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When an employee is required to miss work due to a physical ailment, many different issues and/or laws come into play. We break down the most common below.

### **WHAT IS SHORT-TERM DISABILITY?**

The term Short-Term Disability ("STD") refers to insurance payments that are made to employees who have to miss work due to a physical infirmity. STD insurance is typically purchased by the company (employees may be required to contribute to the premium payment) and one's right to benefits is usually determined by the insurance company from whom the policy is purchased. Thus, while an employee may have to make his/her need for STD benefits known to the company's HR Department, the company has no say into whether an employee is entitled to the benefits - that decision is made by the STD insurance carrier.

STD payments are made by the STD insurance carrier and are typically the equivalent of about 2/3rds of one's regular salary. STD benefits are usually payable for about 6 months - then one must file for **Long-Term Disability** benefits.

An employee may be entitled to STD benefits if he/she suffers a personal injury, has a need for leave under the **Family and Medical Leave Act** ("FMLA") or is suffering physical complications related to a disability covered under the **Americans With Disabilities Act** ("ADA"). Typically, one has to be out of work for at least one week before the right to STD benefits is matured.

### **CAN MY EMPLOYER FIRE ME IF I AM RECEIVING SHORT TERM DISABILITY BENEFITS?**

An employer does not have to hold open an employee's job merely because he/she is receiving STD benefits. STD benefits are **monetary payments**, and do not provide employees with any right to job reinstatement upon recovery. Fair or not, and *subject to the exceptions stated below*, it is not illegal to fire an employee who is out of work and receiving STD benefits.

### **CAN I TAKE FAMILY LEAVE AND RECEIVE SHORT-TERM DISABILITY AT THE SAME TIME?**

As a general rule, the only federal law that expressly prohibits terminating an employee who is out of work due to a physical condition is the FMLA. Leave under the Family and Medical Leave Act is unpaid - the purpose of the statute is only to provide a right to job reinstatement provided that the employee returns prior to the expiration of the FMLA leave period.

However, if an employee has to miss work due to his/her own physical condition, **the employee may obtain STD benefits while out on FMLA**. Accordingly, by exercising one's rights to FMLA leave and Short-Term Disability benefits in tandem, an employee secures both job reinstatement rights *and* a portion of one's normal wages.

## **CAN A SICK LEAVE BE AN APPROPRIATE REASONABLE ACCOMMODATION UNDER THE AMERICANS WITH DISABILITIES ACT?**

Another potential source of job security if one is suffering from a health condition causing absence from work is the ADA. There is typically little question that a person missing work due to an ADA disability will qualify for STD benefits. In such cases, if FMLA leave is available, use it.

If, however, one is not entitled to FMLA leave, or is unable to come back to work when FMLA leave expires, then applying for leave as a "reasonable accommodation" under ADA may be appropriate. However, one should expect that leave as a reasonable accommodation would be of a shorter duration than the 12 weeks leave provided for under FMLA. In sum and substance, if one needs a week or two to fully recover from the onset of an acute problem arising out of a disability, a strong argument can be made that such leave is a required reasonable accommodation under ADA.

## **CAN THEY DENY ME SHORT-TERM DISABILITY BENEFITS IF I HAVE A DOCTOR'S NOTE?**

Insurance companies can and will fight anything. It is fair to say that if an employee has a documented, clear physical injury (broken/fractured bone, herniated disc, surgical procedure), there is a much greater likelihood that STD benefits will be granted without argument.

Cases involving emotional/psychological afflictions, on the other hand, are typically the more hotly-contested claims. Nevertheless, I have found that, with proper medical documentation, such stress-related claims are frequently successful.

However, and particularly where stress-related claims are involved, STD carriers may contest a claim if there is an issue as to whether the condition is work-related.

## **CAN THEY DENY ME SHORT-TERM DISABILITY BENEFITS IF I SEEK WORKERS' COMPENSATION BENEFITS?**

In short: Yes.

The standard STD insurance policy states that workers' compensation insurance must provide salary reimbursement where work-absences arise out of work-related injuries. Consequently, if one is approved for Workers' Compensation benefits, one will be ineligible for STD benefits. If, however, an employee's Workers' Compensation claim is denied, the application for STD benefits will be considered in due course.

NOTE: All companies are required to have workers' compensation insurance for all employees. STD insurance, on the other hand, is not required, and falls under the category of "benefits."

## **CAN I GET SHORT-TERM DISABILITY BENEFITS FOR STRESS?**

Yes, but stress claims are among the most contested of all STD claims. One issue comes up a lot where stress claims are concerned - is the stress at issue work-related? If so, then the employee may have to file a Workers' Compensation claim and have that decided before any possible right to STD benefits arises. In my experience, Workers' Compensation insurers often fight stress benefit claims more vigorously than do STD insurers.

## **WHAT IS WORKERS' COMPENSATION INSURANCE?**

Workers' Compensation insurance protects workers from loss of wages and medical expenses due to work-related injuries. Workers' Compensation laws are enacted by states. Since I practice in Pennsylvania, I will discuss how it works here, which I believe is typical of many states.

If an employee is injured while performing his/her job duties, a right to workers' compensation benefits arises. The typical employer has purchased Workers' Compensation insurance from an insurance company, which in turn then decides claims and pays benefits where appropriate.

Most Workers' Compensation insurance policies pay employees approximately 2/3rds of their regular wage, pursuant to state laws, and also pay for all medical bills arising out of the injury.

## **CAN I BE FIRED WHILE OUT ON WORKERS' COMPENSATION?**

Pennsylvania's Workers' Compensation statute does not provide for any right to job reinstatement upon the employee's ability to return to work. Thus, in theory, you may be fired while out of work due to a work-related injury (absent FMLA protection). However, the courts in Pennsylvania have held that it is illegal to fire an employee *because* he/she has filed such a claim.

I have found that if a company is going to fire someone who has filed a Workers' Compensation claim, they wait until the person is released back to work.

This is so because employees who have been fired while out of work due to a work injury are likely to take a little while longer to "recover" - after all, where is the incentive to recover and thereby cut off their only source of income, the workers' compensation benefits they are receiving? Employers know that firing an employee who is out of work while receiving Workers' Compensation wage loss benefits will have the likely effect of prolonging the former employee's recovery period, which in turn has the effect of increasing the company's Workers' Compensation insurance premiums. For this reason, if no other, I rarely see cases where employers have fired employees who were receiving wage loss benefits due to a work-related injury.

On the other hand, firing an employee soon after he/she has returned from a Workers' Compensation absence raises serious red flags, and in Pennsylvania will likely spark a lawsuit unless there is clear evidence that the employee did something (other than have the temerity to file a Workers' Compensation claim) that warranted termination.

## **CAN I GET FMLA LEAVE AND WORKERS' COMPENSATION AT THE SAME TIME?**

Yes. FMLA provides another layer of job security, and may be taken when one is required to miss work due to a work-related injury.

### **ALPHABET SOUP**

FMLA, ADA, STD, LTD, Workers' Compensation, Social Security and **Unemployment Compensation** may all be implicated when an employee is required to miss work due to a physical malady. Understanding how all of these laws fit together is a challenge, and I hope that this post has provided some useful guidance.

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