

Don't automatically approve FMLA leave for elective or cosmetic surgery

If you routinely assume that any surgical procedure is eligible for FMLA leave, you may be missing an opportunity to curtail covered time off.

Elective surgery that isn't medically necessary may not be eligible for FMLA leave because the employee having the procedure may not be suffering from a serious health condition. Challenge such leave requests by asking for the second and third certifications that the FMLA allows.

Recent case: Gladys Alcazar-Anselmo worked for the city of Chicago until she was terminated for what her employer said was poor performance.

She sued, claiming she was fired shortly after requesting FMLA leave for surgery and that denying her right to FMLA leave was the real reason she lost her job.

The city countered that Alcazar-Anselmo wasn't eligible for FMLA leave at all because her scheduled surgery was an elective, cosmetic procedure. Alcazar-Anselmo presented an expert opinion that the surgery was medically necessary, but the city had its own expert who alleged that the surgery was not needed.

The judge ruled that a jury should sort out the medical evidence and decide if Alcazar-Anselmo needed the surgery. (*Alcazar-Anselmo v. City of Chicago*, No. 07-C-5246, ND IL, 2010)

Final note: The best approach is to use the FMLA's certification process before turning down a request. Few judges will second-guess a denial based on two independent medical assessments that say the surgery was not medically necessary.