

CIVIL UNIONS

All Pension Funds and the Health Benefit Programs

Chapter 103, P.L. 2006, the Civil Union Law, became effective on February 19, 2007, and established “civil unions” between same-sex couples within the State of New Jersey. Under the law, a same-sex couple entering into a civil union enjoy the same rights and benefits — as well as the same burdens and obligations — that are available to heterosexual married couples.

The law extends public pension, State Health Benefits Program (SHBP), and School Employees’ Health Benefits Program (SEHBP) benefits to same-sex civil union partners of State, local governmental, and local educational employees and retirees.

This fact sheet deals only with the pension and health benefits extended by Chapter 103. It does not address the broader rights and responsibilities covered by the law nor does it cover questions of eligibility for a civil union since they are outside of the scope of the Division of Pensions and Benefits.

Note: New Jersey State law also recognizes same-sex domestic partnerships. Chapter 103 does not change or terminate existing same-sex domestic partnerships established under the Domestic Partnership Act (Chapter 246, P.L. 2003). However, Chapter 103 did implement some fundamental changes to the law involving the establishment of domestic partnerships *after February 19, 2007*. For more information see Fact Sheet #71, *Benefits Under the Domestic Partnership Act*.

ELIGIBILITY

Chapter 103 applies to any **State employee, local governmental employee, or local educational employee**, and *any retiree of these employers* who has entered into a civil union, obtained a New Jersey *Civil Union Certificate* (or a valid certification from another jurisdiction that recognizes same-sex civil unions¹), and who is otherwise eligible for pension and/or SHBP/SEHBP benefits.

¹A list of recognized jurisdictions is available on the Division of Pensions and Benefits Web site.

- A **State employee/retiree** includes any employee or retiree of the executive, judicial, and legislative branches paid through Centralized Payroll, employees of Rutgers University, UMDNJ, NJIT, and the State colleges and universities, and employees of the Palisades Interstate Park Commission, the NJ Building Authority, the State Library, the Waterfront Commission of NY Harbor, and the Commerce and Economic Growth Commission.
- A **local governmental or educational employee/retiree** includes any employee or retiree of a local public entity — county or municipal government/authority, a local board of education, or a county college, etc.

Note: The enactment of the Civil Union Law extends health and pension benefits to all eligible civil union couples; therefore, there is no additional resolution or approval required by an employer as is required under the earlier Domestic Partnership Act (Chapter 246, P.L. 2003).

A “**civil union partner**” is defined for pension and SHBP/SEHBP eligibility as a person of the same sex to whom the eligible employee or retiree has entered into a civil union as recognized under Chapter 103.

PENSION BENEFITS

Chapter 103 adds a same-sex **civil union partner** to the definition of spouse, widow, widower, and eligible same-sex domestic partner to the Public Employees’ Retirement System (PERS), Teachers’ Pension and Annuity Fund (TPAF), Police and Firemen’s Retirement System (PFRS), State Police Retirement System (SPRS), Judicial Retirement System (JRS), and Alternate Benefit Program (ABP), so that the civil union partner is considered the same as a spouse.

Upon the death of a retirement system member, a copy of the valid *Civil Union Certificate* is required for verification before any pension benefits are paid.

PERS and TPAF Members

For the **PERS** and **TPAF**, the only benefit added by this law is for Accidental Death. A civil union partner is eligible to receive a pension benefit if the employee dies through an accident in the performance of his or her duty while at work. This is a lifetime benefit; however, if the surviving spouse/partner subsequently marries or establishes a new civil union, the survivor's pension benefit will end. However, a survivor's benefits from an Accidental Death (or Accidental Disability retirement) going to a civil union partner would be subject to federal tax. This is not the case when a survivor's benefit is paid to a spouse².

Regular PERS and TPAF retirements are not impacted since retirees can already name anyone as a joint and survivor beneficiary of their pension benefit. The Internal Revenue Service (IRS)² does, however, restrict who a member can name as a beneficiary under Options 2, A, and B, to either a spouse or to a nonspouse beneficiary within specific age limitations (see Fact Sheet #5, *Pension Options*, for details on age limits for nonspouse beneficiaries).

PFRS and SPRS Members

For the **PFRS** and **SPRS**, the statutory survivor's benefit, provided upon the death of the employee or retiree, can be paid to a surviving civil union partner in the same manner as is done for a surviving spouse or eligible same-sex domestic partner. This is a lifetime benefit; however, if a surviving spouse/partner is receiving a PFRS or SPRS survivor's benefit (with the exception of a survivor of an Accidental Death in the line of duty) and subsequently marries or establishes a new civil union, the survivor's pension benefit will end.

JRS Members

For the JRS, the statutory survivor's benefit, provided upon the death of the employee or retiree, can be paid to a civil union partner in the same manner as is done for a spouse or eligible same-sex domestic partner. This is a lifetime benefit; however, if a surviving spouse/partner is receiving a JRS survivor's

benefit and subsequently marries or establishes a new civil union, the survivor's pension benefit will end.

If a JRS member wishes to also select a joint and survivor retirement option, the IRS restrictions for Options 2, A, and B mentioned above under the PERS and TPAF also apply.

Other Pension Funds

A civil union partner is recognized under the Alternate Benefit Program, the Consolidated Police and Firemen's Pension Fund, the Prison Officers' Pension Fund, and the Volunteer Emergency-Worker's Survivors Pension. Any pension benefits available to a spouse under these plans are also available in the same manner to a civil union partner.

HEALTH BENEFIT PROGRAM COVERAGE

Coverage under the SHBP or SEHBP for a civil union partner is available to any State employee, State retiree, or an eligible employee or retiree of a local public entity that participates in the SHBP or SEHBP.

Enrolling a Civil Union Partner

To add a civil union partner to coverage, an SHBP/SEHBP eligible employee or retiree must submit the appropriate health benefits enrollment application and include a photocopy of the New Jersey *Civil Union Certificate* (or a valid certification from another jurisdiction that recognizes same-sex civil unions) with the application.

Dependent children of your civil union partner may also be added **provided they qualify as your dependents** and required proof of dependency is provided (see Enrolling Dependent Children on page 3).

Employees

As an employee, you must file a *Health Benefits Enrollment Application* with your employer and include a photocopy of the *Civil Union Certificate*.

² Under the federal Internal Revenue Code a civil union partner or domestic partner is not recognized in the same manner as a spouse and therefore does not qualify for similar treatment for federal tax purposes.

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- In cases of a new civil union, the effective date of coverage will be the date of the civil union provided that the application is received by the Health Benefits Bureau of the Division of Pensions and Benefits **within 60 days** of the date of the civil union.
- If you do not add your civil union partner or other eligible dependent children within 60 days of when first eligible, you must wait until the next regular SHBP/SEHBP Open Enrollment period. The annual Open Enrollment is currently held each October with benefits beginning with the start of the calendar year.

Retirees

As a SHBP or SEHBP eligible retiree, you must file a *Health Benefits Retired Change of Status Application* with the Health Benefits Bureau of the Division of Pensions and Benefits and include a photocopy of the *Civil Union Certificate*.

- In cases of a new civil union, the effective date of coverage will be the date of the civil union provided that the application is received by the Health Benefits Bureau **within 60 days** of the date of the civil union.
- If you do not add your civil union partner or other eligible dependent children within 60 days of when first eligible, you may enroll them at any time, however, the effective date of coverage will be the first of the month following a full two-month waiting period from the date of receipt of the application by the Division.

See Fact Sheet #11, *Enrolling in Health Benefits Coverage When You Retire*, for more information.

Enrolling Dependent Children

The children of your civil union partner can be added as dependents under your SHBP or SEHBP coverage **only if** they are single, under the age of 23, live with you, **and are dependent upon you for support**. You will have to file an *Affidavit of Dependency* and provide required documentation when you add them to your coverage.

Note: Extended coverage for dependent children up to age 31 is available under Chapter 375, P.L. 2005.

See Fact Sheet #74, *Health Benefits Coverage of Children Until Age 31*, for more information.

The Cost of Civil Union Partner Coverage

The premium rate for the Member & Spouse/Partner level of coverage is used to determine the cost of coverage for an employee and civil union partner. If the employee also has children enrolled for coverage, the Family level of coverage will include the civil union partner for the same cost as if a spouse were covered.

If the employee or retiree is currently required to pay for any portion of the coverage for their dependents, the same costs apply for the civil union partner as would apply to a spouse.

TAXATION OF HEALTH BENEFITS FOR CIVIL UNION PARTNERS

The federal Internal Revenue Code (IRC) allows an employer to provide certain benefits to its employees on a tax-exempt basis. Those benefits can also be extended to spouses and dependents of an employee on the same tax-exempt basis. The IRC, however, does not recognize a civil union partner in the same manner as a spouse and does not automatically recognize a civil union partner as a dependent for tax purposes. Therefore, your employer may have to treat the civil union SHBP/SEHBP benefit as taxable to you and withhold federal income, Social Security, and Medicare taxes on its value. **This is also true if you are a retiree and are receiving employer- or State-paid health benefits coverage.**

If you add a civil union partner to your coverage, you should expect to receive a *Form W-2* and have to pay federal income, Medicare, and Social Security taxes on the imputed value of the civil union partner benefit.

Similarly, since the civil union partner's coverage is a federally taxable benefit, an employee who participates in the State's Tax\$ave (IRC Section 125) Premium Option Plan, or another employer's Section 125 plan, cannot make pre-tax payments for the cost of a civil union partner's coverage. Pre-tax dollars may still be used to pay for the employee's portion of the cost of his or her own and dependent children's

coverage (see Certifying a Partner's Dependent Status, below).

The civil union partner benefit is not subject to New Jersey State income tax. If you live outside of New Jersey, you should check with your State's tax agency to determine if the civil union partner benefit is subject to state taxes.

Determining the Imputed Income

The SHBP and SEHBP use the cost for Single coverage in determining the imputed value of civil union partner coverage. The imputed income for federal tax withholding purposes will be the full cost of Single coverage for the plan in which the employee or retiree is enrolled less any amount the employee/retiree pays towards the cost of the civil union partner's coverage.

Example 1: A State employee with Single coverage in NJ DIRECT, the Employee Prescription Drug Plan, and the Dental Expense Plan adds a civil union partner to the coverage of all three plans. The civil union partner benefit is a federally taxable benefit. The biweekly imputed income for the NJ DIRECT and Employee Prescription Drug Plan, for which there is no employee premium charge, is the full cost of Single coverage, or \$131.75 and \$47.32, respectively. The biweekly imputed income for the Dental Expense Plan, for which the employee does premium share, is \$13.48. This is the full cost of Single coverage, \$18.48, minus the amount that the employee has paid for the civil union partner coverage, \$5.00 (the difference between the employee share for Single coverage, \$9.24, and for Member & Spouse/Partner coverage, \$14.24). The total biweekly imputed income attributable to civil union partner coverage for this employee is \$192.55, the sum of the imputed incomes for all three plans.

Example 2: A State retiree with State-paid Single coverage in NJ DIRECT, and who is enrolled in Medicare, adds a civil union partner to the plan. The civil union partner benefit is a federally taxable benefit. The monthly imputed income for NJ DIRECT is the full cost of Single with Medicare coverage, \$376.21, minus the premium sharing amount that the employee pays for the civil union partner coverage, \$94.06 (the difference between the retiree share for Single with Medicare coverage, \$94.05, and the

share amount for Member & Spouse/Partner with Medicare coverage, \$188.11). Therefore, the total monthly imputed income attributable to civil union partner coverage for this retiree is \$282.15.

Example 3: An employee of a local employer with Single coverage in NJ DIRECT adds a civil union partner to the coverage. The employer also requires its employees to pay the full cost of dependent coverage. Since the employee, rather than the employer, pays the full cost of the civil union partner's coverage (the \$545.95 monthly dependent cost of Member & Spouse/Partner coverage), the employee will have no imputed income for this benefit and no additional tax liability.

Certifying a Partner's Dependent Status

If a civil union partner can meet the Internal Revenue Service's definition of a dependent for tax purposes, found in Section 152 of the IRC, the employer does not have to treat the civil union partner coverage as a taxable benefit. The requirements for dependent status are not easily met and are strictly enforced by the IRS. If an employee wants to claim a dependency exemption for a civil union partner, all five of the following dependency tests must be met:

- The member of the household or relationship test,
- The citizen or resident test,
- The joint return test,
- The gross income test, and
- The support test.

See Internal Revenue Service *Tax Topic 354 - Dependents* for additional information on dependent status for federal tax purposes.

The IRS has stated in private letter rulings that an employer can rely on an employee's written certification that the dependent meets the IRS tests for dependency. An employee or retiree can provide certification that a civil union partner meets the Internal Revenue Code criteria for a dependent in one of several ways:

- State employees paid through Centralized Payroll can submit the *Employee Tax Certification — Civil Union Partner or Domestic*

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Partner Benefit form to certify their partner's dependent status.

- Employees of other employers should see their employer's Human Resources Officer or Benefits Administrator to determine how tax dependent certification should be provided.
- Retirees can submit the *Retiree Tax Certification — Civil Union Partner or Domestic Partner Benefit* form to certify their partner's dependent status.

Since an individual's situation can change, an employee or retiree who files a certification stating that the civil union partner meets the IRS definition of dependent will be required to file a new certification every calendar year to continue that same tax treatment of the benefit.

Employees or retirees may also wish to consult with a professional tax advisor or contact the Internal Revenue Service directly at 1-800-TAX-1040 or over the Internet at: www.irs.gov.

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