



# Disability Insurance

## Quick Guide to Long-Term Disability Insurance

If you have been diagnosed with a chronic or serious illness and are undergoing treatment, or experiencing long-term side effects of treatment, you may find that you are no longer able to work and earn a living the same way that you were before your diagnosis. Disability insurance may provide you with some income if you are unable to work because of your medical condition. For an overview of the different types of disability insurance, read our Quick Guide to Disability Insurance ([TriageHealth.org/quick-guides/disabilityinsurance](https://TriageHealth.org/quick-guides/disabilityinsurance)).

Most people don't proactively buy disability insurance from a private insurance company. Unfortunately, once you have a medical condition, it can be difficult to buy a private disability insurance plan. However, your employer may provide you with a short-term or long-term disability insurance plan as an employee benefit. Employees often forget that they have these plans, because their employer pays the monthly premium.

This Quick Guide covers two types of private long-term disability insurance: 1) LTD that you get as an employee benefit from your employer; and 2) LTD that you buy on your own from an insurance company.

### Understanding Your Long-Term Disability Insurance Plan

- **Definition of disability:** How does your plan define a "disability?" Is it the inability to fully perform "your job," or "any job?"
- **Benefit amount:** Is it a fixed amount? Is it a percentage of your income? (usually 50-70% of your salary)
- **Benefit reductions:** Are your benefits reduced for any reason? (e.g., if you are getting Social Security Disability Insurance (SSDI) or workers' compensation benefits)
- **Length of benefit:** How long will your benefits last? (e.g., is it for a set length of time, or until you reach a set age) It is common for benefits to last until you turn age 65 or your full Social Security retirement age.
- **Are benefits taxable?** It depends on whether you have an individual plan or an employer plan and if the premiums were paid with pre- or post-tax dollars.
- **Elimination period:** Is there a waiting period before your benefit payments start? Generally, between 90 days and 1 year (180 days is most common).
- **Residual disability:** Does your plan pay you a smaller benefit if you are working less hours in your regular job or a different job, because of your medical condition?

### Tips for Submitting a Claim

When you file a claim for long-term disability insurance, you are the "claimant."

### Follow the Rules in Your Policy

- If you don't have a copy of your plan, ask for it from your insurance company. If you get LTD through your employer, ask for it from your employer *in writing via a trackable method*. Email, certified mail, and fax are all acceptable ways – just make sure you have a record that you asked for it.
- You will have to follow the steps to submit a claim, follow deadlines, and follow the appeals process if you are denied.

### Check for Common Exclusions & Limitations

- Look for “Objective Evidence” requirements & “Subjective Symptom” limitations—even with a cancer diagnosis, the insurance company may claim that your pain, fatigue, or brain fog is “self-reported.”
- Look for “Mental/Nervous” limitations—if you are depressed, the insurance company may claim that is causing your inability to work.

### Provide Evidence

You will need to submit evidence to explain why your medical condition is keeping you from working. You may be required to submit this evidence to the insurance company:

- Claimant's Statement (about how your medical condition is impacting your ability to work)
- Attending Physician Statement (Is your doctor a specialist? If yes, say so)
- Employer's Statement (ERISA plans only)
- Authorization for Release of Medical Information (to the disability insurance company)
- Usually also need to have a phone interview (to answer questions and explain how your medical condition is impacting your ability to work)
- Detailed job description
- If relevant, also provide:
  - Social Security award, state disability award, VA rating, disability retirement, etc.
  - Performance reviews
  - Health journal (diary of symptoms)
  - Statements from supervisors/co-worker/subordinates, caregivers, family, and friends
- Work with your health care team
  - Talk to your health care team about documenting all of your symptoms with objective evidence, if possible
  - Make sure your doctor understands what your job entails – physical and cognitive aspects
  - Create an outline of all medical records that support your diagnosis, symptoms, side effects from treatment and medications, and co-morbid conditions that may impact your ability to work
  - Be sure you are explaining any changes against a baseline—do not say “doing better” unless qualified against a benchmark, say “doing better but still limited in my ability to ...”
  - The longer your treatment relationship with your health care provider, the better – it's OK to get a second opinion, but “doctor shopping” looks bad

### Pitfalls to Avoid

- Your claim is based on your credibility. Don't overstate your restrictions and limitations. Never say never, always avoid saying always. Answer all questions honestly.
- Assume you may be surveilled by the insurance company (e.g., watched, followed, pictures taken, etc.). If you are seen doing any activities you claimed you were unable to do, this will be used against you.
- Assume the insurance company is tracking what you do on social media. Avoid social media posts by yourself or others that may be taken out of context. If your friends can see your posts or “tags,” assume the insurance



company can, too. For example, if you post about the one short hike you were able to go on last month, rather than the 29 days of fatigue and pain you faced before and after that hike, the insurance company may think that you are able to work and end your benefits. For more information, see our Checklist to Participating in Camps & Adventures ([TriageHealth.org/quick-guides/checklist-camps](https://TriageHealth.org/quick-guides/checklist-camps)).

### **After Submitting a Claim**

- The insurance company will order your medical records.
- A non-treating nurse or physician will conduct a “peer review” with your attending physician.
- Inform your physicians that the insurance company may reach out. Ask if they will only respond to the insurance company in writing.
- The insurance company may ask you to take an “independent” medical exam. If the request is reasonable, you can’t avoid it. This is a big red flag for the insurance company if you don’t comply.

### **Appealing the Denial of a Claim**

If your claim for LTD benefits is denied, you have the right to apply that decision. How you appeal the denial of a claim depends on whether you get your policy from an insurance company or through an employer.

### **Individual LTD Plans**

These plans are not governed by ERISA but are usually governed by state law. Usually, you don’t have to file an appeal before you file a lawsuit. Juries can make the decision on your case, and insurers face the possibility of significant damages beyond the benefits owed if a jury finds the insurance company acted in bad faith.

### **Employer LTD Plans**

Employer LTD plans (even if you pay some or all the premiums) are usually governed by a federal law, called the Employee Retirement Income Security Act (ERISA). Two common exceptions:

- Government employees (federal, state, county, city, and possibly quasi-government entities like the Federal Reserve)
- Religious organization employees

ERISA protects employees who have certain benefits through their employers. ERISA also has specific rules you and the insurance company must follow. If you do not follow the rules, you may lose valuable rights. Here are some tips for filing an ERISA appeal, which is mandatory.

- Submit your appeal letter by the deadline in the denial letter (usually 180 days, or shorter, in certain cases)
- Request a copy of your claim file immediately, in writing, from the insurance company.
- ERISA appeals are like pre-legal proceedings and require specific medical and work evidence to be presented. The insurance company may share evidence why you shouldn’t qualify for benefits. You have the ability to provide evidence to rebut that information. The appeal may be your last opportunity to include information in your record in case you have to file a lawsuit against the insurance company. Consider hiring an attorney to help with the appeal. See our Quick Guide to Legal Assistance ([TriageHealth.org/quick-guides/legalassistance](https://TriageHealth.org/quick-guides/legalassistance)).

A challenge for employees that have LTD plans under ERISA is that if your claim is denied and you file a lawsuit, there can be limited discovery and a judge decides if you have a disability. Also, you can only sue for the amount of benefits you are owed and maybe some attorneys’ fees. You cannot ask for punitive damages, which means that there are no consequences for insurance companies who are acting in “bad faith.”

### **If the Appeal is Denied**

- Consider hiring an attorney. You can look for someone who offers free consultations. Some attorneys will offer to work on a contingency fee basis, others will charge an hourly fee.
- Contact your state's insurance agency, see [TriageCancer.org/StateResources](https://www.triagecancer.org/state-resources). If your claim is governed by ERISA, they likely will not be able to help.
- Consider filing a lawsuit. Before doing so, ask your insurance company for the claim file again.

### **Other Things to Think About**

- You need to understand how your LTD plan interacts with SSDI.
- Check to see if you have to apply for SSDI when you start getting private LTD benefits. Most LTD companies require you to also apply for SSDI. Some companies will even provide you with an attorney to help with the application process.
- Check to see if you will have to pay back any SSDI payments to the LTD company. If you received LTD benefits for any months that you also got back or retroactive payments from SSDI, you may have to pay those SSDI payments to the LTD company. To learn more about back and retroactive payments, see our Quick Guide to the Timing of SSDI & Medicare Benefits ([TriageHealth.org/quick-guides/ssditiming](https://www.triagehealth.org/quick-guides/ssditiming)).
- You should be able to receive both SSDI and private LTD benefits. However, your LTD benefits may be reduced. For example, if your LTD plan pays 80% of your normal salary rate, but SSDI only pays 50%, moving forward, you will get 50% from SSDI and 30% from the LTD company.
- Check your employer's rules:
  - If you take FMLA for the first 12 weeks that you are getting LTD, will your employer pay all or part of your health insurance premiums?
  - Is your job held for you and for how long?
  - Do you get your health insurance through your employer? Do they continue to provide health insurance while you are on LTD? If yes, for how long? If no, do they move you to COBRA?
    - See our Quick Guide to Losing Employer-Sponsored Health Insurance ([TriageHealth.org/quick-guides/losinginsurance](https://www.triagehealth.org/quick-guides/losinginsurance)).
- Do you have access to other benefits through your employer? If yes, can you keep them, convert them, or roll them over? (e.g., life insurance, supplemental plans like AFLAC, retirement plans, etc.) If yes, how?
  - See our Quick Guide to Leaving Work ([TriageHealth.org/quick-guides/leavingwork](https://www.triagehealth.org/quick-guides/leavingwork)).
- Do you have a deferred compensation plan that may "vest" immediately because of your disability?

**For more information, see our Disability Insurance Resources ([TriageHealth.org/disability-insurance](https://www.triagehealth.org/disability-insurance)).**

---

*Disclaimer: This handout is intended to provide general information on the topics presented. It is provided with the understanding that Triage Cancer is not engaged in rendering any legal, medical, or professional services by its publication or distribution. Although this content was reviewed by a professional, it should not be used as a substitute for professional services.*