

# DISABILITY CLAIMS: What You Should Know



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L A W Y E R S**

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# INTRODUCTION

## What is disability insurance?

These are 'peace of mind' contracts that pay you a portion of your lost income if you become "disabled" from working through illness or injury.

## Who pays for coverage?

Individual plans are paid for privately by the person wishing to be insured.

Group plans may be paid in one of three ways:

- Employer pays
- Employee pays
- Cost is shared between the employer and employee

## Other forms of coverage:

- Employment benefits
- Employment Insurance benefits
- WCB
- CPP

# What are your Rights and Obligations under the policy?

As mentioned, disability policies are contracts. It is important to have a copy of the contract in order to know your rights and obligations under the policy.

Often, the employee handbook that outlines the benefits does not cover off many of the terms of the contract. It is simply a guide. What the insurance company is permitted to do is outlined in the contract. You are entitled to receive a copy of the contract from your employer. The contract will answer questions related to the following:

## Benefit amount (how it is calculated?)

Most policies cover anywhere from 50% to 80% of your salary pre-disability with most plans covering 66%. Some plans have monthly maximums which may cap the actual amount you receive.

## Waiting period to receive benefits

Again, you will need to read the contract. Usually, for short term disability benefits you will typically be entitled to access benefits under that plan after a short time frame.

For long term benefits, you will have to be disabled from working for several months. The amount of time is sometimes called the "elimination" or "qualifying" period.

## Definition of disabled

The contract will set out the definition and it will almost always be open to interpretation. Generally you will qualify for benefits if you are not able to do all, or substantially all, of the duties of your current job - sometimes referred to as the "own occupation" definition. Many policies will also shift the definition after some point in time (usually 2 years) to "any occupation" – meaning you have to prove that you are not only disabled from working your own occupation but ANY occupation. Again this is open to interpretation – the courts have held that "any occupation" means any occupation similar in status and pay to your former occupation. Generally, you will be considered disabled if the injury or illness is such that common sense requires you to stop working so you can focus on getting better.

## How long the benefit will be paid

Generally, plans can last until you are 65 years old. Some plans, however, have a limited time frame, such as 5 or 10 years. Again, it depends on the terms of your policy.

## Deductions

Most policies are intended to top up those disability benefits available to you elsewhere. As such, most contracts allow the insurer to set off benefits from CPP, WCB, wages or severance pay etc. Do not accept these reductions unless the insurer can point to the term in the contract that allows it to do this.

Most contracts contain terms that permit the insurer to make you apply for benefits from another source (for example, CPP).

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## Medical Exams

Most policies have provisions that allow the insurer to have you assessed by a doctor of its choosing in order to determine if you meet the definition of disabled under the contract. The doctor must be reasonably qualified to do such an assessment.

**KEEP IN MIND THAT YOUR RELATIONSHIP WITH THE INSURANCE COMPANY IS GOVERNED BY THE CONTRACT**

Always keep in mind that the insurer has obligations under the contract as well. If you meet the definition of disabled – they must pay benefits unless they can assert a reason not to - for example, pre-existing condition, misrepresentation, video surveillance etc.).

You also have obligations under the contract – premiums must be paid, applications properly submitted and in time, you generally need to be under the care of a physician and be receiving treatment for your condition, there may be residency requirements (i.e. some policies stipulate that you cannot move to another country) etc.

In order to fully understand your rights and obligations, you must get a copy of the contract. If you are unsure about the terms, it is recommended that you seek clarification either from the insurer or seek legal advice. *However, always remember: the adjuster is not qualified to give legal advice.*

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# What if the Insurance Company will not Pay your Benefits?

The first thing you need to do is find out why. A verbal denial is not good enough. Make sure the insurer sets out in writing why it refuses to pay benefits for your claim. If you disagree with the decision, it is important to seek legal advice promptly.

Even in circumstances where the insurance company permits you to appeal the decision, it is still important to seek legal advice for the following reason:

YOU ONLY HAVE A LIMITED TIME WITHIN WHICH TO TAKE LEGAL ACTION. THIS IS CALLED A LIMITATION PERIOD. WHEN THE TIME LIMIT BEGINS TO RUN WILL DEPEND ON THE FACTS OF YOUR CASE.

The law related to limitation periods has been described as labyrinthine.

**Time limits are not the same for every policy and every circumstance and that is why it is essential to get legal advice to know what time limits apply in your particular circumstance.**

# Your Right to Sue for Benefits

If an insurer has wrongfully denied you benefits, you may have no alternative but to take legal action.

It may surprise you to know that not all contracts allow you access to sue in a court of law if you disagree with a denial of benefits. Some collective agreements contain language that says any disputes are to be resolved within the context of the employer/employee relationship.

## Remedies

A legal remedy is the means by which a right is enforced or compensated.

A lawsuit would typically include the following claims:

- (a) breach of contract;
- (b) a declaration of entitlement to benefits, and an Order for payment of benefits;
- (c) damages for breach of statutory duty;
- (d) aggravated damages; and
- (e) damages for mental distress

## Disclaimer

The content of this pamphlet is meant as general information and should not be construed as legal advice. We are providing this information to you so that you can learn more about disability claims.

Your legal needs depend on the specific circumstances of your case.

We would be happy to talk to you about your specific circumstances.

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