

Extending benefits for terminated employees

Written by John Bascom, president, J.P. Bascom Insurance on Tuesday, January 31st, 2012 at 9:00 am

Employers are not required to provide employee benefit plans when an employee is terminated.

However, if an employer does decide to provide them, the rules against discrimination under the [Employment Standards Act, 2000](#) (ESA) must be applied to certain plans.

If the employer wants to extend benefits as per the ESA, as part of a severance package in lieu of notice, they can extend benefits as per the ESA guidelines which are based on the employee's number of years of employment.

The following chart specifies the periods of statutory notice required:

- Less than three months – No notice required
- Three months but less than a year – one week
- One year but less than three years – two weeks
- three years but less than four years – three weeks
- four years but less than five years – four weeks
- five years but less than six years – five weeks
- six years but less than seven years – six weeks
- seven years but less than eight years – seven weeks
- more than eight years – eight weeks

Any period extension of benefits above the ESA guidelines has to be preapproved by the insurance carrier and is available under special circumstances.

Health and dental benefits are usually extended by the insurance company if they are for a reasonable period of time. Insurance companies are reluctant to extend short-term (STD) and long-term disability (LTD) benefits because of the potential liability. There have been legal cases where the court has sided with a disabled employee who was not offered these benefits and the employer was forced to pay the claims.

Protecting employers against risk

Most employers prefer not to avoid the risk and expense of fighting these decisions in court. The sympathy of the court obviously lies with a recently-terminated employee who claims to be disabled. How can employers control this risk?

It is important that employers have an employee benefit handbook and that it is worded very carefully. Make sure that employees understand that STD and LTD benefits will cease immediately upon termination, even if the employee is entitled to notice or compensation in lieu. Note that in Ontario, all benefits, including STD and LTD benefits, must be continued during the statutory notice period.

Employers may want to explore the possibility of obtaining "Transition LTD" coverage. Some providers offer an individual disability insurance product developed and designed specifically to provide temporary income replacement coverage to terminated employees during their career transition period. This coverage is expensive and is subject to individual underwriting.

Spelling out what is and isn't covered will go a long way in protecting an employer should a terminated employee decide to sue upon becoming disabled.