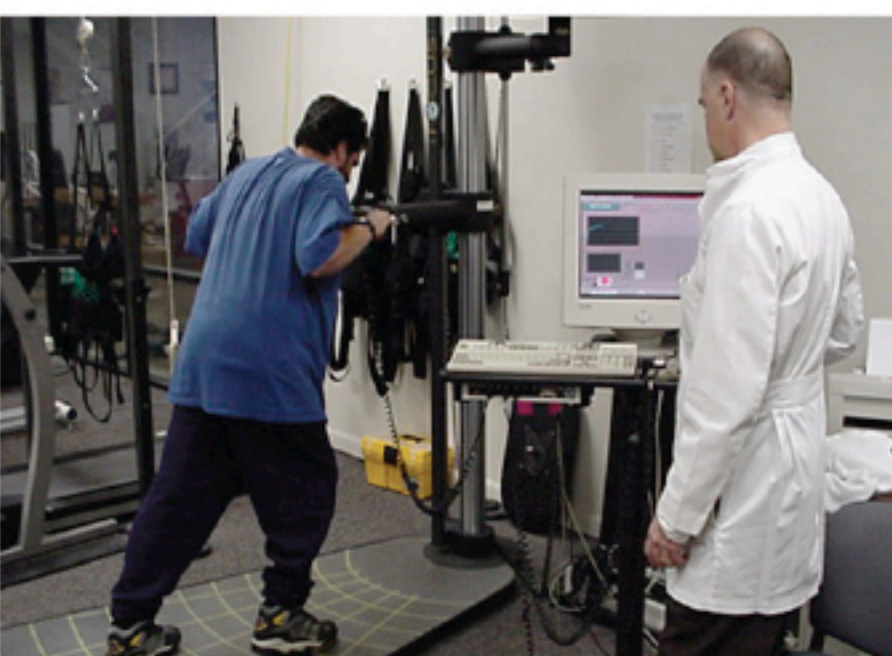




# ISR Physical Therapy

FCE TIP OF THE MONTH  
*September, 2010*

## FCEs and the ADA Amendments Act – Avoiding Allegations of Employee Discrimination



When President Bush signed the “ADA Amendments Act (“ADAAA”) on Sept 28, 2008, he widely broadened the scope of individuals covered by the ADA. ADAAA took effect on January 1, 2009 eliminating mitigating measures that could be considered when determining if an impairment substantially limits a major life activity, and meets the level of a protected disability. This law has an impact on how employers utilize FCEs for post-offer pre-placement (new hire) and for return to work decisions. ADAAA has ruled that mitigating measures such as medications and other interventions that manage a disease or disability that were once used to deny ADA coverage must now be ignored. Avoiding allegations of Claiming discrimination has consequently become more liberal as well. An individual only has to show that he or she was discriminated against because of an actual or perceived impairment, even if the impairment doesn’t limit or isn’t perceived to limit a major life activity. However, the employee has to show that the employer believed that he or she had a mental or physical impairment. So what’s the bottom line? Many more people who would not have previously been protected by ADA prior to the ADA Amendment Act will now be covered and employers will need to document and engage in interactive discussions to determine when reasonable accommodations are necessary. For more information on best practice procedures to conduct employee agility testing via FCEs , please contact Dr. Bunch or Mr. Bardarson at ISR.

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