

UNDERSTANDING INTERNAL SHORT TERM DISABILITY POLICIES

(where no insurance company is involved)

Some employers provide short term disability benefits for employees who cannot work due to a non-work related illness or injury. Paying disability benefits is often referred to as a “salary continuation plan.”

Short-term disability benefits typically start after three to seven days of absence and can last 30 or 60 or 90 days. Employers may design the disability plan/policy as they wish. A benefit lasting longer than 90 days is often referred to as “Long Term Disability” which is not discussed here.

Employers should describe their Short-Term Disability Leave policy in writing. This is often done in the employee handbook. If the benefit payments are provided by an insurance company, the plan is subject to federal ERISA law and all of its requirements/regulations will apply (claim payment and appeal procedures, fiduciary responsibilities, etc.). If, however, the employer pays the short term disability benefits from their “general assets” and no insurance company is involved, the program may be exempt from ERISA, which may be desirable.

Our discussion below describes how the employer’s short term disability benefits can be kept free from federal ERISA laws. To achieve this safe harbor exemption from ERISA, the plan must:

- Be designed to pay the employee their normal compensation (or less) for periods of time they do not work due to medical reasons.
- Not pay former employees.
- Make payments from the employer’s general assets.
- Not have a separate account holding assets to pay benefits (no separate bank account or third party administrator’s account).
- Be described as a “Payroll Practice,” not a formal benefit plan. No 5500 filing is made, and no Summary Plan Description booklets are issued.
- Not have an insurance company paying the benefits.

The exemption from ERISA is called a regulatory “Safe Harbor.” Meeting the above criteria allows the employer to maintain this non-ERISA status for their Short Term Disability Plan (payroll practice).