



## LEGAL BRIEFS:

# The New Jersey Civil Union Act: What Everyone Should Know



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In response to the New Jersey Supreme Court's recognition that "committed same-sex couples must be afforded on equal terms the same rights and benefits enjoyed by married opposite-sex couples", Governor Corzine signed into law the New Jersey Civil Union Act in December 2006.

The Act recognizes "civil unions" for same-sex couples and amends the State's marriage, insurance, tax, health and pension laws, among others, to provide that civil union partners are accorded "all of the same benefits, protections and responsibilities under the law... as are granted to spouses in a marriage."

The purpose of this article is to help familiarize civil unioned couples with the benefits to which they are entitled under the Act and identify certain steps that employers should take to help ensure compliance with its requirements.

### What Civil Unioned Couples Should Know about Employer Provided Benefits:

The Act provides that New Jersey "laws relating to insurance, health and pension benefits" applicable to married couples must "apply in like manner to civil union couples." Unlike the New Jersey Domestic Partnership Act of 2004, the Act does not give employers the option of deciding whether to offer group health insurance and other benefits provided by them, to their eligible employees' civil union partners.

Under the Act, employer sponsored health plans must permit a participant to elect dependent coverage for his or her civil union partner and, to the extent otherwise applicable, allow the partner to elect coverage under New Jersey's continuation coverage law in the same manner and upon the same terms as a married participant's spouse. The Act also applies to all types of insured benefits governed by New Jersey law, including life, disability and workers' compensation.

Under the New Jersey Family Leave Act, as amended by the Act, the term "family member" includes "one partner in

a civil union couple." Thus, an otherwise eligible employee is now entitled to take leave under New Jersey law to care for a civil union partner on the same terms that a married employee would be permitted leave to care for a spouse.

The Act does not impact the application of federal laws, including the Internal Revenue Code of 1986, as amended, ERISA and COBRA, to arrangements such as qualified retirement and group health plans. Accordingly, any federal rights and benefits conferred to individuals on the basis of marital status are not applicable to civil union partners, who are not recognized as "spouses" under federal law.

As illustrated below, certain gaps in benefit coverage remain due to inconsistencies between federal and state law.

Premium amounts paid, either by the employee or the employer, for coverage of the employee's civil union partner under an employer's group health plan constitute income to the employee for federal tax purposes. In contrast, employer paid premiums for spousal coverage are excludable from a married employee's federal taxable income, and the employee's share of the premium, if any, for spousal coverage may be paid by the employee on a pre-federal tax basis under a cafeteria plan.

A terminated participant's civil union partner is not a "qualified beneficiary" entitled to elect COBRA continuation coverage under an employer's group health plan. Thus, the civil union partner may be eligible for continuation coverage under New Jersey law but ineligible for such coverage under COBRA. And, under federal law, a qualified retirement plan's joint and survivor and pre-retirement survivor annuity distribution options are not required to be provided for civil union participants.

The Act amends the New Jersey Law Against Discrimination to include "civil union status" as a protected classification. Thus, it is now unlawful in New Jersey for an employer to refuse to hire, terminate or otherwise discriminate against an employee in the terms, conditions or

privileges of employment on the basis of civil union status.

### Estate Planning:

Although the Act does not impact federal estate tax laws, the surviving civil union partner of a decedent dying on or after February 19, 2007 is allowed a deduction, for New Jersey estate tax purposes, equal to the marital deduction available to a surviving spouse under the federal estate tax laws in effect on December 31, 2001. In addition, property passing to such decedent's surviving civil union partner is exempt from New Jersey transfer inheritance tax.

### What Employers Should Know:

Employers should review their benefit arrangements to insure that they comply with the Act. It is especially important that employers coordinate with their insurance carriers, not only to confirm such compliance, but to determine the manner in which the carrier will handle any changes to its group plan materials in view of the Act. Employers should also pay attention to the administrative issues that will inevitably arise in view of the fact that benefits for civil union and married employees are treated identically for tax and other purposes under New Jersey law but not under federal law.

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This article is not intended to provide an exhaustive discussion of the New Jersey Civil Union Act, it is provided for educational purposes only and is not intended to provide legal or tax advice.

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