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*are you in*  
***good hands ?***

BY STEVE UTSLER

Carrying **Disability Insurance** Isn't Just A Perk – It's Crucial

For your attorneys and staff, access to disability insurance provides peace of mind by protecting their ability to earn an income when they are too sick or hurt to work and by helping them return to work as soon as possible. For law firm managers, offering disability insurance as part of the benefit package can help the business attract and retain quality employees and boost morale. When designed properly, disability insurance can save the firm money by minimizing the impact of lost production time, retraining, cross training and new hires to replace sick or hurt staff through effective claims management.

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## **KNOW WHAT YOU ARE BUYING**

Not all disability contracts are the same. There are a lot of moving parts, and while some provisions can help manage costs, they may limit how well your firm's employees are protected if they become unable to work. Though not an all inclusive list of the provisions in a disability contract, here are some key options to consider. Armed with this information, you can determine which provisions are best for your firm.

## **QUALIFICATION PROVISIONS**

Determining how employees qualify for benefits provides the foundation of disability coverage. The definition of disability is arguably the most important provision in a disability contract. It is used to determine whether an employee qualifies to receive disability benefits. There are a variety of options available. The most common definition used for the legal services industry allows employees to qualify as disabled when totally or partially disabled. Other options include partial (total disability is required during the elimination period and partial thereafter), total, and total with Social Security approval.

It is important to determine in which circumstances you want employees to be able to qualify for disability and then make sure that definition of disability is in your contract.

## **OWN OCCUPATION/SPECIALTY**

As a law firm, you need to consider how the definition of disability will be applied to attorneys. If some attorneys are highly specialized or practice in a niche market, you may want to upgrade the definition of own occupation to own occupation for attorneys, which is commonly referred to as own specialty. Own occupation for attorneys allows coverage to be based on the inability to work in a given specialty of law.

Here is an example: A trial attorney who spends the majority of his/her time trying cases in court suffers a physical impairment that takes away the ability to speak. Since this impairment affects the attorney's ability to try a case – which is the majority of his/her material duties – the attorney could qualify for benefits even if able to do research for litigation.

Without an own specialty definition, this situation would likely not result in a disability benefit since the attorney could potentially

practice in some other capacity, function or field. This provision can vary by carrier, so be clear on how this definition will be applied.

## **ELIMINATION PERIODS**

The elimination period is the amount of time between the onset of a disability and the time employees are eligible for benefits. Elimination periods are typically 90 or 180 days. It is important to consider how long employees could go without pay if they become too sick or injured to work, in addition to sick pay/salary continuance, personal time off and/or any short-term disability benefits offered.

Temporary recovery protects an employee who returns to work during the elimination period following a disability but becomes disabled again from the same or a related cause. If this occurs within a certain period of time, the employee will be considered disabled from the original disability and will not be subject to a new elimination period. This provision can vary significantly between carriers. Make sure the number of days allowed to recover provides employees ample time to qualify without having to start the elimination period over. This will help encourage employees to return to work sooner.

## **BENEFIT PROVISIONS**

Will the amount of the disability benefit be enough for the employee and your firm? Here are some provisions to think about. Benefit percentages purchased by attorney groups range from 50 to 70 percent with 92 percent of groups offering a 60 percent long-term disability benefit.

Maximum monthly benefit: Often one maximum does not fit an entire group. Consider providing a lower maximum for non-attorney employees of the firm and a higher maximum for attorneys. Maximums in the range of \$6,000 to \$10,000 are typical for non-attorneys. Attorney maximums tend to be between \$10,000 and \$15,000. Also, if the available group maximum does not meet the income replacement needs of the attorneys, an individual disability insurance policy can help bridge the gap.

Definition of earnings: An employee's pre-disability earnings can be defined a few ways, including base wage, W-2, and owner/partner income (K-1, S corporation). This provision determines the earnings on which benefits will

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be calculated. This is important so you know how much of your employees income is protected.

For example, if you use base wage, does that include earnings under a qualified deferred compensation plan and voluntary earnings reduction under a Section 125 plan? How does the definition work for owners? If employees get overtime or bonuses does the definition account for these earnings? Think about the income your employees would lose should they become disabled and select a definition that provides adequate coverage.

Bonus-up describes a method of premium contribution you might want to consider. When the employer pays the premium for the disability benefit, the benefit payable is taxable since premiums are being paid with pre-tax dollars. Under a bonus-up arrangement, the employer adds money to the employees' paychecks to cover the cost of the disability benefit. Since the coverage is being paid for by employee dollars on a post-tax basis, benefits are paid tax-free. Partners generally receive a tax-free benefit regardless of whether the benefit is paid by the employer or employee. This is due to the partner's ownership stake in the firm.

Benefit duration is the maximum length of time that long-term disability benefits last. Of the options available in the market, roughly 93 percent of in-force long-term disability insurance for attorney groups has benefit durations to either age 65 or Social Security Normal Retirement Age.

#### **BUSINESS PROTECTION BENEFIT**

This benefit can help the business offset the loss of a key shareholder/partner due to a disability. It pays the policyholder up to 60 percent of the disabled employee's pre-disability earnings for a maximum duration of 12 months. A proportionate benefit is payable if the claimant remains disabled and has earnings greater than 20 percent of their pre-disability earnings.

#### **EXTENDED EARNINGS PROTECTION FOR ATTORNEYS**

When an attorney returns from a disability, their client base may have reduced. Providing an extended earnings protection benefit can help bridge the potential gap in earnings while the attorney works to rebuild their client base. This benefit continues to provide a benefit after a claimant fully recovers and continues to earn less than 80 percent of pre-disability earnings because of the prior disability. The benefit amount is proportionate to the reduction in earnings and is available for a maximum duration of six months.

#### **REHABILITATION PROVISIONS**

Rehabilitation provisions are commonly included in disability policies to assist disabled employees in returning to work. Disabled employees have a better chance of returning to work if they participate in rehabilitation programs. And that's good for both the employee and employer. The average disability absence results in lost productivity costs exceeding \$22,800 and the total cost of each disability absence exceeds \$35,000.

Rehabilitation incentive and reasonable accommodation are benefits typically included in disability contracts, return to work childcare and spouse rehabilitation are optional benefits that can be included for an additional cost. Work with a carrier that collaborates with the doctor and claimant to help them to get back to living as close as possible to their pre-disability lifestyle.

#### **ADDITIONAL BENEFIT PROVISIONS**

Other benefits are optional and may be purchased for an additional cost based on the needs of the group. Cost of living adjustment provides an annual cost of living increase to a disabled employee's benefit for a period of time, typically 3 percent annually for five years. Dependent education benefit pays a portion of post-secondary education expenses for qualifying

children of a disabled employee. Retirement plan supplement benefit continues contributions to a qualifying disabled employee's retirement plan (annuity or 401k). Accidental disability benefit ensures a minimum number of disability payments are paid as a result of an accidental injury resulting in a specified physical loss. Survivor benefit provides payment to the beneficiary for a specified number of payments if a disabled employee dies while receiving a disability benefit. Activities of daily living provide an additional benefit to employees who are unable to perform two or more activities of daily living.

- **Conversion privilege** - Employees who are no longer employed due to resignation, termination for cause, layoff or leave of absence can continue their coverage for a specified number of months. These provisions may help you create a more cost-effective disability insurance program. However, it's important to understand these provisions as they can impact how and if benefits will be paid for a disabled employee.
- **Mandatory rehabilitation** - Disabled employees who could benefit from an individualized rehabilitation plan will be required to participate. If employees do not

comply with the rehabilitation plan without good cause, their disability benefits may end.

- **Gainful occupation** - With this provision gainful occupation is defined within the definition of disability. Gainful occupation is defined as any occupation in which employees can reasonably be expected to earn an amount equal to or greater than their primary monthly benefit amount.
- **Increased income loss requirement** - With this provision, the income loss requirement during the any occupation period is equal to one minus the benefit percent instead of the standard 20 percent.
- **Full capacity** - This provision requires disabled employees work to their full medical and vocational capacity. If they choose not to, benefits will be paid as if they were working to their full capacity.
- **Forty hour work week** - Employees who are working, or have the ability to work, 40 hours per week are not considered disabled. Do your employees work more than 40 hours a week? If that's the case, look out for contract language that says employees aren't considered disabled if they can work at least 40 hours.
- **Economy** - This provision weakens the strength of the contract by evaluating an employee's occupation as it is performed in the economy.
- **Prudent person** - Some policies may try to limit benefits for a pre-existing condition if a reasonably prudent person would have sought care or treatment for a condition but chose not to.

## DISABILITY HAPPENS: WHY INSURANCE IS NEEDED AND WHAT TO LOOK FOR

By offering group disability insurance you can offer a benefit solution that helps keep employees and the firm protected.

Consider these statistics:

- In just the past hour, almost 3,000 Americans became disabled. That's 49 every minute.
- Almost one-third of Americans entering the work force today will become disabled before they retire.
- Three-fourths of employees rated the emotional impact of becoming disabled and not being able to work as at least an 8 on a 10 point scale in which a 10 means "devastated."
- Over 225 million days of production time were lost in 2006 due to off-the-job injuries, at a cost of over \$240 billion.

## WHAT NOW?

Disabilities happen, but you can prepare your firm and employees for when they occur. If you already have disability insurance, take a look at the contract to ensure all of your firm's needs are being met. If you don't currently offer disability coverage, now is a good time to see if it can benefit the firm and its employees. ✱

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