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Contributed by [Disability Insurance Bad Faith Attorney](#), Eric Ratinoff

We've spent quite a bit of time now in this series talking about [disability insurance claims](#), [what the insurance policy is about](#), what the [insurance company's duties](#) are and how to put your best foot forward when making a claim. But what does it mean to be totally disabled under an insurance policy?

Well, most private insurance policies that have been sold in the last 20 years have two major provisions. One is a total disability provision involving "own occupation," and then there is a conversion to "any occupation."

Let's talk about "own occupation." Most insurance policies will state that in the first 24 months of disability, if a person is unable to do the substantial and material duties of their own occupation, that's total disability. Now, an "own occupation" policy is a kind that I talked about in an earlier post where insurance companies were selling these policies in the 1970's through the early 1990's, and they were policies that never converted. They were pure "own occupation" policies all the way to age 65 sometime and beyond. That meant that if you were unable to do the substantial and material duties of your own occupation, then even if you began another career, you would still collect the full benefits of your policy. Most policies that are sold now contain a provision stating that after 24 months of disability from being unable to do the material and substantial duties of your own occupation, the [policy will convert to "any occupation."](#) This means if you are able to do the substantial and material duties of any occupation, your benefits will be reduced based on the level of income you are able to produce in any occupation you choose.

Now, the insurance policy doesn't tell you what the courts have interpreted "any occupation" to mean here in California.

"Any occupation" does not mean that if you used to work as a technician in a lab that you can now become a ticket taker at your local movie theatre or a greeter at Walmart. That's not what "any occupation" is. In order to understand what the meaning of "any occupation" is in California, you have to look to the case law.

What the case law tells us is that you must consider what the substantial and material duties are for the [policyholder's occupation](#). What that means is what is necessary to the prosecution of an occupation in the usual and customary way. Now what it also means is that you also have to be able to do a job with reasonable continuity. You can't be considered as able to work if you can only work a couple hours here and a couple hours there. If you could work eight hours a day, but in two hour increments throughout a 20 hour period with naps in between; that's not realistic, and that's not reasonable continuity. So you must be able to work with reasonable continuity in your own or another occupation.

The next important point is that an occupation would have to be in your own field, or another occupation in which you could reasonably be expected to engage in. It has to be another occupation that you can do with reasonable continuity, that you could reasonably be expected to perform satisfactorily in light of certain very specific things that have been [recognized and ruled on by the California courts](#). Your age, your station in life, your education, your training, your experience, your physical and mental capacity are all the type of criteria that determines whether the so called "any occupation" component of the disability policy applies to you.

Again, using the example of the ticket taker, if you had worked in a lab before, if you were a court reporter, or if you were a lawyer, if you were a veterinarian, or if you were a vet tech — you can't be expected, having done that type of work, to then have to become a ticket taker or a greeter at Walmart. It's not the way the law works in California and it's not what you purchased when you purchased your disability insurance, and you paid those premiums over all these years. You bought protection. You bought piece of mind, and your insurance company owes it to you to hold up their end of the bargain. You have held up your end, so don't let the insurance company get away without holding up their end of the bargain. They are holding to the promises that they made to you and your family.

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