

Benefits Under the Domestic Partnership Act

All Pension Funds and the Health Benefit Programs

CIVIL UNIONS AND CHANGES TO THE DOMESTIC PARTNERSHIP ACT

Please Note: Chapter 103, P.L. 2006, established civil unions under New Jersey law and changed certain provisions of the Domestic Partnership Act. After February 19, 2007, same-sex couples are permitted to establish a civil union, but may no longer enter into a domestic partnership in New Jersey¹. For additional information about civil unions see Fact Sheet #75, *Civil Unions*.

New Jersey continues to recognize same-sex domestic partnerships established in New Jersey prior to February 19, 2007, and in jurisdictions¹ other than New Jersey *both prior to and after* February 19, 2007. An updated list of recognized jurisdictions is available on the Division of Pensions and Benefits Web site at: www.state.nj.us/treasury/pensions

Chapter 246, P.L. 2003, the Domestic Partnership Act, established certain rights and responsibilities for domestic partners in the State of New Jersey. The law also extended public pension, State Health Benefits Program (SHBP), and School Employees' Health Benefits Program (SEHBP) benefits to same-sex¹ domestic partners of State employees and retirees and permits local governmental employers to extend those same domestic partner benefits to their employees and retirees.

This fact sheet deals only with the pension and SHBP/SEHBP benefits extended by Chapter 246. It does not address the broader rights and responsibilities covered by the law nor does it cover questions of eligibility for a domestic partnership since they are outside of the scope of the Division of Pensions and Benefits.

ELIGIBILITY

Under Chapter 246 a domestic partner is defined for pension and SHBP/SEHBP benefits eligibility as a person of the same sex to whom the employee or retiree has entered into a domestic partnership and

received, through application to a local registrar, a New Jersey *Certificate of Domestic Partnership* dated prior to February 19, 2007 (or a valid certification from another jurisdiction¹ that recognizes same-sex domestic partners).

The Domestic Partnership Act applies to any **State employee** or **State retiree** who has entered a same-sex domestic partnership and obtained a valid *Certificate of Domestic Partnership*. A **State employee** includes employees 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 **State retiree** is any retiree from one of the above mentioned employers.

The Domestic Partnership Act applies to eligible employees and retirees of **local public entities** only if the governing body adopts the benefit by resolu-

¹ With the passage of Chapter 103, P.L. 2005, the Civil Union Law, provisions remain in place to permit both same-sex and opposite-sex couples 62 years of age or older to elect to join in a domestic partnership if they choose. Prior to the enactment of the Chapter 103, all opposite-sex domestic partners under the Domestic Partnership Act, including those 62 years of age or older, were precluded from pension and/or SHBP benefits because they were able to obtain those benefits by exercising the option of marriage. Now both same-sex and opposite-sex domestic partners 62 years of age or older who enter into a New Jersey domestic partnership after February 19, 2007, will not be entitled to pension or SHBP benefits. The Division of Pensions and Benefits is also awaiting advice from the Office of the Attorney General regarding the pension and SHBP eligibility of same-sex domestic partnerships established after February 19, 2007 outside the jurisdiction of New Jersey by couples 62 years of age or older. The Division will provide additional details on the specific eligibility status of these couples when more information becomes available.

tion or ordinance (see Adoption by Local Public Entities, below). The local public employee or retiree must also obtain a valid *Certificate of Domestic Partnership*.

Adoption by Local Public Entities

In order for the Domestic Partnership Act to apply to the employees/retirees of a local public entity, the entity's governing body must pass a resolution or ordinance extending the domestic partner benefit and file it with the Division of Pensions and Benefits. The decisions to provide pension and/or health benefits to domestic partners are separate and distinct decisions that must be made by the governing body.

The law gives the employer the option to extend, or not extend, the domestic partner benefit to its employees and retirees. However, if the employer wishes to provide domestic partner *pension* benefits, it must do so for **all** its employees and retirees in all of the pension funds in which it participates.

When adopted, a local entity's effective date for the addition of coverage of domestic partners is the 1st of the month following a 60-day period after the Division receives the resolution.

PENSION BENEFITS

The Domestic Partnership Act added a same-sex domestic partner to the definition of spouse, widow, and widower to the **State component** of the Public Employees' Retirement System (PERS), Teachers' Pension and Annuity Fund (TPAF), Police and Firemen's Retirement System (PFRS), State Police Retirement System (SPRS), and Judicial Retirement System (JRS), so that the domestic partner is treated in the same manner as a spouse. The law allows **local employers** to apply the same changes through action of its governing body.

Upon the death of a retirement system member, a copy of the valid *Certificate of Domestic Partnership* 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. An eligible domestic

partner is able 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 domestic partnership or civil union, the survivor's pension benefit will end. However, a survivor's benefits from an Accidental Death (or Accidental Disability retirement) going to an eligible domestic 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 an eligible same-sex domestic partner in the same manner as is done for a surviving spouse or civil union 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 domestic partnership or 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 an eligible same-sex domestic partner in the same manner as is done for a spouse or civil union 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 domestic partnership or civil union, the survivor's pension benefit will end.

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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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

The Domestic Partnership Act does not extend any domestic partner *pension* benefits to members of the Alternate Benefit Program, the Consolidated Police and Firemen's Pension Fund, the Prison Officers' Pension Fund, or the Volunteer Emergency-Worker's Survivors Pension.

HEALTH BENEFIT PROGRAM COVERAGE

Coverage under the State Health Benefits Program (SHBP) for a same-sex domestic partner is available to any eligible State employee or State retiree.

Coverage under the SHBP or School Employees' Health Benefits Program (SEHBP) for a same-sex domestic partner is available to any eligible employee or retiree of a local public entity **if** the governing body adopts the benefit by resolution (see Adoption by Local Public Entities, on page 2).

Enrolling a Domestic Partner

To add an eligible same-sex domestic partner to coverage, an SHBP or SEHBP eligible employee or retiree must submit the appropriate health benefits enrollment application, and include a photocopy of the New Jersey *Certificate of Domestic Partnership* dated prior to February 19, 2007 (or a valid certification from another jurisdiction that recognizes same-sex domestic partners) with the application.

Dependent children of your domestic partner may also be added **provided they qualify as your dependents** and required proof of dependency is provided (see Enrolling Dependent Children, on page 4).

Employees

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

- In cases where a new domestic partnership is permitted, the effective date of coverage will be the date of the partnership 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 domestic partnership.

- For existing domestic partnerships, or if you do not add your domestic partner or other eligible dependent children within 60 days of when first eligible, you must wait until the next regular SHBP/SHBP 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 valid *Certificate of Domestic Partnership*.

- In cases where a new partnership is permitted, the effective date of coverage will be the date of the partnership provided that the application is received by the Health Benefits Bureau **within 60 days** of the date of the domestic partnership.
- For existing domestic partnerships, or if you do not add your domestic 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 Health Benefits Bureau.

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

Note: While some education and local PFRS retirees receive SHBP or SEHBP coverage that is paid — in-full or in-part — by the State, these retirees were not State employees and are not considered State retirees. Therefore, the eligibility of a domestic partner of an education or local PFRS retiree for SHBP/SEHBP coverage remains based on the actions of the governing body of the retiree's former employer. If the governing body of the employer passes a resolution to extend the domestic partner health benefits to its employees and

retirees, the retirees of that employer will be able to add an eligible domestic partner to their SHBP/SEHBP coverage.

Enrolling Dependent Children

The children of your domestic partner can be added as dependents under your SHBP/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 30 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 Domestic 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 domestic partner. If the employee also has children enrolled for coverage, the Family level of coverage will include the domestic 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 domestic partner as would apply to a spouse.

TAXATION OF HEALTH BENEFITS FOR DOMESTIC 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 domestic partner in the same manner as a spouse and does not automatically recognize a domestic partner as a dependent for tax purposes. Therefore, your employer may have to treat the domestic partner 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 domestic 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 domestic partner benefit.

Similarly, since the domestic 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 domestic 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* on page 5).

The domestic partnership 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 domestic 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 domestic 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 domestic 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 domestic partner to the coverage of all three plans. The domestic 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 domestic 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

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biweekly imputed income attributable to domestic 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 domestic partner to the plan. The domestic 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 domestic partner coverage, \$94.06 (the difference between the retiree share for Single with Medicare coverage, \$94.05, and for Member & Spouse/Partner with Medicare coverage, \$188.11). Therefore, the total monthly imputed income attributable to domestic partner coverage for this retiree is \$282.15.

Example 3: An employee of a local employer with Single coverage in NJ DIRECT adds a domestic 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 domestic 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 domestic 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 domestic 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 domestic 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 domestic 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 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 domestic 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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This fact sheet is a summary and not intended to provide total information.

Although every attempt at accuracy is made, it cannot be guaranteed.
