

Must we give FMLA leave for cosmetic surgery?

Q. An employee lost weight and is having excess skin removed and a breast lift. There will be a surgery and recovery period. Is elective cosmetic surgery covered under a serious medical condition? — Becky, Texas

A. In general, elective cosmetic surgery is not covered by the FMLA “unless inpatient hospital care is required or unless complications develop.” The rules go on to say that, “restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met.” (29 C.F.R. Section 925.113)

If the employee’s surgery will be inpatient, her condition would qualify as a serious health condition. If the surgery is outpatient, but requires a regimen of ongoing care that’s more than three days, the regulation suggests FMLA leave does not apply, but ongoing care suggests perhaps it does. If there are complications that require ongoing care, the FMLA will apply. Before making a decision, read the regulations and talk to your attorney.