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Total Income Protection Information Kit

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Your Guide to Total Income Protection

Life with a GPS makes finding your destination simple - make a wrong turn and the GPS reconfigures your route as you continue toward your intended destination.

It's not quite that simple with planning salary continuation plans for employees who are unable to work because of sickness or injury. Often an employer's decision about plan configuration can result in unintended consequences for an employee. Many times that's when an employer realizes their sick leave and short-term disability plans overlap. Other times employers may discover they've left employees with a gap of several weeks between sick leave and a long-term disability plan. Unlike traveling with a GPS, you can't go back and redirect at claim time.

Avoid unintended consequences at claim time. Foster integration of various forms of salary continuation plans. Consider all forms of salary continuation as creating total income protection for employees.

This guide will help you do just that. These materials were created to effectively design a comprehensive income protection package. This booklet includes:

- **Needs Analysis Worksheet** - through a series of questions, employers can express their desired level of income protection for employees and evaluate the effectiveness of their current salary continuation package.
- **FAQs** - uncover why various information is requested for the Needs Analysis Worksheet and read more details on particular topics.
- **Glossary of Terms** - provides a basis for common understanding of essential definitions.
- **Sample Implementation Documents** - review the *Salary Continuation Arrangement* sample plan document, summary plan description and related documents to illustrate how a formal plan could be documented.

In addition to this booklet, we're also providing:

- **Income Protection Navigation Tool** - see common outcomes in the *integration* of various *Salary Continuation Arrangements* and *fully insured* disability plans.

Claim time shouldn't be the moment an employer realizes they designed or purchased the incorrect benefits for employees who are unable to work because of sickness or injury. We hope these materials will set employers down the right path of providing employees total income protection from the beginning.



The purpose of the Assurant Employee Benefits Needs Analysis Tool is to provide employers a tool that will help them review their *Salary Continuation Arrangements* as well as any *fully insured* short-term or long-term disability plans to identify overlaps or gaps in the total-income protection package the employer provides for its employees who are unable to work because of sickness or injury.

COMPANY INFORMATION

Name of company _____

Number of FT employees (30+ hours/wk) _____ PT employees (20-30 hours/wk) _____

Do you have employees in CA, HI, NJ, NY, or RI? Yes No If yes, identify the state(s) and the number of employees in each state. _____

Type of Business Entity: Corporation Professional Corporation Subchapter S Corporation
 Partnership Limited Liability Company Sole Proprietorship Government
 Other; please explain _____

If you are organized as a professional corporation, Subchapter S corporation, a partnership, limited liability company or sole proprietor, are the business owners covered under your *Salary Continuation Arrangements* and/or insured disability plans? Yes No

If yes, please explain for each arrangement or plan. _____

If business owners are covered under your *Salary Continuation Arrangements* and/or *insured disability plans*, does your shareholder, partnership or owner agreement address the disability of an owner? If yes, please explain. _____

SICK LEAVE/VACATION/PAID TIME OFF (PTO)

Do you continue to pay employees who are not working because of sickness or injury? Yes No

If yes, does it include: Sick leave Vacation PTO Other *self-funded Salary Continuation Arrangements*

Insured Short-Term Disability (STD) *Insured Long-Term Disability (LTD)*

How do employees accrue sick leave, vacation or any other type of PTO? Describe for each type of arrangement, including number of days/hours annually. _____

Do you allow employees to carry over sick leave, vacation or PTO year-over-year? If so, is there a maximum amount that can be carried over or accrued? Please describe for each applicable arrangement. _____

Can “banked” sick leave, vacation or PTO be shared among employees? Yes No

Are the arrangements and/or plans marked above documented and distributed to employees? If not, how is the arrangement(s) communicated to employees? _____

SELF-FUNDED SALARY CONTINUATION ARRANGEMENTS

If you provide *self-funded Salary Continuation Arrangements* for your employees, what are the key components of the arrangements? *Qualifying Period* for payments to start _____, maximum duration payable _____% of salary that is continued _____?

If benefits differ by employment class (e.g., key employees are treated differently than other employees) please describe each class and the benefits provided for each class. _____

Are all employees eligible for the same sick leave, vacation, PTO and *self-funded Salary Continuation Arrangements*? Please explain any differences. _____

Is the eligibility for your *self-funded Salary Continuation Arrangement(s)* the same as for your *insured STD and/or LTD plans*? Please explain any differences. _____

SELF-FUNDED SALARY CONTINUATION ARRANGEMENTS (continued from page 7)

Is the duration or amount paid under any of your *self-funded Salary Continuation Arrangements* affected by approval or denial of *insured STD* and/or *LTD* benefits?

Please explain.

If the *Salary Continuation Arrangement* is paid concurrently with your *insured STD* and/or *LTD* benefits, do they coordinate with one another? If so, how?

INSURED DISABILITY PLANS

If you provide *insured STD* and/or *LTD* plans, are all employees eligible for the same benefits or do the benefits differ by employment class? (e.g., are key employees treated differently than other employees?) If yes, please describe each class and the benefits for that class.

If yes to *insured STD*, what are the key components? *Qualifying Period* accident _____ days.
 Qualifying Period sickness _____ days. *Benefit duration* _____ weeks.
 Income replacement _____%. *Maximum benefit* \$ _____.

If yes to *insured LTD*, what are the key components? *Qualifying Period* _____ days.
 Benefit duration _____. *Income replacement* _____. *Maximum benefit* \$ _____.

**Please attach current policy/certificate for insured STD and LTD*

Do you allow or require employees to use accumulated sick leave, vacation or *PTO* before or after *insured STD* and/or *LTD* benefits commence? Please explain.

What types of compensation do you want to be replaced by your *insured disability plans*?

Are you looking to make changes to any component of the income protection you provide? Yes No



Frequently Asked Questions

A Supplement to the Needs Analysis

Company Information

Q1 Why do we ask if the employer has employees in California, Hawaii, New Jersey, New York, or Rhode Island?

A1 These states are known as “cash sickness states.” In these states, employers are required to participate in the *state-mandated disability* program. Employers who have employees working in any of these states must provide the state-mandated benefits to their employees. State-mandated disability benefits are funded by employer and/or employee contributions to the state program or to self-insured or insured plans that provide the state-mandated benefits. Eligibility for these state-mandated benefits is a factor in calculating the premium for *insured disability* plans. See the Cash Sickness States Table on page 22.

Q2 Does Assurant Employee Benefits offer state-approved disability policies in each of the cash sickness states listed in Q&A 1 above that provides the state-mandated benefits?

A2 While Assurant Employee Benefits provides insured short-term disability products that supplement the state-mandated benefits in each of the cash-sickness states, in New Jersey and New York, Assurant Employee Benefits also has state-approved products that provide the state-mandated benefits. The products providing the state-mandated benefits may be available if underwriting requirements are met.

Q3 If a short-term disability policy has been issued in a state other than New York and the employer has New York employees, can the coverage under the short-term disability policy be used to satisfy the New York Disability Benefits law?

A3 No. The Assurant Employee Benefits’ short-term disability policy issued outside of New York does not meet the requirements of the New York Disability Benefits laws. To cover the New York employees, the employer must either purchase insurance coverage from an insurance company authorized to write disability insurance in New York that provides the same benefits as the New York Disability Benefits law or self-insure under a plan that provides the same benefits as the New York Disability laws.

Q4 Why do we need to know the employer’s type of business entity?

A4 Owners of certain types of business entities are not treated as employees under federal tax law. Capital or equity partners of a partnership, more than 2% shareholder of a subchapter S corporation, members of a limited liability company treated as a partnership and sole proprietors (collectively “Owners”) are not considered employees. If the Owners are covered under a *Salary Continuation Arrangement* or an *insured disability plan*, this status may change the character, type, and taxability of any benefits received by the Owners.

Q5 What do we mean by Salary Continuation?

A5 For purposes of the Assurant Employee Benefits' Needs Analysis Tool, the phrase "*Salary Continuation Arrangement*" includes the following types of arrangements which provide payments to employees who are unable to work because of sickness or injury: Sick leave, vacation time, *paid-time off (PTO)*, and/or any type of *self-funded salary continuation plan*. *Self-funded salary continuation plans* include those under which benefits are paid from an employer's general assets as well as those under which the benefits are paid from an employer-established trust created to provide those benefits. For the purpose of the Assurant Employee Benefits' Needs Analysis Tool, fully insured short-term and long-term disability plans are not considered *Salary Continuation Arrangements*.

Q6 Why do we need to know if there is a written Owners' agreement that addresses what happens in the event of the disability of one of the Owners?

A6 These types of Owners' agreements often describe when an Owner will be considered disabled and what payments will be made during periods of disability as well as the duration of those payments. Owners' agreements may also describe the process used to "buy out" a disabled Owner. If Owners are covered under the employer's *Salary Continuation Arrangements* and/or insured plans, the benefits paid may be impacted by benefits provided under the Owners' agreement.

Sick Leave/Vacation Time/Paid Time Off (PTO)

Q7 Why do we need to know how employees accrue and carry over sick leave, vacation time, *PTO* or service requirement/waiting periods for any other type of *Salary Continuation Arrangement* or *fully insured short-term or long-term disability plan*?

A7 We need to know this information in order to identify any overlaps or gaps in benefits as well as to understand how these types of benefits are treated under any *insured short-term or long-term disability plan*. If employees can accumulate a significant amount of sick leave, vacation time or *PTO* that carries over from year-to-year, it could impact the net benefit payable under an *insured short-term or long-term disability plan*. If employees are required to use accumulated sick leave, vacation time and/or *PTO* prior to becoming eligible for an *insured short-term or long-term disability plan*, Assurant Employee Benefits can assist brokers and employers in designing plans that may allow the employer to provide a more complete income protection package to its employees and potentially reduce premium costs.



Q8 What is a leave-sharing bank in which employees can “give” their accumulated sick leave, vacation time or *PTO* to an employer-provided leave-sharing bank?

A8 An employer-provided leave-sharing bank allows employees to contribute accumulated leave to a bank of hours for use by other employees. The *only* Internal Revenue Service approved leave-sharing plans are those that can be used for employees impacted by a major disaster or medical emergencies. A major disaster is one declared by the President of the United States that warrants individual assistance or public assistance from the federal government. A medical emergency is a medical condition of an employee or family member that requires a prolonged absence from work and which will result in substantial loss of income to employee because of exhaustion of all other paid leave. Donating time to the leave-sharing bank does not create taxable income to the donee, but the recipient will be taxed on paid leave as taken from the leave-sharing bank. Like other *Salary Continuation Arrangements*, leave-sharing plans must be in writing and include the operating rules of the plan. Employers should always work with their qualified employee benefit counsel in establishing any leave-sharing plan.

Q9 What does it mean for a *Salary Continuation Arrangement* to be documented?

A9 A documented *Salary Continuation Arrangement* means that an employer’s sick leave, vacation time and *PTO* arrangements are in writing and included in an employee handbook that is distributed to employees. For any other *Salary Continuation Arrangement* that is subject to ERISA, documentation must include a plan document and a summary plan description which has been distributed to eligible employees explaining the eligibility for, the benefits of and the terms of the plan.

Q10 What are the potential consequences if an employer does not have a written *Salary Continuation Arrangement* or plan?

A10 If the employer does not have a written *Salary Continuation Arrangement* or plan that has been communicated to eligible employees, there are several potential consequences. First, the Internal Revenue Service may take the position that the payments made under that Arrangement or plan are not deductible by the employer as ordinary and necessary business expenses. Disallowing the deduction taken in a prior year may result in lost deductions and the assessment of back taxes, penalties and interest to the employer. Second, while employees may have already been taxed on the benefits received, those benefits should not have been treated as wages or sick pay. As such, Social Security and Medicare taxes should not have been withheld on those amounts. Recharacterizing those payments could impact an employee’s quarters of service and qualified wages paid in determining that employee’s Social Security disability and retirement benefits. Third, the employer faces the potential for increased litigation risk if the *Salary Continuation Arrangement* is not documented. Employees who are not provided a benefit, or believe they should have been provided a better benefit based on past practices or some other theory, could use the lack of documentation to their advantage to make a claim for benefits. If the employer does not have a document to follow, the risks are great that management or the owners

continued on page 12

will “play favorites” and these acts could result in litigation. Also, if the *Salary Continuation Arrangement* is subject to *ERISA*, and a plan document is not available and a summary plan description is not provided to eligible employees, certain protections in litigation proceedings for *ERISA* plans will not be available to the employer in any litigation and the employer could face penalties and fines for not providing the documents.

Self-Funded Salary Continuation Arrangements/Insured Disability Plans

Q11 Is the employer required to establish and maintain *Salary Continuation Arrangements* and/or *insured disability plans* for the benefit of its employees?

A11 With the exception of the cash sickness states identified in Q and A 1, there is no legal requirement that an employer establish and maintain *Salary Continuation Arrangements* and/or *fully insured short-term or long-term disability plans* for the benefit of its employees. However, if the employer has any of these Arrangements or plans, they should be in writing and distributed to eligible employees.

Q12 Is an employer required to provide the same eligibility, *qualifying period*, replacement percentage and benefit duration under its *Salary Continuation Arrangements* and/or *insured disability plans* to all employees?

A12 No, but if benefits for the plans are funded through the employer’s *Section 125* plan or through a *Voluntary Employee Beneficiary Association (VEBA)* tax-exempt trust, tax discrimination rules may apply. Federal and state discrimination/human rights laws may also apply. Employers should always consult their own qualified employee benefits advisor when they establish any such Arrangements and/or plans and should consult with qualified counsel to understand the risks of providing different benefits to different groups of employees.

Q13 What are some of the discrimination/human rights laws that may apply to *Salary Continuation Arrangements* and *insured disability plans*?

A13 Among the federal laws that may apply are the *Age Discrimination in Employment Act (ADEA)* which protects employees age 40 or older, the *Americans with Disabilities Act (ADA)*, the *Pregnancy Discrimination Act of 1978* and Title 7 discrimination (sex, race, national origin, etc.). These laws apply to employers who have the statutory threshold number of employees. Most states also have various discrimination/human rights laws that apply to employers with fewer employees than as required by the federal laws.

Q14 Does Assurant Employee Benefits have standard definitions of monthly pay for its insured short-term and long-term disability coverages?

A14 Assurant Employee Benefits has standard definitions of monthly pay for employees and Owners that are included in its short-term and long-term disability policies. See Assurant Employee Benefits' Standard Earnings Definitions on page 23. Any change to the definition of monthly pay must be approved by Assurant Employee Benefits' Underwriting.

Additional Information

Workers' Compensation

Q15 How do *workers' compensation* benefits impact *insured short-term and long-term disability plans*?

A15 *Workers' compensation benefits* are generally offset in determining the amount of an *insured short-term disability* plan, providing 24 hour coverage, and/or *long-term disability* benefits payable. *Insured short-term disability* plans, that are written on a non-occupational basis, (typical) would not offset *workers' compensation* since occupational disabilities would be excluded from this coverage.

ERISA

Q16 Are *Salary Continuation Arrangements* considered *ERISA* plans?

A16 *ERISA* status of any plan or arrangement is not always easy to determine. In general, an *ERISA* plan will exist if, among other things, there is an "administrative scheme" in place to determine eligibility and benefits and if the target employees had a reasonable expectation that a plan was being provided. The rules for determining an *ERISA* plan are complex and are driven by evolving case law, so it is always important to never give an opinion on whether a plan or arrangement is or is not an *ERISA* plan. One thing to note: If a plan or arrangement has been "funded;" that is, assets have been set aside to specifically fund the benefits such as in a dedicated bank account or a trust, the arrangement would typically constitute or be considered an *ERISA* plan. However, if benefits are paid solely from an employer's general assets or a *Grantor Trust* established by the employer, the arrangement or plan may qualify for an exception to *ERISA* coverage as a "payroll practice." Payroll practices are not subject to *ERISA*. An example of a payroll practice is vacation pay paid from employer's general expense account. Employers should always consult their own qualified employee benefit counsel to determine those *Salary Continuance Arrangements* and plans that are subject to *ERISA*.



Tax

Q17 Are benefits received from *Salary Continuation Arrangements* and/or *insured disability plans* taxable?

A17 Vacation pay and *PTO* are treated the same as wages and are subject to income tax and employment tax withholding. Sick-leave pay and *self-insured Salary Continuation Arrangements* must meet the requirements of Section 105 of the Internal Revenue Code in order to be treated as a *Tax-Qualified Sick-Pay Plan* for federal income tax purposes.

Q18 What are the requirements for sick-pay plan or a self-funded *Salary Continuation Arrangement* to be considered a *Tax-Qualified Sick-Pay Plan* for federal income tax purposes?

A18 In order to be treated as a *Tax-Qualified Sick-Pay Plan* (self-funded or insured) under federal tax law, the sick-pay plan must be established by an employer. Under that plan, sick-pay must be available to all employees of employer or classes of employees determined by conditions pertaining to employment. The sick-pay plan must also be: 1) in writing, 2) in existence **before** an employee's disability onset, 3) communicated to all eligible employees, 4) established solely for employees, and 5) the benefits paid under the sick-pay plan cannot be excessive when added to all other compensation paid to the employee by the employer.

Q19 Would payments that an employer makes to an employee only on a discretionary or occasional basis during an employee's time of need be considered payments under a *Tax-Qualified Sick-Pay Plan* for federal income tax purposes?

A19 No. These types of payments are not paid pursuant to a *Tax-Qualified Sick-Pay Plan* as described in Q and A 18. These types of payments generally will not be considered deductible business expenses by the employer and will be taxable to the employee. If the person receiving the discretionary or occasional payment is a shareholder of the employer, this type of payment may be considered a disguised dividend. Dividends paid are not deductible by the employer and are fully taxable to the shareholder.

Q20 What happens if the sick-pay benefits when added to all other compensation paid to an employee is considered excessive?

A20 Amounts of compensation paid in excess of reasonable compensation are not deductible by the employer as ordinary and necessary business expenses. The employee will be taxed on the total taxable compensation paid. If the employee is a shareholder, the excess may be treated as a disguised dividend by the Internal Revenue Service.

Q21 Are disability benefits paid from a *Tax-Qualified Self-Funded Sick-Pay Plan* subject to federal income tax withholding?

A21 Taxable disability benefits received from a *Tax-Qualified Self-Funded Sick-Pay Plan* are subject to mandatory federal income tax withholding and may be subject to state income tax withholding. Taxable disability benefits are also subject to Social Security, Medicare and federal unemployment tax withholding for the first full six calendar months following the onset date of disability.

Q22 Are disability benefits paid under *insured short-term or long-term disability plans* subject to the same tax withholding rules as *self-funded plans*?

A22 Not entirely. Taxable *insured disability benefits* received are subject to the same employment tax withholding rules as *self-funded plans*. However, federal and state income tax withholding is not mandatory but is optional at the request of the employee.

Q23 How are benefits received from *Tax-Qualified Sick-Pay Plans* taxed?

A23 The taxability of benefits received from a *Tax-Qualified Sick-Pay Plan* depends on how the benefits are funded. If the benefits are funded by employer contributions that are not included in employees' taxable wages or with pre-tax contributions under the employer's *Section 125 plan*, any benefits received will be taxable to the employee. If the employer includes the employer's contribution in employees' taxable wages or employees otherwise contribute after-tax dollars, the benefits received are not taxable. See Assurant Employee Benefit's Employer-Sponsored Tax-Advantaged Disability Plan Kit for more information about structuring tax-free disability plans.

Q24 Can an employer deduct the costs of providing *Salary Continuation Arrangements* and/or *insured disability plans*?

A24 Employers can deduct the costs of vacation pay and *PTO* pay so long as those payments when added to all other employer-paid compensation are reasonable. Whether the employer can deduct the costs of sick-pay or a *self-funded Salary Continuation Arrangement* depends upon whether the plan is a *Tax-Qualified Sick-Pay Plan* and whether the benefits received are reasonable when added to all other employer-paid compensation. For *insured disability plans*, employers can deduct the employer-paid portions of premium if the *insured disability plan* is a *Tax-Qualified Sick-Pay Plan* and total compensation when added to all other employer-paid compensation is reasonable.



Accounting

Q25 How does *FASB 112* impact a self-funded disability plan?

A25 Self-funded disability plan benefits paid out of an employer's general assets will be subject to *FASB 112*. *FASB 112* requires the employer to recognize, as a current liability, the potential cost of providing the disability benefits on its balance sheet. This liability must be recognized over the working-lives of eligible employees. Because of *FASB 112*, employers can no longer delay recognition of these liabilities until benefits are actually paid.

Q26 Does *FASB 112* apply to insured plans?

A26 No. If the disability benefits are fully insured, the employer does not have to recognize on its balance sheet any liability for future disability benefits.

Q & A

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You Decide:

Self-Funded vs. Fully Insured

<i>Self-Funded Plans</i>	<i>Fully Insured Plans</i>
Employer responsible for paying benefits at worst possible financial time, especially if a key employee is unable to work	Insurer pays benefits
Employer makes all claim decisions	Insurer makes all claim decisions
Additional expense if third party administrator (TPA) used	Claims administration provided as part of premium paid
Total cost unpredictable	Total cost is known and fixed
Potential Employer tax consequences if not properly set up	Tax consequences more certain Employer-paid Premium is deductible if total compensation is reasonable
Balance sheet liability which may impact Employer's ability to obtain financing	No balance sheet liability beyond premium due

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Glossary of Terms

A

Age Discrimination in Employment Act (ADEA) is a federal law that prohibits discrimination against workers age 40 or over and applies to employers with 20 or more employees. This law prevents employers from establishing employee benefit plans that set age limits and other age related requirements. Similar state laws may also apply.

Americans With Disabilities Act is a federal law that requires certain employers with 15 or more employees to make reasonable accommodations for disabled workers. Similar state laws may apply.

C

Cafeteria (I.R.C. Section 125) Plan is an arrangement that gives employees a choice among a menu of benefits consisting of cash or regular pay and certain nontaxable benefits. A cafeteria plan is a tax-preferred vehicle that permits employees to elect certain benefits on a tax-free basis. Amounts paid with pre-tax dollars are not considered taxable income to the employee.

E

The Employee Retirement Income Security Act of 1974, as amended (ERISA) is a federal law that applies to employer-sponsored employee benefit plans. Employer-sponsored employee benefit plans, which may include *Salary Continuation Arrangements*, are subject to *ERISA's* plan document requirements, reporting and disclosure rules and fiduciary standards.

F

FASB 112 is Statement of Financial Accounting Standards Board No. 112 and is an accounting rule regarding financial statement reporting requirements for *self-funded employee benefit plans* that provide benefits to former or inactive employees. Inactive employees include those who are not currently rendering service to the employer and who have not been terminated.

F

Federal Disability Programs include long-term disability benefits under the federal Old-Age, Survivors and Disability Insurance Program (OASDI). This program is available to almost all individuals whose employment is subject to the federal Social Security Program. Other *federal disability programs* that limit disability benefits to a narrowly defined group of persons include veterans' pensions, Railroad Retirement Act disability benefits and black lung benefits.

First (1st) Day Benefit Plan is a plan under which benefits are payable immediately upon onset of sickness or injury with no *qualifying period*.

Family Medical Leave Act (FMLA) is a federal law that provides certain employees of certain employers with up to 12 work weeks of unpaid, job-protected leave a year and requires group health benefits be maintained during the leave. Military families are entitled to additional protected annual leave. Similar state laws may also apply.

Fully Insured Plan is a plan under which all benefit payments and administrative responsibilities relating to paying those benefits are shifted to an insurance carrier in exchange for premiums paid.

G

Grantor Trust is a trust under which an employer is treated as the grantor under Section 677 of the Internal Revenue Code as amended, and in the event of the employer's insolvency, the trust assets are used to satisfy claims of the employer's general creditors. Income generated on the assets held in the *Grantor Trust* is taxable income to the employer.

I

Integration is a disability contract term under which compensation received from certain sources by an employee when the employee is unable to work because of sickness or injury will reduce the benefit otherwise provided under the disability contract. The reduction is typically on a dollar-for-dollar basis and commonly referred to as an "offset." Offsets in an *insured disability policy* reduce premium expense and help minimize the prospect of overinsurance.

Insured Long-Term Disability Plan (LTD) is a *fully insured plan* with benefits commencing after a *qualifying period* of generally three or six months. The length of the *qualifying period* will ideally be coordinated to match the duration of any *Salary Continuation Arrangement* and/or short-term disability coverage provided by the employer. The maximum duration of long-term disability benefits is generally to age 65 or normal Social Security Retirement age.

I

Insured Short-Term Disability Plan (STD) is a *fully insured plan* with benefits commencing after a *qualifying period* of generally seven or 14 days for illness. The duration is sometimes shorter for disability caused by accident. The length of the *qualifying period* will ideally be coordinated with any *Salary Continuation Arrangement* or other plan provided by the employer. The maximum duration of short-term disability benefits is commonly 13 or 26 weeks. These plans generally do not cover disabilities caused by employment and thus typically do not pay benefits if the employee's disability qualifies for *workers' compensation*. Also referred to as nonoccupational coverage.

P

Paid Time Off (PTO) is a bank of hours provided by employers that employees can use to take intermittent leave from employment without need to itemize the time in more specific terms such as vacation and sick leave. Employees using *PTO* are paid their normal wages for the time taken.

Pregnancy Discrimination Act of 1978 is an amendment to Title VII of the Civil Rights Act of 1964 which requires employers with 15 or more employees to treat disability due to pregnancy or childbirth as they would any other disability. Similar state laws may also apply.

Q

Qualifying Period is the length of time during a single period of disability for which the claimant must be disabled before benefits are payable. Also referred to as the Elimination Period.

S

Salary Continuation Arrangement, for the Assurant Employee Benefits' Total Income Protection Information Kit, includes employer-provided sick leave, vacation time, *paid time off (PTO)* arrangements as well as any other type of non-insured *Salary Continuation Arrangement* or plan provided by the employer to eligible employees who are unable to work because of sickness or injury.

Self-Funded Plans or Arrangements are those for which the employer assumes all financial risks and costs and may or may not outsource claims adjudication. *Self-funded plans or arrangements* can be funded with an employer's general assets, a dedicated bank account, or a trust established by the employer for the purpose of providing the benefits.

S

State Disability Income (ST DBI) Plans are state mandated disability plans funded by payroll taxes payable by employers and/or employees. The states that require these plans are California, Hawaii, New Jersey, New York and Rhode Island. These plans typically provide benefits for 26 or 52 weeks. Also referred to as “cash sickness” benefits. See the Cash Sickness State Content Information Table on page 22.

T

Tax-Qualified Sick-Pay Plan is a plan that can be treated as a sick-pay plan for federal income tax purposes.

Twenty-Four Hour Short-Term Disability Plans cover disabilities caused in the course of employment and can also cover disabilities originating outside of the workplace. Also referred to as occupational coverage.

V

Voluntary Employee Beneficiary Association (VEBA) is a tax-exempt trust established by employers for the purpose of providing certain employee benefits to their employees. Restrictions apply as to who can participate and the benefits provided.

W

Workers' Compensation provides benefits for occupational injuries and diseases resulting in disability that arise out of and are incurred in the course of employment. The laws of every state provide for these benefits and depending on each state's laws, employers must cover *workers' compensation* claims either by private insurance, self-insurance or state-funded insurance.

Resources

Cash Sickness State Contact Information

STATE	URL	ADDRESS	TELEPHONE
California	www.edd.ca.gov	Disability Insurance Branch Employment Development Department P.O. Box 13140 Sacramento, CA 95813-3140 or 5009 Broadway Sacramento, CA 95820-1613	800-480-3287
Hawaii	http://hawaii.gov/labor	State of Hawaii Department of Labor & Industrial Relations Disability Compensation Division P.O. Box 3769 Honolulu, HI 96812-3769	808-586-9188
New Jersey	http://lwd.dol.state.nj.us/ labor/tdi/tdiindex.html or www.nj.gov/labor	Division of Temporary Disability Insurance P.O. Box 387 Trenton, NJ 08625-0387	609-292-7060 (SSN & DOB required to get into system)
New York	www.wcb.state.ny.us	Workers' Compensation Board 100 Broadway - Menands Albany, NY 12241 or 111 Livingston St. Brooklyn, NY 11201	866-750-5157 800-877-1373
Rhode Island	www.dlt.ri.gov/tdi	Temporary Disability Insurance Division Rhode Island Department of Labor & Training 1511 Pontiac Ave. Cranston, RI 02920-4407 Mailing address: P.O. Box 20070 Cranston, RI 02920-0941	401-462-8420

Resources

Assurant Employee Benefits' Standard Earnings Definitions

For W-2 employees of an employer (other than shareholders of a subchapter S corporation, professional corporation, professional association):

Basic pay from the policyholder or a covered associated company. Bonuses, overtime, and other compensation not considered as basic wages or salary are not included. However, commissions received during the prior full calendar year will be included. If you have been eligible to receive commissions for less than a full calendar year, standard pay will include commissions received during the time you were eligible to receive them.

If you are an hourly employee, standard pay will be based on your hourly rate of pay, but not on more than 40 hours per week.

For partners of a partnership or members of a limited liability company treated as a partnership for federal income tax purposes:

Ordinary income as reported on the partner's Schedule K-1 from the partnership/policyholder for the prior calendar year.

For shareholders of a subchapter S corporation, or professional corporation, or professional association which has made a subchapter S election:

Salary plus distributions other than dividends as reported on the shareholder's Schedule K-1 from the subchapter S corporation/policyholder for the prior calendar year.

For shareholders of a professional corporation or professional association which has not made a subchapter S election:

Salary plus draw from the professional corporation/professional association/policyholder for the prior calendar year.

For sole proprietors:

Salary plus draw from the sole proprietorship/policyholder for the prior calendar year.

NOTICE

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The enclosed sample documents reflect a Salary Continuation Arrangement which is self-funded by an employer and for which no insurance coverage is provided. The enclosed sample documents are not intended and should not be deemed to constitute the rendering of compliance, tax or legal advice or the general provision of legal services. Neither Assurant Employee Benefits nor Proskauer Rose LLP assumes any responsibility for the contents of the sample resolution, plan document, or employee announcement form or their legal sufficiency. Employers are advised to consult their qualified counsel to determine whether these sample documents meet applicable legal requirements for their intended use including, without limitation, to determine whether the sample plan document complies with ERISA, as applicable.

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Assurant Employee Benefits is the brand name for insurance products underwritten and issued by Union Security Insurance Company. In New York, insurance products are underwritten and issued by Union Security Life Insurance Company of New York which is licensed in New York and has its principal place of business in Syracuse, NY.

Sample Resolution for Review by Counsel

**Certified Copy of Resolution of the
[Board of Directors, Board of Trustees, or Other Governing Body]**

The undersigned, as the duly elected and acting [Secretary or Authorized Officer] of _____ (referred to as the "Company"), a [corporation, partnership, limited liability company, sole proprietorship, or other specified entity] organized and existing under the laws of the State of _____, does hereby certify that the following is a true and correct copy of a Resolution adopted by the [Directors or other governing body] of the Company through a Resolution with unanimous written consent and that the Resolution remains in full force and effect:

WHEREAS, the Company proposes on _____ to establish the _____ Salary Continuation Plan (the "Plan") for the exclusive benefit of employees of the Company who become participants therein.

NOW, THEREFORE, IT IS HEREBY RESOLVED:

THAT, effective as of _____, the Plan shall be, and hereby is, adopted in the form attached hereto.

FURTHER RESOLVED, that the [Officers or other authorized person] of the Company are authorized and directed to take any other action deemed necessary or helpful to implement the resolutions set forth herein including, without limitation, by signing such instruments as are necessary to implement the foregoing.

IN WITNESS OF the foregoing, the hand and seal of the undersigned is set this ____ day of _____.

[If corporation: CORPORATE SEAL]

Secretary or Authorized Officer

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**Sample Execution Page to Attach to Plan Document and Summary Plan Description for
Review by Counsel**

EXECUTION PAGE

_____, (the "Employer") hereby establishes a Salary Continuation Plan for the benefit of Eligible Employees.

The Plan will be referred to as the _____ (the "Plan"). The Plan is effective as of _____.

The purpose of the Plan is to provide salary continuation in the event of an Eligible Employee's Absence from Work. Benefits are provided in the amounts, for the periods, and to the extent described in the Plan.

[NOTE: INCLUDE ONLY IF ERISA COUNSEL HAS DETERMINED THAT THE PLAN IS SUBJECT TO ERISA:] It is the intention of the Employer that this Plan shall meet the requirements of ERISA, if applicable.

The Employer has caused this instrument to be executed by its duly authorized officers this _____ day of _____, 20____.

(Employer)

By: _____
(Signature)
(Title)

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**ARTICLE ONE
SCHEDULE OF BENEFITS**

Eligible Employees:	[Describe fully and clearly identify eligibility requirements]
Service Requirement(s):	[Describe fully and clearly identify requirements]
Salary Continuation Benefits Amount and Duration:	<p>[Choose Among the Following, as applicable:]</p> <p>The Salary Continuation Benefit for each Participant is _____ % of his/her pay during an Absence from Work. The Salary Continuation Benefit shall continue for _____ weeks (days) of Absence from Work or until the Participant returns to active employment with the Employer (if sooner).</p> <p>[Optional]</p> <p>During the first _____ weeks (days) of Absence from Work, the Salary Continuation Benefit for each Participant is _____ % of his/her Pay.</p> <p>During the next _____ weeks (days) of Absence from Work, the Salary Continuation Benefit for each Participant is _____ % of his/her Pay.</p> <p>During the next _____ weeks (days) of Absence from Work, the Salary Continuation Benefit for each Participant is _____ % of his/her Pay.</p> <p>In all cases the Salary Continuation Benefit shall terminate upon the Participant's return to active employment with the Employer (if sooner than the above).</p>

[NOTE: DO NOT INCLUDE IF UPON ADVICE OF COUNSEL
IT IS DETERMINED ERISA DOES NOT APPLY]

ERISA REQUIRED GENERAL INFORMATION

This section contains general information that you may need to know about the Plan.

1. General Plan Information

The Plan Sponsor has assigned Plan Number [5 ____] to the Plan.

2. Plan Sponsor Information

The Plan Sponsor's name, address, and identification number is:

[_____]

EIN: [_____]

3. Plan Administrator Information

The Plan Administrator's name and telephone number is:

[_____]

The Plan Administrator keeps the records for the Plan and is responsible for the administration of the Plan. The Plan Administrator will also answer any questions you may have about the Plan.

4. Service of Legal Process

The name and address of the Plan's agent for service of legal process is:

[_____]

Attn: [_____], Plan Administrator

5. Type of Plan

The Plan is intended to be an "employee welfare benefit plan" within the meaning of ERISA Section 3(a).

6. Plan Year

The Plan Year is the twelve month period commencing on the first day of _____ each year and ending on the last day of the following month of _____.

7. Funding

Benefits furnished under the Plan are provided from [Choose 1] [the general assets of the Plan Sponsor] or [a trust established by the Plan Sponsor for these purposes]. [Choose 1:] [No employee contributions are made to this Plan.] or [Employees are required to contribute to the Plan. Note: If employees contribute to the Plan, a Trust is required.]

ARTICLE TWO DEFINITIONS

- 2.1 Absence from Work means a Participant is absent from and unable to work due to pregnancy or an Illness or Injury **[Add if required:]**[and requires a Participant to be under the regular care and attendance of a Doctor] that the Plan Sponsor determines constitutes an absence entitling the Participant to Salary Continuation Benefits under this Plan.
- 2.2 Doctor means a person, other than the Participant or a member of his or her family, licensed to practice and acting within the scope of his or her license to practice medicine and perform surgery.
- 2.3 Eligible Employee means an Employee of the Employer who meets the eligibility requirements set forth in Article One (Schedule of Benefits) and Paragraph 3.1 of the Plan.
- 2.4 Employee means a common-law employee of the Employer. An "Employee" does not include any individual classified by the Employer to be an independent contractor, freelancer or similar classification irrespective of whether such individual is later determined to be a "common-law employee" for tax, labor or any other purposes. Such designation shall have a prospective effect only.
- 2.5 Employer means **[insert name of employer sponsoring the Plan]**. [The Employer is also referred to as the "Plan Sponsor" in the Plan.][**Note: DO NOT INCLUDE SECOND SENTENCE IF UPON ADVICE OF COUNSEL IT IS DETERMINED THAT ERISA DOES NOT APPLY**]
- 2.6 ERISA means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations and rulings in effect thereunder from time to time. [**Note: DO NOT INCLUDE IF UPON ADVICE OF COUNSEL IT IS DETERMINED THAT ERISA DOES NOT APPLY**]
- 2.7 Full-time means working at least _____ hours per week. [**Note: Use only if full-time status is an eligibility requirement.**]
- 2.8 Fund or Trust Fund means any Fund or Trust Fund maintained in connection with the Plan. [**Note: Use only if Fund or Trust Fund is used to provide the Salary Continuation Benefit.**]
- 2.9 Illness means a physical or mental sickness that **[insert any limitations]**. [**Add if added to 2.1 above:**] [To qualify as an Illness for purposes of this Plan, a Participant must be under the regular care and attendance of a Doctor.]
- 2.10 Injury means accidental bodily injury which is not **[Choose if apply:] [work related] [self-inflicted] [insert other limitations]**.
- 2.11 Participant means an Eligible Employee of the Employer who participates in the Plan.
- 2.12 Pay means the Participant's **[Choose 1:] [weekly] [bi-weekly] [monthly]** base pay as determined by the Employer and that is in effect as of the day preceding the first day of the Absence from Work.
- 2.13 Plan Administrator shall have the same meaning as provided in ERISA. [**Note: DO NOT INCLUDE IF UPON ADVICE OF COUNSEL IT IS DETERMINED ERISA DOES NOT APPLY**]
- 2.14 Salary Continuation Benefit means the benefit provided to a Participant in accordance with the terms of this Plan.
- 2.15 Trustee means the individual or entity acting as trustee of the Trust Fund. [**Note: Use only if Fund or Trust Fund is used to provide the Salary Continuation Benefit.**]
- 2.16 You or your means a Participant in the Plan.

ARTICLE THREE
ELIGIBILITY AND TERMINATION PROVISIONS

- 3.1 Eligible Employees. To be eligible for participation, an Employee must be:
- (a) Actively employed by the Employer in good standing on the first day of an Absence from Work;
 - (b) **[insert requirement such as full-time or other designated classification if applicable];** and
 - (c) Designated as an Eligible Employee by the Employer in accordance with this Plan.
- 3.2 Termination of Participation. A Participant's participation ends on the first to occur of the date the:
- (a) Plan is terminated by the Employer;
 - (b) Plan is amended to exclude participation in the Plan by a Participant; or
 - (c) Participant's employment with the Employer terminates for any reason.

ARTICLE FOUR
SALARY CONTINUATION BENEFIT

- 4.1 Commencement of Salary Continuation Benefit. A Participant who has an Absence from Work will be eligible to commence receiving a Salary Continuation Benefit in accordance with the terms of this Plan on the [____ day] [**Note: Insert appropriate number**] following the commencement of an Absence from Work.
- 4.2 Amount of Salary Continuation Benefit. The amount of the Salary Continuation Benefit is shown on the Schedule of Benefits set forth in Article I.
- 4.3 Duration of Salary Continuation Benefit. The duration of the Salary Continuation Benefit is shown on the Schedule of Benefits set forth in Article I. However, notwithstanding the duration set forth in Article I, a Participant's Salary Continuation Benefit will terminate early if the Participant:
- (a) Receives remuneration or compensation from another employer or entity for services provided to such employer or other entity by the Participant;
 - (b) Receives Worker's Compensation benefits;
 - (c) Is deemed to no longer have incurred an Absence from Work;
 - (d) Engages in any activity that violates any Employer policy or procedure that the Employer deems or determines constitutes an act that terminates eligibility under this Plan;
 - (e) Engages in any criminal activity; or
 - (f) Returns or is eligible or able to return (in the discretion of the Employer) to active employment with the Employer.
- 4.4 Misrepresentations. If a Participant makes a material misstatement of fact regarding an Absence from Work, all benefits hereunder shall immediately terminate. The Employer may take further disciplinary action including, without limitation, termination of employment. In addition, the Employer may take such actions as may be necessary to recover any benefits provided under the Plan.

ARTICLE FIVE CLAIMS PROCEDURES

- 5.1 **Claims for Benefits.** If a Participant makes a claim for benefits that is denied, he or she may contest that denial by filing a written claim with the Employer within 60 days of first receiving notice that the claim had been denied. The Employer shall have full discretionary authority to review such claim and shall consider all aspects of fact and law in reaching its determination. The Employer shall respond within 60 days of receipt of such claim or may, within such 60 days, notify the Participant that it requires an additional 60 days to consider the matter. If the Employer denies the claim, it shall so state in a letter to the Participant, along with its reasons for the denial. Its decision shall be final and binding unless the Participant, within 60 days of receiving notice of such denial, requests a review by the Plan Administrator. **[NOTE: IF COUNSEL DETERMINES ERISA DOES NOT APPLY, "PLAN ADMINISTRATOR" MAY BE CHANGED TO "EMPLOYER".]** The Plan Administrator shall review the claim and shall have full discretionary authority to consider all aspects of fact and law in reaching its determination. The Participant may supplement the request for review with any relevant information and may request a formal hearing by the Plan Administrator, which request shall not be unreasonably denied. The Plan Administrator shall render a decision within 60 days of receiving the written request for review or may request additional time to consider such request. The decision of the Plan Administrator shall be final and binding and shall be reviewed, if at all, only for an abuse of discretion. It is intended that the preceding claims review process shall be the sole methodology for resolving all disputes arising out of or related to the benefit plan described in this Plan.
- 5.2 **Exhaustion of Administrative Remedies.** No legal action for benefits under the Plan shall be brought unless and until the Participant has completed the claims procedures set forth in Section 5.1.

ARTICLE SIX FUNDING

[Choose 1:]

- [6.1 **Unfunded Benefit.** Benefits available under this Plan are unfunded and available only from the general assets of the Employer. No Participant shall have a claim to such benefits except as specifically provided herein.]
- [6.1 **Trust Fund.** For purposes of providing the benefits described in this Plan, the Employer may establish a Trust Fund from which benefits may be paid. If a Trust Fund is created, all benefits under the Plan shall be provided solely from the Fund. If established, the Trust must (a) be a grantor trust with respect to which the Employer is treated as a grantor for purposes of Section 677 of the United States Internal Revenue Code of 1986, as amended, (b) not cause the benefit provided pursuant to this Plan to be funded for purposes of ERISA, and (c) provide that Trust assets, upon the insolvency of the Employer, will be used to satisfy claims of the Employer's general creditors.]

ARTICLE SEVEN
AMENDMENT AND TERMINATION OF THE PLAN

7.1 Amendment and Termination of the Plan. The Employer reserves the right to alter, amend or terminate this Plan at any time, for any reason, in whole or in part.

ARTICLE EIGHT
MISCELLANEOUS

- 8.1 Gender and Number. Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.
- 8.2 Uniformity. All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner.
- 8.3 No Guaranty of Employment. The Plan does not constitute a contract between the Employer and any Participant or Employee and is not a consideration, or an inducement, for the employment of any Employee by an Employer. Nothing contained in the Plan shall be deemed to give any Employee the right to be retained in the services of an Employer or to interfere with the Employer's right to terminate the employment of an Employee at any time without regard to the effect the termination may have on such Employee's participation in the Plan.
- 8.5 Applicable Law. The validity and effect of the Plan and the rights and obligations of all persons affected thereby, are to be construed and determined in accordance with applicable federal law, and to the extent that federal law is inapplicable, under the laws of the State of _____.
- 8.6 Entire Plan. This document is a complete statement of the Plan and as of the effective date listed on the Execution Page supersedes all prior plans, proposals, representations, promises and inducements, written or oral, relating to its subject matter. The Employer shall not be bound by or liable to any person for any representation, promise or inducement made by any person who is not embodied in this document or in any authorized written amendment to the Plan.

**[NOTE: DO NOT INCLUDE IF UPON ADVICE OF COUNSEL
IT IS DETERMINED ERISA DOES NOT APPLY]**

STATEMENT OF ERISA RIGHTS

As a Participant in this Plan, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations and rulings in effect thereunder from time to time. ERISA provides that all plan participants shall be entitled to:

- (i) Examine, without charge at the Plan Administrator's office and at other specified locations such as worksites and union halls, all documents governing the plan and, if required, a copy of the latest annual report filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Pension and Welfare Benefit Administration.
- (ii) Obtain, upon written request to the Plan Administrator, copies of all documents governing the Plan and, if required, copies of the latest annual report and the updated summary plan description. The Administrator may make a reasonable charge for the copies.
- (iii) Receive a summary of the Plan's annual financial report. The Plan Administrator is required by law to furnish each participant with a copy of this summary annual report.

In addition to creating rights for Plan Participants, ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate our Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of you and other Plan Participants and beneficiaries. No one, including your employer, your union, or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a welfare benefit or exercising your rights under ERISA. If your claim for welfare benefits is denied in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request certain materials from the Plan and do not receive them within 30 days, you may file suit in a federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay you up to \$110 a day until you receive the materials unless the materials were not sent because of reasons beyond the control of the Plan Administrator. If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or federal court. If it should happen that Plan fiduciaries misuse the plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a federal court. The court may decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and legal fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous. If you have any questions about your Plan, you should contact the Plan Administrator. If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the Plan Administrator, you should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

Sample Employee Announcement for review by counsel

Employee Announcement

_____ (Employer) is pleased to announce that it has adopted a Salary Continuation Plan under which you may be entitled to continue to receive _____ % of your Pay during a covered Absence from Work due to pregnancy, illness or injury.

The attached description of _____ (Employer's) Salary Continuation Plan provides you with information relating to the eligibility requirements, the benefits provided and the duration of those benefits as well as other important information about the Salary Continuation Plan.

It is important that you review the attached document and keep a copy for your reference.

Should you have any questions about _____ (Employer's) Salary Continuation Plan, please contact _____.

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