

THE CAMPLINE

Providing Camp-Specific Knowledge on Legal, Legislative, and Risk Management Issues

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Photo courtesy of Camp Howe, Goshen, MA

SERVICE ANIMALS AT CAMP. YES. AND. BUT.

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CAMPER MEDICAL MADE EASY



Camps, wanting to be inclusive but protective of their program and maintaining its quality for all campers, have inquired about their obligation, under the Americans with Disabilities Act (ADA), to allow service dogs at camp. Are camps required to comply with the ADA? Is a camp required to allow a camper to bring a service dog to camp, and, if so, under what conditions? What if other campers are allergic to or afraid of dogs? Who is responsible, financially or otherwise, for the dog while it is at camp? Does the ADA requirement extend to an emotional support animal? Camps are asking these and many other questions.

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I. ADA Application to Camps

In our Winter 2016 *CampLine* article “The Americans with Disabilities Act — Revisited,”¹ we updated our readers on the ADA’s application to camps. We advised that the purpose of the ADA 2008 and 2010 amendments was to emphasize the intended broad and liberal interpretation of the ADA (to bring more persons, more easily, under the ADA’s protection).

We advised that most camps, unless they fall within an exclusion for religious organizations, must comply with the ADA.² We also noted that many states have enacted companion state laws protecting individuals with disabilities. To be enforceable, these state laws must include protections to individuals with disabilities equal to or greater than those protections provided under the ADA, including with regard to service animals. Camps should understand these additional compliance requirements (if any) as well.³ As always, camps should consult with their legal counsel to confirm the ADA’s application to the camp and, if it applies, the ADA’s and any companion state law’s impact, considering the camp’s structure and operation.

Bottom line, the ADA prohibits qualifying organizations from discriminating against individuals with a disability — on the basis of that disability — in accessing employment, services, facilities, and activities provided by the organization. The ADA and accompanying regulations further require camps to make reasonable modifications to accommodate individuals with disabilities, including, under appropriate circumstances, allowing the individual to bring a service animal to camp.⁴

For context here, note that in many cases, the camp is considered a private entity and governed by ADA Title III.⁵ If the camp is run by a state or local government or related public entity (example: a city recreation center), the camp would be governed by Title II. The ADA requirements are similar under each Title, and identical with respect to a camp’s obligations regarding service animals. Note

that Titles II and III address a camp’s obligation to its campers — not to its employees — regarding service animals. Title I governs an employer’s obligations to make accommodations for an employee with a disability — a similar but slightly different analysis (see V). Significantly, unlike ADA Titles II and III, ADA Title I and Equal Employment Opportunity Commission (EEOC) regulations governing Title I contain no service animal restriction.⁶

II. What Is a Service Animal and What Are the ADA’s Requirements?

A camp is required to modify its policies to permit a camper with a disability to bring a service animal to camp, within certain parameters, discussed later in this article. As mentioned previously, allowing a camper with a disability to use a service animal is one type of “reasonable modification” to allow the camper access to the camp’s programs and services.

Service animals must be dogs (with one exception for miniature horses, as defined).⁷ Importantly, the work or tasks performed for the camper by the service animal must be directly related to the camper’s disability. A service dog (or a miniature pony, if that is the chosen service animal)⁸ is a dog “trained to perform tasks for an individual with disability — including a physical, sensory, psychiatric, or intellectual disability.” Examples of tasks include, but are not limited to, assisting individuals who are blind or have low vision; alerting individuals who are deaf or hard of hearing; providing nonviolent protection or rescue work; pulling a wheelchair; assisting an individual during a seizure; alerting individuals to the presence of allergens or a change in blood sugar levels; retrieving items; providing physical support and assistance with balance and stability; and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.⁹

In determining whether the animal qualifies as a service animal, the camp is allowed to ask only two questions:

1. Is the animal required by the camper because of a disability?
2. What work/task has the animal been trained to perform?

Note that an emotional support animal whose purpose is to provide comfort (that does not otherwise qualify as a service animal) is not considered a service animal.¹⁰

III. If a Camp Allows a Service Animal, What Are the Parameters?

The camper should be allowed to take the service animal in all areas of the facility/place where the public, program participants, etc., are allowed to go (absent the application of any legitimate limiting criteria discussed later in this article).¹¹ The service animal is subject to local dog licensing and registration requirements and must be compliant with public health laws (required vaccinations, etc.), but need not be trained by a professional trainer. The camp cannot ask for or require proof of a service animal’s certification or licensing (as a service animal), and the animal is not required to wear a vest or other indicator verifying its status as a service animal.¹²

Icon Key

The icons below correspond to article topic areas. Use them to find the articles that best match your interests!



EDUCATION



POSITION STATEMENT



ISSUES



PUBLIC POLICY
AGENDA DEVELOPMENT



LEGISLATIVE



REGULATORY
ADVOCACY



MOBILIZATION



RELATIONSHIPS



Photo courtesy of Camp Waverneck, Raymond, ME

The service animal must be tethered (harness, leash, or other tether), unless, because of a disability, the handler is unable to use a tether, or a tether would interfere with the service animal's safe and effective performance of the work. If tethering isn't an option, the animal must be under voice control, hand signals, or other effective means.

Importantly, the camp cannot impose a "surcharge" or other fee for a camper who is accompanied by a service dog.¹³ However, if the camp normally charges campers/camper families for damages caused by the camper, a camp can charge for damages caused by the camper's service animal. Damages, however, cannot include a cleaning charge for dander or hair left by the animal.¹⁴

The camp is not responsible for the care or supervision of the service animal. The handler is responsible for these tasks, including care, feeding, toileting, veterinary care, etc.¹⁵ If a camper is a young child, or otherwise unable to manage the task of "handling," the handler may be someone other than the camper. In that event, a camp's obligations to provide, or pay for, assistance in handling and caring

for the dog is less clear. Legal authority is scant, but consider the following: ADA regulations require a camp, in appropriate circumstances, to provide an interpreter for a deaf camper, as an auxiliary aid or service.¹⁶ Would a handler, then, fairly be considered such an aid or service? Perhaps not, for a handler is, essentially, a second aid or service (the dog being the first), and arguably adds to a camp's financial and operations burden. A handler for the dog, then, may not be an accommodation expected of the camp, but rather the subject of discussions with the camper and family and perhaps some compromise regarding the cost and operations issues at hand. Note that the presence of a dog handler doesn't clearly fall into the category of addressing the "personal needs" an individual with a disability, which are, by law, the individual's (and not the camp's) obligation.¹⁷ In any event, given the ADA's intent for broad inclusion, it makes sense for the camp to find sensitive and sensible ways to make this work. Consider contacting your ADA regional center for guidance.¹⁸

The camp may ask the camper/camper family to remove the service animal from the camp premises if:

- The animal is out of the handler's control and the handler does not take action to control it;
- The animal is not housebroken.

Note though, that if the animal is removed, the camper must be given the opportunity to continue to access the camp's services or activities without the service animal present.¹⁹

Other, more general limitations applicable to service animals — broadly accepted in the ADA as grounds for limiting modifications for those with disabilities — include:

- If the camp can demonstrate that allowing a service animal would "fundamentally alter the nature" of the goods, services, etc., offered by the camp²⁰;
- If the presence of the service animal would pose a "direct threat" to the safety or health of the camper or others²¹;
- If allowance for the modification poses an "undue burden" (significant difficulty or expense) on a camp (although this factor isn't mentioned in association with current writings on service animals, it is one of the three general ADA articulated limiting criteria).²²

An organization is entitled to limit modifications, including the allowance of service animals, in light of legitimate safety requirements that are necessary for safe operation. However, “[s]afety requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.”²³ Ideally, these criteria can be addressed in a camp’s Essential Eligibility Criteria (EEC) developed for its camp services and activities.²⁴

IV. Factors Not Considered Legitimate for a Camp Wanting to Deny Service Dogs

A camp cannot justify denying a request for a service animal based on other campers’ or staff members’ fear of animals or existing allergies. The camp is directed to find a way to separate these individuals (particularly those with allergies) appropriately to accommodate these factors.²⁵ If a camp has “no animals allowed” or “no pets allowed” signage on its property, the camp should update the signage to provide an exception for service animals.

V. What About an Employee? — Title I Differences

As previously mentioned, ADA Title I does not contain a similar restriction on employees with disabilities regarding service animals. Employers are required to provide reasonable

accommodations for employees with disabilities in facilitating their ability to perform their job duties — which may include allowance for an employee to bring a service animal or simply an emotional support animal to the workplace.²⁶ The analysis for considering a service or support animal as a “reasonable accommodation” under Title I is similar to that undertaken under Titles II and III (as mentioned previously), albeit in the context of an employee in the workplace. There are many constructive resources available for understanding an employer’s obligations. Consider calling your regional ADA Center for assistance and access this helpful resource: askjan.org — and consider this article: “*Emotional Support Animals in the Workplace: A Practical Approach*” at askjan.org.²⁷

VI. Conclusion

Camps can’t and shouldn’t shy away from their obligations under the ADA to allow service or other animals at camp to assist campers or camp employees, in appropriate circumstances. Certainly, a posted “no pets” or “no animals” policy won’t fly in today’s pro-ADA and animal-inclusive culture. Understand your camp’s obligations, and take a proactive approach to these issues, before you hear dogs barking at the camp’s front gate. You will be glad you did. And again, revisit our 2016 ADA *CampLine* article for discussion of proactive ways to

comply with the ADA, including helpful resources and ways to plan for, negotiate or mediate ADA issues and avoid litigation, (for example, the Department of Justice’s encouragement to mediate disputes at no cost to the parties).²⁸

**This article contains general information only and is not intended to provide specific legal advice. Camps and related organizations should consult with a licensed attorney regarding application of relevant state and federal law, as well as considerations regarding their specific business or operation.*

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¹ *CampLine* Winter 2016 ACamps.org/resource-library/campline/americans-disabilities-act-revisited.

² *Id.*, see, generally, text and notes 1–8.

³ 42 U.S.C. 12201(b).

⁴ ADA Introduction, 42 U.S.C. 12101; ADA Title I, 42 U.S.C. 12112; ADA Title II, 42 U.S.C. 12131(2); ADA Title III, 42 U.S.C. 12182(b)(2)(A)(ii); See also ADA Guidance and Department of Justice (DOJ) Q&A, respectively at: ada.gov/service_animals_2010.htm and ada.gov/regs2010/service_animal_qa.html.

⁵ ADA *CampLine* Article, *supra*, text and notes 5–6

⁶ 42 U.S.C. 12111, *et seq.* and adata.org/publication/service-animals-booklet (section V.b); see also The Rehabilitation Act of 1973 re: covered federal employers or employers receiving federal financial assistance.

⁷ 28 CFR 35.136; 28 CFR 36.302(c).

⁸ See, Definitions 28 CFR 35.104; 28 CFR 36.104.

⁹ *Id.*

¹⁰ *Supra* note 4 DOJ Q & A.

¹¹ 28 CFR 35.136(g); 28 CFR 36.302(c)(7).

¹² *Supra* note 4, link to DOJ Q & A.

¹³ 28 CFR 36.306, and for a general discussion of these issues, *supra* note 1, text and notes 14–15.

¹⁴ 28 CFR 35.136(h); 28 CFR 36.302(c)(8); *supra* note 4 DOJ Q&A.

¹⁵ 28 CFR 35.136(e); 28 CFR 36.302(c)(5); see *supra* note 4 link to DOJ Q&A.

¹⁶ 28 CFR 36.303(a).

¹⁷ See 28 CFR 36.306 and for a general discussion of these issues, *supra* note 1, text and notes 14–15.

¹⁸ *Supra* note 1., Sections IV. and V — providing case examples, tips and resources.

¹⁹ 28 CFR 35.136(b)(1) and (2); 28 CFR 36.302(c)(2)(i) and (ii).

²⁰ *Supra* note 4 DOJ Q & A; 28 CFR 35.130(b)(7)(ii); 28 CFR 36.302(a).

²¹ *Supra* note 4 DOJ Q & A; 28 CFR 35.139; 28 CFR 36.208.

²² See 28 CFR 36.104 (Title III regulations) for factors considered relevant in justifying the existence of an undue burden and ada.gov/regs2010/titleII_2010/title_ii_primer.html (re: Title II undue burden analysis). See also, *supra* note 1, text and notes 21–22.

²³ 28 CFR 35.130(h); 28 CFR 36.301(h).

²⁴ *Supra* note 1, text and notes 16, 18 and 19.

²⁵ *Supra* note 4, link to ADA 2010 guidance.

²⁶ See nwadacenter.org/factsheet/service-animals-employment-accommodation; and adata.org/publication/service-animals-booklet (section V.b)). Again, be cognizant of any companion state laws.

²⁷ *Supra* note 1, Section V. containing a link to regional ADA centers. askjan.org/publications/consultants-corner/vol12iss04.cfm?cssearch=1965857_1

²⁸ *Supra* note 1, text and notes accompanying article Sections III, IV, and V.



Photo courtesy of Camp Walden, Diamond Point, NY

COMPENSATING CAMP STAFF: FIVE KEY ISSUES TO CONSIDER IN SETTING YOUR 2019 PAY POLICIES

Emmanuel “Manolis” Boulukos

When it comes to personnel issues, one of the foremost areas of risk for all employers — camps included — is employee compensation. Employers must contend with a web of federal, state, and local laws, the requirements of which are highly nuanced and continually evolving. Unfortunately, there is no simple solution to guarantee ongoing compliance. Regularly reviewing and updating compensation policies and practices is your best protection from the expense and stress of a wage and hour lawsuit or investigation. Achieving compliance can be a challenge, but it is nothing compared to the potentially existential threat of massive wage and hour liability.

To assist your camp in meeting that challenge, this article discusses five key issues regarding the compensation of camp staff, with a particular focus on the nuances of the 13(a)(3) “seasonal” exemption to the Fair Labor Standards Act (FLSA)’s minimum wage and overtime requirements. Please note that this article is provided for informational purposes only, and should not be construed as a substitute for legal advice. We strongly encourage members to discuss the matters addressed in this article with employment counsel, and have their compensation policies and forms reviewed by counsel on a regular basis.¹

No Blanket FLSA Exemption for Camps

Many seasonal camps have long relied upon the 13(a)(3) “seasonal” overtime and minimum wage exemption to the federal FLSA. The applicability of the 13(a)(3) exemption focuses on the operations of the organization itself, not the duties of individual employees, as opposed to the “white-collar” exemptions (discussed later in the article), which apply on an employee-by-employee basis. If the 13(a)(3) exemption applies to a camp’s entire operation, all of the camp’s employees are exempt from the FLSA irrespective of whether they individually qualify for another exemption, and there is no minimum salary requirement.

¹ Portions of this article are taken from a prior article by the same author concerning the Section 13(a)(3) exemption.

Specifically, Section 13(a)(3) provides an exemption from its minimum wage and overtime provisions for any employee² employed by an organized camp, or religious or nonprofit educational conference center, if (a) the establishment does not operate for more than seven months in any calendar year, or (b) during the preceding calendar year its average receipts for any six months of such year were not more than 33 and 1/3 percent of its average receipts for the other six months of the year. As detailed below, there is a specific carve-out for certain employees who provide goods or services on federal lands.

The exemption may seem simple enough at first glance, but the nuances of its application require careful analysis. While many camps are able to take advantage of the exemption, it is not a blanket exemption for all camps, particularly given the increasing prevalence of nontraditional camps and camp-like programs. The following are just a few of the details of the exemption that require careful attention. (Also see the section regarding the effect of state and local laws, which in some cases effectively negate the application of the 13(a)(3) exemption.)

Separate Establishments on the Same Premises?

Critically, in the context of the 13(a)(3) exemption, the term “establishment,” as defined by FLSA regulations, refers to “a distinct physical place of business, rather than to an entire business or enterprise, which may include several distinct places of business.” One particular part of a larger enterprise may qualify for the exemption, whereas other parts of the enterprise do not. For example, a summer camp operated by a youth organization that also provides other year-round services may still be able to take advantage of the 13(a)(3) exemption as

to the camp only if the camp stands alone as a separate establishment.

This can get tricky when a camp seeking to utilize the exemption is operated on the same premises as another reputed establishment (for example, a year-round school, day care, or after-school program) that does not qualify for the exemption. Under the FLSA regulations and US Department of Labor (DOL) guidance, three requirements control whether multiple establishments on the same premises are separate business units for 13(a)(3) purposes: “(a) *physical separation from other activities*, (b) *functional operation as a separate unit with separate records and separate bookkeeping*, and (c) *no interchange of employees between the units*.” (Emphasis added.) (A DOL opinion letter discussing this issue can be found here: dol.gov/whd/opinion/FLSANA/2004/2004_08_04_06FLSA_NA_summercamp.pdf.) If all three requirements are not observed, then the exemption is likely unavailable to the camp, even if the seasonality test is met. Notably, in other informal guidance contained in its Field Operations Handbook, the DOL has opined that a camp operated on school premises during the summer (i.e., when school is not in session) is not necessarily disqualified from the exemption merely because it operates on the same grounds as the school.

What Receipts?

In applying the 33 and 1/3 percent seasonal test, what counts as “receipts?” Does “receipts” mean revenues accrued during a certain period, or money actually received? Is it up to the employer to decide how to account for its receipts?

Several federal courts have provided guidance on this issue. They have held that “receipts,” in this context, means “money actually received” during the period in question. The calculation of receipts does not depend on the particular employer’s accounting system. Instead, what matters is when the establishment actually received the money. Also, for nonprofit organizations, there is no clear rule as to

whether donations and pledges count toward “receipts,” but at least one federal court has ruled that they do. Given the general legal precedent on the definition of “receipts” for purposes of this exemption, it appears likely that most courts would agree.

“White-Collar” Exemptions May Apply

For camps that are covered by the FLSA but cannot take advantage of the 13(a)(3) exemption, the white-collar exemptions are generally the most plausible route to lawfully classifying some camp employees (most likely those in supervisory or administrative positions) as overtime exempt. The exemptions (administrative, executive, professional, outside sales, and computer-related occupation) generally require that an employee meet the “duties” test for the specific exemption, and that he or she be paid the minimum salary required on a “salary or fee basis,” which is not subject to reduction based on quality or quantity of work performed. Whether an employee meets the “duties” requirement of a particular exemption depends on the duties they actually perform, not job titles or position descriptions. (A DOL fact sheet outlining the basic requirements of the white-collar exemptions can be found here: dol.gov/whd/overtime/fs17a_overview.pdf.)

Notably, significant increases to the minimum salary required for most of these exemptions (currently \$455 per week) were scheduled to go into effect in December 2016 under regulations issued by the DOL during the Obama administration. However, a last-minute federal court injunction blocked those changes. Rather than continuing litigation over whether the blocked 2016 regulations should go into effect, the DOL under the Trump administration has announced that it is working on an entirely new set of regulations for the white-collar exemptions. Consequently, it’s possible that the minimum salary will increase at some point in the relatively near future.

² The exemption does not cover certain employees of private entities “engaged in providing services or facilities (other than, in the case of the [minimum wage] exemption . . . a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture.”

Don't Forget State and Local Laws

States and municipalities may institute their own overtime (and minimum wage) standards (including exemption requirements) that are more stringent than FLSA rules. If an employer is subject to both a state and federal overtime standard, the more stringent of the two controls. For example, many states mandate a minimum wage higher than the \$7.25/hour federal requirement and/or higher minimum salaries for their versions of the white-collar exemptions. Of notable relevance to camps, some states (California, among others) have much narrower overtime and minimum exemptions for camp staff. In these states, the fact that a camp may qualify for the federal 13(a)(3) exemption is an effectively moot point, because some or all camp staff may not qualify as exempt under the state overtime standards. For this reason, all camps need to be aware of state and local wage and hour requirements, and it is strongly recommended that these concerns be reviewed with employment counsel. To access state laws, consider ACA's resource, found here: ACAamps.org/resource-library/state-laws-regulations.

Tax Treatment of Staff Meals and Travel Expenses

As discussed in the recent article "Federal Tax Impact on Employer-Provided Meals" (ACAamps.org/news-publications/hot-topic/federal-tax-impact-employer-provided-meals-travel), the 2017 Tax Cuts and Jobs Act Tax Reform legislation has reduced by 50 percent the tax deduction that camps may take for meals provided for the convenience of staff. The deduction is scheduled to be eliminated entirely after December 31, 2025. Also discussed in the same article are common misconceptions about the tax treatment of camp staff travel expenses.

Do You Have That in Writing?

Finally, a key element of wage and hour compliance and litigation avoidance is written documentation of your policies and practices. Maintaining clear compensation policies and accurate position descriptions (for exemption purposes) is a must. Likewise, compensation arrangements with individual employees should be well documented, typically in the form

of an offer letter (with clear at-will employment disclaimers). Terms and conditions of bonuses, commissions, and other incentives should be clearly delineated. In the case of certain year-round staff, formal employment agreements may be appropriate. Again, it is a best practice to have employment policies and forms (such as offer letters and applications) regularly reviewed by employment counsel.

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Photo courtesy of Camp Hows, Cochen, MA

Environmental Factors for Camps to Consider

Severe weather used to have a season. Now, severe weather can happen at virtually any time of the year. Environmental (nonweather-related) factors may include an identifiable element in the physical, cultural, demographic, economic, political, regulatory, or technological environment that affects the survival, operations, and growth of an organization.

Camps need to be prepared. It is important that camp leadership take the time now, in the pre-season, to identify potential emergencies and establish (or update) plans to deal with them. These plans should include severe weather and other environmental factors.

As camps prepare emergency plans, some questions to consider include:

- What immediate action should be taken to protect campers/staff?
- Who, if anyone, should be called? Authorities? Camp families? Neighbors?
- What is the potential impact?
- What follow-up action is necessary?
- What communication strategy is in place?

Potential ACA Resources That May Help You Plan

Severe Weather Season Is Now Year-Round — Preparing Your Camp

[ACAamps.org/resource-library/severe-weather-season-now-year-round-preparing-your-camp](https://acaamps.org/resource-library/severe-weather-season-now-year-round-preparing-your-camp)

Risk Management: Camp Management Liability — Evolving Risk

[ACAamps.org/resource-library/camping-magazine/risk-management-camp-management-liability-evolving-risk](https://acaamps.org/resource-library/camping-magazine/risk-management-camp-management-liability-evolving-risk)

Environmental Impairment Risk

[ACAamps.org/resource-library/camping-magazine/environmental-impairment-risk](https://acaamps.org/resource-library/camping-magazine/environmental-impairment-risk)

Risk Management: Business Interruption Insurance Traps and Gaps by Ed Schirick

[ACAamps.org/resource-library/articles/risk-management-business-interruption-insurance-traps-gaps](https://acaamps.org/resource-library/articles/risk-management-business-interruption-insurance-traps-gaps)

2018 Public Policy Update: Cultural Exchange Program Visas, CPIA, Camps on Federal Lands

[ACAamps.org/resource-library/public-policy/2018-public-policy-update-cultural-exchange-program-visas-cpia-camps-federal-lands](https://acaamps.org/resource-library/public-policy/2018-public-policy-update-cultural-exchange-program-visas-cpia-camps-federal-lands)

Risk Management: Privacy and Security Risks by Ed Schirick

[ACAamps.org/resource-library/articles/risk-management-privacy-security-risks](https://acaamps.org/resource-library/articles/risk-management-privacy-security-risks)

Computer Network Security — Evolving Risks

[ACAamps.org/resource-library/articles/computer-network-security-evolving-risks](https://acaamps.org/resource-library/articles/computer-network-security-evolving-risks)

What If It Does Happen? Camp Security — Plans to Make and Actions to Take

[ACAamps.org/resource-library/campline/what-if-it-does-happen-camp-security-plans-make-actions-take](https://acaamps.org/resource-library/campline/what-if-it-does-happen-camp-security-plans-make-actions-take)

Risk Management: Severe Weather — Flood Risks by Ed Schirick

[ACAamps.org/resource-library/articles/risk-management-severe-weather-flood-risks](https://acaamps.org/resource-library/articles/risk-management-severe-weather-flood-risks)

Wildfire! By Rick Stryker

[ACAamps.org/resource-library/camping-magazine/wildfire](https://acaamps.org/resource-library/camping-magazine/wildfire)

Wildfire Evacuations Resource Page

[ACAamps.org/resource-library/wildfire-evacuations](https://acaamps.org/resource-library/wildfire-evacuations)





Photo courtesy of Camp Killoqua, Everett, WA



PUBLIC POLICY UPDATES

Ralph Forsht

Meals Provided to Employees

A new tax has been imposed on meals provided to camp counselors and other staff during the course of their employment. While ACA believes the recent federal tax law changes were not intended by Congress to adversely affect camps, the new law governing employer-provided meals unexpectedly does just that.

As ACA members know, camp employees are generally required to supervise their campers during mealtimes and, therefore, to eat meals together as a part of their employment. Camps have never charged staff for these meals. They have

always been a fully deductible part of doing business. Camps subject to federal income tax received a tax deduction for the expenses associated with providing such meals, and the value of the meals was not included in the employees' taxable compensation.

The new tax law passed in January 2018 has reversed this tax treatment for camps subject to federal tax retroactive to January 1, 2018, by requiring them to conduct a complex valuation of individual meals for employees who are served meals at camp and to calculate the value of such meals, which are now subject to a limited 50-percent deduction as a business expense, with the balance subject to federal taxation. After December

31, 2025, 100 percent of the value of such meals would be subject to taxation and no longer deductible by camps as a business expense. For a typical camp subject to taxation, the tax bill associated with this change could be in the tens of thousands of dollars or more.

Camps need a legislative fix to remedy this meals tax-deductibility issue. ACA's advocacy team is actively seeking Congressional leaders to champion and support an exemption for camps. ACA's Government Affairs volunteers and advocates will work diligently to try to secure such an exemption in the new Congress.

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Implementing New Federal Background Checks Law

The Child Protection Improvements Act (CPIA) passed in the spring of 2018, and that would enable all camps to access the FBI's federal background check system. Currently, about one-third of states don't have access to the comprehensive federal database.

ACA works closely with YMCA-USA and MENTOR (National Mentoring Partnership), and we've been working with our allies on Capitol Hill to urge the Department of Justice to implement CPIA as soon as possible. When CPIA was passed in 2018, it stipulated that the Justice Department needed to implement CPIA by March 2019.

New Legislation to Address Outfitter/Guide Permits

Toward the end of the last Congress, a new bipartisan bill — Public Land Recreational Opportunities Improvement Act — was introduced that could help camps that operate on federal land. There are several aspects of this bill that would solve problems

that camps have faced for many years in regard to outfitter/guide permits.

One of the biggest provisions within the legislation stipulates that the public land involved cannot charge fees for activities that are unrelated to the time spent on the public lands. The Forest Service has a confusing fee process, which basically says they can charge 3 percent of the revenue of an outfitter/guide for a trip in the forest. This is one thing if they charge 3 percent for the days a camper is actually on the forest land. But a number of camps in multiple places have been charged 3 percent of the entire camp tuition, even though the camper may only be on the forest land for four days of a month-long term. This interpretation makes use of the public lands prohibitively expensive. Clarifying this fee issue would be beneficial.

Other aspects that are helpful include provisions for speeding up the NEPA process. NEPA (National Environmental Policy Act of 1969) requires multiple environmental studies before any type of public lands use can be approved, and these studies often drag on for years, making any use of public lands ponderously slow to approve.

Another positive provision is for a camp to voluntarily (and temporarily) "return" unused user days without endangering the future allotment of user days. Currently, the general rule has been that if you don't use all of the days you are allotted, you lose them.

ACA will be working in the new Congress to generate bipartisan support for this important legislation.

Questions? Reach out to Ralph Forsht, public policy consultant for the American Camp Association, ralphforsht@gmail.com

Ralph Forsht is the government relations consultant for the American Camp Association (ACA). Forsht oversees ACA's work on federal public policy. For nearly 20 years, Forsht has been a dedicated advocate for children and families. Previously, Forsht served as senior vice president at First Focus Campaign for Children, a bipartisan children's advocacy organization. At First Focus Campaign for Children, Forsht worked on federal family tax provisions, children's healthcare, and child poverty. Forsht was also a senior vice president at America's Promise, a national nonprofit dedicated to helping children and communities. At America's Promise, Forsht led the team of advocates championing public policy priorities at the federal, state and local levels. Forsht began his career on the staff of the US Senate Budget Committee.

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Photo courtesy of Chelley Colorado Camps, Estes Park, CO

CORRECTION — Three (Not Two) New Mandatory Standards for 2019

In the fall 2018 *CampLine* (page 17), we stated there were two new mandatory standards that will impact all ACA-accredited camps in 2019. There are actually three (two of them address locking of medication). The list below includes the three new “mandatory” standards. Two of them (SF.3 and HW.19) are current standards moved to mandatory status. HW.28.2 is a new standard.

SF.3 Contact with Local Officials

The slightly revised standard, which has been moved to mandatory status, states: *Does the camp make annual contact with all applicable local emergency officials to notify them of the camp’s dates of operation and relevant scope of programming (including items such as clients served, significant elements of the program, and overview of the facilities)?*

As more camps are being impacted by severe weather and other natural disasters (such as forest fires), establishing the relationship with local officials becomes even more critical.

HW.19 Medication Storage and Administration

Does the camp require:

- A. All drugs to be stored under lock except when in the controlled possession of the person responsible for administering them;
- B. For prescription drugs — they are given only under the specific directions of a licensed physician;
- C. For nonprescription drugs — they are given per the camp’s written procedures (see standards HW.11 and HW.12) or under the signed instruction of the parent or guardian or the individual’s physician?

HW.28 Health Information

The following part has been added to this standard: *HW.28.2: Does the camp require short-term resident camps and/or advise rental group leaders to store and lock all medication (both prescription and over-the-counter) except when in the controlled possession of the person responsible for administering them?*

As more participants bring medication to camp, the potential of “sharing” medication or someone “borrowing” medication becomes greater. Locking of all medication can help prevent this from occurring to some extent.

“Pull and replace” pages that include the revisions and mandatory status for these three standards for the *Accreditation Process Guide, 2012 Edition* are available on the ACA website: ACAamps.org/staff-professionals/accreditation-standards/tools-resources/standards-revisions-clarifications. These three standards are part of the newly revised 2019 standards and are mandatory.

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