

---

## Temporary Disability Insurance

Five states, Puerto Rico, and the railroad industry have social insurance programs that partially compensate for the loss of wages caused by temporary nonoccupational disability or maternity. Those programs are known as *temporary disability insurance* (TDI) because the duration of the payments is limited.

Federal law does not provide for a federal-state system of short-term disability comparable with the federal-state system of unemployment insurance. However, the Federal Unemployment Tax Act (FUTA) was amended in 1946 to permit states where employees made contributions under the unemployment insurance program to use some or all of these contributions for the payment of disability benefits (but not for administration). Three of the nine states that could have benefited by this provision for initial funding for TDI took advantage of it: California, New Jersey, and Rhode Island. The first state law was enacted by Rhode Island in 1942, followed by legislation in California and the railroad industry in 1946, New Jersey in 1948, and New York in 1949. Then came a hiatus of two decades before Puerto Rico and Hawaii passed laws in 1968 and 1969, respectively.

The temporary disability insurance laws of the five states and Puerto Rico cover most commercial and industrial wage and salary workers in private employment if the employer has at least one worker. In no state is coverage under TDI identical with that of the unemployment insurance program. Principal occupational groups excluded are domestic workers, family workers (parent, child, or spouse of the employer), government employees, and the self-employed. State and local government employees are included in Hawaii, and the other state programs generally provide elective coverage for some or all public employees.

Agricultural workers are covered to varying degrees in California, Hawaii, New Jersey, and Puerto Rico, but they are not covered in other jurisdictions. The California law permits self-employed individuals to elect coverage on a voluntary basis. Workers employed by railroads, railroad associations, and railroad unions are covered by TDI under the national system included in the Railroad Unemployment Insurance Act.

The methods used for providing this protection vary. In Rhode Island, the coverage is provided through an exclusive, state-operated fund into which all contributions are paid and from which all benefits are disbursed. In addition, covered employers may provide supplemental benefits in any manner they choose. The railroad program is also exclusively publicly operated in conjunction with its unemployment insurance provisions.

In California, New Jersey, and Puerto Rico, coverage is provided through a state-operated fund, but employers are permitted to "contract out" of the state fund by purchasing group insurance from commercial insurance companies, by self-insuring, or by negotiating an agreement with a union or employees' association. Coverage by the state fund is automatic unless or until an employer or the employees take positive action by substituting a private plan that meets the standards prescribed in the law and is approved by the administering agency. Premiums (in lieu of contributions) are then paid directly to the private plan, and benefits are paid to the workers affected.

The laws in Hawaii and New York require employers to provide their own disability insurance plans for their workers by setting up an approved self-insurance plan, by reaching an agreement with employees or a union establishing a labor-management benefit plan, or by purchasing group insurance from a commercial carrier. In New York, the employer may also provide protection through the State Insurance Fund, which is a state-operated competitive carrier. Both Hawaii and New York operate special funds to pay benefits to workers who become disabled while unemployed or whose employers have failed to provide the required protection. In other jurisdictions, benefit payments for the disabled unemployed are made from the regular state-operated funds.

### Eligibility for Benefits

To qualify for benefits, a worker must fulfill certain requirements regarding past earnings or employment and must be disabled as defined in the law. In addition, claimants may be disqualified if they received certain types of income during the period of disability.

### Earnings or Employment Requirements

A claimant must have a specified amount of past employment or earnings to qualify for benefits. However, in most jurisdictions with private plans, the plans either insure workers immediately upon their employment or, in some cases, require a short probationary period of employment, usually from 1 to 3 months. Upon cessation of employment after a specified period, workers generally lose their private plan coverage and must look to a state-created fund for such protection.

### Disability Requirements

The laws generally define disability as inability to perform regular or customary work because of a physical or mental condition. Stricter requirements are imposed for dis-

---

ability during unemployment in New Jersey and New York. All the laws pay full benefits for disability due to pregnancy.

### **Disqualifying Income**

All the laws restrict payment of disability benefits when the claimant is also receiving workers' compensation payments. However, the statutes usually contain some exceptions to this rule (for example, if the workers' compensation is for partial disability or for previously incurred work disabilities).

The laws differ with respect to the treatment of sick leave payments. Rhode Island pays disability benefits in full even though the claimant draws wage continuation payments. New York deducts from the benefits any payment from the employer or from a fund contributed to by the employer, except for benefits paid pursuant to a collective bargaining agreement. In California, New Jersey, and Puerto Rico, benefits plus paid sick leave for any week during disability may not exceed the individual's weekly earnings before their disablement. Railroad workers are not eligible for TDI benefits while they receive sick leave pay.

In all seven TDI systems, as with unemployment insurance, weekly benefit amounts are related to a claimant's previous earnings in covered employment. In general, the benefit amount for a week is intended to replace at least one-half the weekly wage loss for a limited time. All the laws, however, specify minimum and maximum amounts payable for a week. The maximum duration of benefits varies from 26 weeks to 52 weeks. Hawaii, New York, and Puerto Rico provide for benefits of a uniform duration of 26 weeks for all claimants; California and the railroad program have maximum benefit periods of 52 weeks; New Jersey, 26 weeks; and Rhode Island, 30 weeks. Under the railroad program, duration of benefits varies from 26 weeks to 52 weeks, on the basis of the total number of years of employment in the industry. In the other jurisdictions, limited predisability "base period" wages reduce benefit duration. A noncompensable waiting period of a week or 7 consecutive days of disability (4 days for railroad workers) is generally required before the payment of benefits for subsequent weeks.

The statutory provisions described above govern the benefits payable to employees covered by the state-operated plans. In those states where private plans are permitted to participate, those provisions represent standards against which the private plan can be measured (in accordance with provisions in the state law).

### **Financing and Administration**

Under each of the laws, except for that governing the railroad program, employees may be required to contribute to the cost of the temporary disability benefit. In five of the jurisdictions (all but California and Rhode Island), employers are also required to contribute. In general, the government does not contribute.

Four of the seven TDI programs are administered by the same agency that administers unemployment insurance. Under those five programs, the unemployment insurance administrative machinery is used to collect contributions, to maintain wage records, to determine eligibility, and to pay benefits to workers under the state-operated funds. The New York law is administered by the state Workers' Compensation Board, and the Hawaii law is administered separately in the Department of Labor and Industrial Relations.

By way of contrast, claims in New York and Hawaii are filed with and paid by the employer, the insurance carrier, or the union health and welfare fund that is operating the private plan. The state agency limits its functions with respect to employed workers to exercising general supervision over private plans, to setting standards of performance, and to adjudicating disputed claims arising between claimants and carriers. A similar situation applies to claimants under private plans in California, New Jersey, and Puerto Rico.

CONTACT: Daniel L. Hays (202) 693-3011.