

# Civil Unions for Same-sex Couples in New Jersey

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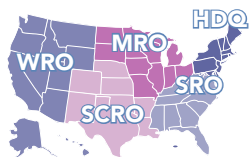
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## Frequently Asked Questions (FAQ)

On October 25, 2006, in *Levitt v. Harris*,<sup>1</sup> Lambda Legal won a declaration from the New Jersey Supreme Court that barring same-sex couples from marriage violated the constitutional promise of equality. The court gave the New Jersey Legislature a deadline of 180 days to correct the violation, and the legislature chose to create the separate status of civil unions. Below are answers to frequently asked questions about the new civil union law.

*PLEASE NOTE:* This document offers general information only and is not intended to provide guidance or legal advice regarding anyone's specific situation. This is an evolving area of law in which there is bound to be uncertainty, and we will be working with New Jersey attorneys to promote the best results. If you have additional questions or are looking for contact information for private attorneys who might advise you, contact Lambda Legal's Help Desk at 212-809-8585 (toll-free: 866-542-8336) or [legalhelpdesk@lambdalegal.org](mailto:legalhelpdesk@lambdalegal.org).

**Q** What is a civil union?

**A** Under New Jersey's new law, a civil union is the legally recognized union of two individuals of the same sex. Civil union couples receive the legal benefits and protections and are subject to the legal responsibilities provided under New Jersey law to married couples. But a civil union is not a marriage. The legislature reserved the status of a marriage for different-sex couples. Although the difference in the two statuses does create constitutional and other problems that are discussed more below, any same-sex couples who otherwise

would choose to marry should give serious thought to entering into a civil union because of the vast set of protections summarized below.

**Q** Who can enter into a New Jersey civil union?

**A** Two people are eligible to enter into a civil union together if they are:

- the same sex
- over 18 years old (or meet requirements for an exception)
- not a party to another civil union, domestic partnership or marriage
- not closely related to each other (for example, not an

ancestor, descendant, sibling, niece, nephew, aunt or uncle)

**Q** What if we already have a New Jersey registered domestic partnership together or are considering entering into one?

**A** Same-sex couples who entered into registered domestic partnerships before the effective date of February 19, 2007 for the new civil union law may remain domestic partners or may enter into a civil union. Entry into a civil union will automatically terminate the domestic partnership. And once the law is effective, only couples (either same-sex or different-sex) in which both partners are 62 years or older will be eligible to register as domestic partners in New Jersey.

**Q** How do my partner and I enter into a civil union in New Jersey?

**A** The process for getting a civil union is largely the same as for getting a marriage in New Jersey. First you must obtain a civil union license from a licensing officer, such as a clerk or registrar, in the municipality where either of you resides. You must appear together in person to get the license. You'll need the approved forms of identification, your Social Security numbers, the names and county of birth of your parents, \$28 to pay the fee and a witness who is at least 18 and knows you both. Call ahead to make sure you are going to the right place, and confirm what particular type of identification that municipality requires (for example, driver's license, birth certificate, lease, passport) and what forms of payment that municipality accepts.

The civil union license may not be issued until 72 hours after you apply for it, except in cases of emergency where the clerk can explain the procedure available for getting the license sooner. You will then need to have a ceremony of civil union within 30 days of issuance of your license. Two witnesses 18 or over must be present at the ceremony and sign the certificate of civil union, which is included on the civil union license form.

**Q** Who can preside over our civil union ceremony?

**A** The ceremony may be performed by the same individuals authorized to perform marriages in New Jersey, including any minister of any religion, judges and other officials. Specifically, the following individuals are authorized to perform your civil union ceremony under New Jersey law: A judge of the United States Court of Appeals for the Third Circuit; a judge of a federal district court; a United States magistrate; a judge of a municipal court, the Superior Court or a tax court; a retired judge of the Superior Court or tax court; a judge who has resigned in good standing from what formerly was the County Court, the County Juvenile and Domestic Relations Court or the County District Court; the surrogate of any county; a county clerk; a mayor or deputy mayor when authorized by the mayor; the chairman of any township committee or village president in New Jersey; and any minister of any religion. In addition, every religious society, institution or organization in New Jersey is also authorized to join together individuals in a civil union according to its rules and customs. If a government official who performs marriages refuses to perform a civil union ceremony for you, please contact Lambda Legal's Help Desk at 212-809-8585 or [legallhelpdesk@lambdalegal.org](mailto:legallhelpdesk@lambdalegal.org).

**Q** What will our rights and responsibilities be under New Jersey law if we enter into a civil union?

**A** A New Jersey civil union automatically includes you in the myriad legal rights and responsibilities under state law conferred on a married couple. In the words of the civil union legislation, a New Jersey civil union grants "all of the same benefits, protections and responsibilities under the law, whether they derive from statute, administrative or court rule, public policy, common law or any other source of civil law, as are granted to spouses in a marriage."

The enormous web of state-based rights and responsibilities include, for example, to the same extent as possessed by a married spouse:

- rights to family leave benefits
- rights relating to joint ownership of property
- rights relating to insurance, health and pension benefits
- rights relating to state public assistance benefits
- obligations and benefits relating to taxes imposed by the state or a municipality
- privileges not to testify against a civil union partner in court proceedings
- rights relating to emergency medical care and hospital visitation
- rights to receive workers' compensation benefits if a civil union partner dies on the job
- rights relating to inheritance
- rights to bring wrongful death and other kinds of claims that previously depended on spousal status
- rights and judicial forums relating to separation, termination of the civil union and caring for the children of the couple.

Civil unions provide far more than that, vastly surpassing the small number of rights provided under New Jersey's Domestic Partnership Act. That Act, for example, only required health and pension benefits for state employees — it was voluntary for other employers — and did not require family leave to care for an ill partner. For a detailed analysis of what the Domestic Partnership Act does not cover, consult the Brief of the New Jersey State Bar Association<sup>2</sup>.

You should also be aware that with the benefits of civil union come the same legal responsibilities towards your civil union partner as others have towards their spouses, such as liability for your partner's debts, limitations on your ability to make unilateral decisions about your property and who will inherit from you, and obligations to provide support for your partner both during the civil union and if it is terminated.

**Q** So will my employer have to give my civil union partner health insurance coverage?

**A** There are employers who must do so and those who should do so. The court said that government cannot treat same-sex couples differently from different-sex couples regarding rights and benefits of marriage, so government employers, both state and local, must treat equally the civil union partners and married spouses of employees. In addition, New Jersey law bars discrimination against civil union partners, so many private employers and others — like businesses, and insurance companies — will be barred from discriminating against someone because he or she is a partner in a civil union. In many circumstances this will mean that private parties must treat civil unions and marriages equally. But in areas that involve federal law, there may be circumstances where a few employers will argue that New Jersey's non-discrimination protection may not apply to civil union partners. This may be the case with some employer-provided health insurance where federal laws are involved, and in particular when the employer is self-insured. Here too the law is evolving, and you should consult with an attorney for advice about your particular situation. But keep this in mind: when a self-insured private employer says that federal law trumps the state's non-discrimination law, that still does not mean the employer is required to choose discrimination. Instead it means that the employer can choose whether or not to discriminate, and it should choose not to, even if that means changing the terms in its plan. In the meantime, we are developing the legal arguments for why such an employer must not discriminate.

**Q** What does a civil union mean for federal benefits and protections?

**A** It is near certain for now that the federal government will not respect your civil union for the purpose of the federal benefits, protections, and obligations that married spouses have, such as Social Security benefits, immigration protections, veterans' benefits, and taxation. That's true even for the married same-sex couples in Massachusetts. For example, for both married or civil unionized same-sex couples, the value of health insurance benefits

from an employer for a spouse or civil union partner will be counted as income to the employee for the purpose of federal taxes. The day will arrive when it will be strategic for us to challenge the federal government's lack of respect for states' legal recognition of same-sex relationships. In the meantime, it's important to consult a professional accountant regarding the implications of your civil union on your federal tax filing, including the valuation of health insurance benefits as taxable income.

**Q** Should we enter a New Jersey civil union?

**A** In most ways, the answer is no different than it has been for different-sex couples deciding whether to marry: such a very serious decision is up to you. You confront the weighty considerations that different-sex couples have confronted across time in deciding whether to marry, because a civil union is an important commitment that carries many state law-based rights, protections and responsibilities that can affect many aspects of your life. So, for example, being in a civil union could disqualify you from the state government's income-based public assistance programs, as would a marriage, because your partner's income and assets may be counted in with yours.

But, in a few ways, same-sex couples, whose relationships are disrespected as a matter of law in other states and are unlikely to be honored by the federal government, have extra considerations. For example, you cannot be certain whether your civil union will be respected should you travel or move to most other states. That can mean, for example, if you've moved to another state, you may not be able to dissolve your relationship if you need to someday (as do roughly half of all married heterosexuals). For some people there are a few other special issues that are very important to consider before entering into a civil union. For example,

- The military may view a New Jersey civil union as grounds for a discharge under its discriminatory policies towards lesbian and gay personnel.

- Being in a civil union could raise problems for you if you have certain immigration statuses (for more information, consult Immigration Equality<sup>3</sup>).
- If you are in the process of adopting a child or planning to do so, you should be aware that some states and countries allow single-parent but not same-sex-couple adoptions, so depending on where you may adopt from your civil union could complicate matters for you.

But any same-sex couple in New Jersey who would have otherwise chosen marriage after careful consideration should give serious thought to choosing a civil union because of the vast set of protections that flow from it.

**Q** If we enter into a New Jersey civil union, will we be able to get married later?

**A** When the day comes that same-sex couples have the freedom to marry in New Jersey, you shouldn't have obstacles to marrying the same person to whom you've committed in a civil union. But this is unbroken legal ground. Presumably the state legislature would act to clear up the problems it caused by creating a separate status of civil unions, as it attempted to do in providing that engaging in a civil union would extinguish a domestic partnership.

**Q** If I live in New Jersey, but my partner and I entered into a civil union in Vermont, will it be recognized in New Jersey?

**A** The new civil union law provides that your civil union entered into elsewhere will be treated as a valid civil union in New Jersey. That applies to civil unions from Connecticut or Vermont, or a California registered domestic partnership, which is the legal equivalent of a civil union. This was confirmed by New Jersey's Attorney General in a formal opinion dated February 16, 2007<sup>4</sup>.

**Q** If my partner and I have a marriage from Canada, will New Jersey respect it?

**A** They should. But New Jersey’s Attorney General, in the February 16, 2007, opinion, declared that same-sex couples’ marriages from other states or countries will be respected only as civil unions. That does extend the same protection provided to same-sex couples who enter civil unions, but just as denying same-sex couples the freedom to marry and limiting them to civil unions does, it labels all same-sex couples, including those legally married elsewhere, as second-class citizens, because the State treats them as unworthy of the respect given to married different-sex couples. The legislature should move quickly to erase that mark of unworthiness and stop the damage it inflicts on families.

**Q** Even if I already have a civil union or marriage from somewhere else, wouldn’t it be safer to enter into a civil union where I live in New Jersey, too?

**A** That is unnecessary, and perhaps unwise. The Attorney General has confirmed it is unnecessary, stating that couples with out-of-state marriages or civil unions “need not secure a New Jersey civil union license or solemnize their relationships in this State in order to enjoy all of the rights and obligations of a New Jersey civil union.” And creating an additional legal status for your relationship may create more problems than it solves, so you should seek legal advice. For example, others may argue that you have disavowed your first legal status by creating a new one, and there are circumstances in which it may be important to you to get respect for the earlier status, such as when the beginning date of the legal relationship affects how ownership of property is treated for tax or other purposes. Also, should your relationship end, you may have more difficulty dissolving your legal obligations if there are two outstanding statuses. These are just some of the issues to explore with counsel.

**Q** If my partner and I have or plan to have children, what does the New Jersey civil union law mean for us?

**A** Securing your legal relationships with your children is vitally important. We offer here only general information in this evolving area of law. We urge you to consult with an attorney for advice on your individual circumstances and what you should do to ensure that you establish legal parenthood.

If both partners to the civil union had a formal legally-recognized parent status to children before the civil union (e.g., through joint or second-parent adoption), the status remains unaltered legally by the civil union, as both partners remain legal parents.

If one partner did not have a formal legally recognized parent status prior to the civil union, the civil union will not change that. As a result of the civil union, that parent may be considered a stepparent, carrying the weight that has in New Jersey. But the only certain way to become a formal legally recognized parent in this situation is for the second parent to adopt the child in court. The adoption decree is a legal judgment that is recognized broadly outside of the state and has legal significance independent of the civil union. It is vital that you consult an attorney and take steps to secure legal parenthood through a second-parent adoption.

If a child is born to one partner after the couple enters into a New Jersey civil union, both partners will be legally presumed to be the child’s legal parents within New Jersey, just as a child born into a marriage is presumed to be the child of both spouses. This legal presumption is profoundly important to the security of the child. However, the presumption does not have the same effect as a court judgment. Since the civil union and the protections under New Jersey law that flow from it may not be accorded legal respect in other states, relying on the fact of the civil union alone to establish legal parenthood exposes you and your child to the risk that parenthood may be challenged in another jurisdiction. Therefore, it is vital that you consult an attorney and pursue securing your child’s legal status with both parents through a second-parent adoption. Likewise, if a civil union couple adopts a child, the legal rela-

tionship of the child should be secured with both parents through joint or second-parent adoption.

In other important respects beyond these considerations, entering into a civil union brings your children the same legal protections and security that married couples obtain for their families under New Jersey law.

**Q** Even if my partner and I enter into a New Jersey civil union, are there other precautions we should take?

**A** Yes. A civil union is new in New Jersey, and legal statuses for same-sex couples are just beginning to be established in various forms elsewhere in the country. This is a rapidly evolving legal area with much uncertainty. Our experience with New Jersey's domestic partnerships shows us that a status other than marriage is confusing to some people, and invites all people to be discriminatory — despite what the law requires — because a separate status signals unworthiness. Further, the federal government and many other states may not respect your New Jersey civil union, so it is especially important to consider whether you have adequate protections if you are traveling outside of the state. You should consult with an attorney if possible about steps you should take apart from your civil union to provide more security to one another and to your family. For example, you can better protect each other through legal documents like wills, health care proxies, advance directives, cohabitation agreements and powers of attorney. Many of these legal protections are routinely obtained by married couples as well to afford greater security for their family; they can be that much more important for same-sex couples whose New Jersey civil unions may not be respected outside of the state.

**Q** If we enter a civil union, can we change our names like married people do?

**A** Yes. The right of a married spouse to change a surname without petitioning a court is available to a civil union partner, too. But keep in mind that the name follows you outside New Jersey,

into interactions with other states, the federal government, and — if you travel abroad — with other countries. You will likely encounter lack of respect for New Jersey's civil union law, and you may encounter worse. As an example of lack of respect, the passport agency has required a court decree of a name change even for couples married in Massachusetts. You will want to consider minimizing problems either by not changing your name or, for those who can afford it, getting a court decree of the change.

**Q** What would I need to do to end a New Jersey civil union?

**A** You would terminate a New Jersey civil union in court the same way a marriage is terminated in New Jersey. Essentially the same steps and criteria for nullifying or dissolving a marriage apply to a civil union, as do the provisions for alimony, dividing assets and allocating responsibilities for the partners' children.

**Q** Can we enter into a New Jersey civil union if we don't live in New Jersey?

**A** New Jersey does not have a residency requirement to obtain a New Jersey civil union license, though the civil union must be performed within New Jersey, and the license is obtained in the municipality where the civil union will be performed.

It is important to be aware, however, that New Jersey does have a residency requirement to bring a court proceeding to terminate a civil union, as with marriage. If the unexpected should happen and you someday want to terminate the civil union, you may be unable to do so in either your home state (depending on where you live) or New Jersey, unless you first move to and establish residency in New Jersey.

Moreover, you should be aware that depending on where you live, your New Jersey civil union may not be accorded legal respect in your home state. You also may want to consider whether entering into a marriage in Canada or another jurisdiction

that permits same-sex couples to marry might provide your family with greater legal security in your home state (NOTE: this is especially true if you live in New York State, where there has been widespread respect for the marriages in Canada of same-sex couples residing in New York). This is an evolving area of law that varies a great deal from state to state and is still very uncertain; you should consult with an attorney for advice about your situation.

Finally, as discussed above, you should also be aware that at present the federal government has not been according legal respect to either civil unions or marriages of same-sex couples.

**Q** Does this new law provide lesbian and gay couples and their families equal treatment?

**A** Absolutely not. Although the New Jersey civil union law grants same-sex couples very significant legal protections, it denies them the right to marry and enter into an enormously important legal and cultural institution, one well understood worldwide. By creating a separate institution of “civil union,” the New Jersey government says loud and clear that lesbians and gay men are inferior because any committed relationships they might have are unworthy of marriage. In dissenting from the New Jersey Supreme Court’s referral of Lambda Legal’s case to the New Jersey Legislature, Chief Judge Poritz explained that: “What we name things matters, words matter... By excluding same-sex couples from civil marriage, the state declares that it is legitimate to differentiate between their commitments and the commitments of heterosexual couples. Ultimately, the message is that what same-sex couples have is not as important or as significant as ‘real’ marriage, that such lesser relationships cannot have

the name of marriage.” That message the government sends is a dangerous example for others in New Jersey that lesbian and gay people are fair game for discrimination and abuse.

The creation of civil unions was for no other reason than to set up a separate and second-class status for the lesbian and gay minority. Even for those who would not necessarily accept the government’s invitation to further bias, there is still the common puzzlement over the meaning of a status like a “civil union,” which fails to convey clearly and automatically the level of respect due to a marriage. We’ve seen that already with New Jersey’s “domestic partnerships;” in one particular instance hospital staff refused to respect the status of an unconscious patient’s partner, telling her that they needed to talk to a “family” member.

**Q** What can we do?

**A** The future for equality lies in New Jersey’s legislature or the courts. For the work in either context, it’s vital for couples in civil unions who experience problems with legal recognition of their status to let us know at Lambda Legal. And for lobbying legislators to end discrimination please contact Garden State Equality at 973-GSE-LGBT. To contact Lambda Legal, please call our Help Desk at 212-809-8585 (toll-free: 866-542-8336) or email [legalthelpdesk@lambdalegal.org](mailto:legalthelpdesk@lambdalegal.org).

### Notes

1. <http://www.lambdalegal.org/our-work/in-court/cases/lewis-v-harris.html>
2. <http://data.lambdalegal.org/pdf/604.pdf>
3. <http://www.immigrationequality.org>
4. <http://www.nj.gov/oag/newsreleases07/ag-formal-opinion-2.16.07.pdf>