



**Facts & Tips
about
Long-term Disability (LTD)**

Revised June 2008

Please keep this document handy for reference

It offers general information about LTD benefits under an insurance policy or contract. It gives advice and tips about what to do when you are applying for, appealing the denial of and receiving LTD benefits.

Please read it carefully.

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Introduction

About Group Disability Insurance Policies

The insurance policy that covers you for income replacement if you are unable to work due to disability is a contract between your employer and, usually, an insurance company (the "carrier").¹

The contract is legal and binding on the employer and the carrier, which are the two "parties" to the contract. Much of the contract deals with the rights and obligations of the parties *to each other*. These issues are rarely of concern to the individual employees who are covered by the terms of the policy.

The terms of the policy may be constrained by provisions negotiated into your collective agreement. These provisions are also binding and may affect your options, but usually it is the employer, as a party to negotiations, that is responsible for ensuring the policy includes the appropriate negotiated terms and conditions.

What you need to know as an employee covered by the policy and the collective agreement, are the sections in the policy and collective agreement that deal with, for example:

- conditions under which you may be entitled to benefits.
- what you must do to establish that you are entitled to benefits.
- how much are the benefits.
- whether and when the carrier can reduce its payments to you.
- what circumstances may allow the carrier to withhold benefits.
- when the carrier may be entitled to stop payments completely.
- what rights of appeal you may have.
- whether and when you may file a civil suit against the carrier.
- how long the carrier must pay them.
- what your obligations are to the carrier.

¹ This does not apply to the ONA-sponsored LTD policy administered by Johnson Insurance.

The Meaning and Implications of "Total Disability"

"Totally disabled" is a phrase that means different things to different people in different contexts. We might use it sometimes in a humorous way to mean we are completely exhausted. In some situations, people hesitate to use the term to describe their medical status because they believe it means "unable to do anything at all" or "confined to bed," and they don't want to think of themselves that way.

For organizations, however, "total disability" and related terms are carefully defined **legal** terms established by contracts, policies, collective agreements and law, and interpreted by civil and arbitral decisions. Definitions may differ between organizations, but they have in common some reference to **medical disability**, as established by evidence.

Here are some of the criteria for disability you may encounter in the process of becoming disabled, applying for benefits and recovering from the disability:

1. Totally disabled from your own occupation in the short term.
2. Totally disabled from your own occupation in the long term.
3. Totally disabled from *any* occupation.
4. Totally disabled from *any* occupation which would provide substantial remuneration.
5. Totally *and permanently* disabled from any work for pay or profit.

Because of the complexity of the issues involved, it is important to discuss your case with your ONA representative and your Labour Relations Officer (LRO) before making decisions that will affect your future. Both the possibility of return to appropriate work and the chances of continuing under the income replacement program may be adversely affected by decisions based on inaccurate or incomplete information.

Don't delay! Don't take a chance! Call ONA first, fast and foremost!

1. and 2. Totally disabled from your own occupation

In order to qualify for LTD benefits, you usually must be unable to perform the duties of your occupation full time for a period of time known as the **qualifying period**, which may be from one or two days up to several months. During this time you may receive income from one or more sources, such as your employer, an insurance company, or the Employment Insurance Commission.

The amount of income you receive during the qualifying period depends on such factors as your basic earned income and the rules set under your collective agreement, an insurance policy, or government legislation and regulations. The definition(s) of total disability and what must be done to establish that it exists are also found in these document(s) and have **legal force**.

The same definition of total disability usually applies to the qualifying period and the initial period of LTD payments. A simple version is found in the Hospitals of Ontario Disability Income Plan (HOODIP) 1980 brochure:

. . . unable to perform the regular duties pertaining to your occupation due to injury or illness and that you are not engaged in any gainful occupation.

A variant of it is in the HOODIP 1992 brochure (reformatted by Desjardins):

Unable, due to injury or illness, to perform the regular duties pertaining to the occupation in which you participated immediately before becoming disabled.

A comprehensive version is in the HOODIP contract (1992 version):

Totally disabled means that the member has a medically determinable physical or mental impairment due to injury or illness which prevents her from performing the regular duties of the occupation in which she participated just before the disability started.

This definition usually means your illness prevents you from performing the regular duties of your own occupation, and is such that common care and prudence require you to desist from your occupation in order to effect a cure. It does not mean you are absolutely unable to carry out any kind of activities related to your own occupation.

In general, if the carrier concludes you are disabled from your own occupation, benefits may continue:

- for two years (from the start of your disability or from the start of LTD benefits, depending on the policy), or
- until an earlier date if, for example, you are no longer disabled from your own occupation or fail to comply with the terms of the policy, or die, or
- for a longer period of time if you are disabled from "any occupation."

Please obtain and read the LTD brochure provided through your employer to understand the exact definition that applies to you and other conditions you must meet, as well as the income you can expect to receive.

Employment Insurance (EI) sickness benefits

Some disability income programs incorporate a period of EI sickness benefits. Note that ONA does not provide support in applying for EI benefits or appealing EI decisions. EI pays 55 per cent of your normal weekly earnings. Your collective agreement may top that amount up to a higher level.

Here's what the Service Canada website ² says about EI Sickness benefits:

*Sickness benefits may be paid up to **15 weeks** to a person who is unable to work because of sickness, injury or quarantine. To receive sickness benefits you are required to have worked for **600 hours** in the last 52 weeks or since your last claim. A medical certificate must be obtained to confirm the duration of your incapacity. The fees requested by your doctor or dentist are entirely at your own expense.*

² <http://www1.servicecanada.gc.ca/>

A person who makes a claim for sickness benefits is not only required to prove to be unable to work but also that he or she would be otherwise available for work.

Particular situations...

You may qualify for sickness benefits even with less than 600 hours as long as you did not stop working because of illness, injury or quarantine. In fact, if you are already receiving regular benefits and you become ill while you are on that claim, you may receive the sickness benefits you are entitled to.

If you are receiving sickness benefits and you ask for maternity and parental benefits, you will want to know more [about the maximum number of combined weeks of benefits you may be able to receive.](#)

*If these situations apply to you, call our telephone information service at **1 800 206-7218** from 8:30 am to 4:30 pm and press "0" to speak to a representative. You can also write us or go in person to your [Service Canada Centre](#) to have your claim modified.*

3. Disabled from any occupation

To qualify for benefits beyond the "own occupation" period, usually you must be unable, due to injury or illness, to participate in any gainful occupation for which you are, or may become, fitted through education, training or experience, and which would provide you with an income at least equivalent to the LTD benefits you were receiving (possibly adjusted for inflation). This means that you must look at other possible positions with your current employer, other occupations, or other jobs in a different sector or environment. This is the definition of totally disabled that you must usually meet after the "own occupation" period ends.

The part of the definition that says, "for which you are or may become fitted through education, training or experience" adds another dimension to proving that you qualify for continued LTD benefits. The burden is on you to become suited for another occupation. The carrier expects that you can transfer your current skills and, perhaps with some upgrading or additional short-term training, you could become employable again. ("Short-term" usually means not more than six months to one year.) The carrier may arrange for training or rehabilitation for you, **but is not obliged to do so.**

The definition of disability during the "any occupation" period does not mean you must be completely bed-ridden and unable to function at all. Being able to do some small part of an activity normally associated with a business or occupation should not disentitle you to benefits. In order to perform the duties of an occupation, you must be able to perform them to the standard of a reasonable employer with some degree of permanence and regularity so as to be able to earn a living.

This position is supported by case law; it means that total disability is in reality a **substantial**, not a **total** inability to perform. However, whether a job is available for you or not is not relevant; the carrier is only concerned with what you can or cannot do due to a medical disability.

If the carrier concludes you are disabled from any occupation, benefits may continue:

- until you are no longer disabled from any occupation, or
- until age 65, or
- beyond 65 in some policies and under some circumstances,
- until an earlier date if, for example, you fail to comply with the terms of the policy,
- or until death.

4. Totally disabled from any occupation for substantial remuneration

If you apply for disability benefits from Canada Pension Plan (CPP), you will find it is different from LTD. It is possible to qualify for LTD benefits but not for CPP disability, and vice versa. This is partly because the terms of one policy may legally disqualify you on technical grounds even if you meet the medical definition of “disability” that applies to you.

CPP pays a benefit equal to 75 per cent of the pension you have earned to date plus a flat-rate amount that is determined each year.

ONA does not provide support in applying for CPP benefits or in appealing CPP decisions.

Here is what the *Service Canada* website³ says about CPP disability benefits.

What do we mean by "disability"?

There is no common definition of "disability" in Canada. If you qualify for disability benefits from other government programs, or private insurers, this is not a guarantee that you'll qualify for a CPP disability benefit.

*The CPP definition states that a disability has to be **both** "severe" and "prolonged", and must prevent you from being able to work at **any job** on a regular basis.*

We can only consider you eligible for the CPP disability benefit if our [medical adjudicators](#) decide that, based on your application and supporting documentation, your disability is both "severe" and "prolonged". The law defines a [severe](#) disability as one which prevents you from doing your former job, or any other job, on a regular basis. A disability is [prolonged](#), when it is expected to last at least one year or is likely to result in death.

Only people who meet all the rules in the legislation can receive a benefit. The CPP disability benefit is [taxable](#). The Plan does not pay short-term benefits, or partial disability benefits. This monthly benefit is not guaranteed for life. Your benefit will stop if your condition improves to the point where you are able to work at any job on a regular basis, or you turn 65, or upon your death.

5. Totally and *permanently* disabled from any work for pay or profit

The definition of total disability is expanded greatly when the work “permanently” is added. Fortunately, the condition of total **and permanent** disability is not common. It is a qualifying condition primarily for employer-sponsored disability **pensions**, such as the Hospitals of Ontario Pension Plan (HOOPP) and the Ontario Municipal Employees Retirement System (OMERS). Some plans offer a disability pension which, like HOOPP's, is equivalent to an unreduced early retirement pension, but it is not available to members who are receiving LTD benefits. This type of provision is found in the pension provided at St. Joseph's Health Centre, Toronto.

For more information about HOOPP and OMERS, contact the Administrator of the pension plan.

HOOPP 416-369-9212; 1-888-333-3659 (toll free in Canada)

OMERS Client Services: 416-369-2444 Toll-free (Canada/USA): 1-800-387-0813

³ <http://www1.servicecanada.gc.ca/>

Tips during the qualifying period, while awaiting approval of benefits and while receiving LTD benefits

Cooperate with the carrier

The insurance policy gives the carrier the right to require you to perform certain actions or to provide them with information. If you fail to comply, your appeal may be denied, regardless of the severity of your disability. If you think any directions from the insurer are unreasonable, check with your ONA representative before refusing to follow them.

If the carrier terminates your benefits and you believe they should not have done so, **contact ONA immediately.**

Examples of actions you may need to take in response to directions from the carrier are discussed below.

Respond to questions from the carrier

Answer all questions from the carrier honestly and fully, whether they are in a written or oral form. For example, they may ask for an updated statement of any earnings. Provide the information they ask for **promptly.**

Remain under appropriate medical supervision and comply with recommended treatments

You must remain under medical care appropriate for all the condition(s) that are contributing to your disability. This care may be provided by your family physician, paramedical practitioners, such as physiotherapists, and any specialists involved in diagnosing or treating your condition(s). In particular, if a mental (cognitive or psychological) disorder is involved, you should maintain regular supervision and treatment by a specialist such as a psychiatrist or psychologist.

You must comply with your doctor's reasonable recommendations for treatment. If you have doubts about the treatment, ask your doctor for more information about it.

Provide the carrier with medical evidence

From time to time, the carrier will ask you for additional medical evidence to show you are still entitled to receive LTD benefits. It is important to understand that doctors' opinions and your own statements about what you can and can't do are not enough for the carrier. Opinions and statements must be backed up by medical tests, results of treatments, assessments, reasoning and so on, and must show how your diagnosis and symptoms cause a disability that functionally prevents you from working.

In order to meet the carrier's conditions, you must remain under appropriate medical care from your family physician, paramedical practitioners such as physiotherapists, and specialists, depending on the nature of your particular disabling conditions. In particular, if a mental (cognitive or psychological) disorder is involved, you should maintain regular supervision and treatment by a specialist, such as a psychiatrist or psychologist.

You must comply with your doctors' reasonable recommendations for treatment. If you have doubts about the treatment, ask your doctor for more information about it.

Apply for disability benefits from other sources

The insurance policy gives the carrier the right to require you to apply for benefits from Workplace Safety and Insurance Board/Workers' Compensation Board (WSIB/WCB) benefits, Canada Pension Plan (CPP) disability benefits, or your employer-sponsored pension plan. If such an application is denied, you may be required to appeal the denial. This subject is dealt with in more detail beginning on page **Error! Bookmark not defined.** If you fail to comply, your appeal may be denied or your benefit payments may be reduced, regardless of the severity of your disability.

If your application is approved, you have an obligation to inform the carrier of this fact, and the amount of your benefits.

Undergo assessments or medical examinations

If the carrier asks you to go for an assessment or medical examination, you must comply unless your doctor directs you not to in writing, with clear, strong medical reasons for her or his advice. Generally speaking, the doctor's expectation that you may experience pain may not satisfy the carrier, while the possibility of further damage may do so. (Even if you cooperate, your benefits may be terminated; if this happens, we may be able to assist you with an appeal.) After the assessment, make careful notes about what was involved, how long it took, any concerns you have about the way it was conducted, and any changes in your health status that occur during or immediately after the assessment.

If your health status changes during or after the assessment, report this to your physician immediately, in order to obtain any necessary treatment and to document the changes.

Participate in an approved rehabilitation program

If the carrier offers you rehabilitation (for example retraining, therapy or a return to work program), you should follow through to the best of your abilities unless your doctor directs you not to in writing, with clear, strong medical reasons for her or his advice. (An opinion that the rehabilitation will not be successful is not sufficient.) Otherwise, your benefits may be terminated. (Even if you co-operate with the rehabilitation, your benefits may be terminated; if this happens, we may be able to assist you with an appeal.)

Note that insurance companies are not required to provide rehabilitation or retraining; if they do, it is usually during the "own occupation" period.

Keep good, complete records

Insurance policies set other conditions which you must meet while you are receiving benefits. Failure to meet these conditions may result in termination of your benefits. The following tips are to help you minimize this risk. If your present appeal is successful, but benefit payments are stopped later, accurate and complete records will help you with an appeal. If the carrier challenges your right to benefits, good records will help you to answer their questions and concerns.

Keep documents

Keep copies of all **documents relating to your LTD claim**: medical reports, correspondence with the carrier or your employer, notes of telephone conversations, and so on.

Keep copies of all documents relating to any **attempt to return to work**: your doctors' recommendations for any modifications to your job when you return, agreements with the carrier

or your employer, schedule of hours worked, duties assigned (or a job description if the position was not modified).

Keep copies of your **pay or cheque stubs**. These may help to document your claim if you believe the amount of LTD benefits you are receiving is incorrect. They may also be helpful in a dispute over the nature of modifications to your job.

Keep records of **any income you receive from sources other than the LTD insurance carrier**, in case the carrier claims the right to reduce its payments to you, based on such other income.

Keep records of conversations

Make notes of any **telephone or personal conversations or meetings** with the carrier or your employer or any rehabilitation or occupational therapy representatives. Note:

- the date and time
- whom the discussions were with
- what was said
- any directions you were given
- answers to any questions you asked
- any agreements that were reached.

Keep a diary

Keep a **chronological diary of major events** surrounding your illness and your claim as they occur. If you have not already started such a diary, go back and try to remember as accurately as you can the events to date. Draw a line under the last date you do from memory, to separate this from when you start to keep the record on an ongoing basis. Your diary should include such information as:

Your application for LTD benefits

- when you applied for LTD benefits:
 - if your application was originally approved, when your benefits began, and when they were terminated.
 - if your application was denied, when the LTD benefits *should have* begun.
- whether and when you appealed the carrier's decision to decline or terminate your benefits, and who helped you with the appeal (if anyone).

Medical and health status

- what caused you to go on sick leave, and the date the injury or illness happened or began.
- when you were first treated for the medical condition(s) which caused you to stop working.
- visits to doctors – the doctors' names and areas of practice, and the dates.
- changes in your health and ability to function and when they occurred.

Meetings and phone calls

Record the name of the person, what was discussed and what was decided by whom. This includes meetings and phone calls with:

- the carrier.
- your employer.
- a rehabilitation specialist or occupational therapist.
- your ONA representatives and staff.

Work-related events

- details of any attempt to return to work with your current employer:
 - the date you returned.
 - the nature of any modifications to your duties or hours of work.
 - any difficulties you experienced, and when you went on sick leave again.
 - when you go off on sick leave again if this happens.

- periods when you did work of any kind, including:
 - what the work was.
 - who it was for.
 - how many hours you worked.
 - how much you were paid (or when it was volunteer work).

- the details of your absence from work:
 - the date you last worked before going off sick and not returning (except for modified work).

Record any other events you think may be relevant.

Work and sources of income during the qualifying period, while awaiting approval of benefits and while receiving LTD benefits

The carrier has the right to reduce its LTD payments by the amount of other income you receive and, in some cases, the amount they believe you are entitled to. Usually, they will reduce LTD benefits if you are receiving income replacement under another insurance policy to which your employer contributes, or from a company which is liable as a result of a car accident.

As noted earlier, if the carrier directs you to apply for other benefits, you are required to do so or risk losing some or all of your LTD benefits.

Two important effects of being approved for benefits other than LTD

1. If benefits from other sources (such as CPP, WSIB, or a pension plan sponsored by your employer) are approved retroactive to an earlier date, you will receive a lump-sum cheque for the retroactive period.

Do not spend the retroactive payment. Under the insurance policy, you will be obliged to repay to the carrier any amounts received that overlap with the period of LTD payments. Notify the carrier you have received this money and send them a copy of the notice of approval. The carrier will tell you how to proceed.

2. If the retroactive benefits cover more than one taxation year, there may be **tax implications** that require you to recalculate and resubmit some tax returns. ONA is not allowed to give tax advice. If you have questions or concerns about this, we recommend you call the **Canada Revenue Agency** or **consult an independent financial consultant** such as a chartered accountant (not your investment manager) for help.

Workplace Safety and Insurance Benefits (WSIB/WCB)

If your disability is due to a work-related injury or illness, you should have applied for WSIB at the time the injury or illness occurred. If you did not do so because the employer told you not to, the employer has violated the *Workplace Safety and Insurance Act*. If you did not apply because you didn't know you should, it may not be too late to apply.

If you applied for WSIB and have been approved, the carrier will reduce its LTD payments to you, depending on the type of benefits you received.

If you applied for WSIB and your application was denied, the carrier will want evidence it was denied. It may also direct you to appeal the denial if you are not already doing so. **Follow the directions from the carrier.**

WSIB (WCB) benefits may be affected if you begin receiving a pension – or even apply for one. Some benefits are only available to persons who are still “in the workforce,” but applying for a pension is considered to be a sign that you are withdrawing from the workforce. Whether your WSIB benefits will be affected by a pension depends on the type of WSIB benefits you are receiving. **Please contact the WSIB directly to find out whether and to what extent your benefits will be affected.**

In any case of other problems related to WSIB, call the ONA Labour Relations Officer (LRO) who is helping you with WSIB (if any). If you had assistance from someone other than an ONA staff person, contact that person. Otherwise, call ONA and ask for the **WSIB Intake person** to get advice.

Income from CPP, employer-sponsored pension plans, and other employer-sponsored Disability Income Plans

If the carrier directs or advises you to apply for the Canada Pension Plan (CPP) Disability Pension, you should apply. If you don't, or do not submit the application in an appropriate and thorough manner, the carrier may reduce your LTD benefits by the amount of pension benefits they think you are entitled to, or they may require you to appeal if your application is turned down.

It is unlikely they will direct you to apply while you are not receiving benefits. However, you might wish to discuss with your doctor whether this is an appropriate time to apply for the CPP disability pension. If CPP denies your application and the carrier tells you to appeal, **follow their directions**. The carrier may also tell you to apply for a disability pension from your employer-sponsored plan. Normally you should comply with this direction, but:

If you are employed in a hospital and the carrier tells you to apply to the HOOPP for a disability pension, call your ONA Representative immediately. Because of recent changes HOOPP made at the direction of the Canada Revenue Agency, taking a disability pension may affect your income after 65. ONA is prepared to file grievances in some circumstances.

Please remember the definition of “totally disabled” in pension plans involves a level of disability even more severe than the carrier’s “any occupation” definition.

Applying for a disability pension

The most efficient strategy is to send all the available/supporting medical reports along with your application. The administrators of the pension plan will make a decision based on your overall physical and mental health or disability, not just on the condition(s) reported as contributing to your disability for purposes of your LTD claim. Sending medical evidence with your application provides the plan administrator with information it needs to review your application and reduces the time for them to reach a decision.

Amount of the reduction

The amount of reduction in your LTD benefits is usually equal to the initial amount of benefits you get from CPP and pensions. Inflation-protection you receive over the years from some plans does not normally further reduce your LTD benefits. However, some plans have a two-tier system for assessing your income. If income exceeds a specified level (usually 100 per cent of pre-disability income), an “all-source” rule applies which allows the carrier to reduce its payments so your income does not exceed the specified level.

Policies differ in whether some kinds of income – such as CPP dependent child benefits – are considered in reducing the LTD benefits. Call your ONA representative if you have questions.

Income from work or employment

Working during or after the qualifying period can affect your entitlement to LTD benefits. Under some policies, working will make you ineligible to receive benefits. Under others, if you receive income (including a pension) or work for pay during the **qualifying period**, it may affect the date on which your benefits begin. After your benefits are due to begin, the carrier has the right to reduce its payments to you for income received during your benefit period if benefits or income are paid retroactively and overlap with the period of LTD payments.

Get approval from the carrier **before working for pay**, and notify the carrier of any income received. Keep careful notes about what you are doing, when, and for how long. (See “Work-

related events” on page 9.) This is important because the policies generally state that working during the qualifying period or while receiving benefits **other than under an approved rehabilitation program** is grounds for terminating your benefits.

Amount of the reduction

How your earnings affect the amount of your LTD benefits varies between policies. In HOODIP, for instance, benefits are reduced by 50¢ for each dollar earned, until the combined benefits and earned income exceed the amount of your pre-disability earnings.

Unpaid volunteer work

Unpaid volunteer work **may not** create problems, but if it shows you are not disabled as defined in your policy, then you may not qualify for benefits. You may not have to volunteer information about occasional, unpaid volunteer work, but answer honestly if the carrier asks.

Social assistance (provincial welfare or disability programs)

The carrier will not reduce your LTD payments because you have received this type of income. However, if your LTD claim is approved, these agencies will stop their payments to you, and will expect you to repay the benefits you received from them for any period for which you receive LTD benefits.

***Remember. If you experience problems with your LTD benefits:
Don't delay! Don't take a chance! Call ONA first, fast and foremost!***