

# Sample documents for use in establishing a Qualified Sick Pay Plan



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# Sample Corporate Resolution

(Excerpt from the ABC Company's Corporate Minutes Containing a Board Resolution Adopting a Qualified Sick Pay Plan)

Mr/Mrs/Ms (name of board member) then discussed the concept of establishing a formal Qualified Sick Pay Plan for (enter designated classification of key employees) of this Corporation. After due discussion, the following resolution was adopted:

RESOLVED, that the Qualified Sick Pay Plan for the Corporation providing coverage for both occupational and nonoccupational disability for the following class of employees,

(NAME) (TITLE)

a copy of which is annexed to the minutes of this meeting, is hereby adopted; and it is further

RESOLVED, that, commencing \_\_\_\_\_, 20\_\_\_\_, this Corporation will provide a policy of disability income insurance protection for each of the above-named employees. The policies will be issued by Massachusetts Mutual Life Insurance Company and will provide benefits according to the Plan document; and it is further

RESOLVED, that the Treasurer of this Corporation will, until otherwise directed, pay the premiums, or portions thereof, as stipulated in the Plan for each policy of Disability Income Protection on each of the employees who will participate in this Plan; and it is further

RESOLVED, that the (e.g., Secretary) of this Corporation be, and hereby designated the NAMED FIDUCIARY of the Plan and is directed to implement the Plan immediately and notify all covered employees of its existence; and it is further

RESOLVED, that all future members of the designated class of key employees will be included under the Plan; and that the appropriate officers of the company be authorized and directed to sign this resolution of the Board of Directors.

Date: Secretary

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This sample is intended for use solely as a guide for attorneys.

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# Sample Qualified Sick Pay Plan

## (A sample Disability Qualified Sick Pay Plan utilizing Individual Policy Funding)

The ABC Company, Inc., a Massachusetts Corporation (“the Corporation”), has authorized, by a Resolution of its Board of Directors, dated \_\_\_\_\_, 20\_\_\_\_, the implementation of the Qualified Sick Pay Plan (“the Plan”), described below, for the benefit of the class of employees who are Officers (or any other defined class) of the Corporation (“the Participants”).

### Preamble

The services of the Participants are extremely valuable to the Corporation.

The Corporation desires to retain the services of the Participants in order to receive the benefits of their knowledge, experience, reputation and contacts.

To retain the Participants’ services, the Corporation desires to implement, in addition to its ordinary wage payments, an incentive disability compensation plan.

To accomplish these desires, the Corporation hereby establishes the following QUALIFIED SICK PAY PLAN.

### Article 1 Participants

Any person who is or becomes (enter name of designated class of employees – e.g., officer, executive) of the Corporation on a full-time basis will be eligible to participate in the benefits provided by the Plan. (Enter definition of class, e.g., full-time basis shall mean working at least thirty [30] hours in each week.)

### Article 2 Named Fiduciary and Plan Administrator

The Secretary of the Corporation is hereby designated as the Named Fiduciary of the Plan. The Secretary shall serve in that capacity until his or her resignation or removal by the Board of Directors and the appointment of a successor by a duly adopted resolution of the Board.

The Named Fiduciary shall have authority to control and manage the operation and administration of the Plan. The Named Fiduciary, however, may delegate this responsibility to other persons. The Named Fiduciary can delegate responsibility only by delivering to the Corporation a signed written instrument specifying the nature and extent of the responsibility delegated and, if appropriate, specifying the names of the persons who are designated to carry out fiduciary responsibilities under this Plan.

The Named Fiduciary shall delegate responsibility to Massachusetts Mutual Life Insurance Company (“MassMutual” or the “Insurance Company”) to act on any claim submitted to the Insurance Company by a Participant for benefits under the Disability Income Policy (“Disability Income Policy”) purchased for each Participant.

The Named Fiduciary designated or appointed under the terms of this article is designated as the Plan Administrator.

### Article 3 Communication of the Plan

The Plan Administrator shall give a copy of this Plan to each Participant. Each Participant shall execute a written acknowledgement of receipt of a copy of this Plan. The Corporation shall retain this acknowledgement.

### Article 4 Disability Income Protection

A. Purchase of Policy – The Corporation will purchase a Disability Income Policy from the Insurance Company for each Participant who qualifies and who is insurable. If a Participant is disabled, as defined in the MassMutual Disability Income Policy, MassMutual will pay the Participant a portion of the basic monthly compensation (including any commissions and bonuses). The amount payable for disability shall be the amount payable under the Disability Income Policy insuring the Participant which is purchased pursuant to the Plan.

## Sample Qualified Sick Pay Plan (continued)

From time to time thereafter, but not less frequently than every five years after each Participant first becomes a Participant in this Plan, the Corporation will purchase an additional policy from MassMutual to reflect any increases in the Participant's compensation. Each Participant will be the owner and beneficiary of each Disability Income Policy purchased by the Corporation for that Participant. Benefit payments under each Disability Income Policy acquired under this Article will be made for benefits commencing on the month of disability and ending on such date as is provided in the policy.

- B. Payments of Premium – The premiums for the Disability Income Policy purchased for each Participant will be paid by the Corporation when each premium becomes due.

Alternative #1 – The Corporation shall pay the premium necessary to maintain each Disability Income Policy in force for benefits commencing on the month of disability and ending on such date as is provided in the policy. Each Participant shall pay the balance of the premium to maintain the policy in force.

Alternative #2 – The Corporation shall pay \_\_\_\_\_% of the premium necessary to maintain each Disability Income Policy in force for benefits commencing on the \_\_\_\_\_ month of disability and ending on such date as is provided in the policy. Each Participant shall pay the balance of the premium to maintain the policy in force.

### Article 5 Benefits Payable

- A. Salary Continuation Payments – During the waiting period before benefits are paid by the Insurance Company under the Disability Income Policy, the Corporation will pay \_\_\_\_\_ percent of the basis monthly compensation of the Participant (including any commissions and bonuses) as salary continuation payments under this Plan if the disability completely prevents the Participant from working. After the expiration of the waiting period, the only payments that may be made are

payments, if any, under the Disability Income Policy. The salary continuation payments shall be made by the Corporation from its general assets. No specific amount shall be set aside in advance for this purpose.

- B. Disability Income Policy Premiums – The premiums, or portions thereof, paid by the Corporation for the Disability Income policy for each Participant in this Plan shall constitute benefit payments by the Corporation under this Plan. The premiums shall be paid out of the general assets of the Corporation.

### Article 6 Claims Procedure

The Claims Procedure set forth below shall be followed in determining whether benefits are payable under this Plan.

If a Participant believes he or she is entitled to receive salary continuation payments under this Plan, the Participant must submit a written claim for such payments to the Plan Administrator. This claim must include:

- 1 | A statement of the nature and cause of the disability;
- 2 | The date of onset of the disease or injury causing the disability;
- 3 | The date work ceased entirely because of the disability;

If a Participant believes he or she is entitled to receive benefits under the Disability Income Policy acquired under this Plan, the Participant must submit a written claim for such benefits to the Insurance Company. Notice of claim must be given within 20 days after the disability occurs, or as soon afterwards as it is reasonably possible to do so. The Insurance Company will supply the appropriate claims forms procedures. This claim for benefits must include the above information as well as any other information required by the Insurance Company.

- A. Approval of a Claim – A Participant shall be entitled to receive salary continuation payments under this Plan during the waiting period for payment of benefits under any Disability Income Policy purchased for the Participant when the Participant has submitted the information required by this Article to the Plan Administrator and the Plan Administrator has determined that the Participant is absent from work because of illness or injury.

No benefits are payable under the Qualified Sick Pay Plan following the expiration of the waiting period. After the waiting period expires, a Participant will be deemed to be disabled under this Plan when the Participant is determined by the Insurance Company to be entitled to receive benefits under the Disability Income Policy purchased for the Participant. The Participant will continue to be considered disabled, for the purpose of this Plan, until the Insurance Company determines that the Participant is no longer entitled to receive benefits under the Disability Income Policy.

- B. Denial of Claim – The Plan Administrator or the Insurance Company, whichever is applicable, shall give written notice to each Participant whose claim is denied. This notice shall be given within a reasonable period of time after receipt of the claim and shall state the following:
- 1 | The specific reason or reasons for the denial;
  - 2 | The specific Plan or policy provisions on which the denial is based;
  - 3 | The additional material or information necessary for the Participant to perfect the claim, including an explanation of why such material or information is necessary; and
  - 4 | An explanation of the Plan's Claim Review Procedure

## **Article 7**

### **Claims Review Procedure**

A Participant whose claim is denied may appeal the decision to the Named Fiduciary or the Insurance Company, as applicable. In making this appeal, the Participant, or his or her duly authorized representative:

- 1 | May request a review by making a written application to the appropriate Named Fiduciary at any time within sixty days after the claim is denied;
- 2 | May review pertinent Plan documents; and
- 3 | May submit issues and comments in writing.

A denied claim shall be reviewed in the following manner:

- 1 | The decision on review shall be made by the Named Fiduciary or the Insurance Company, depending on whether the Participant's claim is for Salary Continuation or Disability Benefit; at the discretion of the Named Fiduciary or the Insurance Company, as the case may be, a hearing may be held on the denied claim. The decision shall be made promptly, and not later than forty-five days after receipt of the request for review, unless special circumstances (such as the need to hold a hearing) require an extension of time, in which case a decision shall be rendered as soon as possible, but not later than 120 days after receipt of the request for review.
- 2 | The decision on review shall be in writing, shall give specific reasons for the decision, and shall give specific references to the pertinent Plan or policy provisions upon which the decision is based.

# Sample Qualified Sick Pay Plan (continued)

## Article 8

### Termination of Employment

If the employment of a Participant is terminated for any reason other than disability, the Corporation's obligation to provide and the Participant's right to receive benefits from the Corporation under this Plan shall cease, except that the terminated Participant shall continue to own any Disability Income Policies acquired for the Participant under this Plan. The terminated Participant will be solely responsible for payment of the premiums on any such Disability Income Policy after his or her termination.

## Article 9

### Non-assignability

This Plan, and the rights, interest and benefits receivable under it, shall not be assigned, transferred, pledged, sold, conveyed, or encumbered in any way by the Participant and shall not be subject to transfer, assignment, pledge or encumbrance of any rights, interest or benefit of any attachment or similar process thereupon, shall be null and void and without effect, provided, however, that dividends on the Disability Income Policies which are provided under this Plan may be assigned by a Participant to the Corporation before such dividends become payable.

## Article 10

### Amendment and Termination Procedure

The Corporation reserves the right to amend or terminate this Plan at any time or times, in whole or in part, by a duly adopted resolution of the Board of Directors. No such amendment or termination shall affect the right of a Participant to receive monthly benefits under this Plan for any disability arising prior to the amendment or termination.

IN WITNESS the Corporation executes this Plan in its Corporate name and by its duly authorized Corporate Officer as of the day and the year written above.

THE ABC COMPANY, INC.

By: Attest: President Secretary

Receipt Acknowledged

By: Participant

# Sample Employee Letter

Dear <NAME>

In consideration of the valuable services you have performed for the ABC Company, Inc., the Board of Directors of the Corporation has approved a Qualified Sick Pay Plan for you during periods of disability due to personal injury or sickness.

In Brief, your plan provides:

During the first (60 days, 90 days, 180 days, etc.) of total disability due to injury or sickness, you will receive \_\_\_\_% of your regular salary (including any bonuses or commissions).

If your disability lasts longer than (60 days, 90 days, 180 days, etc.), you will receive monthly benefits not to exceed the sum of \$\_\_\_\_\_ for a period not to exceed (2 years, 5 years, or to age 65, etc.). The specific provisions are set forth in your new policy (#\_\_\_\_\_) issued by Massachusetts Mutual Life Insurance Company. The Corporation will pay the premiums, or portions thereof, as stipulated in the Plan for the policy while you continue to be an employee.

The Corporation shall be responsible for and have full discretion concerning the continuance, the operation and the management of the Plan and its assets, if any, except that the Insurance Company shall have responsibility regarding those aspects of the Plan governed by the terms of the insurance policy. The Secretary of the Corporation shall serve as Plan Fiduciary and Administrator as required by the Employee Retirement Income Security Act of 1974 as amended.

If a request for company-paid benefits under the Plan is denied, the Secretary of the Corporation will provide you with a written notice stating the reasons for denial. Upon request, you or your representative will be permitted to review the Plan and submit issues and comments in writing. If insured benefits are denied, written explanations can be obtained from Massachusetts Mutual Life Insurance Company.

Any questions regarding the Plan should be directed to the Secretary of the Corporation.

Sincerely yours,

Date:

Enc: Massachusetts Mutual Policy #\_\_\_\_\_

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We advise the employer retain a copy of this letter on file.

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