



Civil Unions and Domestic Partnerships

Information for:
All Pension Funds and the Health Benefit Programs

P.L. 2003, c. 246 (Chapter 246), the Domestic Partnership Act, established certain rights and responsibilities for same-sex domestic partnerships established in New Jersey prior to February 19, 2007, as well as in jurisdictions other than New Jersey both prior to and after February 19, 2007.

P.L. 2006, c. 103 (Chapter 103), the Civil Union Law, established similar rights and responsibilities for same-sex civil unions established in New Jersey on or after February 19, 2007. Furthermore, same-sex domestic partnerships established in New Jersey on or after February 19, 2007, will not be entitled to those same rights and responsibilities.

The laws extend public pension, State Health Benefits Program (SHBP), and School Employees' Health Benefits Program (SEHBP) benefits to same-sex civil union/domestic partners of State, local government, and local education employees and retirees.

This fact sheet deals only with the pension and health benefits extended by Chapters 246 and 103. It does not address the broader rights and responsibilities covered by the laws, nor does it cover questions of eligibility for a civil union/domestic partnership since they are outside of the scope of the New Jersey Division of Pensions & Benefits (NJDPB). For the purposes of this fact sheet, "partner" will refer to both domestic partners and civil union partners.

ELIGIBILITY

Civil Unions

The Civil Union Law applies to any State employee, local government employee, or local education 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 unions) and who is otherwise eligible for pension and/or SHBP/SEHBP benefits.

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 Domestic Partnership Act.

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.

Domestic Partnerships

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*.

PENSION BENEFITS

The laws add a same-sex 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 partner is considered the same as a spouse.

PERS and TPAF Members

For the PERS and TPAF, the only benefit added by the laws is for Accidental Death. An eligible 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; but, 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 partner would be subject to federal tax. This is not the case when a survivor's benefit is paid to a spouse.*

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) does, however, restrict whom a member can name as a beneficiary

* Under the federal Internal Revenue Code (IRC) 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.

under Options 2, A, and B, to either a spouse or to a nonspouse beneficiary within specific age limitations (see the *Retirement — PERS and TPAF Pension Options* Fact Sheet 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 partner in the same manner as is done for a surviving spouse. This is a lifetime benefit; however, if a surviving spouse/partner receiving a PFRS or SPRS retired survivor's benefit subsequently marries or establishes a new civil union, the survivor's pension will end (this does not apply to survivors of PFRS/SPRS Accidental Death in the line of duty or active SPRS survivor benefits).

JRS Members

For the JRS, the statutory survivor's benefit, provided upon the death of the employee or retiree, can be paid to a partner in the same manner as is done for a spouse. 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 previously under the PERS and TPAF also apply.

Other Pension Funds

A partner is recognized under the Alternate Benefit Program (ABP), the Consolidated Police and Firemen's Pension Fund (CPFPF), the Prison Officers' Pension Fund, and the Volunteer Emergency-Worker's Survivors Pension (VESP).

HEALTH BENEFIT PROGRAM COVERAGE

Coverage under the SHBP or SEHBP for a 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 Partner

To add a partner to coverage, an SHBP/SEHBP-eligible employee or retiree must submit the appropriate health benefits enrollment application via mynjbenefitshub along with the required documentation for dependent eligibility and enrollment.

Children of your partner may also be added with required documentation. You will be advised what is required to add your dependents when completing your application.

TAXATION OF HEALTH BENEFITS FOR PARTNERS

The 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 partner in the same manner as a spouse and does not automatically recognize a partner as a dependent for tax purposes. Therefore, your employer may have to treat the civil union/domestic partnership 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 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 partner benefit.

Similarly, since the 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 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 the "Certifying a Partner's Dependent Status" section).

The 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 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 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 partner's coverage.

Certifying a Partner's Dependent Status

If a partner can meet the IRS's definition of a dependent for tax purposes, found in Section 152 of the IRC, the employer does not have to treat the 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 partner, all four 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; and
- The support test.

* Under the federal Internal Revenue Code (IRC) 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.

See IRS *Publication 503 - Child and Dependent Care Expenses* 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 partner meets the IRC 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 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 IRS directly at 1-800-TAX-1040 or online at: www.irs.gov

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