CHAPTER 8

TEMPORARY DISABILITY INSURANCE

IN GENERAL

The Temporary Disability Insurance (TDI) program is designed to complement a UI program by providing wage replacement to individuals who are unable to work due to illness or injury that occurs not in connection to the work. Although federal law does not provide for a federal-state TDI system, SSA and FUTA both authorize the payment of TDI from a state's unemployment fund. This payment is capped at an amount equal to the amount of employee payments made into the unemployment fund of the state.

State law determines which disabilities and services are covered under TDI, the extent to which employers and employees pay for this coverage, the extent to which employers may pursue private coverage or state coverage, the amount of disability benefits based on an individual's work history, and the eligibility requirements for an individual collecting disability benefits. An individual may collect disability benefits while employed or unemployed, depending on state law.

Currently, six states operate TDI programs: California, Hawaii, New Jersey, New York, Puerto Rico, and Rhode Island. The Hawaii program is administered by the Disability Compensation Division of the Hawaii Department of Labor and Industrial Relations. The New York program is administered by the New York State Workers' Compensation Board. All other programs are administered by the state employment security agency.

Historical Note: Rhode Island passed the first TDI law in 1942, followed by California in 1946, New Jersey in 1948, New York in 1949, Puerto Rico in 1968, and Hawaii in 1969.

DEFINITION OF DISABILITY

In general, state TDI laws define disability in terms of an individual's inability to perform their regular or customary work because of a physical or mental condition. New Jersey law provides individuals must be continuously and totally unable to perform the duties of their job, while New York and Puerto Rico provide individuals must be unable to perform work they are reasonably qualified, by training and experience, to perform.

Under all participating state laws, medical certification of disability is required from the claimant's attending doctor, with minor differences in the types of medical personnel permitted to certify. For example, in California, Hawaii, and New York an authorized religious practitioner may certify disability. All participating states' laws give the agency authority to require claimants, without cost to themselves, to submit to examination by a designated licensed physician.

EXCLUSION FROM DISABILITY PAYMENTS—A disability caused by willful, intentional, or self-inflicted injury is excluded from TDI coverage in Hawaii, New Jersey, New York, and Puerto Rico. A disability resulting from participation in an illegal act is specifically excluded from TDI coverage in California, Hawaii, New Jersey, New York, and Puerto Rico. New York also excludes disabilities resulting from an act of war after June 30, 1950. California and Puerto Rico prohibit payments for any period of confinement (because of a criminal violation) in an institution or treatment center as a substance abuser or sexual psychopath. In Puerto Rico, benefits are not payable for disability in cases caused by or stemming from abortion.

TEMPORARY DISABILITY INSURANCE

UNINTERRUPTED PERIOD OF DISABILITY—There are times when an individual will experience more than one occurrence of disability due to the same, or a related, cause or condition. State law determines when a cause can be considered to result in a separate disability period.

TABLE 8-1: CONSECUTIVE PERIODS OF DISABILITY	
CA	Consecutive disability periods due to same or related cause and separated by not more than 14 days
HI	Consecutive periods of disability due to same or related cause and not separated by an interval of more than 2 weeks
NJ	Consecutive periods of disability due to same or related cause and separated by not more than 14 days if individual earned wages from their last employer during the 14-day period
NY	Consecutive disability periods caused by same or related injury or sickness if separated by less than 3 months
PR	Consecutive disability periods caused by same or related illness or injury if separated by less than 90 days
RI	Not defined

COVERAGE

Whether an employee is covered, meaning potentially eligible to receive payment under TDI laws, varies among the six states. Depending on the state, exemptions and elections of coverage are allowed.

TABLE 8-2: COVERAGE PROVISIONS	
CA	Employers of one or more workers and $100 in quarterly payroll, agricultural employees, certain domestic workers who are paid $1,000 or more, and employees of nonprofit hospitals
HI	Employers of one or more workers
NJ	Employers who paid $1,000 in any year
NY	Employers of one or more workers on each of at least 30 days and domestic workers who work a minimum of 20 hours and are employed on each of at least 30 days; individuals can elect out on grounds that they are entitled to Old Age and Survivor's Insurance benefits
PR	Employers of one or more workers on any day of current or preceding calendar year
RI	Employers of one or more workers at any time, except that certain individual workers can opt out on religious grounds or if disabled and employed through a "supported employment" program

FINANCING

All six states require employees to pay contributions to finance TDI, while of the six, only four states require employers to pay TDI contributions. In some states employee contributions collected for TDI were at one time deposited into accounts designated for UI. Through legislation, this issue was corrected, and employee contributions are now deposited into the state's disability fund.

TYPE OF FUND—Each participating state has a unique TDI fund construct. Generally, TDI funds can be set up to pay benefits out of a pooled state fund or a private plan. When contributions are paid into a pooled state fund, all benefits are paid from the pooled fund. An example of a pooled state funding construct can be found in Rhode Island.

When benefits are paid from a private plan, payment can occur in a variety of ways. In California, New Jersey, and Puerto Rico, coverage under a private plan (usually with an insurance company) may be substituted for coverage under the state fund if the private plan is approved by the agency as meeting certain requirements of the law. Contributions are then paid into the private plan and benefits are paid by it; generally, one plan for disabilities beginning during employment and one plan for disabilities beginning shortly thereafter. In Puerto

Rico, benefits under a private plan are paid to individuals for periods of disability that begin during unemployment or while employed in noninsured work.

Hawaii and New York are similar to an employer liability law in that they require employers to take positive action to provide disability insurance for their workers, with employees contributing to the cost. In New York, the employer may provide the protection through self-insurance, or through buying an insurance contract from either a private insurance company or the state insurance fund, which is a state-operated competitive carrier originally organized for workers' compensation. Additionally, New York employers may purchase Enriched Disability Benefits Insurance coverage to provide employees a weekly benefit amount that is above the statutory maximum. In Hawaii, employers may provide protection through private plans with an authorized insurance carrier or through approved self-financing. In addition, there is a special state fund for unemployed workers and employees of bankrupt or noncomplying employers.

AMOUNT OF CONTRIBUTIONS—Each participating state has different calculations for determining the contribution rates for employees and employers. The following table shows the amount of TDI contributions required for both employers and employees.

TABLE 8-3: AMOUNT OF CONTRIBUTIONS

State	Employer Contributions (ER)	Employee Contributions (EE)	Taxable Wage Base (TWB)
CA	None; optional; may elect to pay all or part of employee amount	0.1 – 1.5% of TWB[1]	$153,164
HI	At least ½ plan costs, plus additional costs, plus additional costs not charged to employee	Up to ½ plan costs, but not more than 0.5% of avg. weekly wages; with the maximum not to exceed $5.51 weekly.	$1,318.48 weekly
NJ	0.1% - 0.75% of TWB[2]	0.1%-1.1% of TWB[2]	$41,100 (ER) $156,800 (EE)
NY	Balance after employee contributions	0.5% of wages paid (up to 60¢ weekly)	None
PR	0.6% of TWB which is shared by employer and employee[3]		$9,000
RI	None	1.1% of TWB	$84,000

[1] Rate may not decrease from the previous year's rate by more than 1.2%; the 2023 rate is 0.9%.
[2] Percent of TWB of each employee based on experience rating; rate may decrease to 0.1% or increase to 1.1% on basis of employer's reserve ratio, how long a covered employer, and the status of the state UI fund as a whole. For 2023, there are no employee contributions as employee contributions are only necessary to ensure the total fund balance meets 125% of the benefits which were paid for periods of family temporary disability leave during the last preceding full fiscal year, plus an amount equal to 100% of the cost of administration of the payment of those benefits during the last preceding full fiscal year, less the amount of net assets remaining in the account as of December 31 of the immediately preceding calendar year.
[3] If the employer elects a private plan, the employee does not have to pay the contribution. The employee contribution may not be greater than .30%.

FINANCING BENEFITS FOR DISABILITY DURING UNEMPLOYMENT—In California, where administration of benefits, via contract with a third-party administrator, is permitted, there is no distinction between the amount of benefits payable to individuals who are employed and unemployed, but the latter are charged to a special account in the state fund depending on whether the workers were covered by the state plan or a private plan when employed. Each voluntary plan pays 14 percent of the amount due annually for contributions into the state fund to finance benefits to persons who are either unemployed or working in noncovered employment at the time their period of disability begins.

Hawaii levied a temporary contribution rate of 0.2 percent on the taxable wages of subject employers from July to December 1969 to establish the Special Disability Fund from which benefits are paid during unemployment. Additional amounts are assessed against insurance carriers and self-insured employers as needed. Hawaii now operates the TDI Special Fund to provide payment for individuals who are unemployed and individuals whose employers have failed to provide TDI coverage or who have gone bankrupt.

TEMPORARY DISABILITY INSURANCE

The New Jersey program for disability during unemployment is financed by contributions from both employees and employers. Employee contributions are a percentage of an earnings threshold, known as the wage cap, and is set annually, on January 1 of each year, based on the average weekly wage statewide. The employer contributions vary from 0.10 percent to 0.75 percent of the wage cap.

New York levied a temporary contribution from January 1 to July 1, 1950, of 0.1 percent on the first $60 in weekly wages by both employers and employees (*i.e.*, not more than 60 cents a week each) to establish the fund from which benefits were first paid for disability during unemployment. This fund has been maintained at $12 million (by statute) using interest earned by the fund, by certain fines and penalties, and, when necessary, by an assessment against all carriers including the state fund.

In Puerto Rico, private plans must finance some or all of the disability benefits payable to workers for periods of disability that begin during unemployment or employment in uninsured work.

In Rhode Island, all benefits are paid from the state fund with no distinction between disabilities beginning during employment and those beginning during unemployment.

ADMINISTRATIVE COSTS—Federal law does not allow the amount of employee payments withdrawn from the unemployment trust fund to be used for administrative costs. Administrative costs under five programs are paid from the employer and employee contributions; in Hawaii, such costs are paid from general revenue. In New Jersey, 0.01 percent of taxable wages is credited from the state disability fund to the administration account. In California and Puerto Rico, necessary administrative expenses, as determined by the State Director of Finance (California) or the Secretary of Labor (Puerto Rico), are withdrawn from the disability fund and each private plan is assessed a share of the total amount expended for added administrative work arising out of the voluntary plans.

New Jersey employers covered by the state fund pay an extra assessment for the costs of maintaining separate accounts for experience-rating purposes. Employers with private plans are assessed the additional administrative costs attributable to private plans in proportion to covered wages, with a maximum annual assessment of 0.5 percent of wages. Included in this assessment is a prorated share of the administrative costs of the system for the unemployed.

In New York, the state insurance fund is limited to 25 percent of contributions for administrative expenses. The administrative costs to the state of the programs for both employed and unemployed workers, not including the expenses of the state fund as a carrier, are assessed against all carriers, including the state fund, in proportion to covered wages, with no limit.

BENEFIT PROVISIONS

The TDI benefit provisions are shown in the tables below. In all participating states, eligibility for benefits depends on proof of disability and continuation of such disability. Some states also have special provisions for individuals with specific circumstances (*e.g.*, military service, trade affected, unemployed, etc.).

TABLE 8-4: BENEFIT YEAR AND BASE PERIOD

State	Benefit Formula	Benefit Year	Base Period
CA	Differs from UI	No BY; rights determined with respect to continuous disability period established by valid claim	First 4 of last 5 CQs preceding disability
HI	Differs from UI	1-year period beginning with 1st week of disability for which valid claim is filed	None; see tables in TDI statute for period used for qualifying employment and WBA

TABLE 8-4: BENEFIT YEAR AND BASE PERIOD			
State	Benefit Formula	Benefit Year	Base Period
NJ	Differs from UI	No BY but statutory minimum and maximum benefits in any 12-month period	52 calendar weeks immediately preceding calendar week in which disability period began
NY	Differs from UI	No BY; maximum benefits limited in terms of any 52 consecutive weeks	No BP as used in UI; see tables in TDI statute for period used for qualifying employment and WBA
PR	Same as UI for agricultural and nonagricultural workers up to $64 WBA	No BY; maximum benefit limited in terms of any 52 consecutive weeks	First 4 of last 5 completed CQs immediately preceding 1st day of disability
RI	Similar to UI	Begins Sunday of calendar week in which the individual first became unemployed due to illness and has filed a valid claim for TDI (52 consecutive weeks; 53 if overlaps with any quarter of BP of prior claim)	First 4 of last 5 completed CQs immediately preceding BY or last 4 completed quarters if the individual fails to meet qualifying wage requirement

The following table describes the minimum qualifying wage amounts, or employment, required for TDI coverage.

TABLE 8-5: QUALIFYING WAGES OR EMPLOYMENT	
CA	A minimum of $300 in base period
HI	14 weeks of employment with at least 20 hours in each week and wages of $400 during the 4 completed CQs-immediately preceding 1st day of disability
NJ	20 weeks of employment at 20 times the minimum wage during the base year or 1,000 times the minimum wage during the base year; or $13,000 in earnings for individuals who have not established 20 base weeks
NY	Employed at least 30 days
PR	A minimum of $150 in base period
RI	(1) 200 x minimum hourly wage in 1 quarter and BPW of 1½ x HQ, and BPW must be at least 400 x minimum hourly wage, or (2) paid total BPW of at least 3 x total minimum amount required in (1) above

The following table describes the weekly benefit amounts and length of time benefits may be collected under each state's TDI program.

TABLE 8-6: WEEKLY BENEFIT AMOUNT AND DURATION OF BENEFITS		
State	Weekly Benefit Amount	Duration
CA	$50 - $1,620	Up to 52 weeks
HI	$1 - $765	Up to 26 weeks in BY
NJ	$10 - 1,025	Up to 26 weeks or period necessary for benefits to equal ⅓ of total wages in base year
NY	$20 - $170	Uniform potential 26 weeks in any 52 consecutive weeks or for any single period of disability
PR	Non-agricultural workers: $12 - $113 Agricultural workers: $12 - $55	Uniform potential 26 weeks in any 52 consecutive weeks
RI	$121-$1,007, plus dependents' allowance (equal to the greater of $10 or 7% of the individual's benefit rate for each dependent, up to 5 dependents)	1 - 30 weeks

TEMPORARY DISABILITY INSURANCE

Similar to some state UI laws, most state TDI laws require individuals to wait a period of time before TDI benefits may be collected. In some states, this period can retroactively change depending on the length of the period of disability or depending on the type of work being done. The table below explains how states treat the waiting period.

TABLE 8-7: WAITING PERIOD	
CA	7 consecutive days of disability at the beginning of each period of disability
HI	7 consecutive days of disability at the beginning of each period of disability
NJ	7 consecutive days of disability commencing with the Sunday of the week in which the claim is filed; becomes compensable after benefits have been paid for all or some part of each of the 3 weeks immediately following the waiting week
NY	7 consecutive days of disability at the beginning of each period of disability
PR	7 consecutive days of disability at the beginning of each period of disability; no waiting period for agricultural workers who become disabled during continuous period of unemployment; no waiting period required for regular benefits for hospitalized individual or for individual unemployed and disabled for more than 14 days
RI	Waiting week eliminated 7/1/2012; as a condition of eligibility, an individual must have been unemployed due to nonjob-related injury or sickness for at least 7 consecutive days

PARTIAL WEEKS OF DISABILITY—In all participating states weeks of partial disability are treated different from weeks of partial unemployment. Partial weeks of disability are traditionally payable when an individual resumes work on a less than full time basis, and consequently receives some wages during a week in which the disability still exist. The table below explains how partial weeks of disability are compensated across the participating states.

TABLE 8-8: PARTIAL WEEKS OF DISABILITY	
CA	Benefits payable for less than 1 week will be paid in increments of 1/7 WBA
HI	Benefits payable for less than 1 week will be paid in increments of 1/5 WBA
NJ	Benefits payable for less than 1 week will be paid in increments of 1/7 WBA payment for part week rounded to next higher dollar
NY	Benefits payable for less than 1 week will be paid in increments of the WBA divided by the number of the employee's normal workdays per week (daily benefits computed on basis of normal number of workdays per week
PR	Benefits payable for less than 1 week will be paid in increments of 1/7 WBA rounded to higher dollar
RI	For each day of qualifying unemployment, worker receives benefits at the rate of 1/5 WBA for each workday up to 4/5 WBA rounded to next higher dollar

BENEFITS UNDER PRIVATE PLANS—California requires that private plans provide benefit rights greater than those under the state plan in all respects. In Hawaii, New Jersey, and Puerto Rico, private plan benefits must be at least as favorable to workers as those under the state plans. Hawaii permits deviations from statutory benefits if the benefits provided under the private plan are actuarially equal or better.

In New York, benefits in the formula in Table 8-6, Weekly Benefit Amounts and Duration of Benefits, may be reduced if the plan of insurance includes a shorter waiting period or other benefits, such as hospitalization benefits; weekly benefits may be less than 50 percent of wages if maximum duration is more than 26 weeks. Employees may be required to contribute more than 0.5 percent of wages paid if additional benefits warrant the extra cost.

SURVIVORS' BENEFITS—In some states, following the death of an insured worker, the insured's legal survivor is entitled to receive benefits. In California and New Jersey, if a claim for disability benefits was not filed by an otherwise eligible individual prior to their death, a claim may be filed by another person who legally would be entitled to such benefits.

Puerto Rico provides a lump sum death benefit of $4,000 to dependents of workers. Death benefits are payable upon the sudden death of an insured worker from injuries or an accident compensable under the law, or death resulting within 52 weeks of an onset of a disability because of sickness or injury. However, benefits may not be paid for death or injury caused by certain types of automobile accidents.

DISQUALIFICATION AND NONMONETARY ELIGIBILITY PROVISIONS

ELIGIBILITY REQUIREMENTS IN ADDITION TO WAGES—Under all participating state TDI programs, individuals must be in a non-work status because of disability. They may be declared ineligible for disability benefits if they withdrew from the labor force for reasons other than disability.

A California claimant who has been disqualified from UI is presumed to be disqualified from disability benefits for such weeks unless the claimant establishes that they are suffering a bona fide illness or injury, and the agency finds that there is good cause for paying such benefits. However, a claimant who is otherwise eligible for disability benefits is not disqualified from receiving those benefits because of a labor dispute disqualification for UI.

A Hawaii claimant must be in current employment status, meaning that they were performing regular service prior to the onset of the disability and would have continued in employment but for the disability. In addition, a claimant is ineligible for benefits during any period in which the claimant would be disqualified for UI because of a labor dispute or during any period in which the claimant performed work for remuneration, was unemployed because of an intentional self-inflicted injury, or attempted to obtain benefits through fraud, or failed to file a claim for disability benefits within 90 days after the commencement of the period of disability or as soon as was reasonably possible.

In New Jersey, a covered governmental employee must exhaust all sick leave before becoming eligible for disability benefits. New Jersey claimants for disability benefits beginning during employment also are ineligible if they would be disqualified for UI benefits because of a labor dispute, unless the disability began before the disqualification. New Jersey claimants must be under the care of a licensed physician or other qualifying medical personnel.

In Hawaii and New Jersey, claimants for disability during unemployment must meet all the requirements for UI except they may not be able to work; they are not eligible for disability benefits for any week of disability more than 26 weeks after the last week of covered employment.

In New York, although the TDI benefit formula is not related to the UI benefit formula, individuals who are or would be disqualified from UI benefits are disqualified from disability benefits.

RELATIONSHIP TO WORKERS' COMPENSATION—The TDI program is not intended to replace workers' compensation, although the relationship between the two programs differs among states.

In California, a claimant who is receiving or is entitled to receive workers' compensation for the same temporary disability is not eligible for disability benefits unless the disability benefit is higher than the weekly workers' compensation payment; in that case, the claimant is entitled to the difference from the disability fund. If the claimant's eligibility for workers' compensation has not been determined, the claimant may receive disability benefits subject to reimbursement from any workers' compensation benefits subsequently awarded for that week. Full benefits are payable for permanent disability regardless of cash payments under a workers' compensation law.

Hawaii does not permit duplication of benefits unless a claimant is receiving workers' compensation payments for permanent partial or total disability previously incurred. However, if a claimant's right to benefits under workers' compensation is disputed, the individual may receive disability benefits until their disability becomes compensable under workers' compensation. If a claimant subsequently receives workers' compensation payments, these payments are proportionately allocated among employers or insurers according to the amount of disability benefits paid by them.

In New Jersey, both the definition of disability and the eligibility conditions exclude disability benefits for any week for which workers' compensation, other than for permanent total or partial disability, is payable. However, if a claim for workers' compensation is contested, temporary disability benefits may be paid to an otherwise eligible claimant until the claimant's disability becomes compensable under the workers' compensation law.

The New York law defines disability to exclude illnesses or accidents arising out of or in the course of employment, whether or not worker's compensation is payable. It further provides that no benefits are payable for any period with respect to which workers' compensation, other than permanent partial benefits for a prior disability, is paid.

In Puerto Rico and Rhode Island, a claimant may receive disability benefits if there is doubt as to the individual's eligibility for workers' compensation. If the claimant later receives benefits from a workers' compensation program, the claimant is liable for repayment of the disability benefits. Puerto Rico limits the maximum weekly benefit amount payable while a claim for workers' compensation is under dispute to $65. However, if the claimant is later found eligible for disability benefits, the claim will be recomputed. In addition, in Puerto Rico, no disqualification is applicable if the worker's compensation payment was made on account of partial permanent disability occurring prior to the disability for which disability benefits are claimed.

EFFECT OF OTHER TYPES OF INCOME ON ELIGIBILITY—Other types of income that affect TDI eligibility include wages, employer pensions, old-age benefits, and survivors' insurance benefits.

California provides that the daily combination of such wages and disability benefits shall not exceed one-seventh of the claimant's weekly wage, excluding overtime pay, immediately prior to the disability. Also in California, individuals are entitled to receive disability benefits reduced by the amount of a permanent disability indemnity if the permanent disability indemnity is less than the amount the individual would otherwise receive as disability benefits under the law.

New Jersey applies the UI formula for partial benefits to claimants receiving disability benefits during unemployment. Also, a claimant's disability benefit is reduced by the amount of any pension plan to which the claimant's most recent employer has contributed. In Puerto Rico, any claimant receiving any pension payments or retirement income is denied benefits unless, after receipt of the pension or retirement payment, the claimant has performed services in insured work for at least 15 weeks immediately preceding the disability.

In New York, any payment from the employer, or fund that the employer contributes to, will result in a reduction of benefits, except supplementary benefits paid pursuant to a collective bargaining agreement.

In Puerto Rico, a pregnant worker may not be paid during any period in which that individual is receiving benefits under the Act to Protect Working Mothers unless such benefits are less than the weekly disability benefit amount, in which case that individual may receive the difference.

In Rhode Island, claimants collecting TDI who return to work on a partial basis may receive partial disability benefits. The partial payment allows a person to earn and keep the first 20 percent of the weekly benefit amount without any penalty. After earning more than 20 percent of the weekly benefit amount, the benefits are reduced dollar for dollar. All earnings are taken into consideration in offsetting the partial benefits.

ADMINISTRATION

The systems of disability insurance are coordinated with UI systems, as the same wage record procedures are used for both programs. Claims procedures, however, necessarily differ for UI and TDI claimants. The first claim or notice of disability is normally filed after the end of the first week of disability. In both New Jersey and Rhode Island, all claims are sent to a central office. In California, both the initial and continued claims are sent directly to a field office. In New York, employed workers file claims with their employers, and unemployed workers file claims with the workers' compensation board.

After filing a claim, TDI claimants receive determinations concerning monetary and nonmonetary eligibility, like UI claimants. Individuals who are dissatisfied with determinations on their disability claims have the right to appeal under all participating state laws. In states where disability and UI benefits are coordinated, the appeal is to the UI appeal bodies; in New York, to the workers' compensation board; and in Hawaii, to the referee for temporary disability benefits. In the states with private plans, a private-plan claimant may also appeal to the state's unemployment appeal tribunal.