LTD benefits and terminations demystified

May 11, 2017
presented by Natasha Savoline
overview

• circumstances for terminating someone on LTD benefits
• possible implications of LTD benefits on package
• employer obligations during notice period
• minimizing the risk of wrongful dismissal damages
overview

• part 1: LTD implications in terminations
• part 2: terminating employees on LTD
part 1: LTD implications in terminations
long term disability benefits

• provided for in employment contract
• income replacement
• start 17-26 weeks after disability
long term disability benefits

• to age 65
• typically 55-75% of earnings
• premiums paid by employee, employer or both
termination obligations

• provide notice of termination
  • ESA, common law or contractual
  • continue benefits during notice period
    • includes LTD
issues

• many LTD insurers won’t cover employees not “actively” at work
• LTD coverage typically ends at end of ESA notice period
• potential breach of legal rights
consequences

• employer effectively becomes self insurer for LTD coverage

• employer liable for LTD benefits if terminated employee becomes disabled
Egan v. Alcatel Canada

- 21 month employee
- 40 years old
- terminated without cause July 2002
- paid ESA notice and severance = 12 weeks
- benefits terminated after 12 weeks, including LTD
Egan v. Alcatel Canada

• disabled due to depression October 2002
• totally disabled until October 2003
• sued for wrongful dismissal and benefits, including LTD
Egan v. Alcatel Canada

- wrongfully dismissed
  - 9 month notice period
  - inducement
Egan v. Alcatel Canada

• awarded:
  • full salary: July to Oct 2002
  • STD benefits (60%): Oct 2002 to Jan 2003
  • LTD benefits (60%): Jan 2003 to Oct 2003
• employer liable for salary or benefits
Brito v. Canac Kitchens

- 24 year employee
- 55 years old
- terminated without cause July 2003
- paid ESA notice and severance = 32 weeks
- benefits terminated after 8 weeks, including LTD
Brito v. Canac Kitchens

• re-employed August 2003
  • lower salary
  • no disability benefits
• disabled due to cancer November 2004
• sued for wrongful dismissal and benefits, including LTD
Brito v. Canac Kitchens

• wrongfully dismissed
  • 22 month notice period to May 2005
• awarded:
  • difference in pay: Aug 2003 to Nov 2004
  • full pay: Nov 2004 to May 2005
Brito v. Canac Kitchens

• awarded:
  • disability coverage for 22 month notice period
    • STD for 17 weeks = $9000
    • LTD to age 65 = $200,000
  • employer liable for both salary and LTD benefits
practical tips

• consider working notice
• continue STD and LTD during ESA notice period at minimum
• consider if employee likely to need LTD during remaining notice period
• bridge coverage with insurer
practical tips

• help employee obtain replacement benefits
  • provide information
  • offer extra $$ for premiums
• get a release
• use employment contracts
part 2: terminating employees on LTD
disability leaves

can you terminate?

• what do you gain?
• what is the risk?
  • human rights
  • wrongful dismissal claims
  • cost of lost benefits to employee
  • punitive damages
long term disability

• restrictions due to illness or injury
• prevents employee from:
  • first 2 years: performing essential duties of job
  • after 2 years: performing any job qualified for or can become qualified for with training
the sick or disabled employee

- can you terminate employee on LTD?
  - frustration of contract
  - legitimate business reasons
- do you need to provide a package?
frustration of contract
frustration of contract

• definition:
  • *contract incapable of being performed through no fault of either party*

• possible wrongful dismissal claims even if employee unable to work for years

• consider each situation individually
Duong v. Linamar Corp

• 7 year employee
• workplace injury
• unable to return to work
• refused modified duties
• received LTD benefits
• contract frustrated
• 3 years post injury with no improvement
• even with rehab:
  • no evidence in foreseeable future of return to work
  • employment agreement did not provide that contractual relationship would continue in spite of disability
Duong v. Linamar Corp

• was given opportunity to provide medical evidence to the contrary but did not do so

• LTD coverage did not mean employment contract indefinite

• Court of Appeal agreed with lower court’s decision = contract frustrated
Naccarato v. Costco

- 17 year employee
- absent 5 years
- received STD and LTD benefits
- return to work date unknown
Naccarato v. Costco

• contract not frustrated
• evidence did not support no reasonable likelihood of returning in foreseeable future
• Costco failed to seek medical evidence re: likelihood of return to work
• still under doctor care and seeking treatment
• no business hardship/disruption
practical tips

• consider:
  • terms of contract
  • length of employment
  • permanent or temporary illness
  • prospect of recovery
  • disability benefits offered
practical tips

• do not act in haste
  • allow employee sufficient time to provide medical evidence
• consider all forms of accommodation
• don’t rely too heavily on LTD decision
practical tips

• confirm LTD benefits can continue
• still owe ESA notice and severance
  • note: years of service during disability leave considered active service
• no common law notice as of yet
severance package considerations
severance package considerations

• can LTD payments received by the employee during the notice period be deducted from pay in lieu of notice?
Sylvester v. British Columbia

- employee terminated while on LTD
- offered severance package with LTD benefits deducted
- employee disagreed about deduction and sued
Sylvester v. British Columbia

• disability benefits can be deducted from pay in lieu of notice when:
  • benefit plan established *solely* by the employer
  • employment contract stipulates disability benefits substitute for regular salary
Sylvester v. British Columbia

- employees dismissed while on LTD and employees dismissed while working are:
  - “both entitled to damages consisting of the salary the employee would have earned had the employee worked during the notice period”
practical tips

• may be able to deduct LTD benefits from pay in lieu if:
  • employer paid premiums
  • employer is self-insured
  • contract specifics

• no deduction if:
  • employee paid premiums
  • not addressed by contract
practical tips

• insurance policies normally reduce benefits by severance payments

• consider paying out package after LTD stops
questions

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