



STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

David A. Paterson
Governor

James J. Wrynn
Superintendent

Circular Letter No. 4 (2010)
February 5, 2010

TO: All Motor Vehicle Insurers Writing Motor Vehicle Insurance in New York State, Self-Insurers, and the New York Automobile Insurance Plan

RE: Reduction in No-Fault Loss of Earnings Benefits Payable by Amounts Received from Employer Wage Continuation Plans

STATUTORY REFERENCE: N.Y. Ins. Law §§ 2330 and 5102; 11 NYCRR § 65 (Regulation 68)

This Circular Letter supersedes [Circular Letter No. 12 \(1997\)](#), including its attached listing of wage continuation plans, which is hereby withdrawn as of this date.

Insurance Law § 5102(a)(2) provides in relevant part that an insurer under certain conditions, see 11 NYCRR § 65-3.16(b)(1)(i), may take as an offset against or a deduction from no-fault loss of earnings benefits payable to an eligible injured person amounts that the person receives from an employer's wage continuation plan. Circular Letter No. 12 (1997) included a listing of wage continuation plans that the Department previously concluded had met the required conditions.

The Department no longer maintains a list of wage continuation plans. Consequently, the purpose of this Circular Letter is to remind insurers to properly and consistently apply the provisions of 11 NYCRR § 65-3.16(b)(1)(i) in determining whether an employer's wage continuation plan meets the conditions specified in the regulation. Section 65-3.16(b)(1)(i) provides that in order for an insurer to take an offset or deduction, the following conditions must be satisfied:

- *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;*
- *Benefits for a subsequent unrelated accident or illness must be equal in both time and amount to the wage continuation benefits to which the*

applicant was entitled as a result of the injuries suffered in the motor vehicle accident; and

- *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 a wage continuation plan provides benefits that are less than 100 percent of the employee's salary, 11 NYCRR § 65-3.19(f)(3) requires the insurer to reduce the amount paid under the plan by the amount required to be paid in satisfaction of the New York State Disability Law. Only the excess over statutory New York State disability benefits is a qualified wage continuation plan benefit.

Pursuant to 11 NYCRR § 65-3.16(b)(1)(iii), an insurer may not take a deduction for contractual or voluntary long-term disability plans, which generally become effective six months after the date disability begins.

Pursuant to Insurance Law § 2330 and 11 NYCRR § 65-3.16(b)(2), an insurer that has issued a policy providing no-fault insurance must apply an appropriate discount to the insured's no-fault premium to reflect the insurer's reduced exposure to loss. An insurer must grant the premium reduction upon receipt of information that indicates that the insured is covered by an eligible wage continuation plan.

Every insurer must ensure that all informational policyholder notices are updated to remove any references to Department-maintained listing of wage continuation plans.

Please direct any questions or comments regarding the contents of this Circular Letter to:

Elizabeth Anderson, Associate Insurance Examiner
New York State Insurance Department
25 Beaver Street
New York, NY 10004
212-480-5592 or email at eanderso@ins.state.ny.us.

Very truly yours,

Larry Levine
Assistant Deputy Superintendent &
Chief Examiner
Property Bureau