



**STATE OF NEW YORK
INSURANCE DEPARTMENT
160 WEST BROADWAY
NEW YORK, NEW YORK 10013**

**Circular Letter No. 12 (1997)
July 9, 1997**

**TO: ALL MOTOR VEHICLE SELF-INSURERS AND INSURERS AUTHORIZED TO WRITE MOTOR
VEHICLE INSURANCE IN NEW YORK STATE**

**RE: REDUCTION IN NO-FAULT LOSS OF EARNINGS BENEFITS FOR QUALIFIED
WAGE CONTINUATION PLANS**

Section 5102(a)(2) of the Insurance Law contains a provision that requires insurers to reduce gross earnings from work by benefits paid under what have become known as "qualified wage continuation plans" when calculating No-Fault benefits payable for loss of earnings.

In order for a particular wage continuation plan to qualify for purposes of 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 to which the applicant was entitled as a result of the injuries suffered in the motor vehicle accident; and

(3) wage continuation for a subsequent disability must immediately be 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 will generally qualify.

For plans that provide benefits less than 100% of the employees' salary the plan must provide a level of benefits that exceed the amount required to satisfy the New York State Disability Benefits Law in order to be a qualified plan. Insurers should be reminded that the New York State Disability Benefits are still applied as a statutory offset to No-Fault lost earnings payments.

In order to provide for consistent application of this provision, the Insurance Department has been reviewing plans submitted by insurers and employers and classifying them as either "qualified" or "non-qualified". The lists appended hereto contain the plans reviewed to date and supersede previous lists.

Insurers are reminded that pursuant to Section 2330 of the Insurance Law insureds covered by a "qualified wage continuation plan" are entitled to a premium reduction to reflect the insurer's reduced exposure to loss. Insurers must grant the premium reduction upon receipt of information that

the insured is entitled to benefits under a qualified wage continuation plan.

Insurers are again requested to submit for approval, to the address shown below, details of any other plans that they believe may qualify. All plans submitted will be reviewed and, periodically, the Department will issue revised lists of qualified and non-qualified wage continuation plans. Please note that long-term disability plans, which generally become effective six months after the date disability begins, are not qualified wage continuation plans. Such plans and any questions regarding this Circular Letter should be submitted to:

Ms.Hoda S. Nairooz
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New York State Insurance Department
160 West Broadway
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Very truly yours,

Stewart Keir, CPCU, CFE CIE
Assistant Deputy Superintendent & Chief
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