

EMPLOYEES ON EXTENDED LTD DOES EVERYONE KNOW WHAT TO EXPECT?

Benefits for Disabled Employees

Employees who are absent from work due to disability (illness or injury) are eligible for group benefits coverage as long as they remain an employee. However, if employment is terminated, so too are the group benefits. As we can all imagine, disabled employees and their families rely on their benefits to continue.

Benefits usually end with the termination of employment, and employment terminates when the employment contract is “frustrated” (a legal term). What period of absence should you allow before terminating employment and therefore benefits? Keep in mind that disability insurance, as well as any other benefit which includes waiver of premium (such as life insurance, accidental death and disablement, and disability insurance) may continue without premium payments provided the definition of disability is satisfied, but health and dental coverage will cease.

It is often impossible to know how long an employee will be absent—it could be a few weeks or a few years. Because there are so many variables involved, we recommend our clients develop a company “continuation of benefits” policy, so everyone concerned knows in advance what to expect for the period employees are disabled and unable to work. This period is largely at the employer’s discretion, unlike continuation of benefits during legislated leaves of absence such as maternity and parental leaves, however we advise caution to ensure the policy or employer actions are not seen as discriminatory under Human Rights legislation.

What to Consider in Developing a Policy

A typical policy is to continue benefits after long term disability (LTD) benefits have been approved to the point in time that the insurer will re-assess the claim based on the employee’s ability to work. In most contracts, this is after two years. The insurer considers the employee’s ability to do his or her OWN job, but after two years, the insurer looks at the claimant’s ability to do ANY job.

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If LTD benefits are approved beyond two years, the insurer has deemed that it is highly unlikely that the employee will return to work and the employer will terminate the employment contract.

It is important the policy clearly outlines what your company's rules are as it relates to benefits continuation, including cost sharing, for legislated and non-legislated leaves so that it is fair and then consistently applied from one employee to the next. The policy should keep the same arrangements, including cost sharing, as when the employee is actively at work. When developing a policy, employers should consider:

- ☛ If premiums are shared, how will you collect premiums from the disabled employee?
- ☛ If the disabled employee does not pay their share of the ongoing costs, will you terminate coverage? How will you notify the employee? Is registered mail appropriate?

Terminating Employees on Long Term Disability

Employers have the right to terminate an employee, and should do so where they have collected the requisite evidence to support the termination; provided the disability leave is not a factor that prompted the termination. If an employee is unsuitable and must be terminated, terminations during a medical leave such as Long Term Disability are permissible as long as the reason for termination has nothing to do with the fact that they are disabled and require workplace accommodation. In this case, there should be clear evidence that termination was being considered before the disability arose. It is best to seek legal advice prior to following through with a termination.

On LTD - Waiver of Premium Benefits

Most group insurance policies for life insurance, accidental death & disablement (AD&D), disability (short-term and long-term disability) insurance include a Waiver of Premium benefit. Under this provision, if approved, the insurer is acknowledging its responsibility for valid coverage for the period an employee meets the definition of disability as defined in the policy, without receiving payment of premiums.

Critical illness insurance policies also often include a Waiver of Premium benefit, which could waive off all future premiums due and payable on the confirmed diagnosis of the insured person suffering from any one of the critical illnesses covered under the policy.

Typically, if the employee becomes disabled after age 65, they would not be eligible to apply for Waivers of Premium.

Extended health, dental and employee assistance plans (EAPs) do not include a Waiver of Premium benefit provision. Premiums must be paid to continue coverage during a period of disability for these benefits.

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