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## FOR YOUR INFORMATION

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October 2006

News for School and Municipal Clients

### **Long-Term Disability Insurance Benefits: Income Continuation Insurance or Leave of Absence?**

Long-term disability income insurance (“LTD benefits”) is intended to replace a significant portion of an employee’s earned income through periodic indemnity payments while the employee is disabled from work due to sickness or injury. LTD benefits provide monthly or weekly payments of a specified sum during a period of disability stated in the policy. Most LTD benefit plans require that the employee wait a period of time, known as the “elimination period,” before the plan begins paying LTD benefits to the employee. In order to become eligible and to remain eligible for LTD benefits, all or nearly all LTD benefit plans require the employee to submit medical and other records to certify that the employee is unable to perform his or her job due to a disabling medical condition.

In Wisconsin, the income provided to the disabled employee through a LTD benefit plan is typically a percentage of the employee’s salary at the time at which the disability began. Often LTD plans authorize disabled individuals to continue collecting LTD benefits until the individual recovers from the disability or becomes eligible for Social Security Disability (SSDI) benefits, whichever occurs first. For example, WEA Trust’s LTD benefit plan provides a disabled

employee with 90% of his or her salary for a period of 24 months. If the employee is unable to return to work before that 24 month period expires, the policy provides for payments coordinated with SSDI payments for a period of time depending upon the employee’s age at disability.

LTD benefits are frequently provided to employees of municipal employers through collective bargaining agreements, individual employment contracts and/or personnel policies. Usually, the language providing for LTD benefits states simply that the employer will provide for LTD benefits. Sometimes the language describes the benefit in further detail or identifies the LTD insurance carrier. Rarely will the language confer upon the disabled employee the right to a leave of absence while receiving LTD benefits.

Recently, in *Durand School District*, the West Central Education Association argued that a municipal employer that agrees to provide for LTD benefits implicitly agrees to provide the disabled employee with a leave of absence during the time the disabled employee is receiving LTD benefits. The arbitrator disagreed.

The case arose when a teacher, employed by the district, had exhausted more than four years of paid and unpaid medical leaves of absence; yet, she remained unable to return to work due to her medical condition. The district non-renewed the teacher's employment contract, providing as the reason, her inability to perform her job. At the time of the non-renewal, the teacher was collecting LTD benefits through a plan provided by the district.

The Association asserted that LTD benefits are intended to give an employee an opportunity to recover from his or her illness without worrying about his or her employment status. The Association suggested that the collective bargaining agreement provision obligating the district to provide LTD benefits to the employee also obligated the district to stay any non-renewal and termination actions until after the LTD period expired. In short, the Association argued that by agreeing to provide an LTD plan, the district agreed to offer to each disabled employee a leave of absence to run concurrent with the LTD benefits.

The arbitrator explained that an LTD plan is an indemnity insurance policy designed to replace a portion of the income a covered employee loses due to the employee's inability to work because of a physical or mental impairment. It does not provide a job protection guarantee nor does it provide for a leave of absence.

Furthermore, the granting or denying of a leave of absence is the prerogative of the employer unless otherwise restricted by the agreement or law. Once an employee has exhausted all leaves of absence available under the contract and applicable law but continues to be unable to return to work due to a physical or mental condition, the employer may terminate the employee. In fact, many arbitrators have upheld the employer's management right to terminate an employee under these circumstances.

The *Durand School District* arbitration decision serves as a reminder to municipal employers that LTD is not an employment status, but a type of benefit provided to the employee. Accordingly, when an employee is receiving LTD benefits, it is incumbent upon the employer to designate the employment status of employees receiving LTD benefits. For example, the employee may be on an unpaid medical leave of absence for a definite period of time.

Finally, it is important for employers to remember that various laws govern whether an employee suffering from a medical condition may be terminated. This case does not affect employers' obligations to comply with the Americans with Disabilities Act, the Wisconsin Fair Employment Act, the Wisconsin Worker's Compensation Act, and the state and federal Family and Medical Leave Acts when dealing with an employee suffering from a disabling medical condition.

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