# PLANNING FOR THE POSSIBILITY OF DISABILITY

*by Mark E. Hancock*

No one intends to become disabled, but it happens. According to the Council for Disability Awareness, just over one in four of today's 20-year-olds will become disabled before they would otherwise retire. (Council for Disability Awareness (*disabilitycanhappen.org*).)

Accidents are not the primary cause. Among the most common causes are cancer, circulatory issues (heart attack, stroke) and mental health issues. (Council for Disability Awareness.) Based on my experience, diabetes and related conditions are also common causes of disability.

Not all sicknesses, or accidents and injuries, are work-related, which means that one cannot count on receiving workers compensation benefits for a disability. State Disability (SDI) might be available, but it may be limited to 52 weeks of benefits. Social Security Disability Income might also be available, but there is often delay, not everyone is approved and benefits are often modest. According to SSA statistics, for example, the average SSDI benefit as of Feb. 2021 was $1,279.

Accordingly, you should give some advanced thought to what you would do for income if you were to become disabled before 65 or 67.

One way a person can try to help protect themselves in the event of disability is to have long-term disability coverage. This is of especial concern for high earners. Disability coverage typically covers disabilities from sicknesses, as well as from injuries.

There are two basic ways to obtain such coverage. One is to buy it yourself. It is usually referred to as long-term disability insurance, or disability income insurance. Doctors and other high earning professionals often take this route.

Not all policies are the same. They may differ in important respects. Own occupation coverage is better than any occupation coverage, for example. What's the difference?

Basically, own occupation coverage pays if you can no longer perform the occupation you worked at before you became disabled. With such coverage, the insurance company can't argue that a doctor could be a file clerk. While "any occupation" coverage doesn't literally mean any (other) occupation, it does give the insurance company more room to try to argue that the insured can do other things, such that he or she is not entitled to benefits. Any occupation coverage increases the likelihood of disputes.

Some policies change the definition from "own" to "any" after a period of time, like two to five years, so beware. Compare before buying, consider your needs and budget, and be aware that some insurers have better reputations than others in terms of providing you the benefits you paid for and deserve.

We don't do business entity and/or tax-law, or give tax advice, but one possible advantage to paying the premiums yourself and after tax may be that the benefits may be tax-exempt as a result. Remember that when you are disabled, every penny counts. Check with your tax professional in determining how best to pay the premiums. Another advantage may be that you may be protected by state bad faith insurance law, which may give you more leverage in the event of a dispute.

The other way people typically obtain such coverage is as an employee benefit from or through the employer. Many employers provide it, so you should inquire into what employee benefits are provided in job interviews, especially if you have an important job and plan to work at that place any significant amount of time.

Employers really following the law are supposed to provide their employees with Summary Plan Descriptions (SPDs) of benefits, like LTD coverage. If your employer isn't forthcoming, ask. Many employees don't keep them, even if they were handed out. One take away from this article should be to get them and to keep them a safe, easy-to-locate place.

While getting the coverage through work is good, there can be challenges. One is the very real possibility that ERISA (which is federal law) may apply, even though all the employer did was buy into a group disability insurance policy. If ERISA law applies, you generally have to appeal any denial or termination of benefits and punitive damages. If your employer pays the premiums and/or your payments or contributions are made with pre-tax dollars, your benefits may be taxable. Consult with your tax professional.

Because disability insurers don't want to provide an incentive for filing disability claims, or for remaining off work, you should realize that benefits commonly start at about 60 percent of what the person had been earning when they became disabled, though they are usually indexed so as to increase with certain indices. You should be aware of this in your "planning."

If you have disability coverage and become disabled and the plan/insurance company denies your claim, or terminates your benefits, it is important to consult with a lawyer knowledgeable in both state insurance and bad faith law and ERISA disability law early on to determine your rights and the correct course of action.

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