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Short-Term and Long-Term Disability under ERISA

ERISA is the federal law that governs employee benefits, including retirement pensions, health insurance, short-term disability insurance, long-term disability insurance, life insurance and some severance plans. ERISA stands for the "Employee Retirement Income Security Act," and was passed by the U.S. Congress in 1974.

Who does ERISA apply to?

ERISA applies to nearly all private sector employees. It does not apply to government employees. ERISA also does not apply to insurance policies that a person independently purchases – it only applies to insurance that people obtain through their employment.

What are ERISA disability plans?

Under ERISA, short-term disability insurance policies and long-term disability insurance policies are called "plans." ERISA refers to an employee covered under an employer-provided disability insurance policy as a "participant" or "beneficiary."

What are ERISA plan administrators?

ERISA plan administrators are the people who run ERISA insurance plans and decide who will and who will not receive insurance benefits under those plans. ERISA plan administrators are typically large insurance companies.

What is a summary plan description?

A summary plan description is an overview of the disability insurance plan, explaining what benefits are provided, when a person is eligible for those benefits, and how to make a claim for disability benefits. Sometimes a separate booklet describes the detailed procedures for how to make a claim; that booklet should be provided with the summary plan description. If you do not have a copy of the summary plan description, or the claims procedures, you can request them in writing from the plan administrator. Any time you send a letter to an ERISA plan administrator, keep a copy for your records. It is also a good idea to send letters by certified mail, return receipt requested, to create a record showing the letter was received.

How does ERISA affect disability insurance claims?

Although Congress passed ERISA in order to protect employee benefits, in many cases ERISA makes it more difficult for an employee to obtain short-term disability and long-term disability benefits. Before ERISA was enacted, a person who was wrongly denied disability benefits could file suit under state law to enforce the disability insurance contract. The court then would make its own decision as to whether or not the person was disabled under the insurance policy at issue. This is called "*de novo*" review, because the court determines "anew" whether the person was or was not disabled, regardless of what the insurance company decided.

Under ERISA, however, courts rarely apply *de novo* review to decide for themselves whether or not a person is disabled under the applicable insurance policy. Instead, they only determine whether the insurer "abused its discretion" or acted "arbitrarily." In these circumstances, the court only looks to see if there was a "rational basis" for denying the disability claim. If the court finds that the insurer had *any* rational reason for the benefit denial – even if the court believes the person really is disabled – the court may uphold the benefit denial.

How do I submit an ERISA disability claim?

The summary plan description, or the claims procedure booklet, must describe how to make a claim under your employer's specific disability insurance policy, including where to send the claim and the type of information that should be provided. It is important to provide all the information requested and, if possible, to work closely with your doctor to be sure all the necessary information is submitted.

How long before a decision is made?

Claims for disability benefits must be decided not later than 45 days after the plan receives the claim. The plan administrator is allowed, however, to take up to 30 days additional time to review the claim, provided it tells you before the first 45-day period ends.

What if my ERISA disability claim is denied?

If your claim is denied, the ERISA plan administrator must explain in writing why it was denied. The plan administrator must also allow you to appeal the claim denial, and describe how to make that appeal. The appeal is not optional – if you do not submit an appeal to the ERISA plan administrator, your will likely lose your right to later challenge the claim denial in court.

How do I appeal an ERISA disability claim denial?

Simply writing a letter asking the plan administrator to change its mind is not enough. A strong appeal may require detailed medical information, letters or certified statements from doctors, and scholarly articles about the disabling condition. A strong appeal may also include letters or reports from specialists who perform physical capacity evaluations, psychiatric or

neuropsychological evaluations, or vocational rehabilitation evaluations. An experienced ERISA attorney can help coordinate and prepare a solid appeal.

What if my appeal is denied?

If the plan administrator denies your appeal, the next step is usually to file a lawsuit asking the court to declare that you are entitled to the disability benefits. ERISA lawsuits are unusual proceedings. Frequently the court will not consider any evidence or information except the plan administrator's claims file. *For this reason, it is very important that the appeal be as complete and thorough as possible, because the papers submitted with the appeal become part of the evidence the court will review*.

ERISA plan administrators are usually giant insurance companies. Despite their friendly slogans and engaging advertising, they are profit-driven institutions that regularly deny claims to increase profits. They will often not change their decision unless and until they challenged in court.