

April 21, 1950

SUBJECT: INSURANCE

WITHDRAWN

MEMORANDUM RE: New York Disability Benefits Law Advisory Form I

The advisory forms heretofore approved by the Insurance Department and accepted by the Workmen's Compensation Board are basically forms which contemplate that insurance is now being written for the first time for an employer. Essentially, these forms are not ones which are designed to make whatever changes in the employer's present weekly benefit program are indicated by the effect of the Disability Benefits Law on that program. Neither do they effectively take into account the problems encountered in those cases where the employer has employees in a number of states and several of those states either have or contemplate the enactment of a Disability Benefits Law.

The types of benefit programs now in existence are many and varied, and of necessity, the changes which employers seek to make in the programs in order to meet their obligations under the Disability Benefits Law will likewise be many and varied. In developing the present advisory forms it is essential that the companies be in a position to meet the legitimate demands of employers. In general, these demands will be dictated by the employer's conception of the program best suited to his particular needs and circumstances, the nature and construction of his present program, or the obligations imposed upon the employer as a result of labor negotiations. It seems clear that to anticipate all of the various possible combinations of circumstances and to establish a set of advisory policy forms which will meet anything approaching all of the situations is a physical impossibility.

Advisory Forms A, B, E and G can, and for the most part, will be used to write insurance for employers without existing benefit programs who are undertaking to satisfy the obligations imposed by the new law. Advisory Form H is a device for use with any of the above mentioned forms either to liberalize the benefit provisions of the law or to provide weekly benefits "at least as favorable" as the benefits required to be provided by the law. All of these forms, when used either separately or in combination, start with the statutory benefit requirements as a base for the employer's benefit program. For those employers with established benefit programs, at least those providing some weekly benefits, the base of the program has already been created quite apart from the impact of the law. In such cases, the weekly benefits afforded by the established program will rarely, if ever, correspond precisely with the minimum statutory requirements. In many of these cases, some action must be taken by the employer to qualify under the law.

In those cases where the weekly benefit provisions of the program do not meet in every respect benefit requirements of Section 204 of the law, the employer may be expected either to seek qualification of a plan by taking into account the hospital, surgical or medical benefits provisions of the plan, or by amending the weekly benefit portion to bring it up on all points to the statutory level. In many cases, the program may provide only weekly benefits. In many others, providing a variety of benefits, the weekly benefit provisions are only slightly deficient and then only in some situations. It is to be expected in these latter cases that the employer will choose to amend the weekly benefits portion of his program to make certain that in no case will the benefits payable under that portion be less than those to which an employee would be entitled in accordance with the provisions of Section 204 of the law. Advisory form F has been prepared for this purpose.

Under many existing benefit programs, the weekly benefit portion, at least with respect to benefit amounts, exceed the requirements of the Disability Benefits Law, the excess under some being very substantial. Here, the problem of

qualification would appear to be relatively slight. Such cases, however, do present to the employer certain problems of considerable consequence. These problems are essentially problems of adjustment in existing arrangements to meet the impact of legislation and regulation which until recently, were virtually non-existent.

One of the most serious considerations which the employer must take into account is the effect upon his existing program of the immediate eligibility and post-employment carry-over provisions of the law. Under the usual program, particularly one providing a higher level of benefits, it is customary to provide for a qualifying period of employment which must be completed before the employee is eligible for benefits. This qualifying period is calculated to make the coverage available to employees who have definitely passed the temporary or probationary classification. Moreover, weekly benefits are not customarily payable to an employee for disabilities commencing after termination of employment. Under such a program, it may become necessary to provide benefits at least up to the statutory benefit level during all or a portion of the established qualifying period and during the post-employment period.

Another problem which in the nature of things will only be aggravated with the passage of time, is that which is created for the multi-state employer by the enactment of a succession of state disability benefits laws, no two of which impose, by statute or regulation, uniform obligations or operational procedures. Such an employer, especially one having a liberal benefit program already established operating on a multi-state basis is chiefly concerned with satisfying the requirements of the newly enacted legislation. His benefit program is not one which was prompted by the legislation, nor is it one which is constructed on principles established by legislation. Benefit-wise it is probably superior to the best of the legislative enactments. The problem is one of dovetailing a variety of different required benefit provisions with a uniform overall program extended to all employees, whether they be employed in states having disability benefits legislation or not.

To meet the problems indicated in the foregoing and others of similar nature Advisory form I has been developed. Basically, this form is an adaptation of Advisory form B and, as drafted, affords precisely the same benefits as Advisory forms A, B, E and G. Its most obvious use is, of course, as a coverage rider to a standard group policy which does not afford weekly benefits. Used in this manner it operates in the same manner as when Advisory forms E or G are attached to a Standard Workmen's Compensation Policy. Like Advisory forms E and G it can be amended to liberalize statutory benefits by the use of Advisory form H.

This form may also be used on a standard Group accident and health policy which affords weekly benefits, whether such benefits are greater or less than those provided under Section 204 of the law. When so used the rider will, of course, provide benefits only with respect to those employees entitled to benefits under the law. In those cases where the weekly benefits afforded by the policy are less than the statutory benefits, the policy should be amended to deny the application of such benefits to New York employees, and benefits for such employees will be wholly paid under the provisions of Advisory form I. Used in this manner, Advisory form I accomplishes substantially the same result as Advisory form F.

Where Advisory form I is used on a policy which affords weekly benefits greater than the statutory benefits, It will, generally, be so used to meet the problem of integration. The employer, having a liberal benefit program already established, may be expected to seek to maintain his program with uniform application to all of his employees, wherever located, and to make only such changes as are necessary to meet the requirements of one or more disability benefit laws. With respect to his New York employees this can be accomplished by adding to the policy Advisory form I and so amending the weekly benefit provision of the policy that to the extent that such weekly benefits exceed the statutory benefits, they shall be payable as excess benefits. This will generally be accomplished by providing for the payment to New York employees of the policy benefits reduced by the amount of the benefits payable under Advisory form I. By this device, the New York employee, when he qualifies, will receive under Advisory form I and the policy benefit provision the same benefit treatment as any other qualified employee. In addition, the New York employee will, under all circumstances be guaranteed the payment of statutory benefits.

For the integration of statutory benefits with a multi-state liberal benefit program Advisory form I is a very useful

and very flexible device. With it, all of the requirements of the Disability Benefits Law can be met with a minimum disturbance to an established benefit program. In addition, it will be most useful for adding weekly benefits for New York employees to an existing group accident and health policy which provides no weekly benefits.

Advisory Form I  
2-27-50

Rider for use with group accident and health policy

This rider is issued as the provision of benefits made under the Disability Benefits Law of the State of New York by the Employer of an employee to whom this rider applies. This rider applies only with respect to such of the employees in the following classes as are eligible for benefits under Section 204 of the Disability Benefits Law of the State of New York. The term Disability Benefits Law shall be deemed to include any laws amendatory thereof or supplementary thereto which are or may become effective during the continuance of this rider.

(Classes of Employees)

The (Insurance Company) hereby agrees, as to each employee of an Employer (named in this policy) within the classes of employees specified above, to pay the disability benefits which such employee is entitled to receive under Section 204 of the Disability Benefits Law of the State of New York because of employment with such Employer within any such class while such class is covered by this rider.

This rider provides benefits only

(a) for a disability which commences during the continuance of this rider, or,

[(b) with respect to any employee whose employment with an Employer (named in this policy) terminates during the continuance of this rider, for a disability which commences within four weeks after such termination of employment and prior to the first day after such termination on which the employee performs any work for remuneration or profit.]

All of the provisions of the Disability Benefits Law of the State of New York shall be and remain a part of this rider as fully and completely as if written herein, so far as they apply to disability benefits provided by this rider.

Any provision of this policy for the issuance of certificates shall not apply with respect to this rider.

(The Policyholder may act for and on behalf of any and all Employers named in this policy in all matters pertaining to this rider, and every act done by, agreement made with, or notice (other than a notice of cancellation of this rider required to be given to an Employer by the other terms of this rider) given to the Policyholder shall be binding on all such Employers.)

NOTES: Throughout this rider, matter in brackets should be conformed to the requirements and practices of the company.

This form of rider is designed for use only when the Policyholder is an Employer.

Consideration should be given as to the necessary changes, if any, in the policy proper which may be necessary or desirable because of the addition of this rider.

Unless the policy establishes the Policyholder, it will be necessary to do so in this rider.

The substance of Advisory Form H provisions may be integrated into this rider.