

Short Term Disability Benefits

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Dealing with a serious medical condition such as HCV or HBV often causes people to think only in terms of disability in terms of permanent and total disability. However, for the person not yet needing to go on permanent disability, brief or temporary periods of disability can improve a person's quality of life, help maintain health, and extend the working career.

Usually, employer-provided time off has three levels: sick leave for the person needing a few days off; short term disability for brief periods of disability for one or more weeks; and, long term disability for extended periods of disability.

This month's column focuses on benefits and protections available for briefer periods of disability.

Sick Leave

First, it is important that you know and understand your employer's policy on time off. Some employers provide sick leave as separate from vacation and other time off. Some employers let employees carry over all or part of unused sick leave to future years; others wipe the slate clean and start over.

Some employers place all paid time off under one label such as personal time, paid time off, etc. Whatever the program, it should be in writing and you should make sure you have a current copy of the current plan.

Virtually all employers require employees to use all their sick leave prior to using any other disability plans. After sick leave is used, short term disability benefits begin.

Short Term Disability Benefits

Many employers provide short term disability or STD benefits for their employees. It pays a portion of their salary between the time sick leave is exhausted and long term disability starts.

Benefit: The typical benefit is between 50% and 75% of salary. Some larger employers will pay 100% of the salary for a period of time based on the employee's length of service before dropping to a lesser percentage.

For example, the STD plan may normally pay 60% of salary for 13 weeks; however, employees with five to ten years of service will get 100% of salary for four weeks and 60% for the remaining nine weeks, while employees with ten or more years of service will get 100% of salary for eight weeks and 60% for the remaining five weeks.

The benefit is usually a percentage of gross weekly salary without bonuses, commissions or overtime which will be spelled out in the plan document.

Waiting Period: Most STD plans won't start paying until the employee has been absent for one week or until the sick leave has expired, whichever comes first.

Maximum Benefit Period: The typical STD plan pays benefits for from 13 to 26 weeks. Many employers time the STD plan to cover the waiting period of the long term disability coverage.

Filing an STD Claim: Larger employers usually process and pay STD claims internally so there is little paperwork to complete beyond a statement from the physician. Other employers purchase STD coverage from an insurance company that handles the claims in a manner similar to any other disability benefits provider. Your plan document should give directions on how to file a claim.

State Mandated Short Term Disability Coverage

Five states plus Puerto Rico require employers to provide short term disability benefits for all employees. These states require employers to provide a minimum amount of short term disability benefits to all employees while disabled. Some states permit insurance companies to provide the coverage; others insist that all coverage be provided by the state and paid for through payroll taxes. Each state's plan and administration is handled differently.

California: By far the broadest of the mandated plans, it provides payment of 55% of the employee's gross salary up to a maximum of \$728 per week after a one week waiting period for up to 52 weeks.

New York: New York requires employers to provide coverage for employees of 50% of salary after one week for up to 26 weeks.

New Jersey: New Jersey's law requires payment of 2/3 salary after one week and payment of benefits for up to 26 weeks. After three weeks of disability, the plan goes back and retroactively pays the first week of disability as well.

Rhode Island: Benefits start after seven days and pay benefits up to thirty weeks. The first week is paid retroactively after four weeks of disability. The benefit paid is based on a percentage of your quarterly earnings over a base period. Rhode Island's program is unusual in that it increases the benefit payable for each of the claimant's dependent children under age 18.

Hawaii: Hawaii's disability plan pays 58% of salary after 7 days for up to 26 weeks.

For additional information on the state programs as well as claim forms, you should contact your state's Department of Labor or Office of Unemployment.

Family & Medical Leave Act

The federal government passed the Family & Medical Leave Act in 1992 which provides some job protections for persons who must take time off for medical reasons.

Eligibility: The law generally applies to all employees of an employer with fifty or more employees working in the same geographical area. To be protected under this law, the

employee must have been with the employer for at least twelve months and have worked at least 1,250 hours in the most recent twelve months, and NOT be a “key” employee.

Availability: Employees covered under the law may access the protections if they must take time off due to either their own medical condition or to care for a spouse, child or parent who is seriously ill. Note that domestic partners do not come under this law. Benefits are also available at the birth or adoption of a child.

Benefit/Protection: The law itself does not require that a salary replacement benefit be paid; that is left to the employer to provide. The benefit under this law focuses on job and benefits protection.

When you return to work after taking a FMLA leave, you must be restored to the job you had when FMLA leave started OR, at the employer’s option, to an equivalent position with equivalent benefits, pay, working conditions and seniority.

The employer must also continue all employee benefits while the employee is on FMLA leave, in the same manner as when the employee was actively at work. If you were paying a portion of the cost of your employee benefits through payroll deduction, you will need to make arrangements to continue payments when the paychecks stop.

Maximum Benefit Period: The federal FMLA law provides protection only for twelve weeks per year. The leave does not have to be taken consecutively, and may be taken in increments with periods of work in between. This is especially helpful for persons undergoing treatment that may leave them incapacitated for a week or more.

The annual maximum is determined not by calendar year, but for the prior twelve months. When twelve weeks of FMLA have been taken within a twelve month period, the maximum is reached.

For example, if a person goes out on FMLA for seven weeks, then returns to work, there will be only five more weeks of FMLA available. However, once the prior period of disability is more than twelve months in the past, then there will again be twelve weeks available.

State Disability Leave Statutes

Most states have enacted their own statutes to protect employees’ benefits and their jobs while out on disability.

Three states have comprehensive family and medical leave laws that apply to employers of fewer than 50 employees:

- Vermont (10 or more employees for leaves for new child or adoption; 15 or more employees for leaves for family member's or own medical condition)
- District of Columbia (20 or more employees)
- Oregon (25 or more employees)

Four states use a more expansive definition of a "family member" for whose illness an employee may take family medical leave:

- District of Columbia (includes all relatives by blood, legal custody, or marriage, and people with whom employees live and have a committed relationship)
- Hawaii (includes in-laws, grandparents, and grandparents-in-law)
- Oregon (includes spouse's parent)
- Vermont (includes spouse's parent)

Eight states provide longer periods of family and medical leave:

- California (12 weeks family leave plus 4 months maternity disability leave may be combined for a total of 28 weeks/year)
- Connecticut (16 weeks/2 years)
- District of Columbia (16 weeks of family leave plus 16 weeks of medical leave/2 years)
- Louisiana (4 months for maternity disability)
- Oregon (12 weeks family leave plus 12 weeks maternity disability per year)
- Puerto Rico (up to 20 weeks for complicated pregnancies)
- Rhode Island (13 weeks/year)
- Tennessee (4 months for maternity disability)

Short term disability benefit plans can offer income for a temporary respite from work when you need to take some time off but plan to return in a few weeks. With the federal and state disability leave statutes protecting your position and your benefits, the two programs work together to provide needed time off with both income and job protection.