

# **Louisiana Disability Law**



## **The disabling effect of your policy's definition of "disability"**

A Special Report by

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Do you have long-term disability (LTD) insurance through your employer? Did you have the foresight to purchase your own LTD insurance policy?

Whether or not you can recover benefits under the LTD policy depends on if you are disabled! The definition of disability is the most important definition in the policy.

Many claim denials result from the insurance company's determination that your "disability" does not meet the definition of "disability" in the policy.

**One important thing to remember – just because you and/or your doctor say you are disabled does not mean that your "disability" meets the definition in the policy.** In order to receive benefits under the LTD policy, your disability must meet the policy definition at all times.

This means that you must remain disabled (as defined by the policy) to receive benefits after the initial disability determination was made.

You must understand the "disability" definition in your policy to manage your claim. In depth knowledge of each and every word in the definition is important. You should

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also understand how each word relates to the other words. This is important in order to prove your disability to the insurance company.

Many, if not most, employer provided LTD insurance plans have a variation of the following definition:

You are disabled when WE determine that:

You are **limited** from performing the **material and substantial duties** of Your **regular occupation** due to Your **sickness or injury**; AND

Your earnings are 60% or less than your **pre-disability monthly earnings** due to the same sickness or injury.

During the **elimination period**, you are **unable to perform any** of the material and substantial duties of your regular occupation.

**After 24 months of disability**, the definition of disability changes and you are disabled if WE determine that due to the

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same sickness or injury, you are unable to perform the duties of **any gainful occupation** for which you are reasonably fit through education, training, or experience.

Some of the more important terms are bolded in the above definition and are discussed below.

Each term has a particular meaning to your insurance company. Understanding each term is important to a full understanding of how the disability definition determines whether you disabled.

**Limited** - You must not be able to do all of the important tasks normally identified with your occupation.

**Material and substantial duties**—these are the duties required for the performance of your regular occupation that cannot be reasonably omitted or modified. For example, if you are a truck-driver and we removed sitting for long periods from the job description, your occupation would no longer be considered truck driver.

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Material duties refer to subjective tasks specific to a particular occupation. For example, a salesperson must have the ability to communicate with prospects. If this subjective task (“communicate”) is removed from the job description, the description would no longer describe a salesperson.

Substantial duties are objective tasks required for the completion of a specific occupation in the course of an 8-hour day. For example, if you are a process operator, substantial duties may include sitting for 40% of the time and standing for 60% of the time.

A rule of thumb in determining whether you are unable to perform the material and substantial duties of your occupation is to determine whether or not you are able to do those things that comprise at least 20% of your workday. For example, if you are a computer programmer but can only type for 15 minutes out of every hour, then you cannot do your

**Regular occupation** - this is the occupation you are routinely performing when your disability begins. For example, if you are a lawyer when your disability begins, that is the occupation you will be judged against. Many policies

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require the claims examiner to look to how your occupation is performed in the national economy, and not at your specific workplace. This is an important distinction that you must take into consideration when trying to determine whether or not you are eligible for benefits under your specific policy.

**Sickness or injury** - sickness is an illness or disease while injury occurs as a result of an accident or some other cause. If your disability is the result of an on-the-job injury and you are receiving worker's compensation benefits, these benefits will offset your disability benefits. The same is true for any recovery you may receive related to an off-the-job accident.

**Pre-disability monthly earnings** - this is the gross monthly pay you are receiving at the time of disability, or the amount upon which the premium for the policy was paid. If you have a job that pays commissions and/or end-of-year bonuses, you must review your policy carefully to determine whether or not this pay is included in calculating your pre-disability monthly earnings. Unfortunately, there are a lot of long-term disability policies that do not cover this income, even though you rely upon it and earn it.

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**Elimination period** - this is the amount of time you must be disabled under the policy after filing the claim and prior to receiving benefits. Many policies have a 90-day elimination period, but other periods do exist. Remember, you will not get any benefits for the duration of the elimination period, even though you are disabled.

**Unable to perform any** - this means that during the elimination period (often 90-days), you cannot perform any of the material and substantial duties of your occupation. If you can perform all but one material and substantial duty then you are not disabled under the terms of the policy. Thus, it is important to review the policy's definition of disability carefully to determine what qualifies as disabled. Some policies have alternate wording. For example, **Unable to perform each and every** material and substantial duty. In this case, if you can perform all but one material and substantial duty of your occupation, then you should be considered disabled because you cannot perform each or every task.

**After 24 months of disability**—after you have been disabled and receiving benefits for 24 months (2 years), most long-term disability policies have a change in definition

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for disabled for your occupation to any gainful occupation. Therefore, after only 2 years, if the insurance company determines you can perform the material and substantial duties of any gainful occupation, you will be denied further benefits.

**Any gainful occupation** - a gainful occupation is any occupation available in the national economy that is or can be expected to provide you with an income at least equal to your gross disability payment. Many policies are silent as to what exactly is a gainful occupation, but if you can perform an occupation where your income will approach or exceed your pre-disability income, then it is safe to assume the occupation will be considered gainful. For example, if you are an optometrist earning \$150,000 per year prior to your disability, the insurance company should not be able to claim that a gainful occupation exists for you down at Wal-mart as a greeter or shelver stocker.

While there are many additional facets to evaluating your long-term disability claim, every disability determination is guided by the policy language. Some policies are more favorable than others. Some policies are not worth the pa-

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per they are written on, except to the disability company accepting the premium from your employer every month.

A thorough understanding of how your policy defines disability is essential to navigating through the claims process. From your initial application through the any gainful occupation investigation, your policy is the guide you and the disability company must follow.

If you are thinking about trying to obtain long-term disability benefits, you should evaluate the definition of disability found in your policy prior to making your claim. If your claim has been denied, you should review the denial along with the policy to make sure the disability company is following what the policy tells it.

Not surprisingly, disability companies do not always play by the rules they write. Consultation with a knowledgeable attorney can help you decide whether or not your disability carrier is playing by its own rules.

Please call me at **(504) 272-7734** or write **loyd@louisianadisabilitylaw.com** if you are faced with applying for long-term disability benefits the first time or if you have been denied or taken off of your long-term disability benefits.

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I was first drawn into the fight for long-term disability benefits when I fought for the reinstatement of benefits for a good client. While the battle there was against a disability company, I learned that the same battles are fought to gain Social Security Disability benefits. The disability company made their determination although my client had a significantly deteriorated condition after having brain cancer, brain surgery, radiation and chemotherapy.

I learned that whether you are seeking SSDI or long-term disability benefits under an insurance plan, you face an uphill battle. What I learned along the way about how disability determinations were made really made me cringe. People were doing the right thing in life — working hard, raising good families, paying bills — but when they became sick or were injured, the protection they needed was not there. I decided that I needed to focus my abilities on helping you fight for the benefits you desperately need.

I am a bayou boy from Bayou Gauche, Louisiana. I have an environmental engineering degree from LSU and a law degree from Tulane. I love Louisiana despite its faults and am proud to be a part of New Orleans' recovery. I am a Christian family man with two beautiful children and a loving wife. I want to help you.

I welcome the opportunity to help you in your fight. Please give me a call at (504) 272-7734 or write me at [loyd@louisianadisabilitylaw.com](mailto:loyd@louisianadisabilitylaw.com).

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