

# Employment Law Alert

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## New Jersey Adopts Domestic Partnership Act

**O**n January 12, 2004, Governor McGreevey signed the Domestic Partnership Act. Although it is not effective until July 11, 2004, the new law provides that New Jersey will recognize that certain benefits that were previously only available to married couples will be available to individuals of the same sex who are under 62 years of age and living together in a “domestic partnership.” To a more limited extent, it will also make certain benefits available to individuals of different sexes who are 62 years of age or older and living together in a “domestic partnership.”

The new law is comprehensive. It provides, among other things, that a domestic partner will have rights similar to those of a spouse in matters involving employment, housing, credit, hospital visitation, medical decision making, income tax, inheritance tax, and health and public pension benefits (i.e. for state workers, policemen and fireman, etc.). As with most new laws, however, there are gaps in the legislation that will necessitate further legislation or legal action in the courts for clarification.

### Domestic Partnerships

What is a domestic partnership? Under the law, a domestic partnership is formed by two individuals of the same sex who are under 62 years of age and who are not related by blood or “affinity up to and including the fourth degree of consanguinity” and who can establish that they have a common residence and are responsible for each other’s welfare as evidenced by joint financial arrangements (such as joint bank accounts), joint ownership of real or personal property, or by designating one of the persons as a primary beneficiary in the other person’s life insurance policy or retirement plan. Employers should understand that the law is not limited to

homosexual relationships. Heterosexuals of the same sex that meet the criteria for domestic partnerships will have the same rights as homosexuals under the law.

To establish conclusively the existence of a domestic partnership, the state will permit domestic partners to apply for and receive a “Certificate of Domestic Partnership” from the local registrar (presumably the same municipal official responsible for issuing marriage licenses). In so doing, both individuals seeking the issuance of the Certificate of Domestic Partnership will have to complete and submit to the local registrar an “Affidavit of Domestic Partnership” with proof of the relationship. If the individuals have satisfied the statutory requirements, the local registrar will then issue the Certificate of Domestic Partnership containing “the domestic partners’ relevant information and the date that the domestic partnership was established.”

The law also provides that individuals of different sexes who are 62 years of age or older can apply for and be issued a Certificate of Domestic Partnership. And the law provides that New Jersey will recognize domestic partnerships, civil unions or other such reciprocal relationships that were entered into under laws of any other state.

### New Benefits Obligations

How will the new law apply to employers in the State of New Jersey? Although the New Jersey Law Against Discrimination has made it unlawful for an employer to discriminate against individuals because of their affectional or sexual orientation for many years, the new law will make it unlawful for an employer to refuse to hire or employ or to discharge any individual because of his or her domestic partnership status. In addition, the new law redefines a

“spouse” to include domestic partners for State health benefit and State retirement programs, and requires individual and group health insurers and health maintenance organizations issuing health and dental insurance benefits to employees with dependent coverage to include domestic partners within the definition of a dependent.

Although the new law does not require an employer to provide and/or to pay for health or dental insurance benefits to an employee’s dependents and domestic partners, it will obligate employers to treat domestic partners as any other dependents.

Therefore, if an employer pays all or a percentage of the cost for health care insurance for an employee’s dependents, the employer will now be required to pay the same amount for an employee’s domestic partner.

### **Family Leave Act Unchanged**

Conspicuously missing from this comprehensive legislation, however, is any reference to the New Jersey Family Leave Act. Under the Family Leave Act, an employee is entitled to take a limited amount of time off from work to care for a child, a parent or a spouse without the fear of being discharged. Although the Domestic Partnership Act specifically amends the definition of “spouse” to include a domestic partner under a number of state laws, it does not amend the definition of a “spouse” as defined in the Family Leave Act to include a “domestic partner.” As such, the question of whether an individual is entitled to take a family leave to care for a domestic partner is unresolved and will most definitely have to be addressed by new legislation or by litigation and court ruling.

From an employer’s perspective, there are a number of legal arguments that could be made in an effort to persuade the courts that the new law was never intended to obligate employers to allow employees to take time off from work to

care for domestic partners. Because of the remedial nature of the Domestic Partnership Act and because of the many times the new law has amended various statutory provisions to include a domestic partner within the definition of a spouse, it is our opinion that the courts will ultimately determine that employees are entitled to time off from work to provide care to a

domestic partner under the New Jersey Family Leave Act.

### **What’s Ahead**

It is our concern that the adoption of the new law could trigger more claims of employment discrimination against employers based upon affectional or sexual orientation, as well as domestic partnership status.

As employees begin making requests for benefits for their domestic partners, employers must be vigilant to prevent harassment of homosexuals who were previously assumed to be heterosexual and of individuals perceived to be homosexual because of their domestic partner status.

Clearly, the new Domestic Partnership Act will have a substantial effect upon both an employer’s finances and employee relations. Moreover, as the implementation of this new Domestic Partnership Act will be subject to further amendment and/or interpretation by the courts, employers should assure themselves that their employment policies conform to the new law. We would therefore recommend that employers consult with their legal counsel to make certain that they will be in compliance with the new Domestic Partnership Act on the date it takes effect – July 11, 2004.



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**An employer who provides health benefits to its employees and their dependents will now have to extend such benefits to an employee’s domestic partner.**

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