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Layoffs and disability claims: Understanding employee rights under ERISA

As large-scale layoffs continue across major employers, employees pursuing or considering disability claims must carefully navigate ERISA procedures, severance terms, and jurisdictional nuances that can significantly affect their ability to obtain benefits.

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Over the past six months, numerous large employers such as Microsoft, Amazon, Meta, Intel, Google, Starbucks and Salesforce have announced layoffs affecting thousands of workers throughout the United States. Some of these employees may already have been on disability claims. Others may have bases to file disability claims and had been pushing through their disabilities to keep their jobs. How do these existing or potential claims interact with their terminations?

ERISA vs. Non-ERISA: Understanding the key distinctions

Most employer-provided disability insurance plans are governed by the Employee Retirement Income Security Act of 1974 (ERISA). ERISA does not apply to benefits provided by state or federal government entities, religious organizations (including businesses owned by religious organization such as hospitals), and those that self-fund their plans. If an employer provides a way for an employee to obtain an individual disability insurance policy, that coverage is also usually not subject to ERISA, though it depends on the specific facts surrounding the issuance of that policy.

Determining whether or not the disability benefits at issue are governed by ERISA matters because ERISA imposes strict timelines and procedures around both the insurance claim and any potential litigation of that claim, limiting potential damages and discovery. Non-ERISA plans, governed by state contract and tort law, offer employees broader litigation avenues, including jury trials and the potential for punitive damages.

Human resources departments managing disability plans governed by ERISA must provide a copy of all plan documents within 30 days of request or the company can be subject to fines of up to $110 per day. Both current and former employees are entitled to request such documents under ERISA.

Under ERISA, an insured must appeal any denial of a claim prior to bringing litigation. The insured has 180 days to appeal. If the insured fails to appeal, the right to bring suit is permanently waived. Once the insured appeals, the insurer has 45 days to review and decide the appeal but can request an additional 45 days to review in "unusual circumstances." If the insurer misses its deadline, the claim is "deemed denied" and the insured can bring suit.

Lawsuits brought under ERISA similarly have specific limitations. They must be brought in federal court as ERISA is federal law. While the suits can technically be brought in any court in the country, venue challenges have resulted in the general rule that - unless there is a forum selection clause in the policy - a disability insurance lawsuit under ERISA is proper where the insured resides, where the plan is administered (which is generally where the employer is headquartered), or where the insurer is headquartered. Forum selection clauses in insurance policies are enforceable.

Unlike traditional litigation, suits under ERISA are usually limited to the administrative record, or claim file, with little to no discovery. The "trials" are bench trials usually decided in a hearing after briefing by the parties. There is no jury, no witnesses, and usually no discovery outside of the record. Under ERISA, an insured is able to receive an award of back benefits owed and an order to be put back on claim for so long as the insured remains disabled under the policy. The judge cannot order any lump sum for future benefits. There are

no punitive damages or emotional distress damages under ERISA, the most the insured can obtain are the back benefits owed. The insured can ask the court to award attorney fees, but such fees are awarded at the court's discretion and are not automatic.

Most policies include language granting the insurer "discretion" to decide claims. Under ERISA, those policies result in the courts reviewing claims under the "abuse of discretion" standard of review, which means the judge must determine not whether the denial was correct, but whether the denial was manifestly unreasonable. This is a much more deferential standard to the insurance company. Several states, including most in the 9th Circuit, have passed laws banning discretionary clauses from disability insurance policies, which results in courts deciding whether the insurance company's denial was correct or incorrect, or *de novo* review. States with discretionary bans in the 9th Circuit include California (Cal. Ins. Code 10110.6), Oregon (OAR 836-010-0026), Washington (WAC 284-44-015), Montana (Ins. Commissioner interpretation), Idaho (Ins. Rule 18.01.29), Alaska (Ins. Commissioner interpretation) and Hawaii (Ins. Commissioner interpretation). This matters because *de novo* review is significantly better for plaintiffs.

Layoffs and active disability claims: Tread carefully

Employers must exercise caution when conducting layoffs involving employees on active disability claims. Discriminatory termination based solely on filing a disability claim is unlawful. While employers can generally implement legitimate layoffs, they cannot single out disabled employees. Employers must also adhere to the Family and Medical Leave Act (FMLA) when it applies to them, which provides job-protected leave for eligible employees for up to 12 weeks, making termination during this period potentially problematic. Employers also must comply with the Americans with Disabilities Act (ADA), which mandates the provision of reasonable accommodations for qualified employees with disabilities.

Severance agreements: Proceed with caution

Employers often use severance agreements during layoffs, which can have unintended consequences on disability claims. Employees should obtain carve-outs for existing or planned disability claims to preserve their rights. A severance agreement waiving all rights under ERISA can potentially waive the right to bring suit under ERISA. Employers often require employees to return to work full time to access severance benefits and payments. By returning to work, the employee ends their disability claim and certifies that they are able to return to work, and will no longer have disability insurance coverage under the employer's plan after termination. Courts have held entire mini-trials within ERISA litigation over whether an employee's return to work and signing of a severance agreement was "knowing and willful" under the law. See *Perez-Jones v. Liberty Life Assurance Co.*, No. LA CV11-09518 JAK (AJWx), 2014 U.S. Dist. LEXIS 185419, at *1 (C.D. Cal. Feb. 20, 2014) (aff'd *Perez-Jones v. Liberty Life Assurance Co.*, 647 F. App'x 758, 758 (9th Cir. 2016)).

Claiming disability after termination: Timing and support for claims

Employees can make disability claims even after receiving notice of impending termination. The employee must show that their disability began before their last day of employment and must have physician support for that disability.

Employees can also make retroactive disability claims after termination, if they were treated for symptoms of the disability prior to their termination and their doctor supports that their disability began before the last day of work. Either way, the employee must demonstrate that the disability symptoms began and were treated prior to the last day of employment. Many 9th Circuit courts have fleshed this out, the most recent decision being *Dharmasena v. Metro. Life Ins. Co.*, No. EDCV 23-01510 JGB (DTBx), 2025 U.S. Dist. LEXIS 103407, at *24 (C.D. Cal. May 29, 2025). Courts are also clear, as discussed in *Dharmasena*, that there is no conflict between an employee being disabled and an employee working full time while disabled.

Courts have consistently confirmed that former employees may pursue retroactive disability claims under both ERISA and non-ERISA policies after termination. However, the disability must have existed before the last day of employment. This enables former employees to make retroactive claims, sometimes years after leaving their employment, if they were receiving treatment for the symptoms of the disability. Such fact patterns often arise when the insured had difficulty obtaining a diagnosis for the disabling symptoms.

The notice-prejudice doctrine:

Most disability insurance policies contain language allowing insurers to refuse to consider untimely claims. However, in states that have adopted the notice-prejudice doctrine, insurers cannot rely solely on that language. The notice-prejudice doctrine prevents insurers from denying claims due to delayed submission unless they demonstrate actual prejudice stemming from the delay. Even if an insurer has a policy requiring certain timeframes for filing a claim, that policy cannot be enforced unless the insurer can show that the delay actually harmed their investigation of the claim. All states in the 9th Circuit except Idaho have adopted the notice-prejudice doctrine.

Venue considerations: A strategic advantage

If an insured is or was employed by a company administering its plan in the 9th Circuit, the insured can bring suit under ERISA to enforce the plan where those benefits are administered even if they live on the other side of the country. 9th Circuit states such as California and Washington have a reputation for having more plaintiff-friendly judges than some other circuits. They have outlawed discretionary clauses, allowing judges to decide whether or not a denial was correct rather than having to show deference to the insurance company's reasoning. And they have adopted the notice-prejudice doctrine, which makes it easier for insureds to bring late claims. For all of these reasons, employees of corporations engaging in layoffs - such as Microsoft, Google, Apple, Amazon and others based in the 9th Circuit - may choose to file disability insurance claims and eventually bring suit in the 9th Circuit to obtain benefits owed. And human resources employees at those companies need to understand that the employees are able to do this under the law and must be provided with the Plan documents by the employer even if they are no longer employed by the company.

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