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Some Aspects of Disability Insurance

Introduction

The purpose of disability insurance is to provide peace of mind that replacement income will be available, should you become disabled due to sickness, disease, or injury, and are unable to work to your full capacity. Few contracts can affect your personal interests more than a contract for disability insurance.

Disability insurance coverage is usually available through the purchase of an individual policy or group insurance provided by your employer. This article will be geared largely to those who should obtain individual coverage, such as self-employed professionals or businesspeople; we will briefly outline tips and practical information related to obtaining insurance, making a claim under an insurance policy for benefits, and how to avoid potential pitfalls.

Obtaining Insurance

Seek professional advice prior to purchasing insurance. You can obtain disability insurance coverage for a number of potential losses, such as:

- business interruption;
- business overhead; and
- personal income loss.

You should consult with a financial planner or insurance broker for the appropriate insurance for your purposes. Most policies are difficult to understand and the legal consequences of these terms are not clear. Obviously, insurance is purchased with the hope that it will

never have to be used. If you do need to make a claim for benefits, you want to know that the insurance you have purchased actually covers your needs.

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Definition of Disability: “Own Occupation” versus “Any Occupation” Clauses

While no two policies are exactly the same, disability insurance policies can be divided into three categories:

1. policies that cover individuals who are disabled from performing their “own occupation”;
2. policies that cover individuals who are disabled from performing “any occupation”; and
3. policies that are a combination of the two.

“Own occupation” policies generally mean that to receive benefits, you must be totally disabled from performing the usual and substantial duties of your occupation, regardless of whether you are able to perform the duties of another occupation for which you are qualified or might be

qualified to perform. This type of coverage is more favourable to the insured.

For example, your regular occupation is that of a legal professional. Due to an injury, you are totally disabled from practising in your field, but are able to work in a less demanding occupation, at a reduced salary. Depending on the wording of your policy, you would likely meet the “own occupation” definition of disabled and be entitled to receive benefits.

“Any occupation” policies generally mean that to receive benefits, you must be disabled from performing not only your “own occupation,” but any other related occupation for which you qualify or could be qualified to perform. This much broader definition of disability is more favourable to the insurer. Using the above example, you would have to be totally disabled from practising as a legal professional, and any other occupation in any field commensurate with your education, skill, and training.

If your policy is a combination of the two, the definition of “total disability” under the “own occupation” will be for a fixed period, i.e., one or two years, and for any time thereafter, the definition of “total disability” will be governed by the “any occupation” definition of “total disability.”

Making a Claim

Like most insurance policies, it puts the onus of proving the loss on the claimant.

This means that in making a claim for disability benefits, you must satisfy the insurer that you meet the policy definition of “disabled.” This is done through a combination of medical reports and factual evidence. Your policy will set out claim procedure and requirements. Often there will be a holding or waiting period from the date of disability before you will be eligible to receive benefits.

How to Avoid Some Potential Pitfalls

■ **Claim Out of Time**

There are crucial time limits under your disability insurance policy for making and pursuing a claim for benefits. The time limits are set within the policy itself, and by the *Insurance Act*. Failure to comply with these time limits will mean that your right to take legal action will be barred. Your policy will set out these time limits. We recommend that you familiarize yourself with them.

While each policy is different, keep two important time limits in mind:

- the time limit for initiating a claim from the date of sickness or injury arose, and
- the time limit for initiating legal proceedings if your claim is denied.

If the insurer denies your claim, or initially pays benefits under the claim only to terminate them at a later date, there is a one-year time limit under the *Insurance Act* (which could be longer under your individual policy) to start a lawsuit. This time starts to run from the date your claim is denied or your benefits are terminated.

■ **Not Being under the Care of a Physician**

Most disability insurance policies require you to be under the care of a medical doctor. Being under the care of a psychologist (as opposed to a psychiatrist) for a mental or emotional illness may not qualify under some disability insurance policies.

■ **Letting Premiums Lapse**

Keep your premiums current. If you do not do so, your policy could lapse at the insurer’s option and it may be difficult,

depending on your health history and personal circumstances, for you to obtain insurance from another carrier.

Usually, most policies contain a premium wavier provision, which means that while benefits are being paid, the premiums for the policies are suspended. If benefits are terminated, it is **critical** that you continue to pay your premiums, retroactive to the date that the benefits were terminated, to keep the policy in good standing.

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■ **Nondisclosure and Misrepresentation**

You must make full and frank disclosure of your medical history, including all past illnesses, injuries, and diseases, and of your past earning history on your application forms. This information is what the insurer relies upon in deciding whether or not to offer coverage and in setting the amount for premiums. The insurer cannot and will not investigate the truth of the contents of your insurance application. Therefore, it is up to you and not the insurer to ensure that all pertinent information has been disclosed accurately.

Most people cannot remember a minor illness or injury from many years ago; many fail to record them on the insurance application form. For example, some applicants erroneously believe that an “illness” or “disease” must mean a very serious sickness, and may consequently omit certain ailments or injuries from his or her medical history. This can be a BIG mistake and could lead to the denial of coverage in the event of a future disability claim. Therefore, make sure you understand the questions being asked on the application form and seek clarification, if needed.

Conclusion

Most people realize that it is important as a self-employed professional or business person to have insurance in place for replacement income in the event that you become disabled and unable to work at your full capacity. As a result, most professionals responsibly obtain disability insurance.

Most people are not aware, until they need to make a claim, the minefield that must be navigated to successfully meet the conditions to obtain disability insurance benefits. We hope that this article has summarized some of the main issues to consider. We strongly recommend that you consult with a legal professional for clarification, both before purchasing insurance and prior to making a claim for benefits, to understand the terms and conditions of your insurance, and to assist you in obtaining benefits. ▲

The content of this article does not constitute legal advice and is provided for informational purposes only. For legal advice for your particular situation, please contact a legal professional.

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