

50% TAX CREDIT

ON YOUR PURCHASE OF:

ULTIMATE 1000 LIFT™ STRETCHER-STEPPER™ Tug-Along™

ADA (AMERICANS WITH DISABILITIES ACT) Q&A

Q: “What is the ADA 50% tax credit from the government?”

Money back in your pocket! The ADA, American with Disabilities Act, Section 44 of the IRS Tax Code Form 8826, give you a **DOLLAR-FOR-DOLLAR** tax credit at the end of your fiscal year—when you purchase **Mortuary Lifts Company’s Ultimate 1000 Lift™, Stretcher-Stepper™, or Tug-Along®**. This tax credit also extends to the track and installation costs, up to \$10,000.00.

Q: “Who really can get this tax break?”

Any company who falls under these guidelines:

1. You have less than 30 employees or gross less than \$1,000,000 dollars per year.
2. Install the lift in an existing facility
3. Have an employee or considering with an injury that prevents them from lifting such as a back injury.

Q: “How do I file for the tax credit?”

Simple! We provided everything you need for your accountant.

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A Lifting Experience™



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Cedar Rapids, Iowa 52403
800-628-8809 • 319-364-4910
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FACT SHEET 4

Tax Incentives for Improving Accessibility



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Fact Sheet 2. Providing Effective Communication

Fact Sheet 3. Communicating with People with Disabilities

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To obtain additional copies of any fact sheet in this series, contact your Disability and Business Technical Assistance Center. To be automatically connected to your regional center, call 1-800-949-4ADA. This fact sheet may be copied as many times as desired by the Disability and Business Technical Assistance Centers for distribution to small businesses but may not be reproduced in whole or in part and sold by any other entity without written permission from the authors.

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Tax Incentives for Improving Accessibility

Two tax incentives are available to businesses to help cover the cost of making access improvements. The first is a **tax credit** that can be used for architectural adaptations, equipment acquisitions, and services such as sign language interpreters. The second is a **tax deduction** that can be used for architectural or transportation adaptations.

→ (NOTE: A *tax credit* is subtracted from your tax liability after you calculate your taxes, while a *tax deduction* is subtracted from your total income before taxes, to establish your taxable income.)

Tax Credit

The **tax credit**, established under Section 44 of the Internal Revenue Code, was created in 1990 specifically to help small businesses cover ADA-related “eligible access expenditures.” A business that for the previous tax year had either revenues of \$1,000,000 or less or 30 or fewer full-time workers may take advantage of this credit.

The credit can be used to cover a variety of expenditures, including:

- provision of readers for customers or employees with visual disabilities
- provision of sign language interpreters
- ■ purchase of adaptive equipment
- production of accessible formats of printed materials (i.e., braille, large print, audio tape, computer diskette)
- removal of architectural barriers in facilities or vehicles (alterations must comply with applicable accessibility standards)
- fees for consulting services (under certain circumstances)

→ Note that the credit cannot be used for the costs of new construction. It can be used only for adaptations to existing facilities that are required to comply with the ADA.

The amount of the tax credit is equal to 50% of the eligible access expenditures in a year, up to a maximum expenditure of \$10,250. There is no credit for the first \$250 of expenditures. The maximum tax credit, therefore, is \$5,000.

Tax Deduction

The **tax deduction**, established under Section 190 of the Internal Revenue Code, is now a maximum of \$15,000 per year—a reduction from the \$35,000 that was available through December 31, 1990. A business (including active ownership of an apartment building) of any size may use this deduction for the removal of architectural or transportation barriers. The renovations under Section 190 must comply with applicable accessibility standards.

Small businesses can use these incentives in combination if the expenditures incurred qualify under both Section 44 and Section 190. For example, a small business that spends \$20,000 for access adaptations may take a **tax credit** of \$5,000 (based on \$10,250 of expenditures), and a **deduction** of \$15,000. The deduction is equal to the difference between the total expenditures and the amount of the credit claimed.

EXAMPLE: A small business' use of both tax credit and tax deduction

\$20,000	cost of access improvements (rest room, ramp, 3 doors widened)
= \$5,000	maximum credit
\$15,000	remaining for deduction

Annual Incentives

→ The tax credit and deduction can be used annually. You may not carry over expenses from one year to the next and claim a credit or deduction for the portion that exceeded the expenditure limit the previous year. However, if the amount of credit you are entitled to exceeds the amount of taxes you owe, *you may carry forward the unused portion of the credit to the following year.*

For further details and information, review these incentives with an accountant or contact your local IRS office or the national address below.

FOR MORE INFORMATION...

Request IRS Publications 535 and 334 for further information on tax incentives, or Form 8826 to claim your tax credit.

Publications and Forms
(800) 829-3676 Voice
(800) 829-4059 TDD

Questions
(800) 829-1040 Voice
(800) 829-4059 TDD

Legal Questions
Internal Revenue Service
Office of the Chief Counsel
CC: PSL 7
1111 Constitution Avenue, NW, Room 5115
Washington, D.C. 20224
(202) 622-6120 Voice/Relay

www.irs.gov/plain/forms_pubs/pubs/p90705.htm

Section 44 – Disabled Access Credit

General

The Americans with Disabilities Act (ADA) mandates that businesses modify their facilities to include people with disabilities. As a result the Internal Revenue Code contains several sections that provide tax incentives to comply with the law. Section 44 of the Internal Revenue Code grants eligible small businesses an annual tax credit of up to \$5,000 for expenditures incurred “to comply with applicable requirements under the Americans with Disabilities Act of 1990”.

Under Section 44, an eligible small business may elect to take a general business credit of up to \$5,000 for eligible access expenditures to comply with the ADA. The amount that may be taken is 50% of the eligible access expenditures incurred that exceed \$250 but do not exceed \$10,250 per tax year. The credit can be carried forward up to 15 years and carried back for three years. However, there is no carry back to a year before 1991.

An eligible small business is defined as:

- Business with gross receipts (for the year preceding the taxable year) of no more than \$1 million.
- Or...
- Thirty or fewer full-time (30 hours a week for 20 or more weeks a year) employees.

Examples of reasonable expenditures to comply with the ADA include (1) cost of removing architectural, communication, physical or transportation barriers; (2) providing qualified interpreters, readers or similar service; and (3) modifying or acquiring equipment and materials.

In the absence of clearly defined IRS regulations, Martin Innovations believes that a disabled access credit may be available to qualified small business practices that purchase a power table to facilitate access by disabled individuals. However, the regulations are clear that if a power table is purchased to replace an existing power table, Section 44 will not apply.

Limitations

- Expenditures must be “reasonable” and must meet standards set out in regulations issued by the IRS; however, these regulations have not been published. As a result, there are no clear guidelines as to what equipment would qualify under the ADA provisions.
- Expenses for new construction or those that are not necessary to accomplish ADA accessibility are not eligible.
- Expenses incurred in renovation of a facility or in the normal replacement of a facility or in the normal replacement of depreciable property are not included.

Advantages

- Section 44 allows for a “tax credit” as opposed to a “tax deduction”. A “tax credit” reduces taxes owed whereas a “tax deduction” reduces “Adjusted Gross Income” which is the basis for determining a taxpayer’s tax liability (i.e. taxes owed).
- Section 44 can be used in conjunction with other tax reduction economic stimulus programs such as IRS Code Section 179 (Election to Expense Certain Depreciable Business Assets) and the Job Creation and Worker Assistance Act of 2002 (“30% Stimulus”).

Cases where it was deemed that expenditures were not “eligible access expenditures”

To date there have been two cases where disabled access credits have been denied. In this connection, there may be other instances where a local IRS office has claimed that a credit taken is not appropriate; however, unless the tax payer/small business has appealed the claim and a ruling was issued, events surrounding these instances would not be disclosed. Summary of the two cases where a credit was denied are shown below:

- A Dentist who was already in compliance with ADA at the time he purchased an intraoral camera system was not entitled to the disabled access credit. He did not discriminate against hearing impaired individuals on the basis of their disability, and he effectively communicated with his patients through the use of handwritten notes (acceptable auxiliary aid under ADA). Moreover, the system was not a replacement or alternative to handwritten notes for purposes of the Code Section 44 credit. As a result, it was deemed that the system did not constitute an eligible access expenditure. S.T. Fan, 117TC – No.3, Dec. 54,419.
- An Optometrist’s purchase of a variable height field analyzer, which plots the visual field of a patient, and a hand-held topographer, which makes a map of the eye and screens for irregularities, did not qualify as eligible access expenditures. As a result, his claimed disabled access credit was disallowed. It was deemed that the taxpayer acquired the equipment in the normal course of his business rather than to comply with applicable requirements of the Americans With Disabilities Act of 1990 (ADA). IRS Letter Ruling 200031001, February 28, 2000.

The information provides general guidance in applying tax credits and deductions. This should not be construed as providing financial advice, tax advice and/or rendering advice on tax return preparation. Consult your tax advisor to best assess your potential savings and to confirm the code interpretations.

AMERICANS WITH DISABILITIES ACT OF 1990, AS AMENDED

Editor's Note:

Following is the current text of the Americans with Disabilities Act of 1990 (ADA), including changes made by the ADA Amendments Act of 2008 (P.L. 110-325), which became effective on January 1, 2009. The ADA was originally enacted in public law format and later rearranged and published in the United States Code. The United States Code is divided into titles and chapters that classify laws according to their subject matter. Titles I, II, III, and V of the original law are codified in Title 42, chapter 126, of the United States Code beginning at section 12101. Title IV of the original law is codified in Title 47, chapter 5, of the United States Code. Since this codification resulted in changes in the numbering system, the Table of Contents provides the section numbers of the ADA as originally enacted in brackets after the codified section numbers and headings.

Sec. 12102. Definition of disability

As used in this chapter:

(1) Disability

The term "disability" means, with respect to an individual

- (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment (as described in paragraph (3)).

(2) Major Life Activities

(A) In general

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Regarded as having such an impairment

For purposes of paragraph (1)(C):

- (A) An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.
- (B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(4) Rules of construction regarding the definition of disability

The definition of "disability" in paragraph (1) shall be construed in accordance with the following:

- (A) The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.
- (B) The term "substantially limits" shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.
- (C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.
- (D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
- (E)
 - (i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as

- (I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;
 - (II) use of assistive technology;
 - (III) reasonable accommodations or auxiliary aids or services; or
 - (IV) learned behavioral or adaptive neurological modifications.
- (ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.
- (iii) As used in this subparagraph
- (I) the term "ordinary eyeglasses or contact lenses" means lenses that are intended to fully correct visual acuity or eliminate refractive error; and
 - (II) the term "low-vision devices" means devices that magnify, enhance, or otherwise augment a visual image.

Disabled Access Credit

▶ Attach to your tax return.

Attachment
Sequence No. **86**

Names shown on return

			Identifying number
1 Total eligible access expenditures (see instructions)	1		
2 Minimum amount	2	\$ 250.00	
3 Subtract line 2 from line 1. If zero or less, enter -0-	3		
4 Maximum amount	4	\$10,000.00	
5 Enter the smaller of line 3 or line 4	5		
6 Multiply line 5 by 50% (.50)	6		
7 Disabled access credit from partnerships and S corporations	7		
8 Add lines 6 and 7, but do not enter more than \$5,000. Partnerships and S corporations, report this amount on Schedule K; all others, report this amount on the applicable line of Form 3800 (e.g., line 1g of the 2006 Form 3800)	8		

General Instructions

Section references are to the Internal Revenue Code.

What's New

- The tax liability limit is no longer figured on this form; instead, it must be figured on Form 3800, General Business Credit.
- Taxpayers that are not partnerships or S corporations, and whose only source of this credit is from those pass-through entities, are not required to complete or file this form. Instead, they can report this credit directly on line 1g of Form 3800.
- The IRS will revise this December 2006 version of the form only when necessary. Continue to use this version for tax years beginning after 2005 until a new revision is issued.

Purpose of Form

Eligible small businesses use Form 8826 to claim the disabled access credit. This credit is part of the general business credit.

Definitions

Eligible Small Business

For purposes of the credit, an eligible small business is any business or person that:

- Had gross receipts for the preceding tax year that did not

exceed \$1 million or had no more than 30 full-time employees during the preceding tax year and

- Elects (by filing Form 8826) to claim the disabled access credit for the tax year.

For purposes of the definition:

- Gross receipts are reduced by returns and allowances made during the tax year,
- An employee is considered full time if employed at least 30 hours per week for 20 or more calendar weeks in the tax year, and
- All members of the same controlled group and all persons under common control generally are considered to be one person—see section 44(d)(2).

Eligible Access Expenditures

For purposes of the credit, these expenditures are amounts paid or incurred by the eligible small business to comply with applicable requirements under the Americans With Disabilities Act of 1990 (Public Law 101-336) as in effect on November 5, 1990.

Eligible access expenditures include amounts paid or incurred:

1. To remove barriers that prevent a business from being accessible to or usable by individuals with disabilities;

2. To provide qualified interpreters or other methods of making audio materials available to hearing-impaired individuals;

3. To provide qualified readers, taped texts, and other methods of making visual materials available to individuals with visual impairments;

or

4. To acquire or modify equipment or devices for individuals with disabilities.

The expenditures must be reasonable and necessary to accomplish the above purposes.

Eligible expenditures do not include expenditures in 1 above that are paid or incurred in connection with any facility first placed in service after November 5, 1990.

Eligible access expenditures must meet those standards issued by the Secretary of the Treasury as agreed to by the Architectural and Transportation Barriers Compliance Board and set forth in regulations. See section 44(c) for other details.

Disability. For an individual, this means:

- A physical or mental impairment that substantially limits one or more major life activities,
- A record of such an impairment, or
- Being regarded as having such an impairment.

Member of Controlled Group or Business Under Common Control

For purposes of figuring the credit, all members of a controlled group of corporations (as defined in section 52(a)) and all members of a group of businesses under common control (as defined in section 52(b)), are treated as a single taxpayer. As a member, compute your credit based on your proportionate share of eligible access expenditures giving rise to the group's disabled access credit. Enter your share of the credit on line 6. Attach a statement showing how your share of the credit was figured, and write "See attached" next to the entry space for line 6.

Specific Instructions**Line 1**

Enter total eligible access expenditures paid or incurred during the tax year. See *Eligible Access Expenditures* on page 1.

Line 6

Denial of double benefit. To the extent of the credit shown on line 6, the eligible access expenditures may not be claimed as a deduction in figuring taxable income, capitalized, or used in figuring any other credit.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is shown below.

Recordkeeping 1 hr., 54 min.

Learning about the law or the form 24 min.

Preparing and sending the form to the IRS 26 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.

§ 36.105 Definition of “disability.”

(a)

(1)*Disability* means, with respect to an individual:

- (i) A [physical or mental impairment](#) that [substantially limits](#) one or more of the [major life activities](#) of such individual;
- (ii) A record of such an impairment; or
- (iii) Being regarded as having such an impairment as described in [paragraph \(f\)](#) of this section.

(2)*Rules of construction.*

(i) The definition of “disability” shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA.

(ii) An individual may establish coverage under any one or more of the three prongs of the definition of “disability” in [paragraph \(a\)\(1\)](#) of this section, the “actual disability” prong in [paragraph \(a\)\(1\)\(i\)](#) of this section, the “record of” prong in [paragraph \(a\)\(1\)\(ii\)](#) of this section, or the “regarded as” prong in [paragraph \(a\)\(1\)\(iii\)](#) of this section.

(iii) Where an individual is not challenging a [public accommodation's](#) failure to provide [reasonable modifications](#) under [§ 36.302](#), it is generally unnecessary to proceed under the “actual disability” or “record of” prongs, which require a showing of an impairment that [substantially limits](#) a [major life activity](#) or a record of such an impairment. In these cases, the evaluation of coverage can be made solely under the “regarded as” prong of the definition of “disability,” which does not require a showing of an impairment that [substantially limits](#) a [major life activity](#) or a record of such an impairment. An individual may choose, however, to proceed under the “actual disability” or “record of” prong regardless of whether the individual is challenging a [public accommodation's](#) failure to provide reasonable modifications.

(b)

(1)*Physical or mental impairment* means:

- (i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as: Neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or
- (ii) Any mental or psychological disorder such as intellectual [disability](#), organic brain syndrome, emotional or mental illness, and specific learning [disability](#).

(2)*Physical or mental impairment* includes, but is not limited to, contagious and noncontagious diseases and conditions such as the following: Orthopedic, visual, speech and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual [disability](#), emotional illness, dyslexia and other specific learning disabilities, Attention Deficit Hyperactivity Disorder, Human

Immunodeficiency Virus infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

(3) *Physical or mental impairment* does not include homosexuality or bisexuality.

(c)

(1) *Major life activities* include, but are not limited to:

(i) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, and working; and

(ii) The operation of a *major bodily function*, such as the functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within a body system.

(2) *Rules of construction.*

(i) In determining whether an impairment substantially limits a major life activity, the term *major* shall not be interpreted strictly to create a demanding standard.

(ii) Whether an activity is a *major life activity* is not determined by reference to whether it is of *central* importance to daily life.

(d) *Substantially limits* -

(1) *Rules of construction.* The following rules of construction apply when determining whether an impairment substantially limits an individual in a major life activity.

(i) The term “substantially limits” shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. “Substantially limits” is not meant to be a demanding standard.

(ii) The primary object of attention in cases brought under title III of the ADA should be whether public accommodations have complied with their obligations and whether discrimination has occurred, not the extent to which an individual's impairment substantially limits a major life activity. Accordingly, the threshold issue of whether an impairment substantially limits a major life activity should not demand extensive analysis.

(iii) An impairment that substantially limits one major life activity does not need to limit other major life activities in order to be considered a substantially limiting impairment.

(iv) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(v) An impairment is a disability within the meaning of this part if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment does not need to prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered

substantially limiting. Nonetheless, not every impairment will constitute a [disability](#) within the meaning of this section.

(vi) The determination of whether an impairment [substantially limits](#) a [major life activity](#) requires an individualized assessment. However, in making this assessment, the term “[substantially limits](#)” shall be interpreted and applied to require a degree of functional limitation that is lower than the standard for [substantially limits](#) applied prior to the ADA Amendments [Act](#).

(vii) The comparison of an individual's performance of a [major life activity](#) to the performance of the same [major life activity](#) by most people in the general population usually will not require scientific, medical, or statistical evidence. Nothing in this paragraph (d)(1) is intended, however, to prohibit or limit the presentation of scientific, medical, or statistical evidence in making such a comparison where appropriate.

(viii) The determination of whether an impairment [substantially limits](#) a [major life activity](#) shall be made without regard to the ameliorative effects of [mitigating measures](#). However, the ameliorative effects of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment [substantially limits](#) a [major life activity](#). Ordinary eyeglasses or contact lenses are lenses that are intended to fully correct visual acuity or to eliminate refractive error.

(ix) The six-month “transitory” part of the “transitory and minor” exception in [paragraph \(f\)\(2\)](#) of this section does not apply to the “actual disability” or “record of” prongs of the definition of “disability.” The effects of an impairment lasting or expected to last less than six months can be substantially limiting within the meaning of this section for establishing an actual [disability](#) or a record of a [disability](#).

(2) Predictable assessments.

(i) The principles set forth in the [rules of construction](#) in this section are intended to provide for more generous coverage and application of the ADA's prohibition on discrimination through a framework that is predictable, consistent, and workable for all individuals and entities with rights and responsibilities under the ADA.

(ii) Applying these principles, the individualized assessment of some types of impairments will, in virtually all cases, result in a determination of coverage under [paragraph \(a\)\(1\)\(i\)](#) of this section (the “actual disability” prong) or [paragraph \(a\)\(1\)\(ii\)](#) of this section (the “record of” prong). Given their inherent nature, these types of impairments will, as a factual matter, virtually always be found to impose a substantial limitation on a [major life activity](#). Therefore, with respect to these types of impairments, the necessary individualized assessment should be particularly simple and straightforward.

(iii) For example, applying these principles it should easily be concluded that the types of impairments set forth in paragraphs (d)(2)(iii)(A) through (K) of this section will, at a minimum, substantially limit the [major life activities](#) indicated. The types of impairments described in this paragraph may substantially limit additional [major life activities](#) (including [major](#) bodily functions) not explicitly listed in paragraphs (d)(2)(iii)(A) through (K).

(A) Deafness [substantially limits](#) hearing;

- (B) Blindness [substantially limits](#) seeing;
- (C) Intellectual [disability substantially limits](#) brain function;
- (D) Partially or completely missing limbs or mobility impairments requiring the use of a [wheelchair](#) substantially limit musculoskeletal function;
- (E) Autism [substantially limits](#) brain function;
- (F) Cancer [substantially limits](#) normal cell growth;
- (G) Cerebral palsy [substantially limits](#) brain function;
- (H) Diabetes [substantially limits](#) endocrine function;
- (I) Epilepsy, muscular dystrophy, and multiple sclerosis each [substantially limits](#) neurological function;
- (J) Human Immunodeficiency Virus (HIV) infection [substantially limits](#) immune function; and
- (K) [Major](#) depressive disorder, bipolar disorder, post-traumatic stress disorder, traumatic brain injury, obsessive compulsive disorder, and schizophrenia each [substantially limits](#) brain function.

(3)Condition, manner, or duration.(i) At all times taking into account the principles set forth in the [rules of construction](#), in determining whether an individual is substantially limited in a [major life activity](#), it may be useful in appropriate cases to consider, as compared to most people in the general population, the conditions under which the individual performs the [major life activity](#); the manner in which the individual performs the [major life activity](#); or the duration of time it takes the individual to perform the [major life activity](#), or for which the individual can perform the [major life activity](#).

(ii) Consideration of facts such as [condition, manner, or duration](#) may include, among other things, consideration of the difficulty, effort or time required to perform a [major life activity](#); pain experienced when performing a [major life activity](#); the length of time a [major life activity](#) can be performed; or the way an impairment affects the operation of a [major bodily function](#). In addition, the non-ameliorative effects of [mitigating measures](#), such as negative side effects of medication or burdens associated with following a particular treatment regimen, may be considered when determining whether an individual's impairment [substantially limits](#) a [major life activity](#).

(iii) In determining whether an individual has a [disability](#) under the “actual disability” or “record of” prongs of the definition of “disability,” the focus is on how a [major life activity](#) is substantially limited, and not on what outcomes an individual can achieve. For example, someone with a learning [disability](#) may achieve a high level of academic success, but may nevertheless be substantially limited in one or more [major life activities](#), including, but not limited to, reading, writing, speaking, or learning because of the additional time or effort he or she must spend to read, write, speak, or learn compared to most people in the general population.

(iv) Given the [rules of construction](#) set forth in this section, it may often be unnecessary to conduct an analysis involving most or all of the facts related to [condition, manner, or duration](#). This is particularly true with respect to impairments such as those described in [paragraph \(d\)\(2\)\(iii\)](#) of this section, which by their inherent nature should be easily found to impose a substantial limitation on a [major life activity](#), and for which the individualized assessment should be particularly simple and straightforward.

(4) **Mitigating measures** include, but are not limited to:

(i) Medication, medical supplies, equipment, appliances, low-vision devices (defined as devices that magnify, enhance, or otherwise augment a visual image, but not including ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aid(s) and cochlear implant(s) or other implantable hearing devices, mobility devices, and oxygen therapy equipment and supplies;

(ii) Use of assistive technology;

(iii) [Reasonable modifications](#) or auxiliary aids or services as defined in this regulation;

(iv) Learned behavioral or adaptive neurological modifications; or

(v) Psychotherapy, behavioral therapy, or physical therapy.

(e) **Has a record of such an impairment.**

(1) An individual has a record of such an impairment if the individual has a history of, or has been misclassified as having, a mental or physical impairment that [substantially limits](#) one or more [major life activities](#).

(2) **Broad construction.** Whether an individual has a record of an impairment that substantially limited a [major life activity](#) shall be construed broadly to the maximum extent permitted by the ADA and should not demand extensive analysis. An individual will be considered to fall within this prong of the definition of “disability” if the individual has a history of an impairment that substantially limited one or more [major life activities](#) when compared to most people in the general population, or was misclassified as having had such an impairment. In determining whether an impairment substantially limited a [major life activity](#), the principles articulated in [paragraph \(d\)\(1\)](#) of this section apply.

(3) **Reasonable modification.** An individual with a record of a substantially limiting impairment may be entitled to a [reasonable modification](#) if needed and related to the past [disability](#).

(f) **Is regarded as having such an impairment.** The following principles apply under the “regarded as” prong of the definition of “disability” ([paragraph \(a\)\(1\)\(iii\)](#) of this section):

(1) Except as set forth in [paragraph \(f\)\(2\)](#) of this section, an individual is “regarded as having such an impairment” if the individual is subjected to a prohibited action because of an actual or perceived [physical or mental impairment](#), whether or not that impairment [substantially limits](#), or is perceived to substantially limit, a [major life activity](#), even if the [public accommodation](#) asserts, or may or does ultimately establish, a defense to the action prohibited by the ADA.

(2) An individual is not “regarded as having such an impairment” if the [public accommodation](#) demonstrates that the impairment is, objectively, both “transitory” and “minor.” A [public accommodation](#) may not defeat “regarded as” coverage of an individual simply by demonstrating that it subjectively believed the impairment was transitory and minor; rather, the [public accommodation](#) must demonstrate that the impairment is (in the case of an actual impairment) or would be (in the case of a perceived impairment), objectively, both “transitory” and “minor.” For purposes of this section, “transitory” is defined as lasting or expected to last six months or less.

(3) Establishing that an individual is “regarded as having such an impairment” does not, by itself, establish liability. Liability is established under title III of the ADA only when an individual proves that a [public accommodation](#) discriminated on the basis of [disability](#) within the meaning of title III of the ADA, [42 U.S.C. 12181- 12189](#).

(g)Exclusions. The term “disability” does not include -

- (1) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
- (2) Compulsive gambling, kleptomania, or pyromania; or
- (3) Psychoactive substance use disorders resulting from [current illegal use of drugs](#).

[AG Order 3702-2016, [81 FR 53240](#), Aug. 11, 2016]

ADA Information Line

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ADA Specialists, who assist callers in understanding how the ADA applies to their situation, are available on Monday, Tuesday, Wednesday, and Friday from 9:30 a.m. until 5:30 p.m. (Eastern Time) and on Thursday from 12:30 p.m. until 5:30 p.m. (Eastern Time). Calls are confidential.

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