



NEW JERSEY ENACTS CIVIL UNION LAW

Background on Same-Sex Unions in New Jersey

In January of 2004, New Jersey passed the **Domestic Partnership Act** (DPA) which provided same-sex partners and opposite-sex partners over age 62 with the ability to certify their union through an *Affidavit of Domestic Partnership* filed with the State of NJ. The DPA was fairly limited in scope. It provided partners with certain benefits including hospital visitation rights, NJ income tax deductions and an exemption from the NJ inheritance tax. The DPA also compelled insurance companies to make domestic partner coverage available, but it stopped short of **requiring** employers to provide it to their employees. In essence, the DPA did little to enhance benefit offerings to domestic partners because it was still an optional benefit on the part of private employers.

Following the passage of the DPA, the NJ Supreme Court made a landmark decision in *Lewis v. Harris* and held that there was an equal protection guarantee under the NJ State Constitution that was being violated by denying rights and benefits to same-sex couples. The Court required the Legislature to remedy the violation by either 1) amending the marriage statutes to include same-sex marriage or 2) enacting a parallel marriage structure. The Legislature chose the second option and created a marriage-like structure termed "civil unions".

Introduction of Civil Union Legislation

New Jersey's Civil Union legislation was signed into law by Governor Corzine and is scheduled to become effective on **February 19, 2007**. The civil union legislation is far-reaching in comparison to the previous Domestic Partnership Act and extends all rights and privileges enjoyed by married couples in NJ to same-sex couples joined by a civil union.

Specifically mentioned within the statute is the right of civil union couples to benefit from the "laws relating to insurance, health and pension benefits". This, of course, leaves employers with many questions relating to how this new law will impact their own benefit plans and their employees. The following Q & A attempts to answer some common questions. Please note that we are still receiving feedback and reactions from the Department of Banking and Insurance, as well as the carriers, and we will continue to provide you the latest information as it becomes available.

Will employees be able to add a partner immediately after forming a civil union?

Informal guidance from the NJ Department of Banking & Insurance indicates that employees will be immediately eligible to add a dependent upon forming a civil union. We continue to solicit confirmation of this.

What will happen to the previously enacted Domestic Partnership Act?

The statute indicates that once civil unions are available, no additional same-sex domestic partnerships will be registered. **Opposite-sex** couples over age 62 will still be able to register domestic partnerships since civil unions will not be available to them. All domestic partnerships formed prior to the enactment of civil union law will have the option of converting their domestic partnership to a civil union.

How will benefits obtained through a civil union be taxed?

The passage of the civil union law does not change the federal taxation situation. Regardless of the laws passed by any state pertaining to marriage involving same-sex couples, benefits received under such a union will always be subject to federal, Medicare and Social Security taxes unless that partner qualifies as a tax dependent. The Defense of Marriage Act (DOMA) provides that the federal government will not recognize same-sex marriages for any purpose, even if concluded or recognized by one of the states. Likewise, no state is required to recognize a same-sex marriage even if the marriage is recognized in another state. Benefits received under a civil union are NOT subject to New Jersey income tax.



What group health plans are impacted by this new law?

All insured New Jersey health plans will be subject to the new law. It is still unclear how this will impact out-of-state plans that employ NJ residents. If your plan currently offers coverage to spouses of employees, you will likely have to extend that coverage to partners of employees when that partnership is formed through a civil union.

To date, it appears that **self-funded groups are exempt** from this due to ERISA preemption.

What about unions in other states?

New Jersey will officially recognize civil union relationships formed outside of the state, if the union is valid under another state's jurisdiction. To date, the following states recognize either same-sex marriage, civil unions or domestic partnerships:

- California (domestic partnership)
- Connecticut (civil union)
- Hawaii (domestic partnership)
- Maine (domestic partnership)
- Massachusetts (same-sex marriage)
- **New Jersey (civil union)**
- Vermont (civil union)
- Washington D.C. (domestic partnership)

As an employer, you will likely be obligated to offer coverage to the partner of an employee, even if their union was formed outside of New Jersey- such as in one of the above jurisdictions.

What do I have to do to be compliant?

1. Going forward, employers will need to modify their terms of benefit eligibility to include partners of employees joined by a civil union.
2. All benefit and employment material that makes reference to spouses or marriage will need to be updated to encompass the term "civil union". (We are awaiting future guidance pertaining to the timeframes for such changes to be made. We expect that the carriers will need to play a large role in updating plan material, but to date we have no official feedback from them on their timelines or action plans.)
3. The civil union statute was also very clear on including civil union as being protected from discrimination in employment practices. As such, employers must be conscious of discriminating on the basis of a civil union.

Do I need to communicate anything to my employees?

To date, there is no official communication that must be provided to employees regarding benefit changes in response to the civil union law. We encourage you to stay in touch with RSI regarding future developments and we will continue to pass along any new information received. A Review Commission has been established by the statute to study all aspects of the law and to evaluate its implementation and operation. If the Commission produces any additional guidance or makes any changes, we will communicate that information to you. Should you receive any requests from employees to add dependents acquired through a civil union, please contact your RSI representative and we will work in tandem with you to ensure that all eligible dependents are added at the required time.

February 5, 2007