

**ESBLN** Eastern Shore Business Leadership Network  
Putting Ability to Work [www.esbln.org](http://www.esbln.org)  
By Jackie Gast, Director

The Americans with Disabilities Act Amendments Act (ADAAA) was overwhelmingly signed into law by the Senate and the House on September 25, 2008 and will become effective January 1, 2009. The following is directly quoted or paraphrased from the U. S. House of Representatives website.

The Americans with Disabilities Act (ADA) of 1990 was intended to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities. Just as other civil rights laws prohibit entities from basing decisions on characteristics like race or sex, Congress wanted the ADA to stop employers from making decisions based on disability. Unfortunately, U.S. Supreme Court decisions have narrowed the definition of disability so much that people with serious conditions such as epilepsy, muscular dystrophy, cancer, and diabetes have been determined to not meet the definition of disability under the ADA. The result: In 2004, plaintiffs lost 97% of ADA employment discrimination claims that went to trial, often due to the interpretation of definition of disability. People who are not hired or are fired because an employer mistakenly believes they cannot perform the job “or because the employer does not want people like that in the workplace” have been denied protection from employment discrimination due to these court decisions. The ADAAA of 2008 overturns the erroneous Supreme Court decisions that have eroded the protections for people with disabilities under the ADA, restoring original Congressional intent.

This new law is supported by a broad coalition of civil rights groups, disability advocates, and employer trade organizations including The U.S. Chamber of Commerce and The Society for Human Resource Management (SHRM), who were also instrumental in the negotiating the content in the law.

Briefly, the law rejects strict interpretation of the definition of disability, and makes it absolutely clear that the ADA is intended to provide broad coverage to protect anyone who faces discrimination on the basis of disability. It strikes a balance between employer and employee interests. It prohibits the consideration of mitigating measures such as medication, prosthetics, and assistive technology, in determining whether an individual has a disability. It covers people who experience discrimination based on a perception of impairment regardless of whether the individual experiences disability. It provides that reasonable accommodations are only required for individuals who can demonstrate they have an impairment that substantially limits a major life activity, or a record of such impairment. Accommodations need not be provided to an individual who is only regarded as having an impairment.

I recently attended the U.S. Business Leadership Conference in which there was a panel discussion on the ADAAA. Panelists included representatives from SHRM and The Equal Employment Opportunity Commission (EEOC). Many are looking at the law as a much needed clarification of disability in the workplace. There was an emphasis made that if a person is qualified, discrimination is prohibited. The law will expand the number of individuals covered.

It is important employers review or create diversity policy for inclusion. For more information, visit the EEOC at [http://www.eeoc.gov/ada/amendments\\_notice.html](http://www.eeoc.gov/ada/amendments_notice.html).