

in this issue:

JUNE 2004

New Jersey Domestic Partnership Act grants several new rights to domestic partners and has significant impact on employment in New Jersey.

New Domestic Partnership Act Affects New Jersey Employers

By Tara S. Smith

The New Jersey Domestic Partnership Act ("the DPA"), which takes effect on July 11, 2004, was enacted to grant same-sex couples and unmarried opposite-sex couples legal status and many, but not all, of the same rights as legally married couples. The DPA accomplishes this by expressly amending several state statutes to include domestic partners within their coverage.

To qualify as "domestic partners" under the DPA, same-sex couples who are at least 18 years of age, and opposite-sex couples who are over the age of 62, must share a residence, not be married and have some level of joint finances or joint responsibility for the other person's common welfare and basic living expenses. In most instances, the DPA further requires that eligible couples file an Affidavit of Domestic Partnership with their local registrar, which will return to the couple a "filed" copy of their Affidavit and issue a Certificate of Domestic Partnership. However, an employer, or any third party, may choose to consider a qualifying person as a member of a domestic partnership in the absence of an Affidavit or Certificate based on some other proof of a domestic partnership.

Significantly, the DPA amends the New Jersey Law Against Discrimination ("NJLAD") to include "domestic partner" as a protected status. Beginning in July, NJLAD will provide that it shall also be an unlawful employment practice for an employer to refuse to hire or employ, bar, discharge, require to retire from employment or otherwise discriminate against an individual because of his or her domestic partnership status. Accordingly, New Jersey based employers should review and update employee handbooks and non-discrimination policies to include this new protected category. Similarly, non-discrimination and anti-harassment

training programs should be updated to educate employees of this important coverage change.

While the DPA does not amend New Jersey's Family Leave Act to allow an employee to take a leave of absence from work to care for his or her domestic partner, even though such leaves of absence are available for married employees, an employer may choose to permit leaves of absence to domestic partners on the same or similar terms.

There are several other significant rights and benefits provided by the DPA:

1. Health and Retirement Benefits. The DPA will require that same sex domestic partners be treated like married couples for purposes of health and retirement plans sponsored by the State of New Jersey. However, the Act does not require New Jersey based private employers to provide domestic partners of employees with health and retirement benefits. It merely requires all insurance companies and HMOs in New Jersey to issue policies that offer dependent coverage for same sex domestic partners if such coverage is otherwise available under the policy. Private employers, though not required to do so, may choose to cover domestic partners as dependents under their group health plans for business-related issues. In the event an employer chooses to provide coverage, it may require an employee to pay all or part of the cost of dependent coverage for the employee's domestic partner.

2. Tax Benefits. Domestic partners will gain several tax benefits under the DPA. First, the transfer of property from one domestic partner to another will be taxed at the same rate as a transfer of property between spouses. Second, the payment of pension, annuity, a retirement allowance, or return of contributions under a tax-qualified

Littler Mendelson is the largest law firm in the United States devoted exclusively to representing management in employment and labor law matters.

retirement plan to a surviving domestic partner is exempt from New Jersey State tax if it is paid as a result of the participating partner's death. Finally, the DPA amends the definition of "dependent" to include a domestic partner, thereby allowing domestic partners to claim personal exemptions for New Jersey State income tax purposes. Accordingly, employers may wish to offer affected employees the opportunity to change their personal exemptions for tax withholding purposes, so that they can take advantage of this newly offered personal exemption.

In light of the foregoing, New Jersey employers should take steps to bring their policies, handbooks and harassment training programs into compliance with the new law.

Tara S. Smith is an associate in Littler Mendelson's Newark, NJ, office. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, Ms. Smith at tssmith@littler.com and at 973.848.4704.
