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March 8, 2007

TO: Certifying Officers, State-Administered Retirement Systems
Benefits Administrators, Participating SHBP Employers

FROM: Florence J. Sheppard 
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SUBJECT: **Civil Union Law: Health Benefits and Pension Implications**

OVERVIEW

Chapter 103, P.L. 2006, the Civil Union Law, effective February 19, 2007, established "civil unions" between same-sex couples within the State of New Jersey. Under the law, civil union partners enjoy the same rights and obligations available to a spouse.

While the Civil Union Law created a new status for same-sex couples within the State of New Jersey, the law is not intended to replace or terminate existing same-sex domestic partnership relationships established under the Domestic Partnership Act (Chapter 246, P.L. 2003).

Both the Civil Union Law and Domestic Partnership Act are distinct from one another in certain instances as they relate to the State Health Benefits Program and State-administered retirement plans.

This letter describes

- (1) State Health Benefits Program (SHBP) and retirement system implications that will be extended to civil union couples of public employers in New Jersey; and the
- (2) Responsibilities of public employers in administering these benefits.

This letter should be used as an informational guide to outline how the Civil Union Law relates to or impacts civil union couples within the SHBP and retirement systems. (*Please note: Also included are SHBP and retirement system implications relating to Domestic Partnerships as a reference point only.*)

PROVISIONS OF THE CIVIL UNION LAW

A few basics things to remember regarding both civil unions and domestic partnerships which will be helpful in avoiding any confusion with the application of either law.

- A civil union couple is given the same rights and benefits as a married couple, while domestic partners are not afforded *identical* benefits and protections.
- The enactment of the Civil Union Law extends health and pension benefits to all civil union couples; therefore, there is no additional resolution or approval required by an employer. The Domestic Partnership Act still requires a Local Employer to file a resolution through its governing body to extend the benefits of the Act to domestic partners of employees.
- **For health benefits purposes:** The Civil Union Law extends SHBP eligibility to a civil union partner in the same manner as a married member's spouse.
- **For pensions purposes:** There are three main areas that are affected by the Civil Union Law:
 - (1) PFRS, SPRS, and JRS (Survivor Benefits)
 - (2) PERS and TPAF (Nonspouse Beneficiaries)
 - (3) Accidental Death Benefits (PERS, TPAF, PFRS, SPRS)
- The Civil Union Law provides for the recognition of civil unions formed in New Jersey as well as the states of Connecticut and Vermont. In addition, New Jersey respects same-sex marriages performed in Massachusetts, Canada, Belgium, the Netherlands, South Africa, and Spain and will extend these relationships the legal protections of a civil union within New Jersey. Domestic partnerships formed in California (which are substantially equivalent to marriage) are also recognized in New Jersey as a civil union.

Domestic partnerships established in Hawaii, Maine, or the District of Columbia (as well as those established in New Jersey *prior to* February 19, 2007) will continue to be accepted for benefits under the provisions of the Domestic Partnership Act.

- After February 19, 2007, same-sex couples are permitted to establish a civil union, but may no longer enter into a domestic partnership in New Jersey. However, the Civil Union Law provides that *both* same-sex and opposite-sex couples **62 years of age or older** may still elect to join in a domestic partnership if they choose. Prior to the enactment of the Civil Union Law, opposite-sex domestic partners 62 years of age or older were precluded from pension and/or SHBP benefits. Now both same-sex and opposite-sex domestic partners 62 years of age or older who enter into a New Jersey domestic partnership after February 19, 2007, will not be entitled to pension or SHBP benefits. The Division of Pensions and Benefits is awaiting advice from the Office of the Attorney General regarding the pension and SHBP eligibility of same-sex domestic partnerships when established by couples 62 years of age or older *after* February 19, 2007, outside the jurisdiction of New Jersey. The Division will provide employers with additional details on the eligibility status of these couples when more information becomes available.

CIVIL UNION LAW: HEALTH BENEFITS

This Civil Union Law extends health benefit eligibility to same-sex civil union partners of employees and retirees enrolled in the State Health Benefits Program (SHBP). This includes:

- Employees and retirees of Local Government and Educational employers that participate in the SHBP, and
- Employees and retirees of State Employers including State employees paid through the State Centralized Payroll Unit, the State colleges and universities, the Palisades Interstate Parkway Commission, the New Jersey Building Authority, the State Library, and the Commerce and Economic Growth Commission

Enrolling a Civil Union Partner for SHBP Coverage

To add a civil union partner to coverage, the employee or retiree must submit the appropriate SHBP enrollment application within 60 days of the date of the civil union.

- Active employees must submit a completed *SHBP Enrollment Application* and/or *SHBP Dental Plans Application* (copies attached) through their employer. The employer should certify the application and forward it to the Division of Pensions and Benefits.
- Retired members must submit a completed *SHBP Retired Status Application* (copy attached) directly to the Division of Pensions and Benefits.
- Both employees and retirees must also provide a photocopy of the New Jersey *Civil Union Certificate* or a valid certification from another jurisdiction that recognizes same-sex civil unions for enrollment. Applications will not be processed until the *Civil Union Certificate* is received.

If the application is submitted within 60 days of the date of the civil union, the effective date of coverage will be the date of the civil union. For applications received after the 60 day window, active employees will have to wait to enroll a partner during the next annual Open Enrollment period (during the month of October), while partners of retirees will be enrolled on a timely basis. (Usually the first of the month 60 days after the receipt of the application — see the *SHBP Summary Program Description* for more details on late enrollment. This publication as well as revised applications are available on the SHBP Web site at: www.state.nj.us/treasury/pensions/shbp.htm)

Cost of SHBP Coverage for Civil Union Partners

The premium cost for a civil union partner to employers and/or employees/retirees is the same as that for a dependent spouse.

If the employee or retiree is currently required to pay for any portion of the coverage for their dependents, the same costs that would apply to a spouse would also apply for the civil union partner.

However, it is important to note that, because the federal Internal Revenue Code does not view a civil union partner in the same manner as spouse, the cost of a civil union partner's coverage may be subject to federal tax (similar to the current tax liability of domestic partners).

Taxability of the Civil Union

The civil union partner benefit is **not taxable under New Jersey law**. However, the federal Internal Revenue Code does not view civil union partners in the same manner as spouses. Therefore, the Internal Revenue Service (IRS) does not automatically consider civil union partners as dependents for tax purposes. Employer health benefits provided to a civil union partner **is normally subject to federal taxes** (income, Social Security, and Medicare taxes) and is considered as imputed income. How employers should calculate the value of the civil union partner benefit is described below.

If the civil union partner meets the IRS definition of a “dependent” for tax purposes, then the employer does not have to treat the civil union partner coverage as a taxable benefit. (See *IRS Tax Topic 354-Dependents*, for information on IRS dependency criteria.) 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 Tax Certification for Civil Union Partner or Domestic Partner Benefit** used for State employees paid through Centralized Payroll is attached for your consideration — payroll officers of local employers should provide their employees with similar tax certification options. Since an individual’s situation can change, employers should also obtain a new certification each tax year.

**(The same federal tax implications that were applied for domestic partners are also applicable to civil union partners. A version of the Tax Certification for retirees is available on the Division of Pensions and Benefits Web site: www.state.nj.us/treasury/pensions or by contacting the Division’s Office of Client Services.)*

Calculating the Imputed Income for Active Employees

If an employee adds a civil union partner to coverage and that benefit is deemed to be taxable (which will be the case unless the employee certifies that it is not taxable), the value of the benefit for reporting imputed income will be **the cost of Single coverage** for the plan or plans in which the employee’s civil union partner is enrolled **less any amount that the employee pays for the civil union partner portion** of the coverage. If the employee is premium sharing, the amount that the employee pays for the civil union partner portion of the coverage is the difference between the employee share for “Single” coverage and for “Member & Spouse/Civil Union Partner” coverage or the difference between the employee share for “Parent & Children” coverage and for “Family” coverage, whichever is appropriate. If the employee does not premium share, then the imputed income is the full cost of “Single” coverage.

Example: A local employee with Single coverage in NJ PLUS, the Employee Prescription Drug Plan, and the Dental Expense Plan adds a civil union partner to the coverage of all three plans. The civil union partner benefit is a federally taxable benefit. The monthly imputed income for the NJ PLUS and the Employee Prescription Drug Plan, for which there is no employee premium charge, is the full cost of “Single” coverage, or \$377.06 and \$120.88, respectively. The monthly imputed income for the Dental Expense Plan, for which the employee does premium share, is \$26.09. This is the full cost of “Single” coverage, \$41.34, minus the amount that the employee has paid for the civil union partner coverage, \$15.25 (the difference between the employee share for “Single” coverage, \$20.67, and for “Member & Spouse/Civil Union Partner” coverage, \$35.92). The total monthly imputed income attributable to civil union partner coverage for this employee is \$539.28, the sum of the imputed incomes for all three plans.

Rate charts which show the imputed income to an employee who adds a civil union partner to coverage will be made available on the Division of Pensions and Benefits Web site at: www.state.nj.us/treasury/civil-unions.htm. Where necessary, employers must also take the necessary income tax, Social Security tax, and Medicare tax deductions for the imputed income from the employee's regular pay and make the required employer contributions to the federal government for the Social Security, Medicare, and Unemployment taxes.

Tax Treatment of Employee Premium Payments

If the civil union partner benefit is taxable to the employee, any premiums that the employee pays for that benefit **cannot be made on a pre-tax basis**. Therefore, if the employee participates in the Tax\$ave Premium Option Plan and normally uses pre-tax dollars to pay the employee share for coverage, the difference between "Single" and "Member & Spouse/Civil Union Partner" coverage has to be made on an after-tax basis.

Example: An employee premium shares for the Traditional Plan and the Dental Expense Plan with "Single" coverage. The monthly employee share is \$174.53 and \$20.67, respectively and it is made on a pre-tax basis. The employee adds a civil union partner to both plans and the benefit is taxable. The new premium share amounts are \$373.56 and \$35.92, respectively. For the new coverage, \$174.53 and \$20.67 can still be paid using pre-tax dollars, but \$199.03 and \$15.25, the difference between the employee's premium share for "Single" and "Member & Spouse/Civil Union Partner" coverage, must be paid using after-tax dollars.

Calculating the Imputed Income for Retirees

The federal government does not distinguish between active employees and retirees with respect to the taxability of employer provided benefits. Therefore, **the taxability issues just discussed for employees apply also to any of your retirees receiving the civil union partner benefit**. The Division of Pensions and Benefits will take the required steps to properly report any imputed taxable income to State retirees because of civil union partner coverage.

CIVIL UNION LAW: PENSION IMPLICATIONS

As mentioned earlier, there are three main areas of pension benefits affected by the Civil Union Law.

PFRS, SPRS, and JRS (Survivor Benefits)

Under the Police and Firemen's Retirement System (PFRS), the State Police Retirement System (SPRS), and Judicial Retirement System (JRS), a civil union partner qualifies for survivor benefits in the same manner as a spouse. Therefore, the law potentially affects all PFRS, SPRS, and JRS survivor benefits, both active and retired, since the pension beneficiary is established by law, not member choice. Additionally, if an individual is receiving a PFRS, SPRS, or JRS survivor benefit (with the exception of a survivor of a PFRS or SPRS member's accidental death in the line of duty), the survivor could potentially lose that pension benefit if the survivor remarries or establishes a civil union or domestic partnership. A civil union partner's right to a PFRS or SPRS survivor benefit will also end upon a proper dissolution of the civil union.

Note: If a JRS member wishes to select a joint and survivor retirement option, the IRS restrictions described below under the PERS and TPAF would apply.

PERS and TPAF (Nonspouse Beneficiaries)

The only PERS and TPAF benefit directly affected by the Civil Union Law is the survivor's benefit in the event of the accidental death of the member while in the performance of duty (see below). Other PERS and TPAF retirement benefits are not affected since a member may already name anyone as the beneficiary of the pension benefit within the constraints imposed by the Internal Revenue Service (IRS). The IRS does, however, restrict who a member can name as a beneficiary under Options 2, A and B. Under Options 2 and A, a member cannot name a nonspouse beneficiary who is more than 10 years younger than the member; under Option B, the nonspouse beneficiary cannot be more than 19 years younger. Since the IRS is a federal agency, it does not view civil union partners in the same manner as spouses.

Accidental Death Benefits (PFRS, SPRS, PERS, TPAF)

Under the Civil Union Law, a civil union partner is eligible for Accidental Death Benefits (along with a surviving spouse or eligible same-sex domestic partner) if the member dies as a result of an accident during the performance of his or her regular or assigned duties. For PFRS and SPRS survivors this benefit is a lifetime benefit to your survivor. For PERS and TPAF survivors this benefit is a lifetime benefit to your survivor unless he or she enters into a new civil union, domestic partnership, or marries.

INFORMATION RESOURCES

We are enclosing copies of revised SHBP applications reflecting civil union partner eligibility for coverage. You may copy and begin to use these forms. The forms are also available on the Division's Web site at: www.state.nj.us/treasury/pensions

The Division is preparing a new Fact Sheet #75, *Civil Unions*, that will be made available through our Web site as soon as possible.

If you have any questions about this letter, write the Division at the address above or e-mail us at: pensions.nj@treas.state.nj.us.

Enclosures

SHBP Enrollment Application

SHBP Dental Plans Application

SHBP Retired Status Application

Employee Tax Certification for Civil Union Partner and Domestic Partner Benefit