

Long-Term Disability Basics: Know Your Rights



While cases, where you are disabled for only a few weeks, are covered by short-term disability, if an injury causes debilitation that lasts months – or even years – your coverage shifts to long-term disability. And, there are some rights under the law to protect those on long-term disability.

Your rights, however, can depend on the type of long-term disability you are receiving, and this is where it can become complicated. There are four different types of disability coverage in Ontario, each with different specific rights and procedures:

- Long-Term Disability from a private insurance company. This is a type of coverage provided by contract, either from your employer or obtained on your own. Because it is private coverage, the procedures and some of your specific rights under the policy will depend on the contract you have signed with your insurance company.
- Workplace Safety and Insurance Board (WSIB). This is a type of government insurance that all employers pay into, and it provides coverage to employees who are disabled due to work-related personal injuries. Because it is no-fault insurance, anybody who receives it gives up the right to file a lawsuit against their employer regarding their personal injury, although the WSIB does reserve the right to file a claim in their stead. Rights specific to the WSIB include the right to appeal a decision made in your case.
- Canada Pension Plan (CPP) Disability Benefits. This is a type of regular coverage that extends from your injury into retirement (assuming you meet the requirements of the stated medical test), although at the age of 65 the coverage transitions into a regular pension. The amount you receive is based in large part on how much money you have already contributed to the CPP in the past. Many, if not most, private insurance providers require a person to apply for CPP Disability Benefits, with the amount received

through CPP deducted from the amount they pay out. Rights specific to CPP Disability Benefits include the right to appeal a decision made regarding your case.

- Ontario Disability Support Program (ODSP). This is a type of coverage for those who are disabled and either have not been able to enter the workforce or are in severe financial need at the time they become disabled. ODSP requires proof of financial need before providing coverage, and also includes drug and medical benefits. Rights specific to ODSP include the right to meet with your case worker to discuss your case in person (with representation if you see fit), the right to receive decisions regarding your case in writing, the right to receive additional drug and medical benefits, and the right to appeal any decision made.

While all four of the types of disability coverage have specific rights, you also have some rights under the law, regardless of your disability coverage. These rights include:

- The duty to accommodate. This is a requirement that your employer takes whatever steps are necessary and reasonable to accommodate your disability. This includes signage, accessibility, job reassignment if you are no longer physically capable of performing your old job, and flexible work hours. There is a limit to this, however – an employer is not required to take measures that would prove so costly or disruptive that the business would no longer be able to function. This often takes several years to determine.
- The right to basic dignity. This includes your employer or service providers respecting your desires and right to privacy regarding your medical condition, and not putting you through measures that would be considered degrading to any reasonable person (such as unnecessary drug tests).
- Not being discriminated against due to your disability. This includes your employer not terminating your employment due to your personal injury or reassigning you to a position that is, in effect, a demotion. This also includes your employer not disallowing you during recovery from participation in benefits including pension plans, dental plans, life insurance plans, drug plans, and extended health plans.
- Not to be discriminated against in regards to the benefits you receive due to age, sex, pregnancy, or marital status.
- Not to have to undergo unnecessary medical examinations. While there is a reasonable right for a disability coverage provider to verify and monitor your physical status, any additional medical examinations must be for a reasonable cause and performed by a doctor with sufficient medical expertise to make an accurate diagnosis.

If any of your rights have been violated, there are a number of resources available. You can file an appeal with your long-term disability coverage provider, or a human rights complaint with the Ontario Human Rights Commission. If your coverage has been unjustly terminated or reduced, you can hire a personal injury lawyer and commence litigation – this is often a good safeguard against an insurance provider using a lengthy appeals process to delay until the statute of limitations has passed on your case.

Regardless of how easy it can be to feel overwhelmed by the complexity of Ontario's long-term disability support system, it can be navigated. Most important of all, you do have rights guaranteed by both federal and provincial

law, and access to justice should they be violated.

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