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IN DEPTH: INSURANCE & EMPLOYEE BENEFITS

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Executives should understand the terms of disability insurance

Christopher Davis

After years of working 70- to 80-hour weeks, often traveling two or three days of each, attorney Charles Lamberton's client was in trouble.

The well-paid executive, who headed a local office for an international company, had developed serious health problems that, he said, were directly related to the everyday stresses of his job.

A heart attack, vascular-related dementia and other maladies had taken their toll on the executive, and he could no longer effectively oversee the hundreds of employees under his charge.

"He wasn't some guy who monitored the copy machine. He was a high-up executive," said Mr. Lamberton, a litigation associate with Rothman Gordon PC, Downtown. "He just couldn't do his job anymore."

Lacking the ability to work again in a similar position, yet still having a number of potential wage-earning years ahead of him, the executive needed to file a disability claim.

Fortunately, the company he worked for had purchased special disability insurance policies for its top executives. He was awarded benefits for roughly six months, but when he applied for long-term disability benefits, the insurance plan's administrator denied them.

The plan administrator was also the same company that determined whether benefits would be paid out -- as well as the amount that would be paid.

"Obviously, any company in that situation is going to be influenced by its bottom line," Mr. Lamberton said.

The executive sued for wrongful denial of benefits, successfully settling the claim before it went to trial for several hundred thousand dollars.

Mr. Lamberton, citing client confidentiality, declined to reveal additional specifics regarding the recent case, but said the situation underscores the need for corporate executives to educate themselves on the ins and outs of disability insurance included as part of their overall compensation packages.

"Executives are generally well paid and they count on the protection that should be afforded by a long-term plan to replace a good chunk of that (lost compensation)," Mr. Lamberton said.

In many cases, insurance and benefits can account for roughly a quarter of an executive's compensation. Still, many executives don't take the time to study the language contained in their disability policies, he said.

They should familiarize themselves with coverage periods and defined pre-existing health conditions, among other issues, Mr. Lamberton said.

"Every sentence is designed to allowthe (plan provider) to deny benefits," he said.

In rare instances, the language can be negotiated or altered. However, the best options to ensure executives of sufficient disability coverage are to request additional individual policies or to purchase additional policies for themselves, Mr. Lamberton said.

If those options are not available under certain job offers, "it may pay for you to keep looking or consider another offer that's on the table," he said.

Wayne Kurtz, a senior vice president in the Downtown office of Aon Consulting Inc., a Chicago-based employee benefits consulting group, said the practice of corporate executives buying or requesting supplemental long-term disability insurance policies has become more prominent over the past five years or so.

Also, more companies have taken up the practice of pulling their key executives from the long-term disability group coverage afforded to their general employees and offering more comprehensive plans to those key executives, Mr. Kurtz said.

"We're seeing a lot of companies do that," he said. "It's very common."

Of the roughly 70 percent of the Fortune 1,000 companies he estimated that have begun to offer special supplemental disability policies to key executives, about half pay for the additional coverage on behalf of their executives. The other half generally request that the executives pick up the cost.

However, "if it's the CEO, very rarely do I see him pay" out of his own pocket, Mr. Kurtz said.

The Employee Retirement Income Security Act -- the law initially created to protect employees who had worked for substantial periods under company pension plans and under which the majority of private-sector, employer-supplied disability policies fall -- often is "not an employee-friendly statute," Mr. Lamberton said.

Many times under ERISA, the best-case scenario when benefits are wrongfully denied is the awarding of back benefits only, with no provisions for punitive damages or pain and suffering.

That's why it's so important to ensure sufficient disability coverage is provided in the first place, he said.

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