FMLA: Second medical opinion is your option

The FMLA allows employers that don't want to accept an employee's medical certification to ask for (and pay for) a second opinion. If the two opinions contradict one another, the employer may pay for a third, tie-breaking assessment. But that can be expensive.

If you prefer to simply deny the employee's leave request, that's fine. If the employee sues, you can still challenge the underlying medical condition and whether it qualifies as a serious health condition under the FMLA.

Recent case: Rose is a doctor, as is her adult daughter. When the daughter underwent brain surgery and was discharged, Rose asked for FMLA leave so she could care for her. Under the FMLA, once a child is over age 18, a parent is eligible for leave only if the child's condition means she's incapable of self-care.

The employer said Rose wasn't eligible for FMLA leave because it believed her daughter could take care of herself. Rose sued, alleging denial of her FMLA rights.

That's when the employer subpoenaed the daughter's medical records. The daughter objected. Rose argued that because her employer never asked for a second opinion back when her daughter was discharged, it lost the right to now demand records and contest her daughter's condition.

The court agreed with the employer. It said employers don't lose the right to challenge an employee's eligibility just because it doesn't want to pay for a second or third opinion. Employers are free to take their chances by denying leave; if sued, they can still try to prove the employee was ineligible for FMLA leave. (*Mezu v. Morgan State University*, No. 11-2396, 4th Cir., 2012)

Final note: Always check a child's age before automatically approving FMLA leave. After age 18, the child must be so sick she can't take care of herself.

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