



TEMPORARY DISABILITY INSURANCE

BACKGROUND

New York is one of the few states in the country that mandates that most, but not all, employers provide temporary disability insurance for most of their workers. This mandate is administered and regulated by the New York State Workers' Compensation Board (WCB). Disability insurance payments are not the same as Workers' Compensation Insurance. Eligibility for temporary disability insurance applies to eligible workers who become ill or injured off-the-job, whereas Workers' Compensation covers workers who are injured or become ill while on-the-job and due to factor(s) arising out of the job. New York temporary disability insurance benefits law sets the baseline for what constitutes adequate temporary disability insurance for employees. Employers are always free to provide better, more comprehensive coverage to their employees than that mandated by New York law, and many employers do offer such plans to their employees. You should check with your employer to determine the nature and type of disability insurance plan that it offers.

WHO IS COVERED?

- Employers of one or more persons on each of 30 days in any calendar year become a "covered" employer four weeks after the 30th day of such employment.
- Employees or recent employees of a "covered" employer, who have worked at least four consecutive weeks.
- Employees of an employer who elects to provide benefits by filing an Application for Voluntary Coverage.
- Employees who change jobs from one "covered" employer to another "covered" employer are protected from the first day on the new job. Generally, an eligible employee does not lose protection during the first 26 weeks of unemployment, provided he/she is eligible for and is claiming unemployment insurance benefits.
- Domestic or personal employees who work 40 or more hours per week for one employer. (Domestic Workers)

WHO IS NOT COVERED?¹

- Minor children of the employer.
- Government, railroad, maritime or farm laborers.
- Ministers, priests, rabbis, members of religious orders, sextons, Christian Science readers.
- Individuals who volunteer their services for nonprofit organizations and receive no compensation. Compensation includes stipends, room and board, and other "perks" that have monetary value. (Stipends used solely to offset expenses incurred while performing activities for the nonprofit are not counted as stipends.)
- An executive officer of an incorporated religious, charitable or educational institution, and persons engaged in a professional or teaching capacity in or for a religious, charitable, or educational institution (Section 501(c)(3) under the IRS tax code), and persons receiving rehabilitation services in a sheltered workshop operated by such institutions under a certificate issued by the U.S. Department of Labor.
- Persons receiving aid from a religious or charitable institution who perform work in return for such aid.
- One or two corporate officers who, either singly or jointly own all of the stock and hold all of the offices of a corporation that employs no other employees.
- Golf caddies.
- Daytime students in elementary or secondary school, who work part-time during the school year or their regular vacation period. (Students)
- Employees who change to jobs in an exempt employment category or with a "non-covered" employer and work in such employment for more than four weeks lose protection until they work four consecutive weeks for a "covered" employer.
- The spouse of an employer that files a spousal exclusion form ([DB-212.5](#)). (Spouse of Employer)

¹ **Note:** There is nothing preventing a "non-covered" employer from providing disability benefits to its employees on a voluntary basis. This can be done by the employer filing an Application for Voluntary Coverage with the Chair of the WCB. For more information on who is and is not covered, go to the WCB website at: http://www.wcb.ny.gov/content/main/offthejob/WhoCovered_DB.jsp.

WHAT ARE THESE TEMPORARY DISABILITY BENEFITS?

Disability benefits are **temporary** cash benefits paid to you if you become disabled by an off-the-job injury or illness. Although cash benefits are intended to cover up to 50% of a worker's weekly wages, the law currently caps payments at a maximum of \$170/week. Disability benefits are also paid to an unemployed worker to replace unemployment insurance benefits lost because of illness or injury (WCL §207).

HOW LONG CAN I GET MANDATED EMPLOYER PROVIDED DISABILITY INSURANCE BENEFITS?

Temporary mandated disability insurance benefits are paid for a maximum of 26 weeks (as long as you remain disabled) out of a 52 week consecutive period. If you are working at the time of and after your disability, your employer does not have to pay you temporary disability benefits until the 8th consecutive day after the period that your disability begins. By the 8th consecutive day of disability, the employer must begin disability insurance payments. The employer must provide what is called the Statement of Rights under the Disability Benefits Law ([form DB-271S](#)) within five days of learning of your disability.²

Employers are permitted, if they choose, to collect contributions from its employees to offset the cost of providing benefits. Employees' contributions are computed at the rate of one-half of one percent of their wages, but in no case more than sixty cents per week (WCL §209).

If you have more than one job at the same time with combined wages of more than \$120 per week, they may request each employer to adjust the contributions in proportion to the earnings of each employment. Combined employee contributions may not exceed 60 cents per week. You should request this division as soon as you begin a second job.

HOW IS THE TERM, "ELIGIBLE EMPLOYEE," DEFINED UNDER THE LAW?

New York's temporary disability insurance law states that "any individual providing services to a for-profit business can be deemed an employee of that business and such an individual is required to be covered by the employer for disability benefits insurance. This applies unless those services are specifically excluded as employment under the Disability Benefits Law (DBL)." (WCL §203, 12 NYCRR §355.2).³

² If you are unemployed and are receiving Unemployment Insurance benefits and become disabled more than four weeks (but within 26 weeks) after termination of employment, benefits are payable from the first day of your disability that disqualifies you from receiving Unemployment Insurance benefits.

³ Note that employees who work for non-profits that do not qualify as religious, educational, or charitable organizations are treated the same as employees of for-profit employers.

If an employer meets any of the criteria listed below and the person the employer is hiring does not fall under the definition of an Independent Contractor or the services that the person is rendering are not specifically exempted as employment under the DBL, that employer is required to provide disability benefits insurance to you. The following criteria are key in determining whether a person performing services for an employer is an employee or an independent contractor:

- Right to control – If the employer has the right in the relationship to define and control the type and nature of the work being performed, this indicates that an employer-employee relationship exists;
- Character of work – If the character of the work being performed or the services being rendered are the same or similar to that which the employer routinely performs, it is likely that an employer-employee relationship exists;
- Method of compensation – If the person rendering services to the employer is paid on a regular interval and the employer is deducting taxes and providing other benefits to the worker, an employer-employee relationship is clear. It is irrelevant whether the employer provides the worker with a W-2 or 1099 tax form.
- Method of furnishing tools and equipment – If the employer provides the tools and equipment for the work being performed, this indicates an employer-employee relationship; or
- Right to hire and fire and determine hours of work – If the employer retains the right to hire and fire the worker rendering services as well as to dictate terms and conditions and hours of work, this also points toward an employer-employee relationship. Independent contractors, on the other hand, tend to work under terms of a contract with the employer and generally are free to set their own hours and methods of performing a job for an employer.

OTHER INFORMATION FOR EMPLOYEES⁴

- No duty to mitigate – Unlike private short-term disability (STD) and long-term disability (LTD) insurance plans provided by some employers that exceed the minimal mandates of the New York State DBL, the DBL does not require employees receiving benefits to mitigate the insurer's costs by applying for Social Security Disability Insurance (SSDI) when they become eligible for benefits.
- No eligibility for benefits when accommodated by employer and able to work with accommodation – Otherwise eligible employees whose disability is accommodated by their employer and who continue to work, either at the place of business or at home, are not entitled to benefits under the DBL.

⁴ There are more Frequently Asked Questions on the WCB website at:
http://www.wcb.ny.gov/content/main/offthejob/CommonQuestions_DB.jsp.

- Employee must prove disability – You must provide your employer with proof of a disability that prevents you from working. Employers may require you to be evaluated by their own contracted medical provider. Also, employers can require employees receiving benefits to submit to weekly determinations of continuing disability.
- No concurrent eligibility for Unemployment Insurance (UI) benefits and disability insurance benefits under New York’s DBL – If you lose your job and collect UI benefits but then later become disabled for purposes of eligibility under New York’s DBL, you cannot collect both UI benefits and temporary disability benefits. If you become disabled during the time you are eligible for UI benefits, you are no longer eligible for those benefits under New York’s UI law. You must then apply for disability benefits, if the onset of disability occurs after four weeks but within the 26 week period of UI benefit eligibility.

WHAT ARE MY APPEAL RIGHTS?

If you receive a Notice of Rejection on your claim for disability benefits, you have a right to appeal the decision to the Disability Benefits Bureau within 26 weeks.

The appeal form is on the reverse side of the Notice of Rejection. The address of the Disability Benefits Bureau is located on the back of the rejection notice. Where necessary, the Board will obtain further information and may hold a hearing on the claim, if it cannot be resolved informally. Benefits will be paid if a claim is determined proper and valid.

DISABILITY RIGHTS NEW YORK CONTACT INFORMATION

Albany:

*725 Broadway, Suite 450
Albany, New York 12207
Fax: 518-427-6561*

Brooklyn:

*25 Chapel Street, Suite 1005
Brooklyn, New York 11201
Fax: 718-797-1161*

Rochester:

*44 Exchange Blvd., Suite 110
Rochester, New York 14614
Fax: 585-348-9823*

*Mail@DRNY.org • www.DRNY.org
Toll free: 1-800-993-8982 • Voice: 518-432-7861 • TTY: 518-512-3448*

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