

August 20, 1981

SUBJECT: INSURANCE

WITHDRAWN
(EFF. 10-4-03)

DATED: AUGUST 20, 1981

CIRCULAR LETTER No. 16 (1981)

TO: ALL INSURERS AND SELF-INSURERS WRITING AUTOMOBILE INSURANCE IN THIS STATE

RE: Reduction In No-Fault Loss of Earnings Benefits for Qualified Wage Continuation Plans.

When calculating a no-fault applicant's first party benefits for loss of earnings, an insurer is entitled, pursuant to a provision contained in Section 671(1) of the No-Fault Law, to reduce the applicant's gross earnings by benefits received from the applicant's employer under a "qualified wage continuation plan." It has come to the Department's attention that some insurers have misinterpreted this provision and are denying loss of earnings benefits to applicants who receive sick pay from their employers under plans that do not qualify under Section 671 (1) which provides, in pertinent part, that:

An employee who is entitled to receive monetary payments, pursuant to statute or contract with the employer . . . by reason of such employee's inability to work because of personal injury arising out of the use or operation of a motor vehicle, shall not be entitled to receive first party benefits for "loss of earnings from work" to the extent that such monetary payments or benefits from the employer do not result in the employee suffering a reduction in income or a reduction in such employee's level of future benefits arising from a subsequent illness or injury.

In order for a particular wage continuation plan to qualify under the aforementioned provision it must meet all of the following three conditions:

- 1) The applicant must be entitled to receive the same level of wage continuation benefits for a subsequent unrelated accident or illness when he or she returns to work after recovering from the injuries sustained in the motor vehicle accident;
- 2) benefits for a subsequent unrelated accident must be equal in both time and amount to the wage continuation benefits the applicant was entitled to as a result of the injuries suffered in the motor vehicle accident; and
- 3) wage continuation benefits for a subsequent disability must be immediately available, without any requirement that the applicant work a stated period of time before full benefits are restored.

If these three conditions are met the plan probably qualifies. A qualified plan need not provide for 100% of a covered employee's salary (see General Electric's plan below). However, long term disability plans, which generally become effective six months after the date of disability, are not qualified wage continuation plans. The Department has reviewed the wage continuation plans of several large employers to determine if they qualify with the following results:

QUALIFIED PLANS

Employer New York City	Covered Employees & Benefits * Employees in the uniformed services of Police, Fire, Correction and Sanitation Departments
Village of Mamaroneck	* Police Officers
City of Yonkers	* Police Officers
Manhasset Union Free School	* All professional personnel, including teaching and administrative staff
Greenwich Fixture Co.	* Officers of the company not covered by the union plan
Depository Trust Co.	Professional, Administrative, Supervisory employees, Guards and confidential Secretaries are entitled full salary for up to 180 days.
Stauffer Chemical Co.	All employees. Benefits are payable for up to 6 months (3 months for employees with less than one year's service.) at 100% of salary
U.S. Armed Forces	* All members of the Armed Forces
Federal District Court	* Justices only
General Electric Co.	All employees. Benefits are equal to 60% of employee's weekly salary up to a maximum weekly benefit of \$ 175 for up to 26 weeks. However, part of this benefit is in satisfaction of N.Y.S. Disability Benefit Law (50% of salary, up to \$ 95 per week). Only the excess over N.Y.S. disability benefits qualifies as wage continua-

QUALIFIED PLANS

Employer

Covered Employees & Benefits
tion benefits. For example:

	A	B
Weekly Salary	\$ 150	\$ 300
G.E. Benefit: 60%		
with \$ 175 Maximum	\$ 90	\$ 175
Less N.Y.S. DBL: 50%		
with \$ 95 Maximum	75	95
Qualified Wage - continuation benefit	\$ 15	\$ 80

* Unlimited sick leave plans providing full
salary for the duration of disability.

NON-QUALIFIED PLANS

International Telephone and Telegraph Corp. (ITT)	Celanese Corp.
State University of New York	Con Edison
Associate Metals and Minerals Corp.	I.B.M.
So. Huntington Schools U.F.S.D. # 13	Sperry Rand
Dobbs Ferry U.F.S.D.	Eastman Kodak

NOTE: If an employee covered by a non-qualified plan is eligible for New York State Disability Benefits, the insurer is entitled to an offset pursuant to Section 671(2) (b) of the Insurance Law.

Insurers are requested to submit for approval the details of any other plans which they believe qualify to the address shown below. All plans submitted will be reviewed and, periodically, the Department will issue revised lists of qualified and nonqualified wage continuation plans.

Insurers are hereby reminded that, pursuant to Section 677(6), all policyholders covered by qualified plans are entitled to receive premium reductions. Accordingly, insurers should review their underwriting procedures to ascertain that those policyholders covered by the qualified plans listed above are receiving appropriate premium reductions.

Acknowledgement of receipt of this letter should be sent to:

Sandra Molina Siegel
Supervising Examiner
New York State Insurance Department
Two World Trade Center
New York, New York 10047

Very truly yours,

[SIGNATURE]

ALBERT B. LEWIS

Superintendent of Insurance

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