

DISABILITY INSURANCE

INTRODUCTION:

Employees with serious medical conditions, such as cancer, who need to take time off from work, may be concerned about maintaining their income during an unpaid leave of absence. Disability insurance is an insurance policy that pays a portion of an employee's income in the event of a temporary or permanent disability, which prevents the employee from working.

I. PRIVATE DISABILITY INSURANCE

- A. **What is Private Disability Insurance?:** Private disability insurance is an insurance policy that can be provided by an employer as an employee benefit, or an insurance policy that can be purchased by an individual directly from an insurance company. It protects employees who are unable to work due to a disability, by paying them all or part of their salaries.
- B. **What is Short-Term Private Disability Insurance?:** Short-term private disability insurance pays a percentage of an employee's salary if the employee becomes unable to work for a short period of time due to illness, injury, or pregnancy. Short-term disability insurance policies typically provide benefits for a short period of time (six months to one year).
- C. **What is Long-Term Private Disability Insurance?:** Long-term private disability insurance pays a percentage of an employee's salary if the employee becomes unable to work for a longer period of time due to illness or injury. Long-term disability insurance policies typically provide benefits for a disability that is expected to last, or has lasted, for one year or longer. However, policies do vary on the length of coverage and the definition of a long-term disability.
- D. **Policy Features:** It is important for the employee to review the terms, limitations, and exclusions in the policy to determine whether the coverage is adequate for their own future needs. It is also important to know how the insurance company defines "disability."
 - 1) The following information should be reviewed prior to purchasing a disability insurance policy:
 - (i) The definition of "total disability" that will entitle an individual to benefits;
 - (ii) The "elimination" or "qualifying" period, which refers to the period of time between the date the disability begins and when benefits are paid;
 - (iii) Availability of "residual" benefits, which make up the difference in income if the individual is only able to work in a limited capacity, which results in a lower income;
 - (iv) Payment for "presumptive" disabilities (such as loss of sight, hearing, or use of limbs), even if the individual still may be able to work;
 - (v) The "benefit period," which means the maximum amount of time an individual can collect benefits;
 - (vi) The "benefit percentage," which is the amount an individual will be paid and is usually a percentage of one's income;
 - (vii) Any cost-of-living adjustments to increase benefits;
 - (viii) "Waiver of premiums," so that an individual does not have to pay premiums if the disability lasts 90 days or longer;
 - (ix) "Mandatory rehabilitation options," which allow the insurance company to terminate benefits if an individual does not cooperate with a rehabilitation plan;

- (x) Any other limitations or exclusions (such as barring benefits for pre-existing conditions);
- (xi) Any offsets against benefits (such as SSDI or workers' compensation); and
- (xii) "Survivor benefit options," which is a lump sum payment to the insured's survivors if the insured dies while receiving disability benefits.

E. Pre-Existing Conditions: Insurance companies can refuse to sell individual disability insurance policies to people who have pre-existing medical conditions. Therefore, it is important to purchase disability insurance before an individual has a pre-existing medical condition. Some policies may offer a pre-existing condition exclusion period. This means that for a specific period of time, the insurance company will not provide benefits, if an employee is unable to work as a result of the pre-existing medical condition. Only after the pre-existing condition exclusion period ends, will the condition then be covered under the policy.

- 1) **Medical Examinations:** The insurance company can also require a medical examination before issuing a policy. Once they issue the policy, it generally cannot be cancelled as long as the premium is paid on time. However, if there was any misrepresentation of a disability or of pre-existing medical conditions, the insurance company may cancel the policy based on a claim of fraud. It is important to always provide accurate medical history information.
- 2) **Claim Denial:** If a disability insurance company denies an insurance claim, some policies require the decision to be appealed within a certain timeframe. Check with the insurance company for information on the appeals process.

F. Private Disability Insurance vs. Workers' Compensation: If an employee is receiving workers' compensation benefits after being injured on the job, some private disability insurance policies will deny or reduce the amount of private disability insurance benefits the employee receives.

II. STATE DISABILITY INSURANCE

A. State Disability Insurance: State disability insurance benefits are benefits that are offered through a state-sponsored program. State disability insurance programs have different names in each state. They can be called temporary disability insurance benefits or state short-term disability insurance benefits. They provide employees with a source of income when they are unable to work due to disabling illnesses and injuries, which are not work-related. In order to draw on these benefits while an employee is unable to work, they must have paid into the system through taxes. Typically, state disability insurance benefits are administered by the same agency that administers state unemployment insurance. Eligibility requirements for these benefits vary in each state.

- 1) **States and Territories That Offer State Disability Benefits:** Below is a list of the states and territories that offer disability insurance benefits and how long they offer benefits:
 - (i) California State Disability Insurance (SDI) – up to 52 weeks
 - (ii) Hawaii Temporary Disability Insurance (TDI) – up to 26 weeks
 - (iii) New Jersey Temporary Disability Insurance (TDI) – up to 26 weeks
 - (iv) New York Disability Benefits Law (DBL) – up to 26 weeks
 - (v) Rhode Island Temporary Disability Insurance (TDI) – up to 30 weeks
 - (vi) Puerto Rico Disability Insurance – up to 26 weeks

III. STATE PAID FAMILY LEAVE

- A. **Paid Family Medical Leave:** Some states provide paid family leave for employees who are taking time off work to provide caregiving services to a seriously ill family member.
- 1) Example: California has Family Temporary Disability Insurance that provides income (up to 55% of an employee's weekly pay) for caregivers who are taking up to 6 weeks off of work.
 - 2) Example: New Jersey has the Temporary Disability Benefits Law that provides income (up to 66% of an employee's weekly pay) for caregivers who are taking up to 6 weeks off of work.
 - 3) Example: Washington has short term disability laws that provide income (up to \$250/week) to caregivers who are taking up to 5 weeks off of work to care for a child.

IV. FEDERAL DISABILITY INSURANCE

- A. **Introduction:** In addition to the disability benefits programs discussed above, the federal government offers two long-term disability benefit programs: Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI). In order to receive these benefits, an employee must apply with the Social Security Administration (SSA) and must also meet the SSA's definition of disability. The key to qualifying for benefits is to show how an employee's medical condition and the side effects from its treatment are keeping an employee from working.
- 1) **Requirements:** SSA defines "disability" as a "medically determinable physical or mental impairment," that:
 - (i) Results in the inability to do any substantial gainful activity;
 - (ii) Has lasted or can be expected to last for a continuous period of 12 months or more;
or
 - (iii) Can be expected to result in death.
 - 2) **Social Security Administration Test:** The SSA has a five-step process to determine whether someone has a disability:
 - (i) Is the applicant working and earning more than \$1,000 per month? If so, the applicant is denied unless the applicant was precluded from working for at least one year;
 - (ii) Does, the applicant have a severe impairment? The impairment must do more than minimally affect an applicant from doing basic work activities in the statute; it must significantly limit the applicant for at least one year;
 - (iii) Assuming the above two requirements are satisfied, does the applicant's medical condition meet or equal a description of severity that is codified in something called a "listing" created by the SSA? If the condition is not listed, then the SSA will look at the severity of the condition;
 - (iv) Can the applicant return to work or any past work done in the last 15 years? If one job is found in the applicant's last 15 years of work history that can be done, the claim is denied. If not, the applicant reaches the last step in the process; and
 - (v) Finally, once the above-mentioned requirements are satisfied, the burden of proof shifts to the SSA to show that there is other work, other than past relevant work, that the applicant can now perform.

- 3) **Compassionate Allowances:** The Compassionate Allowances program began in 2008, as a way of quickly identifying medical conditions that qualify someone presumptively eligible for Social Security disability benefits. The following chart is a list of cancer-related conditions in the Compassionate Allowances program. For a complete list, visit www.ssa.gov and search for Compassionate Allowances.

COMPASSIONATE ALLOWANCES:

- Acute Leukemia
- Adrenal Cancer – distant metastases or inoperable, unresectable or recurrent
- Anaplastic Adrenal Cancer – distant metastases or inoperable, unresectable or recurrent
- Bilateral Retinoblastoma
- Bladder Cancer – distant metastases or inoperable or unresectable
- Bone Cancer – distant metastases or inoperable or unresectable
- Breast Cancer – distant metastases or inoperable or unresectable
- Chronic Myelogenous Leukemia (CLM) – Blast Phase
- Ependymoblastoma (Child Brain Tumor)
- Esophageal Cancer
- Gallbladder Cancer
- Glioblastoma Multiforme (Brain Tumor)
- Head and Neck Cancers – Bone Cancer – distant metastases or inoperable or unresectable
- Idiopathic Pulmonary Fibrosis
- Inflammatory Breast Cancer (IBC)
- Kidney Cancer – inoperable or unresectable
- Large Intestine Cancer – distant metastases or inoperable, unresectable or recurrent
- Liver Cancer
- Mantle Cell Lymphoma (MCL)
- Mucosal Malignant Melanoma
- Non-Small Cell Lung Cancer – metastases to or beyond the hilar nodes or inoperable, unresectable or recurrent
- Ovarian Cancer – distant metastases or inoperable or unresectable
- Pancreatic Cancer
- Peritoneal Mesothelioma
- Pleural Mesothelioma
- Salivary Tumors
- Small Cell Cancer (of Large Intestine, Ovary, Prostate or Uterus)
- Small Cell Lung Cancer
- Small Intestine Cancer – distant metastases or inoperable, unresectable or recurrent
- Stomach Cancer – distant metastases or inoperable, unresectable, or recurrent
- Thyroid Cancer
- Ureter Cancer – distant metastases or inoperable, unresectable or recurrent

- B. **Supplemental Security Income (SSI):** SSI is the federal long-term disability program that makes monthly payments to people who are age 65 or older, blind, or have a disability. An applicant's income and resources are used to determine whether they meet the financial requirements for SSI.

- 1) **Income & Resource Requirements:** Income is money received (wages, Social Security benefits, pensions, etc.). Income can also include things such as food and shelter. Resources that SSA counts in deciding whether an individual qualifies for SSI benefits include real estate, bank accounts, cash, stocks, and bonds. Resources do not include one home and/or car; life insurance policies with a face value of \$1,500 or less; burial plots; and burial funds. However, owning more than one home or car will count towards an applicant's resource level. If an applicant's resources total no more than \$2,000 (or \$3,000 if married), they may be able to get SSI benefits. Eligibility standards for SSI claims are usually the same as those for Medicaid. Therefore, if an applicant is found to be eligible for SSI, they may be eligible for Medicaid, under Medicaid's "aged, blind, and disabled" program.

- 2) **SSI Payments:** Applicants submitting a claim for SSI benefits typically receive their first benefit check after the first month of an approval of application. The amount of an SSI benefit check depends on where an applicant lives. The basic SSI check amount is the same nationwide. Effective January 2011, the SSI payment for an eligible individual is generally \$674 per month and \$1,011 per month for an eligible couple. For information, please visit www.socialsecurity.gov/OACT/COLA/SSI.html.
 - (i) **States that Supplement the Basic SSI Amount:** The following states supplement the basic SSI amount: California, Hawaii, Massachusetts, Nevada, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Washington D. C. Other states administer their own supplemental payments that you must apply for at the state level. The amount an applicant is eligible for depends on a variety of factors including whether the applicant lives independently, has non-medical board and care, lives in the household of someone else, or is a minor child with a disability. Check with SSA for amount of SSI benefits available in each state (www.socialsecurity.gov/pubs/statessi.html).

- C. **Social Security Disability Insurance (SSDI):** SSDI is the other federal long-term disability program. SSDI benefits are based on an applicant's lifetime work history and how much money they have paid into the system through their Social Security taxes. The amount of an applicant's monthly disability benefit is based on their average lifetime earnings. The Social Security statement, that all employed individuals should receive every year, displays lifetime earnings and provides an estimate of disability benefits.
 - 1) **Note:** If an applicant does not have a current Social Security statement, they can either request one online, call the Social Security Administration, or file the request at their local Social Security office.

 - 2) **Eligibility Requirements:** To qualify for SSDI, an applicant must have a qualifying disability, as defined by the SSA, and be "insured."
 - (i) "Insured:" Applicants who have recently worked before their disability forced them to stop working.
 - (ii) "Recently Worked:" The test to determine if an applicant has "recently worked" is whether or not an applicant has worked 5 out of the last 10 years (if the applicant is older than 31) in order to collect benefits.

 - 3) **SSDI Benefits:** It typically takes six months for an applicant to receive their first SSDI check; however, the applicant will be paid retroactively back to the date that they first became "disabled" under the SSA standards. If an applicant's disability began earlier

than the application date, an applicant will also receive retroactive payments up to 12 months before the application date, depending on the date the disability began.

(i) **Waiting Period:** The SSA has established a 5-month waiting period to ensure that all individuals applying for benefits have long-term disabilities. Benefits will not be paid during the 5-month waiting period. Accordingly, benefits are paid on the sixth full month after the onset of a qualifying disability. This waiting period does not apply to individuals applying as “children of workers.”⁴²

- Example: If a patient applies for SSDI benefits on September 1, 2010, with a disability that began on January 1, 2010, if approved, then they wouldn’t actually receive their first benefits check until February 2011. The benefits check would have their first month’s payment, plus the retroactive benefits payments from the eight months of January 2010 to August 2010.

(ii) In addition, once an applicant has been on SSDI for two years, they will receive health insurance coverage through Medicare.

4) **Private Disability Insurance vs. Social Security Disability Insurance (SSDI):**

Applicants who have disabilities that prevent them from working may be eligible for both private disability insurance benefits and Social Security Disability Insurance (SSDI) benefits. Collecting private disability insurance benefits does not bar an applicant from collected SSDI benefits. However, some private disability insurance policies may require that the applicant also apply for SSDI benefits and, if SSDI benefits are received, the private disability insurance benefits will be offset by the amount of the SSDI benefits.

D. **SSI/SSDI Appeals Process:**

1) **SSA Appeals Process:** The disability insurance benefits system is set up to deny applicants, assuming that applicants will not pursue the appeals process. Therefore, applicants must not take “no” for an answer, and should appeal their decisions. Be persistent!

2) **Request for Reconsideration:** If an applicant wishes to appeal a denial of benefits, they must make their request in writing, within 60 days from the date they receive the denial letter from the SSA. This “request for reconsideration” can take approximately four to six months for the claim to be reconsidered.

(i) **ALJ Hearing:** If an applicant’s request for reconsideration is denied, they can request an informal hearing administered by an Administrative Law Judge (ALJ). The ALJ who had no part in the initial denial decision will conduct the hearing. The applicant or their representative (this person does not have to be an attorney) may look at the information in their file and present new information and evidence. The ALJ will question the applicant and any witnesses, such as doctors and vocational experts. The applicant or their representative may also question the witnesses. The ALJ will make a decision based on all the information in the applicant’s file, including any new information or evidence provided at the hearing. After the hearing, the applicant will be sent a letter and a copy of the ALJ’s decision.

⁴² Social Security Administration. “Disability Evaluation Under Social Security.” www.ssa.gov/disability/professionals/bluebook/general-info.htm

- (ii) **Appeals Council:** After a denial at the ALJ hearing, the applicant can file a request for review to an appeals council where the ruling of the ALJ will be upheld, unless legal error in the ALJ's decision is found.
 - (iii) **District Court:** Finally, an applicant can file a lawsuit with the District Court against the Commissioner of the Administration to review the administrative decision, where the final determination will be upheld as long as it is based on evidence or there is no legal error.
- 3) **Assistance with an Appeal:** Many people handle their own appeals with free help from the Social Security Administration. At the ALJ hearing stage in the appeals process, it is advisable to talk with an attorney who is experienced with the Social Security appeals process. Contact the CLRC for assistance finding an SSA appeals attorney.
- E. **Review of Benefits:** SSA does have the right to review the status of all people receiving disability benefits to make sure they continue to have a qualifying disability and are eligible for benefits. If an applicant's health has not improved, or if their disability still keeps them from working, they will continue to receive benefits.
- (i) SSA will gather any new information about an applicant's medical condition by obtaining information from their doctors, hospitals, and other health care providers; or ask an applicant to go for a medical examination or test.
 - (ii) SSA will look at the status of an applicant's medical condition when they last reviewed their case and for any new health problems they may have. If SSA decides an applicant's medical condition has improved, they will decide whether it has improved enough to allow the applicant to work.
 - (iii) If an applicant's medical condition has improved to the extent that SSA decides they can work, the applicant's benefits will be discontinued.
- F. **Paying Taxes on Benefits:** Some people who get Social Security have to pay taxes on their benefits. About one-third of current beneficiaries pay taxes on their benefits. Individuals will be affected only if they have substantial income in addition to Social Security benefits.
- 1) If:
 - (i) An applicant files a federal tax return as an "individual" and their income is more than \$25,000, they have to pay taxes.
 - (ii) An applicant files a joint return, they may have to pay taxes if their and their spouse have a combined income that is more than \$32,000.
 - (iii) An applicant is married and files a separate return, they will probably pay taxes on your benefits.
 - 2) **Note:** An applicant's combined income is determined by adding their adjusted gross income, any non-taxable interest they receive, and half of their SS benefits.⁴³
 - 3) If an applicant does have to pay taxes on their Social Security benefits, they can either make quarterly estimated tax payments to the IRS or choose to have federal taxes withheld from their benefits.

⁴³ Social Security Administration. "Taxes and your Social Security benefits." www.socialsecurity.gov/planners/taxes.htm

G. **SSI/SSDI and Returning to Work:** Each federal disability program (SSI/SSDI) has different employment provisions that allow beneficiaries to test their ability to work while protecting their eligibility for cash payments and health care coverage. Special rules allow people receiving SSI or SSDI to work and still receive payment, until they can return to work permanently. While attempting to return to work, a beneficiary may keep full cash benefits, keep Medicaid or Medicare, and receive help with education, training, and rehabilitation. The trial work period lasts up to a total of 9 months, within a 60-month period. Then, a beneficiary has 36 months to work and receive benefits for any month their earnings are not “substantial.” In 2011, earnings of \$1,000 per month are considered “substantial.”⁴⁴ If a beneficiary cannot continue working after this period, their benefits will resume.

1) **Ticket to Work Program:** The Social Security Administration has a variety of work incentives for people who receive Social Security Disability or SSI benefits, including the “Ticket to Work Program,” which helps an individual obtain vocational rehabilitation, training, job referrals and other employment support services free of charge. For more information, contact the Social Security Administration.

H. **Social Security Benefits for Family Members:** Family members may be eligible for survivors benefits through the Social Security Administration.

1) **Spouses:** Surviving spouses (domestic partners are not covered under federal law) of a person with a sufficient Social Security work history may qualify for benefits. Surviving spouses may:

- (i) Receive full benefits at full retirement age or reduced benefits as early as age 60;
- (ii) Begin receiving benefits as early as age 50 if they have a disability; or
- (iii) Receive benefits at any age, if caring for a child under age 16, or a child with a disability who receives benefits; and
- (iv) May also switch to retirement benefits based on their own work history if the amount of the benefits would be higher.

2) **Children:** A child may also be able to receive survivor benefits if, a parent worked long enough and paid taxes into the Social Security system. In order to be eligible, the child must be: unmarried; younger than 18; 18-19 years old and a full-time student (no higher than grade 12); or 18 or older and have a disability. Within a family, a child may be able to receive 50-80% of the parent’s Social Security benefits.⁴⁵ However, there is a total limit on the amount of money that a family may receive. For more information, contact the Social Security Administration.

V. **OTHER WAGE REPLACEMENT INFORMATION**

A. **Retirement Assets:** Retirement assets, including pension plans, 401K plans, and income retirement accounts (IRA’s) are other sources of income. Under some of these plans, individuals can take money out of their plan to pay for certain expenses when they have a serious medical condition. The rules vary by plan, so contact the plan’s administrator for more information. There may also be tax implications, so an individual may also want to consider speaking with an accountant.

B. **Life Insurance:** Many people do not consider their life insurance policies to be assets, but some individual policies can be converted to cash. If they have a whole life insurance policy, a portion of their premium is invested to create a cash value that will increase the

⁴⁴ Social Security Administration. “Significance of Earnings.” www.socialsecurity.gov/OP_Home/handbook/handbook.06/handbook-0620.html

⁴⁵ Social Security Administration. “Benefits for your Children.” www.ssa.gov/retire2/yourchildren.htm

total value of the policy. This type of policy usually allows an individual to borrow part of this cash value. Although it will lower the amount that is eventually paid out, it is an inexpensive way to access cash because the individual only has to repay the interest on the amount that they borrow.

- 1) **Note:** Some policies have a provision that allows an individual to obtain accelerated benefits, meaning they can access a portion (usually no more than 50%) of the face value of their policy. Check with the individual policy carrier for more information.

C. **Viatical Settlements:** An individual can also choose a viatical settlement, by selling a life insurance policy to a third party for cash. Often a policy can be sold for 30- 80% of the policy's value, but the buyer becomes the owner of the policy with all benefits going to the buyer instead of to the original beneficiary. It is a good idea to speak to a trusted financial planner, accountant, or attorney before making such a decision.

VI. RESOURCES

<p>For private disability insurance questions: See State Insurance Agencies in the STATE APPENDICES</p>	<p>For SSI and SSDI questions: Social Security Administration (800) 772-1213 or www.ssa.gov</p>
<p>For state disability insurance questions: California Employment Development Department State Disability Insurance (SDI) (800) 480-3287 or www.edd.ca.gov</p> <p>Hawaii Department of Labor & Industrial Relations Disability Compensation Division (808) 586-9161 (Oahu) or (808) 984-2072 (Maui) www.hawaii.gov/labor</p> <p>Rhode Island Temporary Disability Insurance Call Center (401) 462-8000 or www.dlt.state.ri.us</p>	<p>New Jersey Department of Labor Division of Temporary Disability Insurance (609) 292-7060 or (800) 852-7889 (TTY) www.state.nj.us/labor/index.html</p> <p>New York State Disability Insurance Bureau (800) 353-3092 or www.nysif.com</p> <p>For viatical questions: Dignity Resources (877) 563-2100 www.dignityresources.com</p>