



Benefits of FMLA 2nd Opinion Exams

A key consideration for requesting a Second Opinion Exam is whether there is **doubt** about the medical certification, diagnosis, and/or treatment plan. This doubt can arise for different reasons including inconsistency with other FMLA certifications, multiple certifications or opinions from the same or different physicians, and a history of the condition presented. The Second Opinion Exam is appropriate whenever there is any doubt about a medical certification from the employee's health provider.

Topic	Issues	Evaluation Benefits
Serious Health Condition (SHC)	Verify diagnosis	Determine the accuracy and validity of the health provider or physician providing certification.
	Verify Serious Health Condition	If there is doubt about whether the condition qualifies for FMLA, a 2 nd opinion consultation can provide evidence for qualification.
	Verify job performance	Does the condition prevent the employee from performing the required functions of the job position?
	Justified absences	The 2 nd opinion will help determine if the health condition is serious enough to justify employee absence.
	Is the SHC incapacitating?	A 2 nd opinion will help determine if the health condition will incapacitate the employee preventing them from their job performance.
	Is intermittent leave required?	A serious health condition may not result in the need for intermittent leave if the condition can be treated and resolved.
Conflicting certifications	Inconsistent diagnoses	If the employee's certification and re-certifications do not have consistent diagnoses, the 2 nd opinion will determine a correct diagnosis and its qualification for FMLA.
	Certifications from multiple providers	If the multiple certifications are presented for the same conditions, a 2 nd opinion will examine whether there are inconsistencies that question qualification for leave.
	Repeated, extended Return to Work dates	Repeated new return-to-work dates may indicate the original health condition was not serious and should be questioned. The 2 nd opinion could also establish an appropriate date.
Intermittent Leave	Is intermittent leave required for this condition?	Does the health condition normally justify extended care or intermittent leave? Or, are there special considerations for this employee's condition?
	Does employee's Serious Health Condition justify intermittent leave?	The 2 nd opinion will help establish whether continued care, over a long period of time, is questionable or not. It can also provide recommendations for treatment plans, treatment end dates, and appropriate leave possibilities.
	Is there sufficient medical evidence for intermittent leave?	A second opinion from a medical specialist may override the opinion or certification from a general practitioner and lead to a treatment plan that reduces intermittent leave or possible leave schedules.
	Does the 2 nd opinion physician agree or disagree with the 1 st certification findings stating that intermittent leave is necessary?	Alternative findings can establish whether future absences are necessary or whether the condition can be resolved through other treatment methods. Sometimes a health condition can be treated and resolved through other health and treatment plans.
	Does the condition justify intermittent leave to begin at this time?	The second opinion can usually answer whether the leave is necessary now, whether it can be resolved through other treatments, and whether it should be allowed to begin at this time or later.
	Could intermittent leave be due to conditions other than the FMLA certified condition?	The second opinion should examine and report on whether there is consistency between the certified diagnosis or health condition and the treatment plan, leave schedule, medical prognosis, etc.



Topic	Issues	Evaluation Benefits
Return to Work (RTW)	2 nd Opinion before or after RTW certification???	A second opinion regarding the return-to-work status of the employee is prohibited AFTER the employee provides a certification from his or her health provider (physician, therapist, chiropractor, etc.)
	Verify RTW date.	If there is any doubt about an employee's ability to return to work or ability to perform required job functions, verification with a second opinion exam should be requested before the employee's provider writes a return to work release or a fitness for duty certification.
	Assess medical or health treatment plans to accelerate RTW.	Another provider should evaluate the employee's treatment plan and a second opinion exam requested if there is doubt regarding the effectiveness of the treatment.
	Anticipate RTW certification	A second opinion evaluation can be useful in considering the employer's options for return to work.

"SERIOUS HEALTH CONDITION":

An illness, injury, impairment, or physical or mental condition that involves one of the following:

1. Hospital Care. Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.
2. Absence Plus Treatment. A period of incapacity of **more than three consecutive calendar days** (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:
 - a. Treatment **two or more times** by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; *or*
 - b. Treatment by a health care provider on **at least one occasion** which results in a **regimen of continuing treatment** under the supervision of the health care provider.
3. Pregnancy. Any period of incapacity due to pregnancy or prenatal care.
4. Chronic Condition Requiring Treatment. A **chronic condition** is one which: (a) Requires **periodic visits** for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider; (b) Continues over an **extended period of time** (including recurring episodes of a single underlying condition); and (c) May cause **episodic** rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
5. Permanent/long-term Condition Requiring Supervision. A period of incapacity which is **permanent or long-term** due to a condition for which treatment may not be effective. The employee or family member must be **under the continuing supervision of, but need not be receiving active treatment by, a health care provider**. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
6. Multiple Treatments (Non-Chronic Condition). Any period of absence to receive **multiple treatments** (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of or on referral by, a health care provider, either for **restorative surgery** after an accident or other injury, or for a condition that **would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment**, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).