

# Your Long-Term Disability Benefits

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What is lurking in your disability  
policy or plan that could ruin  
your future?



**THE MARTIN LAW GROUP, LLC**  
ERISA CASE LAWYERS

## What are the dangers?

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There are many dangers that may be lurking in your long-term disability insurance policy or plan. You may think that if you are hurt or sick your income is protected. However, when you look at the details in your policy or plan, it may not provide the benefits you thought you had. It may, in fact, provide little or nothing at all. Faced with physical danger, you learn to stop, look and listen. You need to do the same with financial danger. Take a moment and examine your disability policy or plan. This booklet will guide you.

**Read this booklet very carefully, and then review your policy or plan document.** If your disability policy or plan falls short, examine your options. If you purchased a private policy, you may be able to switch policies. If it is a policy or plan through your employer, you need to contact your employer's human resources or benefits department, and ask them to search for a better policy or plan. Or, you may need to purchase your own private disability policy in addition to that benefit.

**Our practice is focused on helping individuals with long-term disability claims.** Many of our clients are in a bad financial situation. They can't work, and they have no income. Does an insurer or plan have to take that financial distress into account? You know the answer.

You need to be protected in the event of a serious injury or illness that prevents you from doing your job. After all, you are only one disaster away from disability. It can strike at any time. Then, what will you do? What about your children or loved ones? You need the protection for housing, food, medical care, bills, and basic needs.

**Usually our clients are dealing with a very aggressive insurance company or a plan that seems to wrongfully deny most claims. We are here to help. However, many clients were unaware of the dangers that were lurking in their disability policy or plan. You must check your plan or policy before it is too late. The following pages discuss five dangers to look out for.**

## The First Danger: The Definition Disability

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**What is the definition of disability in your policy or plan?** You may assume that if you can't do your own job, you should meet the definition of disability. However, many policies and plans define disability as the inability to perform any occupation — not just your own occupation. So if you can sell newspapers on the street corner, you are not disabled? You have no claim?

Some policies only insure or cover your inability to perform any part-time occupation working 25 hours or more per week. Such a job may not exist near you, but your insurer or plan administrator does not care about that. It only has to honor the coverage promised. Part time protection is not much protection. Why pay for that? What you want to protect is two years or more of being disabled from your job. **Unless you have a huge cash reserve, paying money for a policy that does not protect the income you have relied on does little good.**

## The Second Danger: Exclusions or Limitations

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**Some policies will exclude or severely limit coverage for certain disabling conditions such as back or leg pain, fibromyalgia or chronic fatigue syndrome.** Some policies limit coverage to only one or two years for

conditions like a neuromusculoskeletal disorder, fibromyalgia, arthritis or chronic fatigue syndrome.

**Other policies may go further and exclude coverage for any pre-existing condition that contributes to disability.** That exclusion can be abused, because no one is born a perfect human specimen. Theoretically, there is always something that can contribute to an illness or injury. So with this danger, it does not matter that you can't do your job. What matters is the condition that causes your inability to work. How does that help?



**Then, there are policies that exclude coverage for anything that is not “objectively verifiable.”** Objectively verifiable may be defined as proof of disability from an x-ray or some other diagnostic test. Unfortunately, pain and

many other conditions cannot be x-rayed. However, we all know that if you are in too much pain, you cannot work. Watch for policies or plans with these exclusions or limitations of coverage. Otherwise you may learn too late that your policy or plan is worthless to you!

## The Third Danger: Offsets

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**Offsets are monies that you receive, but which reduce the benefit you thought you had.** It is a critical danger, as offsets can turn an otherwise good policy into scrap paper. A disability benefit is supposed to insure your income, but policies or plans can have offsets that slash the benefit payment down to very little, such as \$50 or \$100 a month. Or, perhaps nothing at all.

**The most common offset is the Social Security disability benefit offset.** Once you receive this Social Security payment, the amount of your long-term disability benefit is reduced dollar for dollar by that amount. Many policies take it a step further and also reduce your benefit by the amount that your spouse or any children receive due to your disability.



**Plans or policies may also assume your receipt of Social Security benefits before you actually have it.** If your benefit is reduced to very little, and it takes one or two years to obtain Social Security, how will you survive that long on so little? Do you have a reserve to last that long?

Furthermore, and to add insult to injury—a common disability insurance

tactic is to cut claimants off when they receive Social Security benefits. The strategy is based on the fact that some people will “give up,” rather than fight for a monthly disability benefit that has been drastically reduced by offsets.

**You should also watch for an offset for any disability retirement benefit or pension benefit that you may be eligible to receive.** Your policy or plan may apply that offset even if it is a pension benefit from a prior employer. **Finally, if you have two disability plans, some have offsets for one disability plan against the other.**

Many offsets are a windfall for the insurer or plan. Insurers and plans certainly like offsets, because offsets reduce the amount of benefits they have to pay. Meanwhile, you’ve been paying the same premium or contribution all along, assuming you would receive your entire benefit. **‘Not fair’ – you think - and you are right.**

**The time to better your situation, if possible, is now, before it is too late!** Once you have a claim, you cannot make a change. Take a good look at those offsets, so you better know what you should actually receive. You need to know that now, rather than after you are disabled!

## **The Fourth Danger: Time Limits**

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**Some policies will have time limits on how quickly you must provide notice and proof of disability.** The time frames may be very short, such as 30 days or 90 days. If you are too late, your claim may not be honored. There also may be time limits as to how quickly you must challenge or appeal a refusal to pay the claim. If you do not follow all of the rules regarding the claim process, your claim may be denied or barred completely for this failure. Even if you are terribly sick, if you don’t follow the rules, your claim may be denied.

**Additionally, if your claim and appeal are denied, there may be time limits as to how quickly you must file a lawsuit on your claim.** Some policies only give 60 days after the last review of the claim before you have to file a lawsuit.

**It may be very hard to get a lawyer.** There are fewer who help employees than there are working in other areas of the law. Furthermore, there are even fewer who are experienced with these types of claims. Then, your lawyer must obtain the claim file, review the claim file, review your submissions, and then prepare a lawsuit. Meeting that time frame can be very challenging. Do not assume you have plenty of time.



**Certain policies may have time limits that are hard to understand and apply.** One such time limit is when your claim is barred if you don't file suit within three (3) years from the date proof of loss was required. So if proof of loss was required within 90 days of your disability date, you have three (3) years after that to file suit. But what if your claim was paid for four (4) years before it was terminated? **You will have to seek advice if that happens. You may have to file suit as soon as reasonably possible. Remember: If you are too late, you lose.**

## The Fifth Danger: Discretion

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**This danger is much harder for most to understand.** When the policy or plan states that the decision maker has the final say on the claim decision and interpretation of plan documents, you should be concerned. This is called reserving discretion.

**Basically, this is legalese language, which means that a court may not find the insurance company or plan administrator wrong on its decision, if there is a reasonable basis for the decision.** In other words, the decision against paying your benefit can be wrong, but as long as it has some reasonable basis, the court may rule against you.



It does not matter that you are hurt badly or very sick and cannot work. People still in the hospital have had claims denied. It does not matter if you just tell the company the truth! This does not only happen to other people. It can happen to you! **If your claim is denied, you cannot win in court unless you prove the decision denying the claim lacked a reasonable basis.**



That catches most people by surprise. It is one of the biggest reasons why cases are lost. Courts, upon seeing this legalese language, feel compelled to give deference to that claim decision. **A court will only reverse the decision if it is both wrong and unreasonable. That is a big problem for your claim and a danger to your economic survival.**

**This danger is a major reason to call an employee benefit lawyer right away, once your claim is denied or at the first hint of trouble.** You must do this before a final review by the insurer or plan administrator.

**Contacting us before you finish the claim process is counter-intuitive, as most people only think they need a lawyer when it is time to file a lawsuit.** However, it is necessary to create a strong claim record while there is time and during the claim process. That is needed for a lawsuit.

Fast action is required to strengthen the claim record for your appeal. There must be time to obtain all evidence that supports the wrong decision. Time is needed to counter that evidence to show that the decision is very wrong. The decision must be shown to be without a reasonable basis. Only then will there be adequate proof to file a lawsuit. You will need a lawyer during the claim process.

**Many people with claims think that a simple letter and some medical records will cause the decision to be changed. Rarely, if ever, will that be enough.** You must refute the basis of the decision with evidence. That is where diligence and expertise are necessary. This work must occur during the claim process, or there may be no reason to file a lawsuit.

## Other Dangers

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**There are many other dangers in disability policies and plans; however, not all of them are covered in this short booklet.** Take time to stop and read your plan or policy. We urge you to remember that on any day, you can be mere minutes away from an illness or injury that can completely change your life. It is good to prepare for that possibility, and make sure that you have the best policy or plan in place through your employer, association or union. Also, checking with an insurance agent is best. **Protect yourself and your loved ones.**

## This is What We Do

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**You should contact us as soon as there is a hint of trouble with your claim, and certainly when your claim has been denied.** You must act quickly, because your attorney must work diligently and swiftly to make a strong claim record before the claim process is exhausted.

**Our firm is guided by the motto “the hand of the diligent will prosper.”** This means that in order to succeed, you first must be diligent in your efforts. We believe that diligence embodies a determined effort with excellent quality work. We use our decades of experience with long-term disability claims to diligently work on each client’s case. **We know our reputation is tied to the case, and so we invoke that effort with quality workmanship.**

**As you might expect, our firm is tailored to work on long-term disability cases.** If you need a lawyer that handles automobile accidents, domestic issues, matters relating to the criminal justice system, or commercial transactions, we are not the firm to call. **Our practice is focused on long-term disability, life insurance, and pension or retirement cases only. This falls in an area of law called “employee benefits”.**

**We all know that if you do one thing, you can do it much better.** You learn strategies and how to win for clients. We have decades of valuable experience, which can greatly help to “even the playing field” with an insurer or plan administrator.

**We never represent insurance companies, employers, or plan administrators.** You can know we are striving to build justice in an unfair area of law. Also, if we only help one side in disputes, we can avoid conflicts of interest that can arise as well as ethical issues. **We are only for the employee and their loved ones.**

**Because we focus on employee benefit cases, which usually fall under a federal law known as the Employee Retirement Income Security Act or “ERISA,” we assist people all over the nation, with a focus on Alabama and Mississippi.** In fact, monthly, we set up a meeting day, in a different city in those states, to meet with clients.

**Fee arrangements are set to fit your circumstances.** We offer contingent fee contracts, where if there is no recovery, there is no fee. We also offer hourly fee contracts for those who prefer this type of payment. We have offered variations of these fee arrangements as well.



**Our representation has benefited individuals in nearly every occupation,** including doctors, teachers, professors, executives, insurance adjustors, bankers, plant workers, lawyers, engineers, nurses, construction workers, retail workers, and hospital administrators, to name a few. Our firm can be there for you too.

**We have also handled claims against nearly every insurance company that provides group disability insurance and individual disability insurance.** We urge you to research the lawyer or firm you want to handle any case. You can learn more about us at [www.bestlawyers.com](http://www.bestlawyers.com), [www.martindale.com](http://www.martindale.com), [www.superlawyers.com](http://www.superlawyers.com), and [www.alabama-lawyers.org/Lawyer-Directory/ERISA-Plaintiff](http://www.alabama-lawyers.org/Lawyer-Directory/ERISA-Plaintiff).

Also, visit our website at [www.erisacase.com](http://www.erisacase.com) for the latest news on ERISA and disability policies or plans.

Use this estimator to help evaluate your plan or policy.

## Benefit Calculation Worksheet

### 1. Determine monthly pay.

(If paid bi-weekly, multiply by 26 and then divide by 12. If paid weekly, multiply by 52 and then divide by 12.)

\_\_\_\_\_ (amount of monthly pay)

### 2. Determine full benefit. (before offsets)

Review policy/plan and enter benefit percentage (the percentage of your wages your disability policy pays)

\_\_\_\_\_ X \_\_\_\_\_ = \_\_\_\_\_

(percentage of wage your policy pays) (amount of monthly pay) (full benefit before offsets)

### 3. Total Monthly Offsets (add offsets your policy allows)

\_\_\_\_\_ (your Social Security monthly amount)

\_\_\_\_\_ (dependent Social Security monthly amount)

\_\_\_\_\_ (pension or retirement)

\_\_\_\_\_ (other offsets)

} \_\_\_\_\_ (total of all applicable offsets)

### 4. Determine net benefit.

\_\_\_\_\_ - \_\_\_\_\_ = \_\_\_\_\_

(full benefit) (total offsets) (full benefit after offsets)

The following is an example, based on a hypothetical claimant and common policy/plan terms.

## Sample Benefit Calculation Worksheet

**1. Determine monthly pay.** **\$5,200.00**  
 Hypothetical claimant earns \$2,400.00 (amount of monthly pay) every two weeks.  
 (\$2,400.00 x 26 ÷ 12 = \$5,200.00 per month)

**2. Determine full benefit.** (before offsets)  
 Review policy/plan and enter benefit percentage  
 (Let's assume claimant's policy pays 60%)

<b>.60</b>	<b>X</b>	<b>\$5,200.00</b>	<b>=</b>	<b>\$3,120.00</b>
(percentage of wage your policy pays)		(amount of monthly pay)		(full benefit before offsets)

**3. Total Monthly Offsets**

**\$1,400.00**  
 (Social Security disability claimant receives for herself)

**\$700.00**  
 (Social Security claimant's child receives through claimant's Social Security award)

**\$200.00**  
 (pension or retirement)

**N/A**  
 (other offsets)



**-\$2,300.00**  
 (total of all applicable offsets)

**4. Determine net benefit.**

<b>\$3,120.00</b>	<b>-</b>	<b>\$2,300.00</b>	<b>=</b>	<b>\$820.00</b>
(full benefit)		(total offsets)		(benefit after offsets)



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