Make sure employees follow all the rules when requesting FMLA leave

Workers who want to take FMLA time off must show they have a serious health condition. The Department of Labor's FMLA regulations define what constitutes a serious health condition. If an acute condition involves a period of incapacity of more than three consecutive days, continuing treatment includes either:

- Treatment two or more times within 30 days of the first day of incapacity or
- Initial in-person treatment followed by a regimen of continuing treatment under the supervision of a health care provider.

However, in either case, the first in-person treatment with a health care professional must take place within seven days of the initial illness or injury that rendered the worker incapable of performing his job.

Otherwise, the regulations assume the condition isn't a serious health condition. Thus, the worker would not be entitled to FMLA leave.

Recent case: Steve, a port crane operator for Nucor, went hunting on a Saturday. While doing so, he claimed he injured his knee. He was scheduled to work a four-day shift beginning the following Tuesday, but called his supervisor and explained he could not work.

He then waited until the following Monday to see his doctor—a full nine days after the hunting accident.

Steve's doctor diagnosed him with "left knee pain," and prescribed anti-inflammatory medication. He instructed Steve to return if "anything gets any worse." Steve didn't return to the doctor for another two months.

However, he did drive from the doctor's appointment to Nucor and delivered a doctor's note excusing him from work through the end of the year. The doctor's note merely noted that Steve was under his care, offering no more specifics.

The doctor returned FMLA forms to Nucor, with a note that Steve had "no use of left lower extremity." Because Nucor personnel had seen Steve walking when he delivered the note, they requested a second opinion, as allowed under the FMLA.

Steve refused to cooperate. The company rejected his FMLA request and terminated him for absenteeism.

Steve sued, alleging interference with his FMLA rights.

But the court rejected his claim, reasoning that he didn't have a serious health condition. It cited Steve's failure to see a doctor within the initial seven-day period following the injury. His lawsuit was dismissed. (*Curtis v. Nucor*, 8th Cir., 2018)

Final note: Not every minor injury qualifies a worker for FMLA leave. That's especially true when, as here, the employee delays seeking treatment in the first place or doesn't follow up after the initial treatment. The FMLA

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isn’t intended to cover minor illnesses, but to provide job-protected leave for serious health concerns or injuries.

Remember that employers aren’t required to accept a doctor’s certification if they suspect the worker isn’t suffering from a serious health condition. The law allows employers to ask for a second opinion from a health care provider of the employer’s choice. The employer must pay for that assessment. If the second opinion contradicts the worker’s health care provider, the employer is entitled to arrange and pay for a third, tie-breaking opinion. If the worker refuses to participate in the second and third evaluation, the employer can refuse to approve FMLA leave.

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