

## **Benefits Available to Workers with Cancer**

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The types of benefits potentially available to a worker diagnosed with cancer depend on factors such as the worker's employment status, the nature of the illness or disability, and the availability of other benefits.

### **Leave**

Employment contracts and State and federal law may entitle an employed worker to a complement of leave benefits. Maryland law does not require an employer to provide leave to an employee, but rather extends leave benefits to employees of employers that already provide some type of leave benefit. Labor and Employment § 3-801 requires an employer who provides leave for childbirth to provide an option for leave for adoption. Similarly, Labor and Employment § 3-802 allows an employee to use leave with pay for care of an immediate family member in the same way that the employee could use leave with pay for personal care.

The federal Family and Medical Leave Act of 1993 (FMLA), however, entitles eligible employees of covered employers to unpaid leave up to 12 weeks within a 12-month period for childbirth, newborn care, adoption, foster care, care for a seriously ill immediate family member, or personal care due to a serious health condition. The law defines "serious health condition" as applied to employees and immediate family members as "an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility or continuing treatment by a health care provider." Special standards govern FMLA claims based on "qualifying exigencies" related to a military service of an employee's spouse, son, daughter, or parent. FMLA specifies that an employee may choose or an employer may require an employee to substitute accrued paid vacation, personal, medical, or sick leave for the 12-week unpaid leave period. Additionally, the law requires an employer to restore an employee to the same or an equivalent position in terms of benefits, pay, and other terms and conditions of employment.

### **Health Insurance Benefits**

The federal Patient Protection and Affordable Care Act, with limited exceptions, requires employers to provide health insurance benefits to employees. A covered employee who becomes disabled due to nonwork-related cancer may receive coverage for some or all medical expenses under the employer-provided insurance.

### **Workers' Compensation Insurance Benefits**

A covered employee who develops cancer that results from employment and that causes the employee to become temporarily or permanently, partially or totally incapacitated may

receive workers' compensation benefits. In order for an employer to be required to cover medical care and provide a wage replacement benefit, the cancer would need to be determined a compensable "occupational disease" under State or federal workers' compensation law. Certain cancers are presumed to be compensable occupational diseases in firefighters, police officers, and related personnel.

## **Unemployment Insurance Benefits**

Longer-term cancer treatment can cause unemployment when an employee voluntarily quits or an employer discharges the employee on the basis of an extended absence. Maryland law entitles certain employees to unemployment insurance (UI) benefits with or without a penalty if the employees have quit based on medical advice.<sup>1</sup> Federal law, however, limits states' payment of UI benefits to workers who are unemployed but unable or unavailable to work. The Department of Labor, Licensing, and Regulation indicates that this limitation makes it unlikely that a state could legally enact a provision for UI benefits for individuals that are unable to work due to cancer.

## **Disability Benefits**

Federal law entitles certain workers to benefits due to sickness or disability under the Social Security Disability Insurance program (SSDI) and the Supplemental Security Income program (SSI). The SSDI program pays monthly cash benefits to individuals who (1) held jobs that are covered by Social Security; and (2) cannot work because of qualifying medical conditions that are expected to last at least one year or result in death. In determining whether a medical condition qualifies, a designated state agency considers eligibility standards such as: current wages, presence of the condition on a "List of Impairments," recency and duration of employment, and ability to perform the same or different work. Certain family members of disabled workers can receive money from Social Security as well. Processing applications for SSDI benefits can take the Social Security Administration between three and five months, so the New Jersey Department of Labor and Workforce Development (NJ DOL) indicated that it encourages claimants to file for SSDI benefits and state benefits at the same time.

The SSI Program provides monthly cash benefits to individuals who are 65 or older, blind, or disabled, have limited income and limited resources, and meet other qualifications. A disability qualifies an individual for SSI benefits if the individual is 18 years or older and has a medically determinable physical or mental impairment that (1) results in the inability to do any substantial gainful activity; and (2) can be expected to result in death; or (3) has lasted or can be

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<sup>1</sup> Assuming that the individual is able and available to work, no penalty would be imposed if (1) medical evidence shows that the condition was the direct result of employment; (2) a physician advises the individual to leave employment; and (3) the claimant pursued all reasonable alternatives. Similarly, an individual who is able and available to work could receive unemployment insurance benefits with a mitigated penalty if (1) medical evidence shows that the condition was not the direct result of employment; but (2) the claimant was advised by the doctor to leave employment; and (3) the claimant pursued all reasonable alternatives prior to quitting.

expected to last for a continuous period of not less than 12 months. The monthly payment amount for SSI benefits depends on income and cost-of-living determinations. Individuals receiving SSI benefits that also qualify for SSDI benefits may be able to receive both. Further, special standards incentivize self-support and may allow individuals to continue receiving SSI benefits after returning to work.

## **Temporary Disability Insurance Benefits**

Federal law provides no wage replacement benefit for nonwork-related short-term disability. As discussed in greater detail later in this report, several jurisdictions require employers to provide employees with temporary disability insurance.<sup>2</sup> Rhode Island offers a public fund, while California, New Jersey, and Puerto Rico allow employers to choose to insure with the public fund or a private insurance plan. Hawaii and New York require employers to provide coverage through self-insurance or a private plan. The laws generally require individuals to have earned a specified amount of wages and worked in covered employment for a specified period of time. All of the jurisdictions relate the amount of weekly benefits to a claimant's wage prior to the start of the disability. Most jurisdictions finance the insurance programs solely with employer and employee contributions, including payroll taxes levied on private plans to cover state administrative costs. The jurisdictions that allow employers to insure through private plans require these plans to contribute to the cost of insuring individuals who become unemployed while disabled.

## **Sickness Benefits**

Prior to March 1, 2011, an individual could continue to file for UI benefits in Maryland if an illness or disability began after the individual initially filed for those benefits. Chapter 2 of 2010 repealed the provision as part of the Tax Deferment, Trust Fund Solvency, and Cost-Neutral Modernization and Tax Relief Act. Several other states, however, continue to provide for some form of sickness benefit.

## **Exclusivity and Exhaustion of Benefits**

State and federal laws often limit the level or extent of one type of benefit that individuals can receive based on receipt of other public or private benefits. The SSDI program, for example, reduces benefits for individuals that receive workers' compensation, civil service disability, state temporary disability, state or local retirement government, or other public benefits. Receipt of private disability payments such as pension or insurance benefits do not affect the amount of SSDI benefits that an individual can collect.

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<sup>2</sup> For a general background on temporary disability insurance benefit programs, see "Social Security Programs in the United States: Temporary Disability Insurance." Social Security Administration (July 1997): <http://www.ssa.gov/policy/docs/progdesc/sspus/tempdib.pdf>.

Other laws premise eligibility for one type of benefit on disclosure or exhaustion of other benefits. For example, New Jersey administers three programs that establish corollary leave and wage replacement benefits. Under the Temporary Disability Insurance program, individuals who become disabled while working or within 14 days after the termination of employment may receive temporary disability insurance benefits. In turn, under the Disability During Unemployment (DDU) program, individuals who become disabled more than 14 days after the termination of employment but are not able and available to work may receive disability benefits at a different rate. Under the state's UI program, individuals who are unemployed but able and available to work may be entitled to receive UI benefits. Although no individual may concurrently receive two or more types of benefits, certain individuals may transition from one program to the other subject to the maximum benefit amounts. Each of the programs requires individuals to notify the state of changes in employment status, medical condition, and ability to work to ensure that individuals are receiving the appropriate benefits.

## **State Survey**

Five states and Puerto Rico have established a mandatory disability insurance system that requires employers to provide short-term wage replacement benefits to covered employees who become disabled. Some states operate a public fund, while others allow employers to choose whether to purchase temporary disability insurance through a state plan or private plan.

### **New Jersey**

State law establishes two sets of benefits (1) State Temporary Disability Plan and Private Temporary Disability Plan, which cover a worker who becomes sick or disabled during employment or within 14 days of the termination of employment; and (2) Disability During Unemployment program, which covers a worker who has been unemployed for more than 14 days and is totally unable to work.

### **Temporary Disability Insurance Benefits**

In 1948, the New Jersey Legislature enacted a "Temporary Disability Benefits Law" to "fill the gap in existing provisions for protection against the loss of earnings caused by involuntary unemployment, by extending such protection to meet the hazard of earnings loss due to inability to work caused by nonoccupational sickness, accidents, or other disabilities of workers or members of their families." Effective January 1, 1949, employers who reflect quarterly payrolls of at least \$1,000 and are not exempted<sup>3</sup> must provide coverage through the public plan or an approved private plan to employees. Private plans must offer terms and conditions at least as generous as would be available to individuals covered under the public plan.<sup>4</sup> NJ DOL released a report in June 2012 indicating that the public plan processed

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<sup>3</sup> Local governments are not required to provide temporary disability insurance to employees.

<sup>4</sup> For example, a private plan must (1) have eligibility requirements that are no more restrictive than those under the state plan; (2) offer weekly benefits payable that are at least equal to those under the state plan; and (3) require no greater amount of employee contribution than under the state plan.

approximately 169,000 claim forms per year from calendar 2007 through 2011. Additionally, the report estimates that 1,000 employers received insurance coverage by a combination of public and private plans.

In order to be eligible for benefits, an individual must (1) develop or obtain a nonwork-related illness or injury within 14 days of the termination of employment; (2) have worked at least 20 calendar weeks in covered employment; and (3) have earned \$145 or more or earned \$7,300 or more during the 52 weeks before the week the individual became disabled. A claimant may also be required to submit to a medical evaluation by a state-appointed physician. Eligibility limitations include (1) disabilities that do not exceed 7 days in length; (2) exhaustion of the 26-week benefit period; (3) initiation of disability beyond the 14-day time period; (4) failure to be under the medical care of a legally licensed physician or other qualifying medical personnel; (5) self-infliction of disability; (6) discharge from employer due to gross misconduct; (7) receipt of wages for work after the beginning of the disability period; (8) receipt of wages and benefits in excess of regular weekly wages immediately prior to onset of the disability; and (9) failure to exhaust administrative sick leave in covered government employment. An eligible claimant receives weekly cash benefits up to a maximum of 26 weeks at a rate of two-thirds of average weekly wage up to the maximum weekly benefit amount, which is \$572 for disabilities beginning on or after January 1, 2012. The total allowable benefit amount is determined based on the lesser of one-third of total wages in New Jersey covered employment paid during the base year or 26 times the weekly benefit amount. A claimant may appeal a public plan or private plan determination on eligibility, wage rate, or other matters.

Effective June 30, 2009, New Jersey's law also extends benefits known as "family temporary disability leave benefits" to cover an individual's care of a child, spouse, domestic partner, civil union partner, or parent. In particular, the law entitles a claimant to cash benefits payable for up to six weeks for bonding with a newborn or newly adopted child or care for a seriously ill family member. An individual may take leave intermittently within 12 months or continuously to care for a family member, subject to limitations. An employer may require a claimant to use some accrued paid leave before the individual becomes eligible for family temporary disability benefits. An individual who is entitled to leave under the state Family Leave Act or federal FMLA must take the leave concurrently with leave taken under the temporary disability law.

As discussed previously, a claimant who receives temporary disability insurance benefits may not also receive UI benefits or DDU benefits by the nature of the qualification standards. New Jersey law further prohibits an individual from receiving (1) workers' compensation benefits other than for permanent partial or permanent total disability previously incurred; and (2) benefits under any disability or cash sickness benefit provided for under a state or federal law. Receipt of certain public or private retirement, pension, or permanent disability benefits reduces the amount of temporary disability benefits. In turn, a claimant may be entitled to additional benefits if his or her workers' compensation case settles for less than the amount he or she would have been entitled to under the temporary disability benefits law.

Claimants receive benefit payments from the public disability benefits fund. Employer assessments and, in some cases, employee contributions, fund temporary disability insurance

benefits under the public and private plans. In 2012, employees contribute at the rate of two-tenths of 1% (0.2%) on the first \$30,300 in covered wages earned during the calendar year. The employer assessment for temporary disability insurance is separate from the assessment for UI, so the rates at which employers pay are not linked across programs.

### **Disability During Unemployment Benefits**

New Jersey law establishes a “much smaller program” that is a “hybrid between UI and disability law” to provide benefits to individuals who have been unemployed for more than 14 days and become totally unable to work due to nonwork-related illnesses or disabilities.<sup>5</sup> In order to qualify for DDU benefits, an individual must (1) be eligible for UI benefits, except for ability to work; (2) be under the care of a physician or other medical personnel; (3) file a claim within 30 days of the start of the disability unless “good cause” exists for late filing, which may result in a reduction of benefits; (4) have worked at least 20 calendar weeks in covered employment; and (5) have earned \$145 or more or earned \$7,300 or more during the 52 weeks before the week that the disability began. Eligibility limitations include (1) illnesses or disabilities that are work related; (2) illnesses or disabilities that begin during employment or within 14 days after the termination of employment; (3) disability period of less than 7 consecutive days; (4) failure to meet UI qualification standards, except for the ability to work; (5) voluntary quitting of employment, termination due to misconduct or gross misconduct, refusal of suitable work, or fraud; (6) performance of work for remuneration or profit; (7) participation in a labor dispute that would disqualify an individual from receiving UI benefits; and (8) self-infliction of injury.

An eligible claimant receives weekly cash benefits up to a maximum of 26 weeks at a rate of 60% of average weekly wage up to the maximum weekly benefit amount, which is \$611 for disabilities beginning on or after January 1, 2012. Claimants who are not entitled to the maximum weekly benefit amount may be entitled to receive allowances for dependents to bring the total benefit amount up to the maximum weekly benefit amount. NJ DOL reports that it receives approximately 9,000 DDU claims per calendar year.

Claimants receive benefit payments from the public disability benefits fund. Employer assessments and, in some cases, employee contributions, fund DDU benefits. If a claimant becomes disabled during a given “benefit year” while receiving UI benefits, the claimant may be paid DDU benefits. A claimant will generally receive the same weekly benefit rate as he or she received for the existing UI claim. The maximum that a claimant can collect in both UI and DDU benefits is one and one-half times the maximum benefit amount on the underlying claim. A claimant may appeal a determination on eligibility, wage rate, or other matters.

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<sup>5</sup> According to an interview with NJ DOL staff.

## Administration of Programs

The Division of Temporary Disability Insurance within NJ DOL administers the temporary disability insurance, family leave insurance, and DDU programs. According to the division, several independent units facilitate the processing of claims including (1) claims intake, which brings in claims and processes mail; (2) determination, which processes initial claims; (3) reconsideration, which processes any subsequent information received; (4) DDU; (5) private plan approval and compliance; and (6) customer service. The division does not receive a budget appropriation from the New Jersey Legislature, but rather employs 180 employees and covers administrative costs based on funds in the public fund.<sup>6</sup> The division reports that several recent legislative changes, which prohibited the legislature from transferring money out of the public fund and tied the employer assessment rate to the fund balance, ultimately caused a reduction in employer assessments.

The division advises that it receives a low volume of appeals – several per month – and is usually able to resolve appeals without the need for formal action by calling or sending a letter to the complainant. Claimants and employers wishing to appeal determinations of the division must file a written appeal within specified periods of time in order to obtain a hearing before an Appeal Tribunal examiner. In turn, claimants may appeal private carrier decisions to the Claims Review Unit of the division within a specified period of time in order to receive a hearing before a private plan hearing officer. Subsequent appeals must similarly follow specified filing deadlines.

The Bureau of Benefit Payment Control (BPC) processes overpayments made to claimants. BPC recovers the principal amount owed by offsetting future benefits. Fines and interest cannot be repaid with future benefits.

## California

In 1946, the California State Legislature established the California State Disability Insurance (SDI) plan, which facilitates wage replacement under two programs: Disability Insurance and Paid Family Leave. The Employment Development Department (EDD) administers both programs. Approximately 13 million workers pay a mandatory contribution to SDI through payroll deductions. The SDI withholding rate for 2012 is 1%. The taxable wage limit is \$95,585 per employee. The maximum amount that can be withheld from an employee is \$955.85.

The disability insurance program provides benefits to workers who cannot work due to nonwork-related illness or injury or pregnancy or childbirth through three insurance plans: (1) state plan; (2) voluntary plan; and (3) elective coverage. A majority of employees receive insurance coverage from the “state” plan, which limits eligibility to workers who (1) are unable to do regular or customary work for at least eight consecutive days; (2) are employed or actively

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<sup>6</sup> The division did not provide an estimate of staffing costs, but identified the cost-per-claim figures as examples of administrative costs. Temporary disability benefit claims cost approximately \$120 each to process. DDU claims, although occurring at lower volumes, involve more complicated law, take longer to process, and cost over \$200 each to process.

looking for work at the time disability begins; (3) lost wages due to disability or, if unemployed, have been actively looking for work; (4) have earned at least \$300 from which SDI deductions were withheld during a previous period; (5) are under the care and treatment of a licensed physician or accredited religious practitioner during the first 8 days of disability; (6) submit a claim form within 49 days of the date of disability; and (7) receive medical certification from a physician. Eligibility limitations include (1) retention of wages; (2) receipt of UI or paid family leave benefits; (3) disability arises due to commission of a crime that results in a felony conviction; (4) residence in a jail, prison, recovery home, or any other place based on conviction of a crime; (5) receipt of workers' compensation benefits at a weekly rate equal to or greater than the disability insurance rate; and (6) failure to obtain an independent medical examination upon request. The state received 732,812 disability insurance claims in the public plan for fiscal 2011.

A claimant receives weekly benefits based on a base period that covers 12 months and is divided into four quarters of 3 months. The base period does not include wages paid at the time disability begins. The weekly benefit amount is approximately 55% of the earnings shown in the highest quarter of the base period, subject to a limited exception.

The "voluntary plan" includes all private plans that are approved by the director of EDD as well as employers and a majority of employees to provide mandated insurance instead of the public plan. Private plans must provide all of the benefits the public plan plus at least one benefit that is better than what is available under the public plan. A private plan cannot cost more than the public plan and a claimant may choose to have coverage from the public plan even though the employer has coverage through a voluntary plan. A claimant may be disqualified from receiving benefits for several reasons, including (1) late filing of the initial or continued claim; (2) failure to be under the care of a physician; (3) receipt of full wages; (4) receipt of workers' compensation benefits in an amount greater than the disability benefit entitlement; and (5) incarceration or disability due to commission of a crime that results in a felony conviction. Claimants who work for two employers that offer coverage under different plans may receive simultaneous coverage from both the public plan and a private plan. Both companies may be responsible for paying a portion of the disability benefit. Coverage generally ends at midnight on the night of an employee's termination.

The "elective coverage" plan covers employers and self-employed persons such as general partners who are not entitled to receive coverage under the law, but may choose to obtain coverage within this plan. Claimants must generally wait six months after the effective date of elective coverage plans to receive benefits. As an exception, claimants who performed covered employment approximately 6 to 17 months prior the effective date on the elective coverage plans may have wage credits in the base period that give rise to immediate benefits. The state processes elective coverage claims in the same manner as state plan claims. In order to determine the cost of participating in the plan, an employer or self-employed person can contact a local EDD Employment Tax Office for current rates. Elective coverage benefits are payable whether a self-employed person is hurt on the job or off the job unless the individual also carries workers' compensation coverage. An individual may continue to receive income or profits from a business without compromising eligibility to temporary disability insurance benefits or paid family leave benefits.



Effective January 1, 2004, paid family leave became a component of the SDI program. The paid family leave program provides benefits to workers who need to take time off from work to care for a seriously ill child, spouse, parent, registered domestic partner, or to bond with a new child. Employees covered by the state plan are also covered for paid family leave insurance. Private plans that provide temporary disability insurance must also provide paid family leave insurance.

## Hawaii

In 1969, the Hawaii State Legislature enacted a temporary disability benefits law that requires employers to provide coverage to eligible employees for nonwork-related sicknesses or injuries. Eligible claimants must, among other requirements, (1) have at least 14 weeks of Hawaii employment during each of which the claimant was paid for 20 hours or more and earned not less than \$400 in the 52 weeks preceding the first day of disability; (2) be in "current employment"; and (3) not fall into an exempted profession.<sup>7</sup> The law also requires claimants to have (1) a nonwork-related injury or illness; (2) an inability to perform regular work due to injury or illness; (3) certification from a licensed physician or other medical professional; (4) employment immediately before date suffered injury or illness or disability occurred within two weeks of separation from employment; and (5) filed a claim within 90 days of the start of the disability.

Under Hawaii law, an employer may provide coverage by (1) purchasing insurance through a private plan; (2) becoming self-insured and paying benefits directly to disabled employees; or (3) adopting a collective bargaining agreement that contains sick leave benefits that are at least as favorable as those required under the temporary disability insurance benefit law. Benefits potentially available to claimants include (1) statutory benefits, which reflect the minimum standards; (2) equivalent benefits, which are "as favorable as" statutory benefits; and (3) "better-than-statutory" benefits, which are superior to statutory benefits. The Disability Compensation Division (DCD) of the Department of Labor and Industrial Relations administers the program and approves all plans to ensure that they reflect the appropriate benefit levels.

Currently, employers that have statutory benefit plans provide benefits from the eighth day of disability for a maximum of 26 weeks at 58% of the claimant's average weekly wages up to the maximum weekly benefit amount. Sick leave plans, which are required to be equivalent or better-than-statutory plans, determine claimants' weekly benefit amounts, duration of payments, and whether or not a waiting period is required. An employer may pay for the entire cost of insurance or require employees eligible for coverage to contribute equally. Dissatisfied claimants may appeal claim denials or adverse benefit determinations to DCD, but must do so within a specified period of time.

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<sup>7</sup> Exempted employees include employees of the federal government, certain domestic workers, insurance agents and real estate salespersons paid solely on a commission basis, individuals under 18 years of age in the delivery or distribution of newspapers, certain family employees, student nurses, interns, and workers in other categories specifically excluded by the law.

## **New York**

The New York State Assembly enacted the Disability Benefits Law in 1949 to provide cash benefits to workers who are disabled due to nonwork-related illnesses or injuries or pregnancy. The law requires employers with one or more employees to provide temporary disability insurance benefits either through a private plan, the New York State Insurance Fund (NYSIF) or through self-insurance. The New York State Workers' Compensation Board administers the programs. In order to be eligible for benefits, a claimant must be an employee or recent employee of a covered employer for at least four consecutive weeks and must not receive remuneration for work. Certain employees may not receive temporary disability benefits based on the nature of their work.<sup>8</sup> Some individuals, such as corporations with one or two corporate officers and no other employees, who are not required to be covered, may apply for voluntary coverage.

An eligible claimant receives 50% of the claimant's average weekly wage up to the maximum benefit allowed (\$170). Effective April 1, 2010, NYSIF began allowing employers to provide "enriched disability benefit insurance coverage" to claimants at rates up to five times more than the statutory minimum. The average weekly wage is based on a base period of eight weeks of employment. A claimant can receive benefits beginning on the eighth day of disability for a maximum of 26 weeks out of a 52-week period. Benefits are payable from the first day of disability for unemployed workers who become disabled more than four weeks but less than 26 weeks after termination from employment.

Benefits may be financed entirely by an employer or by an employer and employee as employers may deduct 0.5% of an employee's wage up to a maximum of \$.60 per week to offset the cost of providing benefits.

## **Rhode Island**

In 1942, the Rhode Island General Assembly established the first temporary disability insurance program in the United States, which protects individuals from nonwork-related illnesses or injuries and is funded by workers. The Rhode Island Department of Labor and Training administers the program. In order to be eligible for benefits, a claimant must (1) receive certification from a qualified health care provider or medical practitioner of claimant's inability to perform customary and regular work duties; (2) be unemployed due to sickness for at least seven consecutive days; and (3) have been paid at least \$8,880 in either base period or an alternative base period, subject to a limited exception. A claimant may also be required to submit to an impartial medical evaluation. The base period is the first four of the last five completed quarters of a calendar year before the start date of a claim. Employee payroll deductions fund temporary disability insurance benefits. As of January 1, 2011, the withholding rate was 1.3% of a claimant's first \$58,400 in earnings.

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<sup>8</sup> Examples of exempted employees include: sole proprietors, partners, and members of limited liability companies; minor children of employers; government, railroad, maritime or farm workers; ministers, priests, rabbis, members of religious orders, sextons, Christian Science readers; certain corporate officers and persons engaged in a professional or teaching capacity; and persons receiving aid from a religious or charitable institution.

Effective July 1, 2012, a claimant receives a minimum benefit rate of \$69 and a maximum benefit rate of \$736, excluding a potentially available allowance for dependents. A claimant's weekly benefit rate remains constant throughout the benefit year and equals 4.62% of the wages paid in the highest quarter of a claimant's base period. Dependency allowances are limited to five qualifying dependents and are equal to the greater of \$10 or 7% of a claimant's benefit rate. The duration for a claim is based on 36% of a claimant's total base period wages divided by the weekly benefit rate, but is limited to 30 weeks.

A claimant may receive benefits even while collecting wages, but all earnings – including salary, sick, vacation, bonus, and commission – are considered in determining benefit entitlement. A claimant may not, however, receive UI or workers' compensation benefits concurrently with temporary disability insurance benefits except where a settlement for workers' compensation benefits is pending. In that case, a subsequent workers' compensation settlement can be adjusted to reflect temporary disability insurance benefits paid to the claimant.

## **Puerto Rico**

In 1968, the Legislative Assembly of Puerto Rico established a program entitled "Seguro Incapacidad No Ocupacional" to provide temporary disability insurance benefits to workers for nonwork-related disabilities. In order to be eligible for benefits, a claimant must (1) be unable to work due to a car accident or nonwork-related illness or injury; (2) be treated by a licensed physician or chiropractor; and (3) have received wages of at least \$150 in covered employment during the base year. The Department of Labor and Human Resources administers the program. According to the Social Security Administration,<sup>9</sup> Puerto Rico offers both a public plan and an option for employers to obtain coverage through private plans. Benefits offered under private plans must be at least as generous as benefits offered under the state plan. Claimants covered under private plans do not have to contribute toward the public plan and may only be required to contribute toward a private plan what would have been the requisite contribution rate for the public plan. Employers pay any remaining balance to fund benefits. In order to fund the public plan and benefits for individuals who become disabled while unemployed, Puerto Rico levies assessments on private plans.

The law entitles workers to weekly benefits at a rate determined based on the worker's wage for a maximum of 26 weeks. An employer contributes 0.60% of a claimant's salary up to a maximum of \$9,000 per calendar year, with a limited exception. A claimant's contribution may not exceed 0.30%. A claimant receives a minimum weekly benefit of \$12 or a maximum weekly benefit of \$113. If the disability is later determined to be work related, the worker may receive workers' compensation benefits from the State Insurance Fund. The total amount of weekly benefits – including temporary disability insurance benefits and paid sick leave – may not exceed an individual's weekly earnings before disablement.

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<sup>9</sup> The Department of Labor and Human Resources' website summarizes the law in Spanish, rather than English: [http://www.dtrh.gobierno.pr/det\\_content.asp?cnt\\_id=160&cn\\_id=32](http://www.dtrh.gobierno.pr/det_content.asp?cnt_id=160&cn_id=32). A publication from the Social Security Administration on social insurance programs, referenced in footnote 2, provides some background on Puerto Rico's law.

## **Potential Benefit Structure in Maryland**

The Maryland General Assembly could modify another jurisdiction's model to more narrowly address the issue of benefits for cancer patients. The benefit structure could differ from the previous UI sick benefit in that it could be administered as a distinctly different type of benefit for claimants who are disabled at various points in their careers. For example, like the New Jersey model, Maryland's model could address two tiers of disabled claimants – those that become disabled while working or shortly after the termination of employment and those that become disabled longer after termination. If Maryland sought to follow the example of other jurisdictions with mandated programs, the Department of Labor, Licensing, and Regulation or the Workers' Compensation Commission could administer such a program. Employers or employees could help finance the benefits and administrative costs through contributions or the General Assembly could choose to work with the Administration to obtain a budget appropriation.