



AmTrust North America
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The DBL Book

Guide to the New York Disability Benefits Law (DBL)



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Who must provide DBL coverage?

With few exceptions, a New York State employer of one or more persons on each of 30 days in any calendar year becomes a “covered employer” four weeks after the 30th day of such employment. This includes employers of one or more personal or domestic employees who work at least 40 hours a week in their private home.

Sole proprietors and partnerships whose only employee is a spouse are covered employers and required to provide coverage - unless they elect to exclude the spouse. In this case, they must notify the Workers’ Compensation Board by filing form [DB-212.5](#).

Corporations with one or two corporate officers who are the sole shareholders and have no other employees are not required to have coverage. However, they become covered employers when they hire an employee and at that time must obtain coverage.

How does an employer obtain coverage?

DBL insurance may be provided through private carrier, self-insured plan or the State Insurance Fund. Private carriers do cover the majority of employers.

To obtain coverage, an employer should contact their insurance broker or agent within 10 days of becoming a covered employer and request a DBL policy. An employer who chooses to self-insure must first get approval from the state of New York’s Workers’ Compensation Board.

What happens if an employer does not have coverage?

Any employer, who fails to obtain coverage for disability benefits within 10 days after becoming a covered employer, will be in non-compliance of the Disability Benefits Law and subject to a fine from the Workers’ Compensation Board.

The fine imposed is typically \$500 plus one-half of one percent of the employer’s weekly payroll for the period of non-compliance.

If an employee becomes disabled while working for an employer who does not have insurance, the employee is entitled to benefits from the Special Fund for Disability Benefits. The Special Fund will in turn request reimbursement of benefits paid in addition to any fine imposed on the employer.



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Who pays the DBL coverage premiums?

DBL premiums may be paid entirely by the employer, or jointly by the employer and the employee. However, the maximum employee contribution is one-half of one percent of the first \$120 of weekly wages, up to a maximum of \$0.60 per week.

The maximum contribution for an employee per pay period shall not exceed the following:

<u>PAY PERIOD</u>	<u>MAXIMUM EMPLOYEE CONTRIBUTION</u>
Daily	\$0.14
Weekly	\$0.60
Biweekly	\$1.20
Semi-monthly	\$1.30
Monthly	\$2.60

If an employee works for two or more employers, he may request each employer to adjust the contributions in proportion to his earnings so the total contribution does not exceed \$0.60 per week.

What benefits are paid under DBL?

DBL is strictly a plan of partial salary replacement and does not reimburse medical expenses.

A disabled employee will receive 50 percent of his average weekly wage – based on the last eight weeks earnings – up to a weekly maximum of \$170. Benefits are paid beginning with the eighth consecutive day of disability and continue for a maximum of 26 weeks during any consecutive 52-week period. The minimum weekly benefit is \$20 or if less than \$20, the average weekly wage.

If an employee works for two or more employers, he is subject to the minimum and maximum DBL benefit. The benefit paid by each insurer is in proportion to the wages from each employer.

Who is eligible for DBL benefits?

Most wage earners employed in the state of New York are eligible if they are working for a covered employer; however, please take note of the following.

- Full-time employees who are new to the labor force are eligible after completing four consecutive weeks of work.



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- Part-time employees who are new to the labor force are eligible on the 25th day of regular employment for one employer. Under the law, part-time is defined as other than the employer's normal work week. Any part of a day worked is considered a day of employment.
- Employees who have been receiving unemployment benefits are immediately eligible once they begin work provided that prior employment had been covered employment.
- New employees who have previously established DBL eligibility with another employer are eligible as soon as they begin work, as long as the gap in employment is not more than four weeks.
- Personal or domestic employees working at least 40 hours a week in a private home for the same employer.
- The spouse working for a sole proprietor or partnership – unless excluded by the employer.

Working college students are eligible for DBL benefits if they meet any of the requirements above.

Employees working on a 10-month contract (i.e., covered teachers) remain eligible up to four weeks after the last day worked. Employees working on a 12-month contract remain eligible after the fourth week as long as they return to work when the new contract begins.

A corporate officer is an employee and will be covered as such, unless he is a nominal officer and receives no wages or remuneration for his services.

Who is not eligible for benefits?

Certain classes of employees are not eligible for coverage, or are excluded from the definition of employee, this include the following:

- Minor children of an employer
- Government, railroad or maritime workers



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- Ministers, priests, rabbis, members of a religious order, sextons or Christian Science readers
- Persons engaged in a professional or teaching capacity in or for a non-profit religious, charitable or educational institution; persons receiving rehabilitative services in a sheltered workshop operated by such institutions under a certificate issued by the U.S. Department of Labor
- Persons receiving aid from religious, charitable or educational institutions, performing work in return for such aid
- Golf caddies
- Farm laborers
- Daytime students in elementary or secondary school working part-time during the school year or during regular vacation periods
- An independent contractor
- Partners and proprietors are not considered employees
- Corporate directors, acting only as such, and not as employees
- Executive officers of any incorporated non-profit, religious, charitable or educational institution--defined as President, Vice President, Secretary or Treasurer

An otherwise eligible employee loses his eligibility for benefits after working 30 days in non-covered employment (i.e., working in non-New York employment or for a municipality or government agency).

An employer may voluntarily elect to provide benefits to most excluded class(es) of employees by completing form [DB-135](#) or [DB-136](#) with the Workers' Compensation Board. Upon approval, the employer should notify its insurance carrier.



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Are employees not working in New York covered by DBL?

In some instances, eligibility is usually based on the state in which the employee works. However, employees working outside the state of New York are covered if some of their service is performed in New York, and any of the following is true:

1. The employee's base of operations is in New York
2. There is no base of operations in any state, but the employee is directed and controlled from New York
3. The employee's residence is in New York and the base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed

What constitutes disability?

An employee must be prevented from performing regular duties due to a non-occupational accident or sickness and for which he has not received wages or remuneration. The employee must be certified disabled from working and under the care of a licensed or certified physician, podiatrist, psychologist, chiropractor, dentist or nurse-midwife.

Disabilities caused by injury as a result of war, committing a crime or self-inflicted injury are not covered under the law.

Does DBL cover disabilities caused by or in connection with a pregnancy?

Yes. Disability related to pregnancy is treated like any other illness. Eligibility for benefits is based on medical certification of total disability, which may occur at any time during pregnancy. An employee on unpaid maternity leave is eligible if she becomes disabled within four weeks after the last day actually worked.

Does DBL cover disabilities resulting from automobile accidents?

Yes. DBL is primary over No Fault automobile insurance. No Fault benefits may be reduced by the amount of disability benefits the claimant is eligible to receive. The DBL claim must be filed within 30 days.

What should an employer do when an employee becomes disabled?

The employer is required to send form [DB-271](#), Statement of Rights - Disability Benefits Law, to his employee after the seventh consecutive day of disability. The Statement of Rights is available from the insurance carrier or the Workers' Compensation Board. The



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employer should also send the employee a DB-450, Notice and Proof of Claim for Disability Benefits.

Does the Family and Medical Leave Act (FMLA) affect DBL benefits?

Yes. If the disability begins more than four weeks after the last day worked, the employee is not eligible to receive DBL benefits. Benefits for these disabilities would be payable by the Special Fund for Disability Benefits.

How does an employee claim disability benefits?

Form DB-450, Notice and Proof of Claim for Disability Benefits, is available from employers, insurance carriers or the Workers' Compensation Board. The claimant must complete and sign PART A - CLAIMANT'S STATEMENT. The attending doctor must certify the claimant is disabled from working and complete and sign 'PART B - HEALTH CARE PROVIDER'S STATEMENT'.

The completed DB-450 should be filed promptly with the insurance carrier.

Is there a time limit for a DBL claim?

Yes. An employee must file a claim within 30 days after becoming disabled. If a claim is filed late, and unless the claimant can demonstrate that it was impossible to file sooner, benefits may not be paid for any period of disability prior to two weeks before the claim was filed. No benefits may be paid at all if the claim was filed later than 26 weeks after the disability began. An exception is a claimant who is a minor or is mentally incompetent and without guardian or committee.

Can a claimant appeal a rejected claim?

Yes. The claimant may appeal the carrier's decision directly to the Workers' Compensation Board within 26 weeks after receiving form DB-451, Notice of Total or Partial Rejection of Claim for Disability Benefits.

The Board will examine the case and if necessary hold a hearing to determine if benefits should be paid.

What happens if a disability occurs while unemployed?

If a worker becomes disabled while eligible for or receiving unemployment insurance benefits, his unemployment insurance benefits will cease and he may claim disability benefits.

If the disability occurs:



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- within the first four weeks after termination of employment, he must file with his former employer's insurance carrier.
- more than four weeks but within 26 weeks after termination, he must file with the Special Fund for disability benefits, which is administered by the Workers' Compensation Board.

What happens if an employee changes jobs?

An employee, who has already attained eligibility and changes jobs from one covered employer to another, is eligible on the first day of the new job, as long as there's less than four weeks separation between jobs or he is receiving unemployment benefits.

However, an employee loses eligibility after four weeks in non-covered employment, (e.g., municipal government, or non-New York employment).

Can an employee receive both DBL and Social Security retirement benefits?

Yes, the fact that an employee is eligible for or receiving retirement benefits under the Social Security Act does not affect the right to Disability Benefits. However, the employee may elect to be exempted from the Disability Benefits Law by filing a waiver with the Workers' Compensation Board. The employee would cease to be eligible for benefits and the employer may no longer deduct a contribution.

Are DBL benefits taxable?

Yes, they are subject to Federal Tax laws. Benefits must be reported as income.

Federal legislation requires third-party payers, such as insurance carriers, to report to employers all "sick pay" paid to their employees. Benefit payments received under a DBL policy are considered "sick pay" and must be reported as income.

See Appendix A for further explanation.



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The AmTrust Advantage

AmTrust North America provides a suite of small business insurance products including: workers' compensation, commercial package, general liability, property, inland marine, employment liability, commercial agriculture, lumber specialty and fine dining.

Our insurance products are uniquely tailored for the small business market. We underwrite programs in a variety of industries.

Why Choose AmTrust?

Flexibility

We have multi-state capability, multi-tiered pricing and multi-line capability, combined with exceptional customer service and a dedicated staff of insurance professionals, who all share the same vision. Insurance is our product, customer service is our business.

Payment Options

We have cost-effective and flexible payment options to fit your needs. We offer a variety of ways to pay including online payment, as well as payment by phone or check.

Risk Management

At AmTrust North America, we specialize in risk management solutions and are dedicated to helping you mitigate losses in the workplace. Whether you require safety and loss prevention assistance, underwriting support, risk management and administration, auditing, inspection or overall risk management solutions, we give you the individualized attention your company deserves.

Claims Service

We have a 24/7 Claims Reporting Center where our Claims Specialists will provide you with live assistance when reporting a claim that can be accessed online. Regional claims professionals located nationwide, such as dedicated adjusters and a medical director, properly take care of your claim and ensure a seamless and efficient process.

Financial Strength

- A.M. Best rating of "A" (Excellent) FSC "XI"
- Ranked 8th nationwide in the National Association of Insurance Commissioners' (NAIC) March 2014 workers' comp market share report
- Publicly traded on the NASDAQ Global Market under the stock symbol AFSI
- More than \$11.3 billion in total assets
- More than \$4.1 billion in written premium
- Net combined ratio of 90.5%



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Appendix A – Relevant Tax Law Summary

The following is a brief summary of relevant tax laws. For information regarding specific tax questions, we urge employers to contact their tax consultant or the IRS.

FICA/MEDICARE Tax Withholding

Public Law 97-123 requires FICA (Social Security and Medicare) taxes to be withheld from paid sick pay. The employee's regular share of FICA tax (7.65%) is withheld from all DBL payments made within the six calendar months following the month in which an employee last worked. However, a portion of the DBL benefit may not be subject to withholding tax if the employee contributes to the cost of insurance; for example, \$.60 per week. To ensure proper withholding, the employer should advise his insurance carrier the percent of DBL benefit subject to tax each year.

The insurance carrier, in accordance with federally prescribed procedures, deposits the employee's withholding. Notification of this deduction is sent to the employer who must then deposit its portion of the FICA tax.

Exceptions

The insurance carrier does not deduct FICA when:

- The employee continued to receive salary and the benefits payment represents employer reimbursement.
- The employer notified the carrier its employees are not subject to FICA, (i.e., certain non-profit groups).

Overwithholding

In some cases, the FICA deduction may be greater than required by law. The employer may adjust overwithholding its 941 report.

Federal Tax Withholding

In accordance with Public Law 96-601 a claimant may request withholding of Federal tax from his DBL benefit. Upon receipt of the prescribed form, W-4S, AmTrust North America will deduct Federal taxes from the claimant's DBL benefit. The minimum withholding is \$20 per week.