



*Vihrtual provides HR services to employers of all sizes. If you need support with your HR function and are interested in learning more about our services, please go to [www.vihrtual.com](http://www.vihrtual.com). We would love the opportunity to learn how we might be able to best serve you.*

**Question:**

One of our employees was injured at his home while completing a renovation project. His injury was not related to performing work for our company. He has been off work for several days as a result of his injury but is now ready to come back to work. We are concerned that he might not be able to safely do his job. What should we do?

**Answer:**

In accordance with the Americans with Disabilities Act (ADA), you may only make a disability-related inquiry or require a medical examination if it is "job-related and consistent with business necessity". If the employee works in a safety-sensitive position or his role requires physical labor, it may be acceptable to ask him to provide a return-to-work release from his doctor. You will only want to take this step if you have a reasonable belief, based on objective evidence, that he will pose a direct threat or will be unable to safely perform his essential job duties because he is impaired due to the injury. This evidence may include what the employee has shared with you about the extent of his injury and how long he thinks it will take to recover. When requesting the return-to-work release, you may want to explain to him that you are concerned about his safety and the potential that he could harm himself further if he returns to work too soon.

If you employ 50 or more employees within a 75-mile radius for at least 20 workweeks in the current or preceding calendar year and are subject to the Family and Medical Leave Act (FMLA), you will want to comply with all notice requirements and provide a medical certification form to the employee should his injury possibly qualify as a serious health condition entitling him to job-protected leave.

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