

THE FINE ART OF SELF-PROTECTION

Why buying your own disability coverage may be a smart move

No one likes to spend money on something he can get for free, but if the fine print on your employer-sponsored disability insurance reads like a Stephen King novel, consider investing in your own personal policy.

While medical science has greatly enhanced the odds of surviving a catastrophic illness or injury, if you're left unable to work you can quickly burn through your personal assets. Disability insurance is designed to come to your rescue, paying the bills while you recover or perhaps confront a future in which working is impossible. But what exactly constitutes "disabled"? A review of your company's policy may reveal that the insurance company's definition and yours differ greatly.

"Long-term disability under a company-sponsored plan will generally cover the insured for only 24 months in his occupation," warns managing partner Frank Darras, head of health and disability litigation at Shernoff, Bidart & Darras in Claremont, California. "After that, the definition of disabled applies to any occupation for which the person is trained, educated, or suited." That means you may have to be what Darras calls "Social Security disabled" in order to collect. The standard established by the Social Security Administration (SSA) finds a person disabled when he is unable to do the job he performed before becoming disabled and unable to adjust to other work (as determined by the SSA) due to his current medical condition. In other words, if you can work a cash register, the insurance company may deem you ready to re-enter the workforce.

The odds of becoming disabled are higher than you might think. The SSA cites studies showing that a 20-year-old worker has a 30 percent chance of becoming disabled (temporarily, at least) before retirement age. The National Safety Council found that, in 2004, 23 million workers suffered a short- or long-term disabling condition, although insurance studies find that short-term cases outnumber longer-term incidences by about 10 to 1. Causes of long-term disability range from musculoskeletal problems (the most common, accounting for about a quarter of all claims) to nervous-system diseases (the most debilitating, typically lasting nearly five years).

No one's road to recovery is helped by being told that she is ready for a form of work she doesn't want and which won't pay the bills. And company-sponsored policies can be less valuable than they appear in other ways, as well. As an employer-funded benefit, any money paid out is subject to personal income taxes unless the employer has agreed to pay them for you (check with your human-resources department). "Say a CFO qualifies for \$25,000 a month of long-term-disability coverage," observes Darras. "It's immediately taxable. The CFO is probably in the 40 or 50 percent tax bracket, so the aftertax benefit — if he gets it — is about \$12,500 a month. That's not insignificant, but it sure isn't \$25,000." And that hypothetical \$25,000 may not come close to the insured's salary. "What we typically see is coverage around 60 percent of salary," says Scott Hill, a financial adviser with Kanaly Trust in Houston, "although I have seen coverage as high as 75 percent."

No Remedies

Other pitfalls loom. If the insurer denies a claim, don't count on taking your case before a jury. Policies funded by private employers are subject to the Employee Retirement Income Security Act (ERISA), which provides

for disputes to be handled first by an administrative appeal to the employer's insurance company or self-funded plan. Lose there and you can pursue your claim in federal court, but Darras says you'll have to prove your case to criminal-court standards before a judge. That means you'll have to convince the judge that the insurance company was wrong beyond a reasonable doubt.

Even if you prevail, you won't be able to collect any punitive damages or extra contractual damages. "If you have to sell your car collection at a fire sale while you're fighting this thing, or take your kids out of private school, or if the second home goes into foreclosure, you have no remedy," he says. "Because employer-sponsored plans are covered under ERISA, the only thing you will get are back-due benefits, in rarer instances some interest, and in a very few instances attorney fees."

While buying a personal-disability policy may appeal to anyone who'd prefer not to hold down a job that requires wearing a paper hat, or suffer a huge cut in income, or face legal headaches in the event of a dispute, it's particularly well-suited to those who earn high salaries but who haven't accumulated enough wealth to draw on if she became unemployable. "Someone in that situation can buy a lot of disability insurance — and needs it," says insurance broker Paul Simon, president of Simon & Associates, in Villa Park, California.

But shop carefully. Buy from an agent or broker not affiliated with your employer, says Darras. That not only makes any benefits tax free, but, in the event a claim is denied, it gives you access to consumer remedies — most important, a jury trial. Also, insist on a noncancelable, guaranteed-renewable policy with occupation-specific coverage for life, or at least until age 65. Occupation-specific language ensures the policy will pay off if you are rendered incapable of performing your specific job, not just any work. Finally, advises Darras, work with your HR department to put your personal plan in place in lieu of the company-sponsored coverage. Insurers won't allow double coverage.

What will it cost? In California, Simon solicited two quotes on an occupation-specific long-term disability policy for a 55-year-old man. He specified that the policy pay a benefit of \$10,000 per month after the first 90 days of disability, plus cost-of-living increases, and that it cover "residual," or partial, disability. One carrier quoted a premium of \$7,601 per year, the other \$10,074 per year. Prices in some other states, Simon notes, could be as much as 10 percent lower. Elsewhere, Tracy Miller, insurance agent at Houston-based Insurance Alliance, received a quote of \$4,303 per year for a 51-year-old corporate executive on a job-specific policy that would pay \$6,000 per month to age 67.

If you're at or near retirement age, have accumulated significant assets, or have coverage under a better-than-normal corporate policy, don't bother with personal disability insurance. But for many people it's worth a look. "I always end discussions about long-term disability insurance by reminding folks how hard it was to get to the top," says Darras. The right insurance can prevent a precipitous financial fall.