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Civil Union Act Extends Benefits, Prohibits Discrimination

By Lisa Gingeleskie, Esq.

New Jersey's Governor Corzine recently signed the Civil Union Act ("CUA") authorizing civil unions between individuals of the same sex. P. L. 2006, Ch. 103. The CUA took effect on February 19, 2007 and is intended to provide civil union couples with "all of the same benefits, protections and responsibilities under law . . . as are granted to spouses in a marriage." *Id.* §4.

The Act specifically provides that whenever any law, rule, regulation, judicial or administrative proceeding or otherwise, reference is made to "marriage," "husband," "wife," "spouse," "family," "immediate family," "dependent," "next of kin," "widow," "widower," "widowed," or another word which in a specific context denotes a marital or spousal relationship, the same shall include a civil union. To ensure clarity, the Department of Education is recommending to the State Board of Education that it amend all references in Title 6 and 6A of the Administrative Code to substitute "marriage/civil union" for "marriage," "spouse/civil union partner," for "spouse," etc.

The Act amends a variety of New Jersey laws, including those regarding marriage, divorce and child custody. The CUA will also affect the workplace, as it prohibits discrimination based on civil union status. Employers may not refuse to hire, discharge or otherwise take adverse action against an employee because the employee is a partner in a civil union. The New Jersey Division on Civil Rights has issued revised versions of its anti-discrimination posters to reflect this change, which can be found on its website.

Additionally, the Act provides that parties to a civil union will have the same benefits under laws relating to "insurance, health and pension" as are granted to spouses in a marriage. Please note that the CUA will have no effect on COBRA rights, as COBRA is a federal law. Therefore civil union partners will not be eligible for "qualified beneficiary" status or for continued health coverage under COBRA. However, New Jersey has a "mini-COBRA" law, which is applicable to health insurance policies issued to 'small' employers (defined as from 2 to 50 employees) under certain circumstances. (cont'd ►)

This “mini-COBRA” law will likely offer coverage to civil union partners.

Further, the CUA amends the New Jersey Family Leave Act (“NJFLA”) to include a civil union partner in the definition of a “family member.” Thus, the CUA extends state leave to permit employees to take family leave to care for seriously ill civil union partners. The federal FMLA has no such provision. This raises an issue as to the total amount of family leave that may be available for employees with civil union members. Generally leave time runs concurrently under both the state and federal acts when leave is taken for a purpose that qualifies under both acts. Because federal law does not recognize civil union partners, however, it appears that leave time granted to an employee under the state NJFLA to care for a seriously ill civil union partner

cannot be counted against the employee’s leave under the federal FMLA.

Finally, the CUA amends Workers Compensation Law to allow for payment of survivor’s benefits and back wages to civil union partners.

Boards of Education should be certain to change their existing policies to reflect the CUA. Any District forms that make reference to “married” or “spouse,” etc. should also be amended accordingly to keep in line with the spirit of the law.



The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Anthony P. Sciarrillo of the Education Law Group at edlawgroup@lindabury.com.

