

**UNDERSTANDING
YOUR
GROUP LTD POLICY
101**



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INTRODUCTION TO GROUP LTD 101

Hello, and welcome to Group LTD 101. The purpose of this book is to provide you with information about your group long-term disability benefit plan. I recommend all employees who have been provided with a group LTD policy as an employee benefit, obtain an official copy (not a certificate booklet) before sickness or injury begins. The knowledge and understanding you have of your policy provisions can prevent a claim denial when monthly financial assistance is needed most.

Although designed primarily for employees participating in employer sponsored plans, this manual also provides information and insight to attorneys as well as employers. Many of the eligibility issues associated with group LTD policies are often overlooked in ERISA cases. Employers will also find this book useful as a reference when your group LTD policy is revisited during your annual employee enrollment period.

This book will take you from the first page of your group LTD policy to the last, explaining its provisions in language you can understand. I strongly encourage you to contact your employer or other trusted resource if, after completing this workbook, you still do not understand what you are entitled to under your covered plan. You and your family may have to depend on the financial income of a group disability policy during periods of injury or sickness which are almost always sudden and unexpected. This book is intended as a valuable resource to help you “connect the dots” your employer may or may not have explained to you while you are still on the job.

Group LTD 101 is in workbook format. It provides you with pages of definition and self-test questions to help you understand common provisions most often written in “group employee benefit plans” such as your LTD policy. I hope you enjoy working through LTD 101, and feel you have gained valuable information and experience helpful to you in a time of medical and family crisis.

If you have any questions, please feel free to email me at lindanee@cyberwc.net. I am ready to assist you with your disability claim by providing the knowledge and assistance you need.

As part of your purchase of this book, you are also entitled to receive any updates, resources, or priority issue announcements relating to group LTD insurance. I will send them to you via email as the issues are made known.

Good luck and enjoy the group LTD workbook.

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Disability Claims Consultant

Chapter 1

What Is a Group Policy?

Before we begin the technical study of the specific provisions in your group policy, it is necessary to explain what a group long-term disability policy is, and how these policies are distinguished from Individual Disability policies purchased from an agent or broker. If you have been provided with a long-term disability policy by your employer, you have what is called a “group plan.” Group disability plans are not underwritten separately, but are sold to employers covering all employees. The insured “risk” of paying a disability claim is therefore spread out among all members of the employer’s group. These plans have typically lower premiums than individual policies which are normally not affordable for most of the American working middle class.

Since “group” policies are sold directly to your employer, your employer is called the “policyholder.” Your employer enters into a contract with the disability insurer and receives an official copy of the policy. The employees are referred to as “certificate holders” or “beneficiaries” of the policy, but are not the owners of the policy. This is why employees who apply for benefits are only provided with a “Certificate Booklet” describing benefits rather than an official copy of the actual policy.

Premiums for disability group plans may be contributory or non-contributory. A non-contributory policy means 100% of the premiums are paid by your employer. For a contributory policy, the premiums are paid both by the employer AND the employee in accordance with some percentage usually deducted directly from the employee’s paycheck. Disability benefits received are taxable only to the extent to which premiums are paid for by the employer. For example, if your employer pays 60% of the premium and you pay 40%, then your monthly gross disability benefits are only 60% taxable. If you are paying part or all of the premium through payroll deduction on a before-tax basis, your benefits are again taxable. Deferred payroll deductions may save you money in the short-run, but generally not over time for disability.

Most group disability policies are regulated by the Employment Retirement Income Security Act of 1974. (ERISA) These laws are enforced by the US Department of Labor. Individual Disability policies are not subject to ERISA. There are some group STD and LTD policies not regulated by ERISA, but these are policies issued to employers of governmental agencies of the state or federal government. The governmental agency must have the authority to exercise control over the business activities of your employer, and provide financial monies to the operations.

The first page of a group LTD policy is called the “Title Page” and contains important information concerning the effective date of the policy, the policyholder’s name, and the state which holds the governing jurisdiction for the issuance of the policy. A typical title page might look like this:

**PRICED RIGHT
INSURANCE COMPANY, INC.**

**GROUP INSURANCE POLICY
NON-PARTICIPATING**

POLICYHOLDER: Disability Claims Solutions, Inc.

POLICY NUMBER: 513266 001

POLICY EFFECTIVE DATE: January 1, 1997

POLICY ANNIVERSARY DATE: January 1

GOVERNING JURISDICTION: Maine

PRICED RIGHT Insurance Company of Maine (referred to as “Priced Right”) will provide benefits under this policy. Priced Right makes this promise subject to all of this policy’s provisions.

The policyholder should read this policy carefully and contact Priced Right promptly with any questions. This policy is delivered in and is governed by the laws of the governing jurisdiction and to the extent applicable by the Employee Retirement Income Security Act of 1974 (ERISA) and any amendments. This policy consists of:

- all policy provisions and any amendments and/or attachments issued;
- employees’ signed applications; and
- the certificate of coverage.

This policy may be changed in whole or in part. Only an officer or a registrar of Priced Right can approve a change. The approval must be in writing and endorsed on or attached to this policy. No other person, including an agent, may change this policy or waive any part of it.

Signed for Priced Right in Belfast, Maine on the Policy Effective Date.

Notice the policyholder is an employer and does not name each individual employee. This is because employees are not direct parties to the disability contract. The effective date is the date the policy is placed “in force”. Disability policies are generally renewable only on the anniversary of the effective date indicated on the title page. In addition, any amendments or changes made to the policy can only be made once a year on the anniversary of the effective date.

A group “policy” governed by ERISA is referred to as “the plan”, and the accumulation of documents resulting from any claim you file is called “the administrative record.” An employee who submits a claim for benefits is called “a claimant.” For individual disability the person filing for a claim is referred to as “the insured.”

Insurance policies in general may be either “participating” or “non-participating.” “Participating”, means the policyholder will share in any dividend distribution the insurer makes to owners of insurance policies. This type of “dividend share” is most often seen in Individual Disability and Life Insurance policies. Group disability policies are always “non-participating” which means the policyholders will not receive any distribution of dividends from the insurer.

Your question in looking at the title page of your policy should be: “Is this the policy that was in force as of the date of my disability?” Always check the title page to make sure you have been provided with the policy “in force” as of your date of disability, and that you have been provided with copies of any added amendments.

Located at the bottom of each page is a number designation which describes the provisions, page number, and effective date. For example, a typical page number might be “LTD-BEN-3 (1/1/97)”. This means the page contains long-term disability provisions, benefit descriptions, page 3, effective 1/1/1997. If information has been amended, the date indicates the effective date of the change.

All group policies under ERISA are required to have a “Plan Summary” page called the “SPD”. Some insurers call this page “Benefits At a Glance”, or just “LTD Summary.” All plan summaries must provide the holder with basic information about the policy eligibility requirements. All items listed on the summary page can be found in other provisions of the policy in more detail. Here is a typical “Plan Summary” page.

SELF TEST QUESTIONS

Am I a full-time or a part-time employee?

When was my group LTD policy effective? Do I need to enroll every year with my employer?

Is my policy contributory or noncontributory?

Is my policy an integrated STD/LTD plan? If yes, does my employer self-insure my short-term benefits?

The phone or extension for my HR Benefits Representative is:

The name of my HR contact person is:

LTD DISABILTIY PLAN

This long term disability plan provides financial protection for you by paying a portion of your income while you are disabled. The amount you receive is based on the amount you earned before your disability began. In some cases, you can receive disability payments even if you work while you are disabled.

EMPLOYER'S ORIGINAL PLAN

EFFECTIVE DATE: January 1, 1997

POLICY NUMBER: 513266 001

ELIGIBLE GROUPS:

All Employees in active employment

MINIMUM HOURS REQUIREMENT:

Employees must be working at least 30 hours per week.

WAITING PERIOD:

For employees in an eligible group on or before January 1, 1997: None

For employees entering an eligible group after January 1, 1997: None

ELIMINATION PERIOD:

90 DAYS

Benefits begin the day after the elimination period is satisfied.

MONTHLY BENEFIT:

60% of monthly earnings to a maximum benefits of \$6,000 per month.

Your payment may be reduced by deductible sources of income and disability earnings. Some disabilities may not be covered or may have limited coverage under this plan.

MAXIMUM PERIOD OF PAYMENT:

<u>Age at Disability</u>	<u>Maximum Period of Payment</u>
Less than age 60	To age 65, but not less than 5 years
Age 60	60 months
Age 61	48 months
Age 62	42 months
Age 63	36 months
Age 64	30 months
Age 65	24 months
Age 66	21 months
Age 67	18 months
Age 68	15 months
Age 69 and over	12 months

No premium payments are required for your coverage while you are receiving payments under this plan.

OTHER FEATURES:

Disability Plus	Minimum Benefit
Noncontributory	Pre-Existing 6/12/24
Survivor Benefit	

The above items are only highlights of this plan. For a full description of your coverage, continue reading your certificate of coverage section.

PARTS OF THE PLAN

ELIGIBLE GROUP(S) In order to be covered under a disability policy, you must be in what is called an “eligible group.” In the above example, all employees of Priced Right, Inc. are eligible for LTD coverage. This is not always the case. Your employer may have decided to provide coverage for some employee groups and not others. This section could have read, for example:

Group 1

All full time and part-time employees earning \$170,000 or less per year in active employment.

Group 2

All full-time and part-time employees earning more than \$170,000 per year in active employment.

MONTHLY BENEFIT For LTD, monthly benefits are always determined by a certain percentage of your pre-disability monthly earnings, most often 60%. “Monthly earnings” has a very specific definition described in more detail later on in your policy, and it is important for you to be able to verify your monthly earnings reported to the disability insurer so that you know you are being paid accurately. The insurance company will request either the previous year’s W-2 or current payroll records from your employer. A calculation will be made in accordance with the “monthly earnings” definition in your policy. Always inquire what your “monthly earnings” calculation is, and verify the number. I have reviewed numerous claims where upon examination, the claimant has either been underpaid, and on occasion, overpaid. Neither situation is accurate, and requires correction as soon as the error is discovered.

MAXIMUM PERIOD OF PAYMENT OR MAXIMUM BENEFIT PERIOD Depending on your age at the time of disability, this is the maximum period your benefits may be paid. If you are under the age of 60 at the time of your disability, according to the example plan summary above, your benefits will be paid to age 65. If you are over the age of 60, your benefits are limited. Group plans do not insure for lifetime benefits.

A GOOD CASE IN POINT—Cecil’s Missed LTD Enrollment Period

Cecil Doolin is a 45-year-old warehouseman, employed by a local home supply chain. His employer offers all employees the opportunity to sign-up for group LTD insurance after one year of continual employment. On January 1, 2004, Cecil became eligible for his employer’s annual enrollment, but forgot to go and sign-up on the date his notice told him to report to the cafeteria. In fact, Cecil was so busy moving boxes for the annual inventory, he misplaced his enrollment card, and didn’t remember it until June 2005.

Cecil happened to meet an HR benefits representative in the hall sometime in the later part of June, and inquired about the LTD coverage. Marci told him to stop by and she would give him a form to complete called “Evidence of Insurability”.

“Since you missed the annual enrollment period”, she told him, you need to submit this form. “Do you have any medical conditions?”

Cecil shrugged. He didn’t know if he really wanted to answer that question since he did have some back trouble and had planned on having surgery sometime in the near future. His doctor recommended “as soon as possible”, but in addition to his 12 weeks of short term disability, he may need another two months of LTD benefits to keep his family going. He put off the surgery because of his blunder in not signing up for LTD when he had a chance. Cecil decided to wait until the next annual employee enrollment period.

On January 1, 2005 Cecil filled out his LTD enrollment card and became effective on his employer’s group sponsored plan. “Just in the nick of time”, he thought, “my back is killing me.” Cecil did not ask Marci for a copy of the LTD booklet.

On February 19th Cecil had his back surgery and after receiving 12 weeks of STD, applied for LTD since his Orthopedic Surgeon had not released him to return to work. Cecil's occupation as a warehouseman requires lifting of up to 50 lbs. Cecil's claim for LTD was denied due to the existence of a pre-existing condition.

Since Cecil's date of disability occurred within 12 months of his effective date of coverage (January 1, 2005), the insurance company investigated the three months prior to the January 1st date to determine if he had received any treatment, consultation, or took prescribed medications for this time period.

There are quite a few lessons we can learn from this scenario. Generally, it is always a good idea to be "on the lookout for your annual" LTD enrollment period" and make a special effort to sign the enrollment card at that time. If Cecil had turned in his enrollment card on January 1, 2004 when he originally became effective, his LTD disability in February 2005 would not have been subject to a pre-existing condition investigation. In fact, Cecil had an additional 31 day grace period to turn in his enrollment card.

In addition, Cecil should have obtained a copy of his LTD booklet from Marci in January 2005, at the time of his enrollment. Had he read through the complete policy he may have noticed the pre-existing condition provision, and put off his surgery as long as he medically could.

Unfortunately, Cecil was compelled to return to work, prematurely, in order to continue to receive his salary and support his family.

CHAPTER 2 **Long-term Policy Provisions**

The next several pages of your policy describe provisional requirements your employer has agreed to. Issues such as: the payment of premium, changes in premium rates for the group, and cancellation guidelines are written for the benefit of your employer who is the policyholder. The certificate section of the Plan Document (your policy) also describes plan summary definitions in more detail. These definitions are mostly self explanatory, but should be reviewed.

Several of the more important provisions in the certificate section include information as to when your insurance begins, what happens if you are temporarily laid off, or on leave, when your coverage ends, statute of limitations on legal actions and how the insurance company intends to handles cases of insurance fraud. These topics are briefly discussed below.

After your waiting period is satisfied, most employers will give you an opportunity to sign up for LTD insurance right away, and then ask you to re-enroll annually just before the anniversary date. This gives you the opportunity to choose various options if available.

You must apply for LTD insurance within 31 days of becoming eligible. (31 days after you satisfy the waiting period.) If you do not enroll, you must submit evidence of insurability (a disclosure form) which asks you specific health questions. The disability insurer then performs an underwriting analysis on your application instead of including you in the risk pool of the entire employee group. You may or may not receive LTD insurance at that point if you have one or more health problems, and may only enroll at the next yearly employee sign-up. When you are given the enrollment card, it is always best to sign-up right away and not wait. You must also provide evidence of insurability if you voluntarily cancelled your coverage and are reapplying.

If you are temporarily laid off and the premiums are paid by your employer, LTD coverage “remains in effect through the end of the month that immediately follows the month in which your temporary layoff begins.” For example, if you are laid off on April 10th, your LTD insurance remains in effect until May 31st. Family Medical Leave (FMLA) generally follows the same coverage extension.

A typical provision describing the end of your coverage might say the following:

“Your coverage under the policy or a plan ends on the earliest of:

- the date the policy or a plan is cancelled;
- the date you no longer are in an eligible group;
- the date your eligible group is no longer covered;
- the last day of the period for which you make any required contributions;
- or
- the last day you are in active employment except as provided under the covered layoff or leave of absence provisions.

If you were a full-time employee and were in an eligible group, but reduced your hours to part-time, you may not be covered.”

THE DEFINITION OF DISABILITY

Each LTD policy has a provision defining under what conditions you will, or will not be awarded benefits. This provision is called “the definition of disability”, and is the most important writing in your policy. Nearly all claim denials result from in-house interpretations of facts and how they relate to the definition of disability. Having a complete and thorough understanding of this provision is essential in managing and staying in control of any future claim process. The provision itself may seem very concise and understandable, but do not be misled. Words used in this provision have specific meaning, and it is equally important to have a grasp of the insurance vocabulary.

There are four basic types of definitions of disability written into group policies:

- ↪ 2-year own occupation with partial;
- ↪ 2-year own occupation with residual;
- ↪ LTIP (long-term income protection); and
- ↪ LTOC (long-term own occupation).

A detailed discussion of each one of these follows:

Here is an example of a **2-year own occupation with residual** policy:

You are disabled when Priced Right determines that:

- *you are **limited** from performing the **material and substantial duties** of your **regular occupation** due to your **sickness or injury**; and*
- *you have a 20% or more loss in your **indexed monthly earnings** due to the same sickness or injury.*

*After 24 months of payment, you are disabled when Priced Right determines that due to the same sickness or injury, you are unable to perform the duties of any **gainful** occupation for which you are reasonably fitted by education, training or experience.*

First of all, notice this two-part definition says “and”, not “or”. This means that you must meet BOTH conditions in order to qualify for benefits. **Limited** means you must not be able to do all of the important tasks normally identified with your occupation.

Material and Substantial duties are those required for the performance of your regular occupation, and cannot be reasonably omitted or modified. For example, if we removed “typing” from the occupational description of Secretary, in most instances, the occupation is no longer “Secretarial”.

“**Material duties**” are those which are characteristic to specific occupational tasks without which the occupation could not be distinguishable into any specific category or job specification. These duties are qualitative in nature and are those duties, which if eliminated, indicate the occupation, as defined, would not exist.

“**Substantial duties**” are job tasks which represent the largest proportion of total tasks performed in an 8-hour work day. Substantial duties are also recognizable as those which if eliminated, prevent the occupation from existing. These duties are quantitative, and suggest the performance of specific occupational duties for the majority of an 8-hour workday. Four hours per day is considered to be part-time.

“**Material duties**” refer to specific job-related tasks and is generally a qualitative measurement, while “**substantial duties**” refers to proportionate time spent and is an identifiable quantitative determination.

In general, those duties requiring more than 20% of your work day are considered to be material and substantial in nature.

Regular occupation means the occupation you are routinely performing when your disability begins. All group LTD policies require the insurance company to “**look at your occupation as it is normally performed in the national economy, instead of how the work tasks are performed for a specific employer or at a specific location, or job.**”

Most employees are very surprised to learn their group LTD policies do not insure actual **JOBS!** There is a big difference between what you do for a **JOB**, and what your **OCCUPATION** is. Group LTD policies only insure you to the extent you are unable to perform your **OCCUPATION** as it is normally performed by the majority of people who do the same occupation in the United States. Occupations are defined by using the standards used by the Department of Transportation, referred to as the DOT.

Here is an actual example of the job versus occupation issue, as it relates to claim situations.(The name of the claimant has been changed to protect his privacy.)

A GOOD CASE IN POINT – Stan’s job vs. occupation issue

Stan Whitmore is a 42 year-old retail manager for the Eckerd chain of discount stores. He has worked for Eckerd Drugs for the last 10 years, and supervises 15 employees. His job with Eckerd requires him to assist drivers in unloading inventory which can weigh as much as 40-50 pounds. He is required to be on his feet the majority of a 10 hour workday, and spends a great deal of his time stacking shelves and moving store fixtures. Last year, he began to have difficulties with his back which required surgery. His disability insurer paid a short-term disability claim, and later about 8 weeks of long-term benefits.

Shortly after the 8 weeks of LTD benefits, he was notified by the insurance company the occupation of “Retail Manager” as described in the DOT did not require lifting and stacking shelves, therefore, his claim was denied. Stan’s restrictions and limitations precluded him from lifting anything greater than 10 pounds. Could Stan return to his present job? NO. Will he receive LTD benefits? NO. Since the insurance company only insures his occupation as it is performed in the national economy (which does not require lifting), in this case defined as most supervisory and administrative, he will not receive benefits if the insurance company can show he is physically able to perform his “material and substantial” duties as they are performed in the national economy, namely the DOT.

You may ask the question, “What is Stan supposed to do now?” The response to Stan from the insurance company is, “Find another job because we can’t pay your claim under your current disability definition.”

It is extremely important for all individuals covered under a group LTD policy to understand the difference between your **JOB**, and your **OCCUPATION**. You can write to the US Department of Transportation and ask for a DOT for your occupational category. O*NET online can give you a summary of most occupations.

Therefore, the first test, or burden of proof, if you will, is to locate alternative occupations the insurance company feels you can perform. The next task is to determine which of the occupations identified are gainful. LTD policies require alternative occupations identified after the 24th month to be “gainful”. A typical definition of “gainful” might be:

“GAINFUL OCCUPATION means an occupation that is or can be expected to provide you with an income at least equal to your gross disability payment within 12 months of your return to work.”

If your policy is silent as to the definition of “gainful”, AND your policy has a 20% earning loss requirement, “gainful” is assumed to be 80% of your pre-disability earnings. Some policies require “indexing” in order to determine whether or not the alternative occupation is “gainful” or not. (I will explain indexing a little later.) What does all this mean for you?

Basically, the insurance company may not claim you can work in occupations which will not provide you with commensurate wages. If you were earning, let’s say, \$50,000 the year before you became disabled, the insurance company may not claim you can work at McDonalds. Or, if your monthly LTD benefit is \$3,500 per month, McDonald’s wouldn’t be considered “gainful” either.

The Transferable Skills Analysis, then, must show two things:

1) alternative occupations and 2) gainful occupations. And, there must be more than one “gainful” occupation given. If the occupations identified are complex, or, you live in a remote geographical area, the agency may perform what is called a Labor Market Survey to determine the availability of jobs within a 50-60 mile radius of your residence. A Labor Market Survey is not required in all cases, but it will document specific employers, job requirements and salary within the areas indicated. The LMS is intended to resolve the question: “ These identified occupations are not available in my area.” Therefore, the LMS is generally only performed when the claimant resides long distances from major urban or employment areas.

Once the completed TSA is received by the claims specialist, it is reviewed to determine the conclusion. If the TSA has identified “gainful” alternative occupations you can do, given your training, education, and experience, your claim is then denied for benefits beyond the 24th month. Nothing you say or do will stop this process.

Let’s step back a moment and take a look at this. First of all, the restrictions and limitations given by your own qualified medical providers are not used in the TSA to determine your realistic physical work capacity. Only those determined to be reasonable by in-house medical personnel are used. Second, if inaccurate information is given to the vocational agency conducting the TSA, their conclusions will also be invalid.

Insurance companies make monumental errors in this change of definition investigation, but deny claims nonetheless. Here are the most common errors:

- ↪ Inaccurate, outdated or incomplete medical information is forwarded to the TSA agency. Garbage in, garbage out.
- ↪ Identified occupations are not reviewed to determine if they meet the definition of “gainful” in your policy. There is no documentation in your claim file that the issue of “gainful” was even addressed by the insurance company.
- ↪ The test of “reasonableness” is not applied. For example, if the TE&E of an RN indicates she has only worked in patient care, it would not be reasonable to suggest she could later work in the ER, or in a clinical setting. Or, if an individual has been with their current employer for 15 years, it is not reasonable to suggest he/she could change occupations easily. Another example is if a claimant is 55 years old, does it really make sense that they are easily employable? What if a person has a third grade education and cannot read? Is it reasonable to assume they can be retrained and employed in a new occupation? Many insurance companies fail to employ the “common sense” test and as a result large numbers of claims are denied.
- ↪ Similar to above, gainful is not determined using “indexed” earnings if that definition applies. Claims specialists often are not trained to perform “indexing” and therefore this step is often omitted.
- ↪ Insurance companies abuse the “broad definition” of certain occupations such as RN’s, attorneys, and physicians.
- ↪ Complex or dual occupations are not investigated and documented by a qualified vocational/rehabilitation resource.

All group LTD claims with a change in definition of disability undergo an any occupation investigation at some point in the claim history. Again, insurance companies consider the any occupation investigation to be “a last ditch opportunity” to terminate benefits legitimately in accordance with the “change in definition.”

A GOOD CASE IN POINT....

Let’s meet Betty M. Betty is a Registered Nurse who works at the local Memorial Hospital. Betty’s job involved routine patient care with some supervisory duties, daily reports and chart review. One day while she was handing out medications, Betty slipped on a wet floor and sprained her back which was very painful. After several weeks of trying to work, Betty’s doctor placed her on temporary leave and sent her home. Since she met all of the eligibility requirements of her employer, Betty qualified for STD benefits and was in the 25th week of an approved 26 weeks of leave.

