

**TOOLBOX****EMPLOYEE BENEFITS**

# Employers affected by an aging boomer population

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A recent report issued by the Centers for Disease Control in late April reveals the distressing news that the number of Americans reporting a disability between 1999 and 2005 rose dramatically. As the baby boomer generation ages, these numbers are only going to increase. And as the recession grinds on, the future doesn't look great for two mutually antagonistic parties: the long term disability insurance companies and those who will depend on their LTD policies in the event that they can no longer work. Combine this with

the relative shakiness of insurance company stocks, and the potential for disaster looms large.

Clearly, the insurance industry is aware of these Malthusian trends. Those who purchase LTD policies for their employees, as well as individuals who seek to protect themselves and their families, need to pay equal attention.

If you are an employer, now would be a good time to take a close look at your disability insurance benefits program and the company that was delighted to sell you the policies. Chances are you've already done so, with an eye to cutting costs. This time, however, take a look in terms of the financial underpinnings of the insurance company. If your

employees need to file a claim, are you confident that the company will be there for them? If there is a problem, will you be liable?

Obtaining unbiased and independent information about disability insurance companies is no easy task. Even well-known companies such as A.M. Best or Standard & Poor's may not have the whole picture. The recent AIG debacle is clear proof of the difficulty in accurately assessing a company's financial health – as well as why it is so important to do so. Does an employer have exposure to its employees where they contract out the disability benefits to an insurance company? The answer may be yes, depending upon circumstances, as more litigation is cen-

tering upon the fiduciary obligations of employers involved with the employee benefits that are provided.

Employees whose disability claims are denied typically have recourse only in federal court to pursue these claims, but they can and often do bring breach of fiduciary claims against not only the insurance company, but against the employer as well. Employers are thus left to defend themselves against claims that largely relate to the insurance company that they contracted with, becoming unwitting participants in the entire controversy.

Business owners and self-employed professionals usually purchase private disability insurance policies. They need to do the same kind of financial checkup. Although calling your insurance agent to ask if the company behind the products it sells is fiscally healthy may not be the most pleasant conversation you have, it is important information to obtain.

Disability insurance companies faced with significant declines in the value of their portfolios and of their own stocks typically raise cash in one of two ways: They

raise their premiums or deny as many claims as possible. Disability insurance is a necessary part of a complete financial security plan, but it is not like any other insurance product. One of the biggest mistakes that policyholders make is thinking that the claims process is similar to health or property insurance claims – lots of paperwork and annoying forms, but basically something that any reasonably intelligent individual can manage. What most policyholders learn – the hard way – is that managing a disability claim even in the best economic atmosphere is an exercise in frustration, and claims are routinely denied, delayed, terminated or otherwise negatively impacted.

We see the end result in our practice – when disability insurance claims go bad – so we know the terrible financial and emotional impact that policyholders suffer when they cannot work because of illness or injury. A disability insurance company that can't pay claims because of its own fiscal poor health is a risk no employee should have to face.

**Justin Frankel represents disability insurance policyholders at Frankel & Newfield, a Garden City law firm.**

## AMERICANS REPORTING DISABILITY

**Number of adults with a disability:** 47.5 million, or 21.8 percent

**Increase in number of adults reporting a disability:** 3.4 million between 1999 and 2005

**Disability prevalence doubled for each successive age group:**

11 percent for ages 18-44  
23.9 percent for ages 45-64  
51.8 percent for ages 65 or older

**As boomers age, dramatic increases are expected.**



Source: Data collected by the U.S. Census Bureau's Survey of Income and Program Participation; report released by the Centers for Disease Control and Prevention