



What you don't know about employer-provided long term disability benefits will hurt you!

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By John J. Pawloski

Careful and prudent people plan not just for accidental death, but also disability. It is far more likely that you will become disabled than killed accidentally. Many people who work for a larger corporation avail themselves of short term and long term disability protection through their employer's disability insurance program. If at all possible, I recommend you purchase your own disability insurance, and not one provided through your employer as will be discussed herein. The problems with long term disability policies and the insurers managing those claims have been exposed by both ***60 Minutes*** and ***Dateline NBC***.

Unfortunately, those long term disability policies (and less frequently, short term disability claims), result in even good claims being denied for frivolous reasons. Although appearing to afford great protection against disability, in actual practice, many of these plans are not worth the paper they are written on. First, by getting your disability coverage through your employer, you are subjecting yourself to a body of law known as ERISA, The Employment Retirement Income Security Act. This law was essentially written by lobbyists for the insurance industry and contains such poison pills as exclusive jurisdiction in federal court, a waiver of a jury trial (in fact, you really get no trial at all, but rather an appeal of the claims process), federal preemption of state laws (which is a fancy way of saying a waiver of punitive damages and state laws and remedies such as fraud or vexatious refusal statutes that can otherwise be used to punish

an insurer for improperly denying your claim), and perhaps most surprising, a limitation on your right to present proof in court. With a few exceptions, you are bound by the record that was submitted to the insurance company before they denied your claim.

So what can be done? First, it is highly advisable to hire an attorney that works routinely in this area. This is not something that most lawyers know how to do. Make sure you retain a lawyer who has experience in handling these kinds of cases. Do this as quickly as possible. There are deadlines established by the Disability Plan, some as short as thirty days, and some 180 days. Forget what you think you know about the length of the statute of limitations, and get to your lawyer's office as soon as possible. At the first instance that you have reason to believe that you *might* be disabled, request a copy of the summary plan description from the human resources department at your employer. This is not the plan, but rather a summary which digests the pertinent information you need for filing a claim for disability. Gather all of the medical records you can get your hands on which show the disability and the impairment of one or more portions of your body. If you are uncertain what to provide, I generally counsel to error on the side of too much, rather than too little. Trying to add documents after your claim is denied is very difficult.

Submit affidavits and statements from those who know the claimant explaining their pre- and post-injury condition, particularly from treating doctors and providers, including an explanation of the things he or she can no longer do. Job descriptions as to what is required or an essential part of the job are often helpful. It may even be advisable to hire an occupational rehabilitation expert (someone who works with disabled persons and has knowledge of jobs available in the local community) to perform an examination and write an evaluation.

If you think my concern is exaggerated, you should know that I have personally seen cases where wheel-chair bound individuals with progressive illness, people who could not walk, or sit, or stand for more than five minutes, and people who could not lift more than ten pounds were all denied long term disability benefits. By taking the steps outlined above, you can reduce the chances that your claim will suffer a similar fate.

John J. Pawloski is an attorney practicing in Missouri and Illinois, heading The Law Office of John J. Pawloski with offices in St. Louis (Main Office) and Alton, Illinois (by appointment only). He practices before the Southern and Central District of Illinois and the Eastern District of Missouri federal courts and the Seventh and Eighth Circuit Court of Appeals. He handles a variety of federal litigation, including ERISA claims.

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