

Disability Insurance: An Interview with Law Expert Frank Darras

Frank Darras is a nationally recognized lawyer specializing in individual disability problems, long-term employer sponsored ERISA litigation, credit card, auto, and mortgage disability issues.

Darras has nurtured and grown his boutique disability and long-term care practice into the largest in America, with more than 1000 new cases a month streaming into his Ontario, California operation. It's no wonder he has earned the respect of the insurance industry and is Americas' leading disability and long-term care litigator.

Recently, Frank Darras took time to participate in a LoveToKnow interview and answered a few specific questions about disability insurance.

What is disability insurance?

What would you do if you could not work for an extended period of time due to an illness or injury? What would you do to replace your earnings if you were unable to work at all? Most of us need disability insurance, yet less than 15% of us have it. Disability insurance protects one of our most important assets, our earning stream. This "must have" product provides a monthly benefit if you are sick or injured and cannot perform the substantial and material duties of your occupation. Most disability insurance companies insure 60% to 70% of your salary or earnings on a monthly basis. All policies offer total disability benefits while some offer both total and a residual benefit, where you are still able to perform one or more of your substantial and material duties and have a loss of income of at least 20%, as a result of your sickness or injury.

Most policies have a waiting period of at least 90 days before benefits begin accruing. Benefits are paid retroactively on a monthly basis, so if you have a 90-day waiting period where no benefits are paid, your first check won't arrive till the 135 day mark (90 day wait + first 30 day period of disability + 15 days to process the check), so save accordingly.

Every working American should have disability insurance. It doesn't matter whether you are young and single, middle aged and married or married at any age with kids. If a serious injury or illness prevented you from working how would you would meet your basic living expenses, let alone plan for your financial future? And the risk of disability is real. According to recent statistics, disabilities affect one in five Americans or 49.7 million people. On average, 2,329 disabling injuries occur every hour during the year, and a disabling injury occurs every eight seconds at work. In addition, three out of ten working people between the ages of 35 and 65 will be disabled for 90 days or longer, a 40 year old has a 45% chance of being disabled for 90 days or more, one in five people will become disabled for five years or more prior to reaching age 65, and the risk of disability is greater than the risk of death at all ages between 20 and 65. Finally, roughly half of the foreclosures in America are due to disabilities and a quarter of all bankruptcies are tied to serious injury or sickness.

There are several important reasons to purchase this protection now. The most obvious is, the coverage gets more expensive as we get older. Two, if you're earning money you need to protect it now! Three, if your

health declines it will be more expensive to insure yourself or unavailable to you if your problems are serious.

How is short-term disability insurance different from long-term disability insurance?

Like long-term disability insurance, short-term disability insurance provides coverage if you are sick or injured and can't work. Benefits are paid on a weekly basis and for a limited duration (usually 26 weeks), after a very short waiting period (anywhere from seven to 30 days).

If an employer offers disability insurance coverage, is it necessary to purchase a supplemental policy?

Yes. Even if your employer offers disability coverage under a group policy, it is a good idea to buy your own individual coverage as well. Group policies are subject to cancellation at any time, and the maximum monthly benefit may not be adequate for your needs. Also, group policies lack the legal safeguards and consumer remedies of individual policies. If the insurance company delays or denies your group benefits you only get your back due benefits, in some cases interest and in rarer circumstances attorney fees, and only after you formally exhaust all administrative appeals and file a lawsuit. And when you do file, you will not have a trial by jury and there will be no remedy for emotional distress, extra contractual (if your car was repossessed or your home went into foreclosure) or punitive damages. Group policies also lack the tax advantages of individual policies: If you pay the individual disability policy premiums yourself, your disability benefits will be tax-free, whereas group benefits are taxable because your employer is paying your premium.

In addition, group policies often have stricter definitions of disability, and more restrictions and exclusions than individual disability policies. Group benefits are always reduced or offset by any payments you are eligible to receive from state disability, workers' compensation, Social Security, retirement plans, or any lump-sum settlement you receive as the result of an accident that causes your disability. Most group policies also include a clause delaying coverage on pre-existing conditions for one or two years. Finally, if you leave your employment, your group policy isn't portable and you cannot take it with you.

How can someone determine how much disability insurance they need?

Always buy as much individual disability insurance as your income will support. If your employer offers group disability insurance, apply for the individual coverage before you put the group coverage in place as this will allow you to maximize your non-taxable benefits and preserve all of your state's consumer remedies. If you already have employer sponsored group coverage, apply for as much individual coverage as possible and be sure to include a future increase option to protect you in the event you leave your employer and the group coverage terminates.

What factors influence the cost of disability insurance premiums?

Premiums are based on the applicant's age, gender and occupation, health status, the amount of coverage applied for and the specific policy features requested. The younger you are when you apply for disability insurance, the less it will cost. Males pay less than females for the same coverage while professional/white collar applicants pay less than blue-collar applicants. Finally, the less dangerous your occupation, the lower your premium will be.

Is there any way to save on premiums?

One way to reduce disability premiums is to opt for a longer waiting period before benefits begin. Most policies have a 90-day waiting period. If you can hold out for six months by living off savings, you could reduce your premiums by 10 to 20 percent with a 180-day waiting period. Keep in mind, though, that disability payments are paid retroactively on a monthly basis. While a longer waiting period (i.e., 180 days) will reduce your annual premium, it may pose too much of a financial hardship because your first check won't arrive till the 7 1/2 month mark.

Another way to reduce premiums is to opt for a five-year benefit period instead of coverage through age 65. Limiting your benefit period is a risky gamble, as your disability might last much longer than 60 months. What happens when your benefits run out and you are still disabled?

Whatever you do, don't miss a premium payment. If you forget, you'll get one reminder notice. After that, your policy will lapse, and all those premiums you've paid over the years will go down the drain and you will have to qualify again when you are older and your health may have declined.

Are there any policy features in particular that people should look for when purchasing a disability insurance policy?

Always purchase Noncancelable, Guaranteed Renewable coverage. These features mean the insurance company can't cancel your policy, increase your premiums, or change the contract language, as long as you pay your premiums on time.

Always buy "own-occupation" coverage protecting what you do for a minimum of five years, but preferably for the life of the contract. This feature pays you monthly benefits if a disability leaves you unable to perform your own occupation even if you can still work in another occupation.

Obtain the longest benefit period possible – lifetime if available, but at least until you reach age 65. While you might consider a five-year benefit period to reduce premiums, this is a risky gamble as your disability might last much longer.

In addition, if you are young and expect to earn a lot, paying extra for COLA (a cost-of-living adjustment rider) is money well spent. If you become disabled, it will keep your monthly benefit ahead of inflation. You might also consider adding future increase options, which allow you to increase your monthly benefit as you earn more money regardless of your health.

When do benefits expire? Can you receive disability benefits past the age of retirement?

Benefit periods range from two years, to five years, to age 65, to lifetime. You should always obtain the longest benefit period possible. With a lifetime benefit period, as long as your disability commenced prior to a certain age (generally 60), you can receive benefits for as long as you remain disabled, even past the age of retirement.

Where can consumers purchase disability insurance?

Before buying your individual disability policy, get at least three quotes from a licensed agent who has

shopped for the lowest rates and provided you with the most generous coverage available. Your agent can also be helpful should you ever need to upgrade your coverage or file a claim, so pick an agent you like and trust.

Most insurance policies come with a great deal of fine print. What should a consumer do if they do not fully understand the provisions of their disability insurance policy?

Always take a close look at the fine print on exclusions and restrictions, particularly if the premium sounds too good to be true. Some policies have a two-year limit on mental illness or other disabling conditions such as chronic pain, fibromyalgia or chronic fatigue syndrome. Many policies contain a fraud provision that allows the carrier to rescind (cancel) your policy at the time of claim if they find a false statement on your application.

To get the protection you need, you have to understand how individual disability policies are structured and what options are available. Since the options and provisions (including exclusions and restrictions), are numerous and complex, it is worthwhile going over them with your agent, or with an experienced disability attorney before signing up.

Are there any other tips you can offer to help consumers make informed choices about disability insurance coverage?

Disability insurance is underwritten both medically and financially. If you have had a health problem or a recent year in which you did not do well financially, before you apply for disability insurance sit down with your agent, be truthful and have him submit a “trial application” to the carrier. If the agent is a big producer, the underwriter at the insurance company will let the agent know if the policy can be issued. If the answer is yes, then submit a formal application. If the answer is no, then at least you have avoided being “formally rejected,” which will have to be disclosed on any future applications for the next 10 years. We don’t want anyone to be rejected, so be smart submit a “trial application” and get the coverage you richly deserve.

Find a dependable claim paying company that will be around when you need them most, at claim time.

Make sure the policy you’re considering has a “10 day free look” feature that allows you the opportunity to have the policy examined by competent counsel before you begin shelling out the premium.

Finally, be a smart shopper. If you have a problem or concern about your individual or group disability coverage or need advice before filing a disability claim, get the legal advice you need from an experienced disability attorney – someone who has navigated and litigated the disability waters and knows what to expect.