

Your Counsel: Clients who are ill or injured and employed



By **STEVEN V. MODICA**

Lawyers tend to limit their practice to a few areas. Nonetheless, people come to us with myriad problems — many of which fall outside our expertise.

Through this column, we provide practical information to help you assist those who have employment, disability benefit, workers' compensation, and related issues. This information also helps lawyers understand their rights and responsibilities as employers.



By **ANNE MODICA**

Clients who are ill or injured and employed may collect benefits and may be protected by civil rights laws. Here are several options to consider:

1. If the illness or injury is unrelated to work — and your client does not work for a public employer — she should collect short-term disability (“STD”) mandated by NY law.
 - She can collect STD in the amount of 50% of her weekly wage (up to a maximum of \$170) for up to 26 weeks.
 - If your client gets health insurance through her employer and pays part of the cost, she must do so while collecting STD.
 - Urge your client to apply by completing the state-mandated DB-450 form.
2. Some employers provide enhanced STD.
 - Enhanced STD typically protects all

or some (usually 50-70%) of your client's weekly wage with no cap on the benefit amount.

- It usually pays during the first 26 weeks that an employee is unable to work due to disability.
 - Urge your client to contact their human resources or benefits representative and apply.
3. If the illness or injury is related to work — and your client does not work for the federal government — she should collect NY Workers' Compensation (“WC”).
 - Your client can collect a weekly lost income benefit of 66-2/3% of her average weekly wage (but not more than a maximum statutory amount) for a period that depends on the severity of her impairment (among other things).
 - WC pays 100% of medical costs to treat the illness or injury.

Your client must notify her employer within 30 days and must file a WC case within two years. Your client should complete and file form C-3.

4. The Family & Medical Leave Act (“FMLA”) protects your client if: (a) her employer has 50 or more employees; (b) she has worked for at least one year; and (c) she has worked at least 1,250 hours in the previous year.
 - If protected, your client is entitled to return to her prior job or a comparable job if she can do so within 12 weeks.
 - FMLA leave is unpaid, however, your client can collect STD or other paid time off. If she gets health insurance through her employer and pays any part of the cost, she must do so while on FMLA.
 - The employer typically provides the form so that the doctor can certify that your client has a serious health

condition. If not, secure the WH-380-E form online.

5. If your client expects to be unable to work for more than 26 weeks, explore whether her employer provides long-term disability (“LTD”) benefits.
 - LTD protects some (usually 40-70%) of your client's monthly wage up to a maximum benefit.
 - Employers are not required to provide LTD. Eligibility depends on the quality of the policy; one critical issue is how it defines “disability.”
 - Request and read the LTD policy. Urge your client to apply.
6. If your client expects to be unable to work for one year or more, explore Social Security Disability (“SSD”) benefits.
 - To be eligible for SSD, your client must have worked long enough and paid enough in Social Security taxes. She must also be unable to perform her past work or any other work given her age, education, work history, and impairments.
 - The benefit amount depends on how long your client worked and how much she and her employer paid in Social Security taxes. If approved for SSD, your client can participate in Medicare two years from when she starts collecting benefits.
 - The SSD process is very slow and therefore your client should not wait an entire year to apply. There is no cost to apply for benefits. Moreover, an individual who hires an attorney will not have to pay that attorney unless she is awarded a lump sum of back benefits.
7. If your client expects to be unable to work for one year or more, explore whether she can collect a Disability Pension.
 - Many unions, particularly construc-

tion unions, allow members to collect their pensions early if they are unable to work in the trade due to disability.

- Most public employees — including those who work for the state or a county, city, or town — can collect their pension early if they are permanently incapacitated from performing their job.
 - Your client should contact her union representative and explore her rights under the public employee pension system.
8. Your client may have purchased disability insurance individually or may be entitled to disability benefits from other sources.
- Some purchase their own disability insurance. If so, read the policy and urge them to apply.
 - Some unions offer disability insur-

ance for their members. Your client should inquire and, if available, apply.

- Consider other sources. For example, your client's obligation to make student loan, mortgage, credit card, or car payments may be waived or deferred due to her disability. Your client should contact the appropriate people and find out.
9. Depending on the size of your client's employer, she may be entitled to paid leave under New York's Paid Sick Leave Law.
- Employers with four or fewer employees and a net income greater than \$1 million and employers with 5-99 employees must provide up to 40 hours of paid sick leave annually.
 - Employers with 100 or more employees must provide up to 56 hours of paid sick leave annually.

- Employees can use this leave for a variety of reasons, including needs related to their or a family member's mental or physical illness or needs related to domestic violence and similar offenses.

If you have questions about the items discussed above or any other disability benefit or employment-related issue, please contact us.

Steven V. Modica, Esq. is the principal attorney and owner of the Modica Law Firm, a small firm that has served the Rochester community since 1995. His daughter and associate, Anne F. Modica, Esq., joined the firm in January 2020. If you enjoyed this article, please "like" Modica Law Firm on Facebook to stay current on all that we're sharing. If you have questions about this article or want to suggest a future topic, contact Steve or Anne Modica at 585-368-1111 or Firm@ModicaLawFirm.com.