

## EMPLOYEES ON DISABILITY LEAVE

### Does everyone know what to expect?

#### Group Benefits for Disabled Employees

Employees who are absent from work due to disability (illness or injury) are eligible for group benefits coverage as long as they remain an employee. However, if employment is terminated, so too are the group benefits. As we can all imagine, disabled employees and their families rely on their benefits to continue. We're often asked, "When should benefits terminate?" Our response is, "Have you established a policy?"

It is often impossible to know how long an employee will be absent—it could be a few weeks or a few years. Because there are so many variables involved, it is important to establish a company policy regarding the continuation of benefits so everyone concerned knows in advance what to expect.

#### What to Consider in Developing a Policy

Most employers continue benefits for an established period of time when an employee is off work due to illness or injury keeping the same arrangements, including cost sharing, as when the employee is actively at work. When developing a policy, employers should consider:

- If premiums are shared, how will you collect premiums from the disabled employee?
- If the disabled employee does not pay their share of the ongoing costs, will you terminate coverage? How will you notify the employee? Is registered mail appropriate?

Benefits usually end with the termination of employment, and employment terminates when the employment contract is "frustrated" (a legal term). What period of absence will you allow before terminating employment and therefore benefits? Keep in mind that disability insurance, as well as any other benefit which includes waiver of premium (such as life insurance, accidental death and disablement, and disability insurance) may continue without premium payments provided the definition of disability is satisfied, but health and dental coverage will cease.

#### What is a Good Policy?

As mentioned, benefits terminate when employment terminates, even if the employee is disabled. Many employers continue benefits for disabled employees for up to two years after disability benefits have been approved.

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After that period, as it is highly unlikely that the employee will return to work, employment is terminated. The reasoning for this is that in most contracts, during the first two years, the insurer considers the employee's ability to do his or her own job. But after two years, the insurer looks at the claimant's ability to do **any** job. If disability benefits are approved beyond two years, the insurer believes that it is highly unlikely that the employee will return to work many employers end the employment contract at that point.

## Terminating Benefits for Employees on Leave

### Legislated vs. non-legislated leaves

If it's a legislated leave (i.e. maternity leave, parental leave, compassionate leave, etc.) the employer is obligated to maintain the employee's group benefits during the period of the leave, subject to any cost sharing arrangement. If the employee chooses not to maintain their share of the costs of the benefits, then the benefits can be discontinued.

If it's a non-legislated leave (i.e. sick leave, disability leave, personal unpaid leave, etc.) continuing benefits is at the employer's discretion. For sick leave and disability leave, although there may not be a legal requirement to maintain benefits, employers must be careful not to discriminate against an employee due to a disability under Human Rights legislation.

It is important to have a policy that clearly outlines what your company's rules are as it relates to benefits continuation for legislated and non-legislated leaves so that it is fair and consistently applied from one employee to the next.

### Terminating Employees on Medical Leave

Employers have the right to terminate an employee, and should do so provided the medical leave is not a factor that prompted the termination and they have collected the requisite evidence to support the termination; If an employee is unsuitable for the

position, or if the company is restructuring, terminations during a medical leave are permissible as long as the reason for termination has nothing to do with the fact that they are disabled and require workplace accommodation. In this case, there should be clear evidence that termination was being considered before the disability arose. It is best to seek legal advice prior to following through with a termination.

### Change in EI Waiting Period

Effective January 1, 2017, the federal government reduced the waiting period for Employment Insurance (EI) sickness benefits from two weeks to one week. The change did not impact the maximum number of benefit weeks (15 weeks). An employee usually serves the waiting period at the beginning of the benefit period, unless he/she receives earnings during the first week. In that case, the waiting period will start during the first week he/she should begin to receive benefits.

Under certain circumstances, the one-week waiting period can be waived or deferred. For example:

- **if the employee receives sick leave pay** from their employer after the last day worked, the waiting period may be waived; or
- **if the employee receives group insurance payments**, he/she can serve the one-week waiting period during the last week they receive these insurance payments.

For further information click **here** to go to the Service Canada website.

## CONTACT US

### Johnstone's Benefits

3095 Woodbine Drive  
North Vancouver, BC  
V7R 2S3

Phone: 604 980 6227  
Toll Free: 1 800 432 9707  
Fax: 604 983 2935  
Website: [www.jbenefits.com](http://www.jbenefits.com)

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