



## What's Up with "Own-Occupation" Clauses in Today's Disability Insurance Market

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True "own-occupation", modified "own-occupation", "any reasonable" occupation, "loss of earnings".....wow! Today's disability insurance market is a complicated place where prospective disability insurance buyers need to have attorney-like contract reading abilities in order to understand what they're really purchasing.

Since the bottom fell out of the individual disability marketplace in 1996, most of the insurers that chose to stay in the DI business have dramatically changed the contract language in their new disability portfolios. Gone are the days when most major carriers' contracts were essentially the same.

Before 1996, most carriers offered a true "own-occupation" definition of total disability in their top-tier disability contract. Today, there are very few companies that still offer this vital benefit for dentists, most physicians, attorneys, and other "white collar" professionals.

The purpose of this article is to help today's prospective buyers of disability insurance fully understand the importance of the "total disability" definition in their contracts and the different "own occupation" clauses that exist in today's market within this definition. When analyzing a disability policy, there are many options to consider: Partial or Residual disability clauses, Cost of Living Adjustment riders, Future Increase Option riders and others.

The "heart" of your disability policy however, lies within the definition of total disability. This is the part of the contract that deals with protecting your ability to work in your "own-occupation". In today's market you'll find policies that vary widely in this all-important definition.

The following is an explanation of the common definitions you'll find in today's market, as well as what I refer to as the true "own-occupation" definition.

### True "Own-Occupation" Clauses

The majority of top-tier disability policies issued before 1996 had what I refer to as *true* "own occupation" definitions of total disability. The definition simply read: **You are considered totally disabled if, due to sickness or injury, you are unable to perform the material and substantial duties of your regular occupation.** What this meant was that if you were totally disabled in your regular occupation (as a dentist, physician, attorney, CPA, etc.) you would receive your full disability monthly benefit even if you chose to work in another gainful occupation after suffering the total disability. Your benefits would not be reduced because of your earnings in the new occupation, as long as the sickness or injury prevented you from working in your regular occupation. When I refer to the phrase "*true* own-occupation," I'm referring to this simple definition in bold above. This definition protects your ability to perform the duties of your specific occupation for the entire benefit period with no reduction in benefits if you choose to earn income in another job after becoming totally disabled in your regular occupation. This is the benefit that I insist on for my professional clients because it offers the most comprehensive coverage and recognizes your ability to work in a specific occupation.

As I'll go on to explain, there are many new twists on this old policy definition that effectively dilute many of today's newer policies. Please note that there are still companies that offer this definition for their top occupation classes, which include dentists, most physicians, attorneys, CPA's and most professional executives. One of these is Guardian, which offers:

this superior protection through its wholly-owned disability income insurance subsidiary, The Berkshire Life Insurance Company of America, Pittsfield, MA.

### Modified "Own Occupation" Clauses

In my experience in today's DI market, "modified own-occupation" is the most common definition available in the remaining carriers' current DI offerings. This definition of total disability basically reads: **You are totally disabled, if solely due to sickness or injury, you cannot perform the material and substantial duties of your regular occupation and you are not working in any gainful occupation.** The key modification in the definition is the underlined part. Basically it says that if you can't work in your regular occupation because of sickness or injury, you'll be paid your full disability benefit. However if after the disability, you choose to work in another occupation, then the company will consider you to be partially or residually disabled and will pay benefits based on your percentage loss of earned income (if the policy has a residual disability clause).

I don't recommend policies with this definition because the true "own-occupation" contract is still available for most of my prospective clients. Especially in an occupation like dentistry or other medical occupations where a relatively minor injury can cause a total disability (carpel tunnel syndrome, a back injury, nerve damage in a hand, an eye injury, etc.), having a contract that will reduce and likely eventually eliminate your benefits if you go back to work in another occupation just doesn't offer adequate protection. If the totally disabled dentist becomes a success doing something else, say selling disability insurance, then he gets punished financially. When he or she earns 80% of their pre-disability income in a new occupation, then benefits on the policy go away completely. Disability income policies usually provide coverage for between 50-60% of our earned income. This clause will undoubtedly hurt us financially if we choose to go back to work in another occupation.

### One year, Two year and Five year "Own-Occupation" Protection Clauses

These versions are an interesting twist on the original. Basically, they provide a definition that reads something like this: **For the first 12, 24 or 60 months of a covered claim, you are totally disabled, if due to sickness or injury, you are unable to perform the material and substantial duties of your regular occupation. Thereafter, the definition is the same as above plus you are not working in any gainful occupation.** The one and two-year true "own-occupation" definitions don't offer much more protection than the strictly modified version described above. Think about it for a minute. If you couldn't practice dentistry, what's the likelihood that you would go off and work full time in another gainful occupation within a one or two-year period of time after suffering the total disability? It's the longer term that concerns me for my clients, because most would eventually want to do something else for a living if they couldn't practice dentistry (depending on the nature of the disability, of course).

### Loss of Earnings

Loss of earnings contracts are disability contracts that cleverly avoid defining total disability altogether. These contracts read as if this is a positive thing, with wording like "total disability is not defined and is never required." It sounds positive because you don't have to be totally disabled to receive benefits right? Well what if you do become totally disabled? Because the contract doesn't define total disability, it strictly goes by a loss of earnings formula to determine your disability benefits, whether you're working in your "own-occupation" or another. It will essentially pay benefits the same as the modified contract described earlier.

### "Any Occupation" Clauses

I've noticed more and more carriers offering "any gainful occupation" and "any gainful reasonable occupation" clauses in their new policies. I personally consider these to be dangerous. Essentially, these policies define total disability as your inability to perform the duties of either **any gainful occupation or any gainful reasonable occupation for which you may be suited by training, education or experience. Some will go on to**

**temper this definition by including due regard to pre-disability earnings.**

It's obviously better to have the later definition because of the "reasonable" clause, but I still would never recommend either. The insurance company basically has the right to determine what "reasonable" occupation you could work in. If you disagree with their definition of reasonable, then I wish you good luck. They can stop your benefits if you don't go to work elsewhere in the "reasonable" occupation. I simply don't recommend these plans.

**Combinations**

Some carriers today are offering contracts with total disability definitions that are a mix of two or more of the definitions above. These can be quite confusing to read and fully understand. An example would be a "modified" definition coupled with an "any reasonable occupation" clause after a period of five years of total disability. They're a lot of fun to read. These definitions make it clear, in my opinion, that the insurance company is trying to lessen their risk significantly by offering these plans.

**Conclusion**

I think I've covered virtually all the current total disability definitions available in today's disability insurance market. Disability contracts are exactly that: a contract between the insured and the insurance company.

Disability contracts have always been somewhat complicated because of the number of definitions and optional benefits from which to choose. If you take anything from this article let it be the understanding that the heart of your plan is the total disability definition.

Read that definition first before you move on to the other available options. For my clients, I want both their income and their ability to work in their specific occupation or occupations to be protected. I recommend the true "Own Occupation" plan whenever it's available for my clients' occupation class.

Think about it. You've spent years studying and paying to become a professional. Whether you're a dentist or dental specialist, physician, attorney, CPA or a professional executive, you deserve to have your ability to work in that specific occupation properly protected. After all, why do you buy the coverage in the first place?

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