

January 31, 1985

SUBJECT: INSURANCE

Circular Letter No. 2 (1985)

January 31, 1985

TO : ALL INSURERS AUTHORIZED TO TRANSACT PROPERTY AND CASUALTY INSURANCE BUSINESS
IN THIS STATE AND RATE SERVICE ORGANIZATIONS

RE : MANDATORY WORKERS' COMPENSATION COVERAGE UNDER COMPREHENSIVE PERSONAL
LIABILITY AND HOMEOWNERS POLICIES

Chapter 540 of the Laws of 1984 amended former Section 167 of the Insurance Law by adding a new subdivision 4-a (Section 3420(j) as recodified). Put as plainly as possible, this legislation requires every policy:

- (a) providing comprehensive personal liability insurance on a one, two, three or four family owner-occupied dwelling (including such dwellings occupied by condominium owners);
- (b) issued or renewed in this State on or after March 1, 1985;
- (c) to provide coverage against liability for the payment of any obligation that the policyholder may incur pursuant to the provisions of the Workers' Compensation Law;
- (d) to an employee arising out, and in the course, of employment shorter than forty (40) hours per week, in and about the policyholders' residences located in this State.

The benefits are the same as those provided by the standard New York Workers' Compensation policy, parts 1 and 2 inclusive.

The above provisions do not apply to owner-occupants of such dwellings where the dwelling liability is insured under other than a comprehensive personal liability policy or a homeowners policy, such as a commercial owners, landlords and tenants liability policy.

The new law does not provide voluntary or elective coverage for those employees who are presently exempt under the Workers' Compensation Law. Those specifically exempted under that law, and therefore not covered under the Legislation in question, are the following:

1. Domestic employees employed for less than forty (40) hours a week (Sec. 3, subd. 1, grp. 12);
2. Clergymen and persons engaged in a teaching or non-manual capacity for a religious, charitable or educational institution (Sec. 3, subd. 1, grp. 18);
3. Employees of municipal and other political subdivisions not engaged in "hazardous" employment (Sec. 3, subd. 1, grp. 17);

4. Uniformed sanitation workers, firefighters and police officers in the employ of the City of New York (Sec. 3, subd. 1, grp. 17; General Municipal Law Sec. 207; Sec. 30 of W.C.L.);

5. Babysitters (Sec. 2, subd. 4);

6. Minors fourteen (14) years of age or over engaged in casual employment consisting of yardwork and household chores in and about a one-family, owner-occupied residence or the premises of non-profit, non-commercial organizations, which does not involve the use of power driven machinery (Sec. 2, subd. 4);

7. Longshoremen and harbor workers who are covered by the Longshoremen and Harbor Workers Act, and railroad employees (Sec. 113);

8. Federal employees (Sec. 113);

9. Anyone engaged in yardwork or household chores or making repairs or painting in or about a one-family, owner-occupied residence (Sec. 2, subd. 4); and

10. A farm laborer whose employer has a total payroll of less than \$ 1,200.00 in the preceding calendar year (Sec. 3, subd. 1, grp. 14-b).

(Note: Unless otherwise noted, all section numbers refer to Workers' Compensation Law)

Carriers may comply with the requirements of this new law by adopting the forms filed by, and approved for, a rate service organization to which the carrier belongs as a member or subscriber. Other carriers, which have not authorized a rate service organization to file on their behalf, should file their own forms for separate approval, pursuant to the instructions set forth in Circular Letter No. 15 (1984) re: Procedures for Filing Forms, Rating Classifications and Territories under Article 23.

With respect to the rate to be charged for this required additional coverage, each carrier should make a filing with the Superintendent, pursuant to the instructions set forth in Circular Letter No. 16 (1984) re: Revised Procedures for Furnishing Rating Information under Article 23. A carrier may adopt the advisory rates recommended by a rate service organization to which it belongs as a member or subscriber, or may file its own independent rate. Based upon a study by the New York Compensation Insurance Rating Board, the initial rate for this coverage should not exceed \$ 3.00. When credible experience develops, a different rate may be considered.

The Insurance Department has designated the New York Compensation Insurance Rating Board as its statistical agent in the collection of data, by call and on an annual basis, for this coverage.

It should be noted that this Department does not interpret the Workers' Compensation Law. Accordingly, the applicability of this coverage under various circumstances will be governed by the interpretations and rulings by the New York Workers' Compensation Board and the courts.

Very truly yours,

[SIGNATURE]

JAMES P. CORCORAN

Superintendent of Insurance