

Definition of Disability in Private Pension Plans

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SOME PRIVATE PENSION PLANS make payments to workers who become disabled, as well as to those who retire because of age. A study of the first trustee pension plans negotiated in the mass-production industries showed that in 1949-50 many of them included disability benefit provisions.¹ The addition of disability benefits was the second most frequent change reported in a 1948-52 survey of pension plans.² Because insurance companies had suffered heavy losses in administering disability retirement provisions during the 1920's and early 1930's, many of them were initially reluctant to permit the inclusion of disability benefits in an insured plan. During the 1950's, however, some insurance companies permitted the inclusion of this type of protection in insured plans.

As a result of these developments, disability retirement protection increased rapidly during the 1950's. The results of several surveys of private pension plans indicated that roughly three-fourths of the approximately 20 million covered employees in the late 1950's were members of plans providing disability retirement.³

A significant and probably growing proportion of the private wage and salary labor force therefore has dual protection against the economic hazards of disability—coverage under a private pension plan and under the Social Security Act. Almost all private plans require that a member must meet certain age or service requirements, or both, to qualify for disability benefits. Few members of private plans can qualify for disability benefits with 10 years of service or less, but most of them have no age requirement to meet or

an age requirement no higher than 50.⁴ In addition to meeting the age and/or service requirement, the member must also be sufficiently disabled to meet the requirements of the plan's definition of disability. Defining disability is one of the major problems in drafting a disability benefit provision. A "liberal" definition will enable more members to qualify for benefits and thereby increase the cost of the plan; a "strict" definition will have the opposite result.

Although a few studies have included some information on the definition of disability,⁵ very little has been known about the exact definitions used in private plans. The Social Security Administration therefore requested the Bureau of Labor Statistics to prepare special tabulations on definitions of disability when that Bureau began a comprehensive study of private pension plans in 1962.⁶

The BLS study was based on the records filed by plan administrators in compliance with the Welfare and Pension Plans Disclosure Act. (This act requires, with some exceptions, that the administrator of a pension or welfare plan covering more than 25 participants file reports with the Department of Labor.) The Bureau of Labor Statistics estimated, on the basis of a sample of more than 1,200 plans, that there were approximately 15,800 pension plans on file, covering 15.6 million active members. More than half (8,193), with about 70 percent of the active members (10.9 million), had provisions for disability retirement (table 1).

Since the study was limited to the documents filed at the Office of Labor-Management and Welfare-Pension Reports and no contacts were made

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¹ Joseph Zisman, "Permanent and Total Disability Benefit Provisions in Industrial Pension Plans," *Social Security Bulletin*, January 1951.

² Walter J. Couper and Roger Vaughan, *Pension Planning: Experience and Trends* (Industrial Relations Counselors, 1954), page 177.

³ Joseph Krislov, "Age and Service Requirements for Total and Permanent Disability Benefits in Private Pension Plans," *Analytical Note No. 108*, Bureau of Old-Age and Survivors Insurance, Division of Program Analysis, February 1960.

⁴ *Ibid.*

⁵ See, for example, W. Michael Blumenthal, *Disability Retirement in Industrial Pension Plans*, Princeton University, 1956, pages 35-37, and Harland Fox, "Disability Pensions, 1961," *Management Record*, September 1962, pages 11-12.

⁶ The Department of Labor plans a series of bulletins based on the study; the first, which will deal with vesting and early retirement, will be released in the summer of 1964.

with private plan administrators, it has not been possible to determine how specific provisions were interpreted and administered. Since interpretations of the same definition may vary, decisions on whether an individual qualifies will differ from one plan to another even though the definitions of disability may be identical.⁷ Nevertheless, it is important to analyze the definitions of disability in private pension plans for at least three reasons: (1) the analysis suggests the types of disabilities for which private plans will pay benefits; (2) the analysis also provides the basis on which future studies can build to determine the extent that actual administration deviates from the wording of the definition; and (3) a court's decision in a litigated case may depend on the plan's definition.

The analysis leads to the generalization that most workers in 1962 were covered by plans that provide benefits for the member who is unable to work at any job and whose disability is judged to be permanent or long-lasting—roughly the same individual who is likely to be able to qualify for benefits from the Social Security Administration. Some private plans provide benefits to members who were not so severely disabled as to preclude any employment, but others probably do not pay

⁷ Suggestive of the possibilities is the report that the Social Security Administration rejected as many as one-fifth of the employees who qualified for disability benefits in the automobile industry, which had a strict definition of permanent and total disability, very similar in intent to that in the Social Security Act, and a strict method of making determinations. See Jerome Pollack, "Disability Insurance Under Social Security," in Earl Cheit and Margaret Gordon, *Occupational Disability and Public Policies* (John Wiley & Son, 1963), page 175.

benefits for some of the disabilities for which benefits are provided by the Social Security Administration. More specifically, the analysis points to three major conclusions.

First, most plans (70 percent) define disability in some detail; their membership includes an overwhelming proportion of all workers covered by plans providing for disability retirement (87 percent). Among the remaining plans (a significant minority) some (9 percent) have a social security definition—that is, they require a determination of disability by the Social Security Administration—and others (18 percent) have adopted a definition that permits the plan's management wide discretion in determining eligibility (a discretionary definition). The first type covered fewer than 6 percent of the covered workers; the second covered only 7 percent of the covered workers.

Second, plans with social security definitions and those with discretionary definitions of disability were almost all smaller plans. They were heavily concentrated among nonmanufacturing industries, and substantially more of them were insured and unfunded plans than were self-insured. Plans using the social security definition were largely plans that limited their membership to production workers; plans with discretionary definitions were less likely to have such a limitation. The discretionary plans were probably, for the most part, plans covering nonunion rather than union workers.

Third, plans that had their own definition of disability typically limited payments to members who were unable to work at any job—practically

TABLE 1.—Definition of disability in private pension plans, by number of active workers covered, winter 1962–63

Number of active workers covered	Total ¹		Definition of disability					
			Social security		Plan's own		Discretionary	
	Number of plans	Number of workers ² (in thousands)	Number of plans	Number of workers ² (in thousands)	Number of plans	Number of workers ² (in thousands)	Number of plans	Number of workers ² (in thousands)
All plans with disability retirement provisions.....	8,193	10,895	714	597	5,823	9,440	1,445	798
Fewer than 200.....	4,709	297	500	13	2,968	218	1,041	50
200 and up to 500.....	1,396	445	150	38	1,030	333	216	74
500 and up to 1,000.....	781	529	10	7	698	464	73	58
1,000 and up to 5,000.....	955	2,143	41	89	824	1,867	80	174
5,000 and up to 10,000.....	159	1,117	4	28	136	951	19	138
10,000 and up to 25,000.....	114	1,685	5	75	97	1,434	12	175
25,000 and up to 50,000.....	56	1,923	3	104	48	1,659	4	129
50,000 and up to 100,000.....	13	913	-----	-----	13	913	-----	-----
100,000 or more.....	10	1,843	1	242	9	1,601	-----	-----

¹ Total columns include 211 plans, covering 61,000 workers, for which information on definition of disability was not available.

² Active workers in 1961. Source: Department of Labor, Bureau of Labor Statistics, August 1963.

the equivalent of the Social Security Act definition. Relatively few of these private plans, however, follow the Social Security Act in the protection afforded for disabilities arising from mental disorders or in its specific provision concerning the duration of the applicant's disability. The membership of plans providing benefits for less severely disabled workers and for mental disorders was concentrated among nonmanufacturing industries.

BASIC DEFINITION OF DISABILITY AND WAITING PERIOD FOR BENEFITS

The definitions used by the plans⁸ with disability retirement provisions were compared directly in this study with the definition of disability in the Social Security Act: "Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration."

The basic definitions were classified as follows: (1) those that adopted the social security definition; (2) those that provided their own detailed

⁸ In late 1962 the Internal Revenue Service issued a ruling that may cause some plans to revise their definition of disability. The eligibility requirements of a plan whose disability benefits are integrated with those paid under the Social Security Act will now have to be "as stringent as those required for payment of disability benefits under that Act" ("Revenue Ruling 62-152," *Internal Revenue Bulletin*, 1962, pages 37-38). For a discussion of the ruling, see *Employee Benefit Plan Review*, November 1963, pages 50-52.

and comprehensive definition; and (3) those that delegated substantial discretion in awarding benefits to the plan's management.

The Social Security Act requires a waiting period of 6 months after the onset of disability before payments begin (except in the second or subsequent period of disability). Data on the private plans' waiting period were also obtained (table 2).

Following is an example of the wording used in those plans that require that the member be judged disabled by the Social Security Administration in order to receive the benefit: "An employee . . . shall . . . be thereafter entitled to a monthly disability income . . . provided, however, (1) that such disability is approved and recognized as such under the applicable provisions of the Federal Social Security laws. . . . It shall be the duty of each person claiming to be entitled to disability income to furnish the company with adequate proof of the fact of approval and recognition of his or her disability under the Federal Social Security laws, and the date when such approval is granted." As would be expected, a 6-month waiting period was required by practically all plans with a social security definition (covering practically all workers who were members).

Examples of the language used by plans that defined disability in a comprehensive manner are given below.

"An employee shall be deemed to be totally and permanently disabled when . . . on the basis of medical evidence he is found to be wholly and permanently prevented, as a result of bodily injury or disease, either occupational or nonoccupational in cause, from engaging in any occupation and employment for wage or profit in which he is able to earn in excess of \$60 per month."

TABLE 2.—Waiting period for disability retirement benefits in private pension plans, by definition of disability, winter 1962-63

Waiting period	Total ¹		Definition of disability					
			Social security		Plan's own		Discretionary	
	Number of plans	Number of workers ² (in thousands)	Number of plans	Number of workers ² (in thousands)	Number of plans	Number of workers ² (in thousands)	Number of plans	Number of workers ² (in thousands)
All plans with disability retirement provisions.....	8,193	10,895	714	597	5,823	9,440	1,445	798
None specified.....	3,219	3,619			³ 2,133	5,136	1,086	483
1 month and up to 6 months.....	633	926			631	901	2	26
6 months.....	2,923	5,012	706	579	2,003	4,190	214	242
7 months and up to 12 months.....	486	454	5	14	345	418	136	22
When accident and sickness benefits cease.....	721	823	3	4	⁴ 711	795	7	25

¹ See footnote 1, table 1.

² Active workers in 1961.

³ Includes 2 plans, covering 26,000 workers, that paid an actuarially reduced benefit at age 55, or a normal benefit at age 65.

⁴ Includes 2 plans, covering 106,000 workers, that deferred payment until permanent and total disability benefits under the company's group life insurance program were exhausted.

Source: Department of Labor, Bureau of Labor Statistics, August 1963.

"Total disability means incapacity, resulting from bodily injury or disease, to perform any work for the company."

"An employee is considered permanently disabled if he is no longer able to perform his customary work."

About half the workers covered by plans with their own definition were required to wait 6 months or longer before disability retirement payments began. An additional 8 percent of the workers were members of plans that did not begin disability retirement payments until after the worker's accident and sickness benefits had ceased. Only 30 percent were members of plans that did not specify a waiting period; 10 percent were covered by plans specifying waiting periods of 1-6 months.

Some of the discretionary definitions use the following wording: "In the event of the termination of service consequent of disability arising from accident or disease, it shall be within the discretion of the Council to determine . . ." Another definition reads: "If retired by the company after 25 years of continuous service because of disability (of which [the] company and [the] company doctor shall be the sole judge) . . ."

About a third of the workers covered by discretionary plans were members of plans requiring a waiting period of 6 months or longer before payment of benefits. About 60 percent of the workers, however, were members of plans that did not specify any waiting period.

The smaller plans tended to have social security or discretionary definitions. More than 70 percent of the plans using such definitions had fewer than 200 members, compared with only about half the plans with their own definition. Plans of this size may find it convenient to avoid the administrative work in determining disability and also preclude litigation by adopting either the social security definition⁹ or a discretionary definition.

Since 87 percent of the covered workers were members of plans that had their own definition of disability, almost all the workers in each industry division were also members of plans that had their own definition (table 3). A significant proportion of the membership of certain industry groups, however, was covered by plans that had social security or discretionary definitions. Specifically,

⁹ See, for example, Joseph J. Melone, *Collectively Bargained Multi-Employer Pension Plans* (Richard D. Irwin, Inc., 1963), page 81.

about 25 percent of the covered workers in both construction and transportation (highly unionized industries) were members of plans with a social security definition, and 37 percent of the covered workers in retail trade and 22 percent of those in finance, insurance, and real estate (less unionized industries) were members of plans with discretionary definitions.

The following tabulation shows the membership of the plans with disability retirement provisions, distributed according to the basic definitions of disability and the type of worker covered.

[In thousands]

Definition of disability	Number of workers				
	In all plans	Production	Salaried and production	Salaried	With earnings of more than specified amounts
Total ¹	10,895	4,861	4,387	948	699
Social security.....	597	525	66	5	-----
"Own".....	9,440	4,167	3,813	814	646
Discretionary.....	798	156	477	112	53

¹ Totals include membership of plans, covering 61,000 workers, for which information on definition of disability was not available.

Almost 90 percent of the membership of plans with social security definitions were members of plans covering only production workers. Less than 1 percent were in plans covering only salaried workers or plans limiting coverage to workers whose earnings exceeded specified amounts and who were therefore in all probability mostly salaried workers. The coverage of the other plans was not concentrated among production workers. Less than half (44 percent) of the members of plans with their own definitions of disability and only 20 percent of those in plans with discretionary definitions were in plans covering only production workers.

More than 90 percent of the workers covered by self-insured plans or plans both self-insured and insured were members of plans that had their own definition of disability, compared with about 60 percent of the workers covered by insured plans or unfunded plans. The membership of plans using the social security definitions was divided almost equally between insured and self-insured plans; none of the unfunded plans had social security definitions. In contrast, about three-fourths of the members of plans that had

their own definition of disability were members of self-insured plans. And about half of those belonging to plans with discretionary definitions were members of self-insured plans, with the remainder distributed among the other funding mediums.

The Welfare and Pension Plans Disclosure Act requires that an administrator must report if a plan is mentioned in a collectively bargained agreement. The tabulated responses indicate only roughly whether the plans' members belonged to a labor organization, since some nonunion workers may be members of a pension plan that is mentioned in a collectively bargained agreement. The membership of plans with the social security definition and of those with their own definitions of disability was heavily concentrated among plans mentioned in such an agreement. Less than half the membership of the plans with discretionary definitions were in plans mentioned in a collectively bargained agreement.

PLANS WITH THEIR OWN DEFINITIONS

Only 60 plans, covering approximately 200,000 members, specify conditions—typically, loss of one or both legs or arms, or blindness—that automatically qualify a member for benefits. Since most plans providing disability retirement benefits define disability in some detail, these definitions have been analyzed further. Specifically, three elements of the private plans' definitions were compared with those in the definition in the

Social Security Act: (1) the extent to which the disability impaired a member's future employment; (2) the cause of a member's disability; and (3) the expected duration of his disability.

The number of plans and the number of covered workers are distributed below according to the extent to which the disability was likely to affect a member's future employment. About 60 percent

Required extent of disability	Number of plans	Number of covered workers (in thousands)
Total	5,823	9,440
Inability to perform regular or current job.....	704	1,123
Inability to perform any job in the industry or company.....	453	1,691
Inability to perform any job.....	3,597	5,868
No specific reference to inability to perform job..	1,069	757

of the plans, with about the same proportion of the covered workers, restricted benefits to members who were unable to perform any job—practically the equivalent of the Social Security Act's definition. About one-fifth of the plans, with about 30 percent of the covered workers, provided benefits to members who were less severely disabled.¹⁰ Workers protected by these more liberal definitions of disability included (1) 1.1 million (12 percent) who were members of plans requiring only that the member be unable to perform his

¹⁰ The more liberal definitions of disability are widespread among public employee staff retirement systems. Joseph Krislov, *A Survey of State and Local Government Retirement* (Bureau of Old-Age and Survivors Insurance, 1962), page 11.

TABLE 3.—Definition of disability in private pension plans, by industry group, winter 1962–63

Industry	Total ¹		Definition of disability					
			Social security		Plan's own		Discretionary	
	Number of plans	Number of workers ² (in thousands)	Number of plans	Number of workers ² (in thousands)	Number of plans	Number of workers ² (in thousands)	Number of plans	Number of workers ² (in thousands)
All plans with disability retirement provisions.....	8,193	10,895	714	597	5,823	9,440	1,445	798
Agriculture, forestry, and fisheries.....	9	13			9	13		
Mining.....	153	52			153	52		
Contract construction.....	301	597	69	138	225	441	7	17
Manufacturing.....	5,183	7,342	628	124	3,765	6,829	579	328
Transportation.....	448	962	2	249	335	581	111	132
Communications and public utilities.....	215	944	8	13	83	810	124	121
Wholesale and retail trade.....	533	386	7	73	412	217	114	95
Wholesale trade.....	412	243	7	73	352	128	53	41
Retail trade.....	121	143			60	89	61	53
Finance, insurance, and real estate.....	1,001	436			591	339	410	97
Services.....	350	163			250	155	100	8

¹ See footnote 1, table 1.
² Active workers in 1961.

Source: Department of Labor, Bureau of Labor Statistics, August 1963.

own or a related job and (2) 1.7 million (18 percent) who were in plans requiring that the member be unable to perform any job in the company or industry. Most of the 1.7 million were undoubtedly in extremely large plans, since the average membership of the 453 plans with that requirement was 1,700.

Examples of each definition of the extent of disability can be found in practically every major industry division. As indicated in the tabulation below, plans with definitions that require a member to be disabled for any job covered proportionately about twice as many workers in manufacturing and construction as they did in non-manufacturing industries.

Industry	Number of covered workers in plans	
	With own definition of disability	Requiring inability to perform any job
Contract construction.....	441	298
Manufacturing.....	6,829	4,804
Nonmanufacturing.....	2,169	767

Within the nonmanufacturing sector, the proportion of workers covered by the more liberal definitions of disability was larger in some industries than in others. About a fourth of the workers in retail trade and services were members of plans whose definition of disability required that the individual be disabled for his regular or current

job. More than 40 percent of the workers in wholesale trade and 80 percent of those in communications and public utilities were covered by plans with the requirement that the individual be disabled for any job in the company or industry.

A mental disorder was the reason that about 10 percent of the disabled beneficiaries under old-age, survivors, and disability insurance were receiving benefits in 1962.¹¹ The private plans' definitions were therefore coded to determine if they provided protection for mental disorders. The number of plans and the number of covered members are distributed below according to the type of disability covered.

Protection provided	Number of plans	Number of covered workers (in thousands)
Total.....	5,823	9,440
Physical and mental conditions included.....	1,206	1,651
Physical conditions only.....	42	189
Physical conditions, silent on mental conditions.....	2,569	4,281
Not specific.....	2,006	3,318

Most of the plans, with about two-thirds of the covered workers, specifically provided protection for physical conditions, but less than one-fifth of the plans, with slightly less than one-fifth of the covered workers, provided protection for

¹¹ Arthur Hess, "Five Years of Disability Income Benefits: A Progress Report," *Social Security Bulletin*, July 1962, page 12.

TABLE 4.—Definition of disability in private pension plans, by disqualification for disability benefit, winter 1962-63

Disqualification for disability benefit	Total ¹		Definition of disability					
	Number of plans	Number of workers ² (in thousands)	Social security		Plan's own		Discretionary	
			Number of plans	Number of workers ² (in thousands)	Number of plans	Number of workers ² (in thousands)	Number of plans	Number of workers ² (in thousands)
All plans with disability retirement provisions.....	8,193	10,895	714	597	5,823	9,440	1,445	798
No disqualification.....	5,229	5,824	696	262	3,132	4,910	1,401	652
Applicant refuses rehabilitation services.....	10	13			10	13		
Criminal activity.....	30	46			30	46		
Self-inflicted injury or willful misconduct:								
Only.....	66	215			66	215		
Criminal activity.....	160	189			³ 160	189		
Alcoholism or addiction to narcotics.....	102	404	2	248	⁴ 81	148	19	8
Alcoholism, addiction to narcotics, and criminal activity.....	2,246	4,086	16	87	⁵ 2,205	3,861	25	133
Alcoholism, addiction to narcotics, and criminal activity.....	139	57			139	57		

¹ See footnote 1, table 1.
² Active workers in 1961.
³ Includes 8 plans, covering 16,000 workers, in which disqualification would occur if the applicant refuses rehabilitation services.
⁴ Includes 1 plan, covering 5,000 workers, in which self-inflicted injury or willful misconduct is not grounds for disqualification; and 1 plan, covering

13,000 workers, in which disqualification would occur if the applicant refuses rehabilitation services.
⁵ Includes 2 plans, covering 83,000 workers, in which disqualification would occur if the applicant refuses rehabilitation services.
 Source: Department of Labor, Bureau of Labor Statistics, August 1963.

mental disorders. Although a few plans specifically excluded mental disorders, more than three-fourths of the plans (with about 80 percent of the covered employees) were either silent or made no specific statement about their policy. The plans that made no reference to either physical or mental conditions may pay benefits for mental disorders. It is probable, however, that the plans (covering about 45 percent of the workers) that specifically mentioned protection for physical conditions but omitted any reference to mental conditions do not provide benefits for mental disorders.

Protection for mental disorders was more prevalent for workers in nonmanufacturing industries than in others. About one-fourth of the plan members in wholesale and retail trade, about one-third of those in finance, insurance, and real estate, and more than half in the service industries were covered by plans that specifically included benefits for mental disorders. Since manufacturing industries are more highly unionized than nonmanufacturing industries, the prevalence of protection for mental disorders among plans not mentioned in a collectively bargained agreement tends to confirm the finding that protection is more prevalent among the nonmanufacturing industries. About 1/4 of 1 percent of the members of plans not mentioned in a collectively bargained agreement were specifically protected for mental disorders, compared with about 15 percent of the members of plans mentioned in such an agreement.

The number of plans and the number of covered workers are distributed below according to plan requirement concerning the expected duration of the disability.

Required duration of disability	Number of plans	Number of covered workers (in thousands)
Total.....	5,823	9,440
Long-continued and indefinite or expected to result in death.....	1,053	2,351
Permanent.....	3,696	6,183
Not specific.....	1,074	905

Less than one-fifth of the plans, with about one-fourth of the membership, had the equivalent of the Social Security Act definition. Most plans

(with two-thirds of the covered membership) required that the disability be permanent. Coverage of these plans was distributed by industry, type of worker, and medium of funding. No significant patterns were found since the coverage of the plans with each criteria was distributed more or less randomly. Because the two criteria are difficult to administer, it is probable that administration may be more significant than a plan's specific wording.

DISQUALIFICATIONS

The Social Security Act provides that an individual's benefit may be suspended if he refuses without good cause to accept rehabilitation services that have been made available to him. Private plans using social security definitions would presumably therefore disqualify a member who had refused rehabilitation services since the member's benefit would have been suspended by the Social Security Administration. It is estimated, however, that fewer than 10 persons have had their benefits suspended by the Social Security Administration for this reason during a year. In addition to the plans with social security definitions, only 21 plans (with 125,000 members) had provisions that disqualified a member if he refused without good cause to accept rehabilitation services (table 4). It can thus be concluded that few members of private plans are denied benefits for refusing to accept rehabilitation services.

Private pension plans disqualify applicants for other reasons. Slightly less than half the covered workers were members of plans that disqualified a member if the disability had certain causes. Relatively few plans with a social security or discretionary definition had any disqualifications. Eighteen plans with a social security definition had, however, some disqualifications, and they had 335,000 members. Plans that have their own definition are more likely also to have provisions for disqualification. Most of the plans having their own definition of disability, with more than three-fourths of all plan members, disqualified a member if his disability was caused by self-inflicted injury or willful misconduct, criminal activity, alcoholism, or addiction to narcotics.