



THE NEW JERSEY CIVIL UNION ACT: WHAT EVERY EMPLOYER SHOULD KNOW

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A. Introduction

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 Jon S. Corzine signed into law the New Jersey Civil Union Act (the "Act") on December 21, 2006. This sweeping new legislation recognizes "civil unions" for same sex couples and amends the state's marriage, insurance, tax, health and pension benefits 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".

Given the Act's significant impact in the workplace, especially with respect to the provision of certain employee benefits, the purpose of this article is to help familiarize employers in New Jersey with the Act and identify certain steps they should take to help ensure compliance with its requirements.

B. Applicability to Employer Provided Benefits.

The Act provides that, effective February 19, 2007, New Jersey "laws relating to insurance, health and pension benefits" applicable to married couples must "apply in like manner to civil union couples". Thus, 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 covered benefits to the civil union partners of their eligible employees. Rather, with respect to benefits covered under the Act, employers are required to treat civil union couples in the same manner as married couples.

1. Employer sponsored health and welfare plans

Effective February 19, 2007, all employer sponsored health and welfare plans must provide the same rights and benefits to participants who have entered into civil unions as accorded to married participants. For example, plans must permit a civil union participant to elect dependant coverage for his or her civil union partner (and anyone who became a dependant of the participant as a result of the civil union) in the same manner and upon the same terms that a married participant could elect spousal and/or dependent coverage. Plans must be amended to provide all required benefits as of the Act's February 19, 2007 effective date, rather than as of the renewal date of the particular plan, which is generally the deadline for providing new state-mandated benefits under an existing plan.

Employers should also be aware that the Act entitles a group health plan participant's current or former civil union partner to elect continuation coverage under New Jersey's health continuation coverage law, which is applicable to all "small employers" with 2-50 employees, in the same manner and on the same terms as a participant's spouse or former spouse.

2. Other insured benefits

In addition to traditional employer sponsored group health plans, the Act applies to all types of insured benefits provided under or governed by New Jersey law, including life, disability and workers' compensation insurance. With respect to workers' compensation insurance in particular, the Act amends New Jersey law to provide for the payment of survivor benefits and back wages to civil union partners in the same manner as spouses.

3. State medical and family leave

Under the New Jersey Family Leave Act, as amended by the Act, the term "family member", which was previously

defined as a child, parent or spouse, now also includes “one partner in a civil union couple”. Thus, an otherwise eligible employee must now be permitted to take leave under New Jersey law to care for his or her civil union partner on the same terms that a married employee would be permitted leave to care for a spouse.

4. Benefits covered by federal law

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

- Any premium amounts paid, either by the employee or the employer, for the civil union partner’s coverage constitutes taxable income to the employee for federal income and employment tax purposes. For example, suppose an employer pays 75% of the premium cost of group health coverage for its employees. If the total annual premium under the plan is \$6,000 for individual coverage and \$10,000 for married or civil union coverage, \$4,000 of the annual premium for married or civil union coverage is for coverage for the employee’s spouse or civil union partner. The portion of this premium paid by the employer, or \$3,000, is excludable from a married employee’s federal taxable income but includable in the federal taxable income of the civil union employee.
- An employee’s share of the premium, if any, payable for coverage for his or her civil union partner under a group health plan cannot be deducted from the employee’s salary on a pre-federal tax basis under a premium conversion cafeteria plan.
- The civil union partner of a terminated participant in an employer sponsored group health plan is not a “qualified beneficiary” entitled to elect continuation coverage under COBRA. Thus, if the plan sponsor is a “small employer” subject to New Jersey continuation coverage law, the civil union partner may be eligible for continuation coverage under state law but ineligible for such coverage under COBRA.
- Under qualified retirement plans, the joint and survivor annuity benefit distribution option required to be provided under federal law for married participants is not required to be provided for civil union participants. As it is common for defined benefit pension plans, in particular, not to provide a death benefit for the beneficiary of an unmarried participant who dies before entering pay status under the plan, a civil union partner designated as a beneficiary under his or her partner’s retirement plan may not receive the death benefits to which a spouse would be entitled, absent amendment of the plan.

5. New Jersey Law Against Discrimination

The Act also amends the New Jersey Law Against Discrimination to include “civil union status” as a protected classification. Thus, it is now an unlawful employment practice in New Jersey for an employer to refuse to hire, terminate or otherwise discriminate against an employee in compensation or in the terms, conditions or privileges of employment on the basis of his or her civil union status.

C. What must an employer do to comply with the Act?

Employers will need to review their employee benefits arrangements, especially their group health plans, and make sure that the appropriate changes are made to insure that the operation and documentation of the arrangements are in compliance. It is especially important that employers coordinate with their insurance carriers not only to confirm compliance with the Act, but also to determine the manner in which the carrier will handle any changes to its group plan materials in view of the new law. Employers should also pay particular attention to certain administrative issues that will inevitably arise in view of the fact that benefits for civil union and married employees that are treated identically for tax and other purposes under New Jersey law will not necessarily be treated identically under federal law.

Although employers are not required to notify their employees of the enactment of the Act, forward thinking employers would be well advised to consider such an announcement. In addition, employers should review and revise, as necessary, their employee handbooks, employment policy statements and any other communications concerning benefits previously distributed to employees to reflect any changes required under the Act.