

Unpacking the Complexity of an Employee's Disability Claim



Assessing the impact of a disability claim on the employment contract and other employee benefits

Employee benefits such as a retirement fund, healthcare insurance, medical scheme membership, group life and disability benefits are pre-negotiated and agreed upon as part of the employment process and contracting. Typically, these benefits remain in place until the employee-employer relationship concludes through resignation, dismissal, retrenchment, retirement or death. But what happens if an employee becomes seriously ill or disabled whilst in employment, and lodges a successful disability claim? What is the impact of such a claim on their employment contract, and the rest of their employer-sponsored benefits?

Johan Botha, head of employee benefits business development at Aon South Africa, explains that employee disability claims could generate much uncertainty around the responsibility and liability of the employer in terms of ongoing contributions towards remaining benefits such as retirement, group risk and medical aid. "It's important to understand what the responsibilities of the employer are depending on the type of disability - and this comes down to whether the disability claim is paid as a lump sum disability benefit or an income replacement disability benefit," explains Johan.

Lump Sum Disability Benefit

If an employee's disability claim is approved as a lump sum benefit, their employment would normally be terminated on the date the disability claim is approved because the employee would be deemed to be totally and permanently incapable of generating any form of income in future, typically with a severe and

permanent disability.

This would then also mean that any commitment by the employer towards providing ongoing benefits would also be halted (as they are no longer contractually employed), and the claimant's pension fund benefits or investments would also be paid out to them subject to the applicable tax obligations.

Income Replacement Disability Benefit

If an employee's disability claim is approved as an income replacement disability benefit, this means that the claim would be linked to the individual's ability to perform the duties specifically defined within their employment contract. It could be a condition that prevents your employee from performing their duties for a limited period or it could be as severe as mentioned under lump sum disability.

Such an employee is considered by the employer as an inactive/active employee: inactive due to the individual's inability to perform their duties under their employment contract, but active in that the individual still participates in all the other benefits provided such as their retirement fund, group risk benefits and medical aid. In this instance, the employer remains liable for its part in contributing towards benefits that are in place and this would include the full spectrum of benefits.

"Circling back to the employer's responsibility then in continuing with supporting and contributing towards the benefits for the claimant, it is appreciated and understood that in the case of an income replacement disability claimant, the employer remains liable for its part in contributing towards benefits that are in place. Here, the underlying remuneration structure has a direct impact on what the employer's liability is.

"If the employment contract is structured on a cost-to-company basis where remuneration is defined on an all-inclusive basis and salary and benefits are sub-parts of the whole, then the change in status of an employee from being active to a disability claimant would not change the employer's liability. The disability benefit received monthly would now represent the all-inclusive value and salary plus benefits would be funded from this," Johan explains.

"However, if remuneration is provided on a salary PLUS benefits basis, then it would mean that the employer's commitment to retirement fund contributions, group risk and medical aid premiums towards the employee must still be honoured," he adds.

The solution for employer groups in the ongoing provision of such retirement fund contributions and group risk premiums lies in the introduction of an **employer waiver benefit** as an extension to an income replacement disability benefit policy. "This benefit provides for the insurer to take over the responsibility of making contributions or paying premiums on behalf of the employer. The commitment by the insurer remains in place until the employee either recovers, retires, resigns or passes away, whichever comes first. In essence, the employer insures its commitment to provide these benefits through an extension to the disability policy," says Johan.

What happens to medical aid premium contributions?

Similarly to the commitments regarding retirement and group risk, a disability policy may include a

medical aid premium waiver benefit that is included as an extension to an income replacement disability benefit policy. “However, the insurer’s obligation is typically capped at a maximum period of 24 months and may be further restricted to covering only premiums for a medical scheme associated with that insurer. Once this designated period elapses, the responsibility for paying or subsidising the medical premium reverts back to the employer. This obligation persists until the employee either recovers, retires, resigns, or passes away, whichever occurs first,” Johan emphasises.

“Another circumstance that could relieve the employer of their ongoing commitment to a claimant’s medical scheme benefit, is if the employer lawfully terminates the employee’s employment due to their inability to fulfil the duties outlined in their employment contract. Such termination of employment does not affect the claimant’s participation in, or the insurer’s commitment to, the other benefits,” he adds. Employers must discuss the matter with a labour law specialist to gain clarity and to advise employees so that they have a clear understanding of what would happen in the event of a disability claim. These stipulations need to be defined in the employment contract to avoid any uncertainties should a claim arise.