

SETTLEMENT AGREEMENT
DJ # 202-30-55

The parties to this Settlement Agreement (“Settlement Agreement”) are the United States of America and MD Food Inc. (doing business as Subway) (“MD Food”). The parties hereby agree as follows:

I. BACKGROUND AND JURISDICTION

1. MD Food operates a Subway restaurant franchise (the “Subway franchise”) located at located at 2522 Hazelwood Drive in Crescent Springs, Kentucky.
2. The United States Attorney’s Office for the Eastern District of Kentucky, a component of the United States Department of Justice (“United States”), opened an investigation of MD Food pursuant to the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§12181-12189, as amended.
3. The United States initiated its investigation upon the receipt of a complaint from an individual with a disability who alleged that an employee at Subway did not allow him to remain in the restaurant with his service animal. Specifically, the complainant is a veteran with post-traumatic stress disorder (PTSD) who uses a service animal. He alleged that when he attempted to dine in at the Subway franchise while using his service animal, a Subway franchise employee asked him to leave because dogs were not allowed in the restaurant. The complainant alleges that because of the denial of access to the restaurant, he was embarrassed, anxious, and suffered emotional distress. MD Food was unable to confirm the complainant’s specific allegations but desires to resolve this dispute without litigation.
4. The United States is authorized to investigate alleged violations of Title III of the ADA. Moreover, the United States is authorized, where appropriate, to use alternative means of dispute resolution, including settlement negotiations, to resolve disputes. If resolution is not achieved, the United States may bring a civil action in federal court in any case where the Attorney General has reasonable cause to believe that a pattern or practice of discrimination exists or where the case raises an issue of general public importance. 42 U.S.C. §§ 12188(b), 12212; 28 C.F.R. §§ 36.502, 36.503, 36.506.
5. Title III of the ADA mandates that “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.” 42 U.S.C. § 12182(a).

6. The Subway franchise is a place of public accommodation within the meaning of Title III because it is a “restaurant, bar, or other establishment serving food or drink . . .” 42 U.S.C. § 12181(7)(B). Thus, MD Food, which owns, operates, or leases the place of public accommodation, is a public accommodation subject to the requirements of Title III of the ADA. 42 U.S.C. § 12182. Public accommodations under Title III of the ADA are subject to the ADA’s requirements, including its service animal requirements.
7. In its operation of the Subway franchise, MD Food is required to make reasonable modifications to its policies, practices, or procedures to permit the use of a service animal by an individual with a disability. See 28 C.F.R. §36.302(a), (c). To ensure compliance with this ADA obligation, MD Food must ensure that its employees are aware of the ADA’s service animal requirements and make reasonable modifications to its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.
8. MD Food shall not ask or require an individual with a disability who is accompanied by a service dog to produce any documentation including a certificate and may ask only two questions: (1) if the animal is required because of a disability; and (2) what work or task the animal has been trained to perform. 28 C.F.R. § 36.302(c)(6). Further, MD Food must permit a service animal to accompany its handler to any space that is normally available to the public. 28 C.F.R. § 36.302(c)(7).

II. REMEDIAL ACTION

A. General Nondiscrimination Requirement

9. Consistent with the requirements of Title III of the ADA, MD Food will not discriminate against any individual on the basis of disability in the full and equal enjoyment of any of its goods, services, facilities, privileges, advantages, or accommodations. Specifically, MD Food will modify its policies, practices, or procedures to permit the use of service animals by individuals with disabilities.

B. Service Animal Policy

10. Within 14 days after the effective date of this Settlement Agreement, to ensure equal access for persons with disabilities who use service animals to the Subway franchise, MD Food will:

- a. adopt the Service Animal Policy ("Policy") attached hereto and incorporated by reference herein as Attachment A to this Agreement;
 - b. distribute the Policy to all employees and managers of the Subway franchise who have contact with the public;
 - c. provide a copy of the Policy to all newly hired Subway franchise employees and managers as part of its standard onboarding process for all new hires;
 - d. post a copy of this Policy in a conspicuous location where employees can readily read the Policy; and
 - e. keep the Policy on hand for any store customers who wish to, upon request, read the Policy.
11. Wherever required by paragraph 10 above to be posted, displayed or kept on hand, the Policy shall be printed in a dark bold font on a contrasting background in the largest font that fits on two 8.5" by 11" pieces of paper. Physical copies of the posted Policy will be refreshed, as needed, for the life of this Settlement Agreement.
 12. Within 30 days of the effective date of this Settlement Agreement, MD Food will provide written confirmation to the United States of the issuance and communication to employees and the posting of the Policy at the Subway franchise.
 13. For the life of this Settlement Agreement, on an annual basis, MD Food will redistribute the Policy to all Subway franchise employees and managers who have contact with the public. MD Food will provide the United States with written confirmation of the issuance of this communication to employees.

C. Training

14. Within 60 days of the effective date of this Settlement Agreement, MD Food will ensure that all owners, managers, and employees of the Subway franchise receive training regarding the ADA requirements regarding individuals with disabilities who use service animals, including a review of the Department's technical assistance document, *Frequently Asked Questions About Service Animals and the ADA*, available at: https://www.ada.gov/regs2010/service_animal_qa.html. MD Food will notify the United States when the above training has been completed.
15. MD Food shall provide such training as described above on an annual basis thereafter for the life of this Settlement Agreement.

D. Monetary Relief for Complainant

16. MD Food agrees to pay \$1,000 to compensate the Complainant. Within 14 days of the effective date of this Agreement, MD Food will send, via overnight delivery, a check for the full amount made payable to this aggrieved person (whose name and address will be provided separately by the United States to MD Food).

III. IMPLEMENTATION AND ENFORCEMENT OF THE AGREEMENT

17. In consideration of the terms of this Agreement, the United States agrees to refrain from filing a civil suit for failure to comply with Title III of the ADA at the Subway franchise; provided, however, that the United States reserves the right to file a civil lawsuit to enforce this Settlement Agreement.
18. The United States does not assert that this Settlement Agreement or the remedial measures contemplated herein will bring the Subway facility into compliance with all aspects of the ADA, and nothing in this Agreement is intended to constitute an interpretation of the legal requirements of the ADA by the United States. Rather, the parties enter into this Agreement for the purpose of compromising disputed claims and avoiding the risk and expenses of litigation. This Agreement is a compromise and it shall not be used or introduced into evidence in any other case or proceeding other than between the parties to this Agreement.
19. The United States may review compliance with this Settlement Agreement at any time, including but not limited to testing at the Subway franchise. If the United States believes that MD Food has violated this Settlement Agreement or any requirement thereof, it agrees to notify in writing via U.S. Mail and/or electronic mail, MD Food's counsel, Mr. Michael Spillane, Cornetet, Meyer, Rush & Stapleton, 123 Boggs Lane, Cincinnati, OH 45246, mspillane@cmrs-law.com, of the specific violation(s) alleged. MD Food shall have 30 days from its receipt of the notice to cure and/or respond in writing to the United States the alleged violation(s).
20. All notices, demands, reports, certifications, or other communication to be provided to the United States pursuant to this Agreement shall be in writing and delivered by U.S. mail or electronic mail to the following:

Carrie B. Pond, Assistant U.S. Attorney
U.S. Attorney's Office
260 W. Vine Street, Suite 300
Lexington, KY 40507-1612
email: carrie.pond@usdoj.gov

21. This Agreement is a public document. A copy of this document or any information contained in it may be made available to any person.
22. Failure by the United States to enforce this entire Settlement Agreement or any provision thereof with regard to any deadline or any other provision herein shall not be construed as a waiver of its right to do so with regard to other deadlines and provisions of this Settlement Agreement.
23. This Settlement Agreement, including Attachment A, constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Settlement Agreement, shall be enforceable. This Settlement Agreement is limited to the facts set forth herein and it does not purport to remedy any other potential violations of the ADA, including violations of the alterations or new construction provisions of the ADA, or any other Federal law. This Agreement does not affect the continuing responsibility of MD Food and the Subway facility to comply with all aspects of the ADA.
24. If any provision of this Settlement Agreement is determined by any court to be unenforceable, the other terms of this Settlement Agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the United States and MD Food shall engage in good faith negotiations in order to adopt such mutually agreeable amendments to this Settlement Agreement as may be necessary to restore the parties as closely as possible to the initially agreed-upon relative rights and obligations.
25. The person signing this Settlement Agreement for MD Food represents that he or she is authorized to bind MD Food and the Subway facility to this Settlement Agreement.
26. The Effective Date of this Agreement is the date of the last signature below. This Agreement shall remain in effect for three (3) years from the Effective Date.

Agreed and Consented to:

Lexington, KY

Feb 25 2021

Crescent Springs, KY

02/19 / 2021

FOR THE UNITED STATES

CARLTON S. SHIER, IV

Acting United States Attorney for
the Eastern District of Kentucky

By: Carrie B. Pond
CARRIE B. POND

Assistant United States Attorney
260 W. Vine Street, Suite 300
Lexington, KY 40507-1612

FOR MD FOOD INC.

By: Mingyu M. Patel

ATTACHMENT A

POLICY REGARDING SERVICE ANIMALS FOR PEOPLE WITH DISABILITIES

Subway does not discriminate against any individual on the basis of disability in the full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations. Further, Subway is committed to making reasonable modifications in its policies, practices, and procedures to permit the use of service animals by persons with disabilities. Service animals play an important role in ensuring the independence of people with disabilities, and it is therefore our policy to welcome into our restaurant any animal that is individually trained to assist a person with a disability.

What is a Service Animal?

Service animals include any dog that is individually trained to work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Service animals do not always have a harness, a sign, or a symbol indicating that they are service animals. A service animal is not a pet. Service animals assist people with disabilities in many ways, such as:

- Guiding people who are blind or have low vision and retrieving dropped objects for them;
- Alerting people who are deaf or hard of hearing to sounds and the presence of others;
- Carrying and picking up items, opening doors, or flipping switches for people with disabilities who have limited use of their hands or arms, limited use of their legs, or limited ability to bend or stoop;
- Pulling wheelchairs;
- Alerting people with disabilities to the onset of medical conditions such as seizures, protecting them and cushioning them if they fall, reviving them, and performing other tasks that reduce the risk of disability-related injury;
- Doing work or performing tasks for persons with traumatic brain injury, intellectual disabilities, or psychiatric disabilities, such as reminding a person with depression to take medication or waking him or her up, alerting a person with anxiety to the onset of panic attacks, calming a person with Post Traumatic Stress Disorder (“PTSD”) during an anxiety attack, orienting people with schizophrenia to reality, and helping people with intellectual or cognitive disabilities to locate misplaced items, find places, or follow daily routines; and
- Providing physical support and assisting people with physical disabilities with stability and balance.

Requirements with Regard to Service Animals:

Most of the time, people with disabilities who use service animals may be easily identified without any need for questioning. If we can tell by looking, it is our policy not to make an individual feel unwelcome by asking questions. If we are unsure whether an

animal meets the definition of a service animal, it is our policy to ask the individual only two questions:

- Is your animal a service animal required because of a disability?
- What work or task is the animal trained to perform?

If the individual says yes to the first question and explains the work or tasks that the animal is trained to perform, we will welcome the person and service animal into the restaurant without asking any additional questions about the service animal. We will **not** ask an individual questions about his or her disability. We will **not** ask an individual to show a license, certification, or special ID card as proof of the service animal's training. We will **not** charge a surcharge to an individual with a disability accompanied by a service dog nor will we impose any other requirements generally not applicable to people without service animals, including requiring them to sit in a designated area of the restaurant. We treat individuals with service animals with the same courtesy and respect that Subway affords to all of our customers.

Manager Responsibilities:

Subway has the right to exclude a service animal from the restaurant if the dog is out of control and the handler does not take effective action to control it, or the dog is not housebroken. We will not exclude a particular service animal based on past experience with other animals or based on fear that is not related to an individual service animal's actual behavior. Each situation will be considered individually. In the event Subway excludes a service animal because it is out of control, we will not refuse service to the individual with a disability when he or she is not accompanied by that particular service animal. Only the Manager of Subway or someone he or she designates can make the decision to exclude a service animal.