

You've recently been diagnosed with a severe illness, or perhaps a condition you have managed for a long time is now interfering with your ability to work. What do you do to make sure you have the income you need to focus on your recovery? This resource provides you with basic information about disability benefits to help guide you through the process.

Public Short-Term Disability Benefits

As of May 1, 2017, there are only five states that have state-mandated disability insurance requirements: [California](#), [Hawaii](#), [New Jersey](#), [New York](#) and [Rhode Island](#). Click on the links for more information about these programs.

Public Long-Term Disability Benefits

The federal government has Social Security and Supplemental Security Income disability programs that provide financial and other assistance for people with disabilities.

Social Security Disability Insurance (SSDI) pays benefits to you and certain family members if you are "insured," meaning you worked long enough and paid Social Security taxes. To qualify, the

Social Security Administration must determine that:

- you cannot do work that you did before;
- you cannot adjust to other work because of your medical condition(s); and
- your disability has lasted or is expected to last for at least one year (12 months) or to result in death.

The definition of disability is "strict" and the process can sometimes take multiple appeals and many months before you get paid. You do not need to wait 12 months before you apply. If your doctors expect your condition to prevent you from working for at least one year, apply as soon as practicable. You can do so by clicking [here](#).

If you do not have sufficient work history to qualify for SSDI benefits, you may qualify for Supplemental Security Income (SSI) if you are disabled and have limited income and resources. You can read more about SSI benefits [here](#).

Employer-Sponsored Disability Benefits (ERISA)

If you are working at the time of your disability for an employer in the private sector, you may be covered by your employer's short-term

disability (STD) and/or long-term disability (LTD) plan that is governed by the Employee Retirement Income Security Act of 1974 ("ERISA"). Most employer-provided disability plans are governed by ERISA, with the exception of plans provided by government and or church employers. (If you work for a government or a church, you may still be covered by your employer's disability plan, it would just not be subject to ERISA law.)

ERISA does not require employers to provide disability benefits. If an employer chooses to provide such benefits, then it must follow ERISA's rules and regulations.

Your Rights Under ERISA

ERISA affords disability plan participants with many protections. To determine whether or not you are covered by an ERISA-governed disability plan, the best first place to start is by asking your Human Resources department about what benefits are available to you.

Step One: Get the disability plan documents. Your rights and obligations must be set forth in a written plan document. The Plan Administrator is legally obligated to provide you with a copy of all plan documents if you make a written request for them. In your request, be sure

to mention that you are requesting all plan documents pursuant to ERISA § 104(b)(4).

If you do not know who the Plan Administrator is, you can find out by searching for your company's Form 5500 online. You can do so for free on the Department of Labor's website [here](#). Not all employers who offer disability benefits will file a Form 5500. As such, be sure to also make a written request to HR.

The plan documents are important because they describe the eligibility requirements, factors that determine the level of benefits provided, and any exclusions (for example, pre-existing conditions or limited payments for mental health related disabilities).

There is no uniform disability plan so it is important to read and understand what your employer's plan offers. You may also want to consult with an ERISA attorney.

Step Two: Gather medical support for your claim. Before you apply for disability benefits, be sure to first discuss your ability to work with your doctors. You must also be receiving appropriate care and treatment for your condition.

Step Three: Apply for disability benefits. You must submit a written application for benefits per the

requirements for your employer's plan. It is important that you provide the administrator with all of the evidence establishing your inability to work.

You must also prove that your disabling symptoms cause restrictions and limitations that prevent you from working. Proof of disability comes in many forms, and may include:

- Medical records;
- Letters from your doctors explaining how their clinical findings support their opinion that you are not able to work (an "off note" work is never enough);
- Letters from friends, co-workers, and family members that describe your limitations;
- Functional Capacity Evaluations (if your disability causes physical work restrictions like limited sitting, standing, or walking tolerances);
- Neuropsychological Evaluations (if your disability causes cognitive problems);
- Independent Medical Evaluations by an expert in the specialty most knowledgeable about your condition;
- Vocational information (a vocational consultant may be necessary to establish the requirements of your occupation);

- Medical literature about your rare disorder.

It is typically not necessary for you to have all of your evidence gathered before you submit a claim for benefits. However, if feasible, it is best practice to submit a complete package of medical and other information to support your claim when you first submit your application.

After you submit your claim, the administrator must make a decision within 45 days. However, it can in "special circumstances" take up to two 30-day extensions. That means that an administrator may take up to 105 days after you submit an application to decide whether you are entitled to payment.

Step Four: Appeal any denied claim within 180 days. If the administrator denies your claim, it is very important that you submit a written appeal of the denial within 180 days of when you receive the denial letter. The best practice is to fax and mail your appeal within 180 days of the date of the denial letter. Courts strictly enforce these deadlines against claimants. If you are late by even one day and the administrator refuses to consider your appeal, that decision may be upheld by a court down the road.

It is important that you appeal a denied ERISA disability claim within 180 days.

Your appeal should contain all of the evidence that supports your inability to work. You should consult with an ERISA attorney before submitting your own appeal. If your claim is denied and you must file a lawsuit, a court is typically limited to reviewing only the documents considered by the administrator before it issued the final decision denying your claim. This means you must present the administrator with your best case. Since many of these LTD plans provide income benefits through retirement age, there is a lot at stake.

What To Look For In Your Employer's Disability Plan

There are a few things you should look for when reviewing your employer's disability policy.

Time limits. Sometimes a disability prevents you from taking care of your financial matters. However, you do not want to wait too long to submit a claim for disability benefits because your employer's plan may refuse to accept a late claim. Also, the plan may contain a limitations period that requires you to file a lawsuit within a certain period of time. This is usually three years from when proof of disability is due but it may be sooner than that.

Limited benefits. Most disability plans limit the duration of benefits for certain conditions. These conditions may include mental health conditions or other conditions not subject to "objective" proof. Some plans limit payment for disabilities caused by "subjective" reports of symptoms like pain and fatigue. It is important that you work with your doctor in undergoing all necessary diagnostic tests.

Offsets. Most disability plans will reduce your benefits based on other income that you receive. Other income may include part-time work earnings, SSDI or SSI, Workers' Compensation benefits, or pension benefits.

Private Disability Insurance Policies

If you purchased an individual disability insurance policy on your own (*i.e.*, not through your employer), your rights will be governed by state law. The good news for you is that if the insurance company wrongfully denies your claim or acts in bad faith, you will have remedies available to you that are not available under ERISA.

It is important to review your policy to see what it provides in terms of the definition of total and/or partial disability and if there are any limitations or exclusions that may apply to your particular disability.



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