

# **DISABILITY INSURANCE**

## **INTRODUCTION:**

If an employee is taking time off from work, the employee may be concerned about maintaining an income during an unpaid leave of absence. Both California and the federal government have benefits that allow an individual to receive some money while a medical condition, such as cancer, requires the employee to take time off work.

Private disability insurance is also available to supplement income while the employee is unable to work because of a medical condition. Although such policies are often sponsored by an employer, individuals can purchase private disability benefits on their own. Private disability plans often have short term benefits covering a leave of six months or less or long term benefits which pay a percentage of one's monthly income. Before enrolling in a private disability insurance plan, an individual should be clear on the plan's definition of "disability" as well as the possibility of coordinating government benefits. Most, if not all policies, must be purchased before a need arises.

## **I. SHORT-TERM DISABILITY INSURANCE**

- A. **State Disability Insurance (SDI):** California has a short-term state disability insurance program that provides a form of income for those who have medical problems (not caused by work) that preclude them from returning to work at the same job for up to one year. SDI is administered through the Employment Development Department (EDD). Short-term state disability benefits are also offered in New York, New Jersey, Rhode Island, Hawaii, and Puerto Rico.
- 1) **Requirements:** In order to qualify as having a disability under SDI:
    - (i) You must have a mental or physical illness or injury;
    - (ii) Such illness or injury prevents you from performing your regular/customary work for at least eight calendar days;
    - (iii) You must have been employed or actively seeking work when the disability began;
    - (iv) You must be under the care of a physician who certifies that you have a disability;
    - (v) You must file a claim within 49 days from the date your disability began; and
    - (vi) You must have earned at least \$300 in the last year, from which SDI taxes were withheld.
  - 2) **How SDI Works:** Assuming your employer has not opted out of SDI, you pay into the SDI system through taxes taken out of your paycheck. If you look at your paycheck and it says "CA SDI", then you have paid into the system and can therefore draw benefits from it (approximately 55% of what your paycheck would have been). If you also have a private disability insurance policy, you will receive income from both the private policy and SDI simultaneously until the private policy runs out. At that point, you may continue receiving SDI for up to one year. The private plan supplements the SDI; however, you will never receive more than 100% of your salary.
  - 3) **Applying for SDI Benefits:** Applying for SDI benefits is fairly straight forward, and can be done online or through the mail. When applying, the

EDD determines what your weekly benefit is by taking the average wage you earned during the highest quarter of earnings you received during your base period. Your base period is the time available to the EDD calculated from your employer's reporting. There is a lag time, so the base period is typically a 12-month interval, but it depends on when the claim is submitted and it does not include the most recent months. How many months back it includes depends on when your claim is filed.

- 4) **SDI Application:** Please see APPENDIX D11 for State Disability Insurance application forms.
- B. Family Temporary Disability Insurance (FTDI):** In California, Family Temporary Disability Insurance (FTDI), known as "paid family leave," is also available. The requirements for FTDI are the same as what is necessary to qualify for SDI; however, these benefits are only available to the caregiver.
- 1) **Requirements:** FTDI provides up to six weeks of wage replacement benefits to employees who take time off to care for a seriously ill child, spouse, parent, or domestic partner. You can only receive up to six weeks of leave during a 12-month period, but you can take leave time in intervals, similar to the Family Medical Leave Act (FMLA). Unlike the FMLA, FTDI does not provide job protection or benefit protection. However, your job may be protected if your employer is subject to the FMLA. If that is the case, then you must take your FMLA and FTDI at the same time.
    - (i) **Example:** If you are taking a simultaneous FMLA and FTDI leave, for the first six weeks your job and benefits are protected under the FMLA and you get paid through FTDI. For the second six weeks, you will not get paid, but your job is still protected under the FMLA.
    - (ii) **Note:** If you have vacation time accrued, your employer may require you to take up to two weeks of earned but unused vacation time, before being able to draw on the FTDI system.

## II. LONG-TERM DISABILITY INSURANCE

- A. Introduction:** There are two federal long-term disability programs for people who are unable to work: Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI). Under both federal disability programs, an employee must be "disabled" by the standards of the Social Security Administration (SSA) and be unable to work. By receiving these benefits, an individual is essentially drawing on their Social Security retirement benefits early, because they have a disability. Most employees are eligible for Social Security benefits. When you work and pay Social Security taxes, you contribute to your future Social Security retirement benefits. If a person cannot work because of a health condition that person may apply for Social Security disability benefits.
- 1) **Requirements:** For purposes of entitlement to disability benefits, the term "disability" is defined by the SSA as a medically determinable physical or mental impairment
    - (i) Resulting in the inability to do any substantial gainful activity;
    - (ii) Can be expected to result in death; or
    - (iii) Has lasted or can be expected to last for a continuous period of 12 months or more.

- 2) **Social Security Administration test:** The SSA established a five-step sequential evaluation process that is used to determine whether someone is disabled:
    - (i) The Administration first examines whether the applicant is working. If so, the applicant is denied unless he/she was precluded from working for at least one year;
    - (ii) Next, the applicant must have a severe impairment. The impairment must do more than minimally affect an applicant from doing basic work activities codified in the statute;
    - (iii) Assuming the above two requirements are satisfied, the applicant's medical condition must next meet or equal a description of severity that is codified in something called a "listing" created by the SSA;
    - (iv) The SSA next asks whether the applicant can return to any past work done in the last 15 years. If one job is found in the applicant's last 15 years of work history that can be done, the claim is denied. If not, the applicant reaches the last step of the evaluation process; and
    - (v) Finally, once the above-mentioned requirements are satisfied, the burden of proof shifts to the Administration to show that there is other work, other than past relevant work, that the applicant can now perform.
- B. Supplemental Security Income (SSI):** SSI makes monthly payments to people who are age 65 or older; blind; or have a disability. In addition, whether you can get SSI benefits depends on your income and resources. In order to determine whether you meet the income requirements for SSI, the SSA looks to see what income you are receiving and what resources you have.
- 1) **Income & Resource Requirements:** Income is money you receive such as wages, Social Security benefits, and pensions. Income can also include such things as food and shelter. Resources that the SSA count in deciding whether you qualify for SSI benefits include real estate, bank accounts, cash, stocks, and bonds. Resources do not include your home; your car; life insurance policies with a face value of \$1,500 or less; burial plots and burial funds. If your resources total no more than \$2,000, you may be able to get SSI benefits. Eligibility standards for SSI claims are usually the same as those for Medi-Cal. Therefore, if you are found to be eligible for SSI, you will most likely be eligible for Medi-Cal, under the Medi-Cal "aged, blind, and disabled" program.
  - 2) **SSI Payments:** People submitting a claim for SSI benefits typically receive their first benefit check after the first month of application. The amount of your SSI benefit depends on where you live. The basic SSI check amount is the same nationwide. Effective January 2008, the SSI payment for an eligible individual is \$637 per month and \$956 per month for an eligible couple. However, California is one of many states that provide eligible individuals additional money. This can range from an extra \$21 to \$412, depending on various factors, such as whether the individual lives independently, has non-medical board and care, lives in the household of someone else, or is a minor child with a disability. For more information, please visit [www.ssa.gov/pubs/11125.html#pay](http://www.ssa.gov/pubs/11125.html#pay).

- 3) **Keeping Medi-Cal When Returning to Work:** One of the biggest concerns SSI beneficiaries have about returning to work is the possibility of losing their Medi-Cal coverage that provides health care coverage. Section 1619(b) of the Social Security Act provides protection for these beneficiaries. This section offers continuing SSI status and continuing Medi-Cal benefits for SSI beneficiaries who have disabilities and whose earnings are too high to qualify for an SSI cash payment, but need Medi-Cal benefits.
  - 4) SSA allows the use of authorized representatives (not necessarily attorneys) to represent an individual when applying for SSI, or appealing a denial of benefits.
- C. **Social Security Disability Insurance (SSDI):** SSDI is another federal long-term disability program. It is based on your work history and how much money you have paid into the system through your Social Security taxes. The amount of your monthly disability benefit is based on your average lifetime earnings. The Social Security statement that all employed individuals should receive every year displays lifetime earnings and provides an estimate of disability benefits.
- 1) **Eligibility Requirements:** To qualify for SSDI, a person must have a qualifying disability and be “insured.” “Insured” means the employee must have “recently worked” before their disability forced them to stop working. The “recently worked” test is based on your age at the time you become disabled. The calendar quarters are: First Quarter: January 1 through March 31; Second Quarter: April 1 through June 30; Third Quarter: July 1 through September 30; and Fourth Quarter: October 1 through December 31. If you become disabled in the quarter you turn age 31 or later, you must have worked five years out the 10-year period ending with the quarter your disability began.
  - 2) **SSDI Benefits:** It typically takes six months to receive your first SSDI check; however, you will be paid retroactively back to the date that you first became “disabled” under the SSA standards. In addition, once you have been on SSDI for two years, you will receive Medicare health insurance coverage.
  - 3) **SSDI Appeals Process:** The disability insurance benefits system is set up to deny an application the first time around. Only 40% of applicants are approved on the first try. So, it is imperative that you do not accept “no” for an answer and that you appeal the decision. If you wish to appeal a denial of benefits, you must make your request in writing, within 60 days from the date you receive the denial letter from SSA.
- D. **SSI / SSDI Appeals Process:**
- 1) **The Social Security Appeals process has four levels:**
    - (i) After being initially denied, a person can submit a “request for reconsideration.” It takes approximately four to six months for the claim to be reconsidered; however, approximately 15% of claims are approved at this stage.
    - (ii) If you are denied, you can request an informal hearing administered by an Administrative Law Judge (ALJ). An administrative law judge who had no part in the initial decision will conduct the hearing. You or your representative (this person does not have to be an attorney) may look at

the information in your file and present new information and evidence. The administrative law judge will question you and any witnesses, such as doctors and vocational experts, at the hearing. You or your representative may also question the witnesses. The administrative law judge will make a decision based on all the information in your file, including any new information or evidence provided at the hearing. After the hearing, you will be sent a letter and a copy of the administrative law judge's decision.

- (iii) After a denial at the ALJ hearing, you can file a request for review to an appeals council where the ruling of the ALJ will be upheld, unless legal error in the ALJ's decision is found.
- (iv) Finally, you can file a lawsuit with the District Court against the Commissioner of the Administration to review the administrative decision, where the final determination is upheld, so long as it is based on evidence or there is no legal error.

- 2) **Assistance with an Appeal:** Many people handle their own appeals with free help from the Social Security Administration. If you reach an ALJ hearing, it is a good idea to talk with an attorney who is experienced with Social Security appeals process.
- 3) **Review of Benefits:** From time to time, SSA will review the status of all people receiving disability benefits to make sure they continue to have a qualifying disability. If your health has not improved, or if your disability still keeps you from working, you will continue to receive your benefits.
  - (i) SSA will gather any new information about your medical condition by obtaining information from your doctors, hospitals, and other health care providers; or ask you to go for a medical examination or test.
  - (ii) SSA will look at the status of your medical condition when they last reviewed your case and at any new health problems you may have. If SSA decides your medical condition has improved, they will decide whether it has improved enough to allow you to work.
  - (iii) If your medical condition has improved to the extent that they decide you can work, your benefits will be discontinued.

- E. **SSI / SSDI and Returning to Work:** Special rules allow people receiving SSI or SSDI to return to work and continue to receive disability benefits, until they can return to work permanently. While attempting to return to work, you may receive full cash benefits, Medi-Cal or Medicare, and help with education, training, and rehabilitation. The trial work period lasts up to a total of nine months, within a 60-month period. During the trial work period, there are no limits on your earnings. After the trial work period ends, you have 36 months to work and receive benefits for any month your earnings are not "substantial." In 2008, earnings of \$940 per month were considered "substantial." If you cannot continue working after this period, your benefits will resume. The Social Security Administration has a variety of work incentives, including the "Ticket to Work Program." This program

helps you obtain vocational rehabilitation, training, job referrals and other employment support services free of charge.

- 1) **Note:** Each federal disability program (SSI/SSDI) has different employment provisions that allow beneficiaries to test their ability to work while protecting their eligibility for cash payments and health care. For more information contact the Social Security Administration.

F. **Social Security Benefits for Your Family:** Surviving family members can sometimes receive survivors benefits.

- 1) **Widows or widowers:** Surviving spouses of a person with a sufficient Social Security work history may be able to receive benefits. Survivor spouses may:
  - (i) Receive full benefits at full retirement age or reduced benefits as early as age 60;
  - (ii) Begin receiving benefits as early as age 50 if disabled; or
  - (iii) Receive benefits at any age, if caring for a child under age 16, or a child with a disability who receives benefits; and
  - (iv) May also switch to retirement benefits based on their own work history if the amount of the benefits would be higher.
- 2) **Children:** If a parent worked long enough and paid taxes into the Social Security system, a child may also be able to receive survivors benefits. In order to be eligible, the child must be: unmarried; younger than 18; 18-19 years old and a full-time student (no higher than grade 12); or 18 or older and have a disability. Within a family, a child may be able to receive 75% of the parent's Social Security benefits. However, there is a total limit on the amount of money that a family may receive. For more information, contact the Social Security Administration.

### III. **OTHER WAGE REPLACEMENT INFORMATION**

A. **Retirement Assets:** Retirement assets, including pension plans, 401K plans and income retirement accounts (IRA's) are another source of income. Under some of these plans, a person can take money out of his/her plan to pay for medical expenses. The rules will vary by plan, so contact your plan administrator for more information. There may also be tax implications, so you may also want to consider speaking with an accountant.

B. **Life Insurance:** Most people don't consider their life insurance policies to be assets, but some individual policies can be converted to cash. If you have a whole life insurance policy, a portion of your premium is invested to create a cash value that will increase the final amount paid. This type of policy usually allows you to borrow part of this accumulated cash. Although it will lower the amount that is eventually paid out, it is an inexpensive way to access cash because you only have to repay the interest on the amount that you borrow.

- 1) **Note:** Some policies have a provision that allows you to obtain accelerated benefits, meaning you can access a portion (usually no more than 50%) of the face value of your policy. Check with your individual policy carrier for more information.

C. **Viatical Settlements:** An individual can also opt for a viatical settlement, by selling a life insurance policy to a third party for cash. Often a policy can be sold for 30 – 80% of the policy’s value, but the buyer becomes the owner of the policy with all benefits going to the buyer instead of to the original beneficiary. It is a good idea to speak to a trusted financial planner, accountant, or attorney before making such a decision.

IV. **CONTACT INFORMATION**

<p><b>For State Disability Insurance (SDI) questions:</b>          Employment Development Department          (800) 480-3287 or (800) 563-2441 (TTY)  <a href="http://www.edd.ca.gov/dirq2501.htm">www.edd.ca.gov/dirq2501.htm</a></p>	<p><b>For SSI and SSDI questions:</b>          Social Security Administration          (800) 772-1213 or <a href="http://www.ssa.gov">www.ssa.gov</a></p>
<p><b>For life insurance questions:</b>          California Department of Insurance          (800) 927-4357 or (800) 482-4833 TDD  <a href="http://www.insurance.ca.gov/0100-consumers/0600-information-guides/0020-life/life-insurance.cfm">www.insurance.ca.gov/0100-consumers/0600-information-guides/0020-life/life-insurance.cfm</a></p>	<p><b>For viatical questions:</b>          Dignity Resources          (877) 563-2100  <a href="http://www.dignityresources.com">www.dignityresources.com</a></p>