

**FREQUENTLY ASKED QUESTIONS (FAQ's)  
AB 205, Domestic Partner Legislation**

**GENERAL INFORMATION**

**When does CalPERS require a copy of the certificate or registration of domestic partnership to qualify for a benefit?**

CalPERS' requires a copy of the domestic partner certificate or registration when: 1) a member applies for retirement and a registered domestic partner would qualify for survivor continuance (survivor continuance application questionnaires are included in the *Stepping Into Retirement* and *Your Disability Retirement Application* publications), 2) a retiree enters into a registered domestic partnership after the retirement date and wishes to change the retirement option to provide for a continuing benefit to the retiree's registered domestic partner upon death (see Publication *Changing Your Beneficiary or Monthly Benefit After Retirement*), 3) a registered domestic partner applies for a pre-retirement or post retirement death benefit (additional information on death benefits can be found in the Member Benefit booklet), or 4) upon application to enroll a domestic partner as a family member in the CalPERS' Health Program. CalPERS' publications can provide additional information on other documentation that may be required.

**When does CalPERS need to be notified if a member enters into or terminates a registered domestic partnership outside of the specific situations discussed above?**

CalPERS' does not require a member to notify us when they enter into or terminate a registered domestic partnership for purposes of beneficiary or survivor benefits, however, these events will revoke the member's beneficiary designations for any pre-retirement death benefits or post-retirement lump sum death benefits previously filed. In this situation, the lump sum death benefits would be automatically payable to the member's registered domestic partner, or if none then to the member's next closest surviving family member(s). However, the member may choose to complete a new Beneficiary Designation form when these events occur. Typically, a member will be required to obtain the registered domestic partner signature when applying for any CalPERS' benefits or programs including a refund of contributions or when you convert any of your State Second Tier service credit to the First Tier retirement formula. If the registered domestic partner is unable or unwilling to sign the CalPERS' applications, the member would be required to complete a "Justification for Non-Signature of Spouse or Registered Domestic Partner" form.

In regard to participation in the CalPERS' Health Program, an active member is required to notify his or her Personnel Office, and a retiree is required to notify

the CalPERS' Office of Employer and Member Health Services immediately upon termination of a Domestic Partnership.

### **COMMUNITY PROPERTY**

**Can the court award a member's former registered domestic partner a portion of their CalPERS (Defined Benefit Plan) pension upon termination of the partnership?**

Yes. Upon the termination of a registered domestic partnership, a member's CalPERS' Defined Benefit Plan may be divided in accordance with the law governing the division of a pension under the California Family Code. The division of the CalPERS' Defined Benefit Plan is subject to the same procedures for filing and implementing of a Domestic Relations Order that apply in the dissolution of marriage (see Family Code section 299 (d)).

**Does CalPERS have any information or publications regarding community property or sample language that may be used for a Domestic Relations Order?**

Yes. The CalPERS community property model order package, CalPERS-MBSD-183 available on CalPERS' Web site, provides information regarding community property and CalPERS'. This package also contains suggested language which may be used in the preparation of the Domestic Relations Order used to divide the CalPERS' Defined Benefit pension. The CalPERS' Community Property Unit can answer additional questions in this area and can be reached at (916) 795-3551.

### **LIFE THREATENING ILLNESS/INJURY OR IMMINENT DEATH OF AN EMPLOYEE**

**What should we do if an employee is seriously injured or their death is expected within 6 months and the employee has a registered domestic partner?**

If you have an employee who is terminally ill with a short time to live or who has a serious life threatening injury, you may protect the employee's registered domestic partner's right to a monthly post retirement death benefit by completing a disability retirement application on the employee's behalf, listing the registered domestic partner's name in the "Survivor Continuance" section of the Disability Retirement Election Application (Publication, *Your Disability Retirement Application*). The application must be received by CalPERS prior to the employee's death and may be faxed to (916) 795-3988, attention "Emergency Retirement Counselor". In this type of situation, we recommend that you call us at our toll-free number, (888) CalPERS (225-7377).

## **PRE-RETIREMENT DEATH BENEFITS**

### **Is a registered domestic partner entitled to monthly pre-retirement death benefits?**

A surviving registered domestic partner will be entitled to any type of monthly pre-retirement death benefit that a spouse would be entitled to receive as long as the partnership was registered for either one year prior to the employee's death or prior to the onset of the illness or injury that causes the employee's death. For more information about monthly death benefits, please refer to the Member Benefit Booklet available through the CalPERS' Web site [www.calpers.ca.gov](http://www.calpers.ca.gov) or by calling our toll-free number, (888) CalPERS (225-7377).

### **If there is no valid beneficiary designation at the time of the employee's death, how will benefits be paid?**

If there is no valid beneficiary designation at the time of the employee's death, benefits will be paid to the employee's surviving registered domestic partner as the closest family member. Beneficiary Designation forms are available via the CalPERS' Web site [www.calpers.ca.gov](http://www.calpers.ca.gov), or by calling our toll-free number, (888) CalPERS (225-7377).

### **Does a registered domestic partner have a community property interest in the employee's CalPERS pre-retirement death benefits?**

A registered domestic partner has the same community property rights as a spouse. Therefore, if an employee has a registered domestic partner and wishes to name someone other than their partner as beneficiary they may do so. However, the registered domestic partner may be entitled to a share of the retirement contribution portion of the lump sum death benefit or a portion of the monthly death benefit, if applicable, based on their community property interest in the employee's account. The remaining death benefit amount would then be paid to the employee's designated beneficiary(ies).

### **What if a beneficiary designation is on file and the employee later enters into a registered domestic partnership?**

A beneficiary designation form is automatically revoked if the employee enters into or legally terminates a registered domestic partnership after the designation form is filed. However, a designation form filed after initiation of partnership termination is not revoked when the termination is finalized. When a designation form is revoked, benefits are payable to the closest surviving family member based on the following order: 1) spouse or registered domestic partner, or if none, 2) children, or if none, 3) parents, or if none, 4) siblings, or if none, 5) estate.

**If an employee enters into a registered domestic partnership with someone who already has a child(ren), will that child(ren) be entitled to any benefits, i.e., Special Death Benefit or 1959 Survivor Benefit, upon the employee's death?**

The employee's registered domestic partner's unmarried child(ren) under age 22 may be eligible for the Special Death Benefit or 1959 Survivor Benefit if the child(ren) was living with the employee in a parent-child relationship at the time of the employee's death. Please refer to the Health Benefits section for information on health benefit entitlement.

**What are the tax implications of the lump sum benefit for a registered domestic partner?**

The federal government does not recognize domestic partners as a "spouse". Therefore, a registered domestic partner who is entitled to a taxable lump sum death benefit may not elect to roll it into an IRA. Federal tax withholding is not mandatory when a benefit is paid to a registered domestic partner. If the partner elects to have federal tax withheld from the lump sum payment, it will be deducted based on 10 percent of the taxable amount.

### **POST-RETIREMENT DEATH BENEFITS**

**Will a registered domestic partner be eligible for the Survivor Continuance Allowance?**

If the employee retires on or after January 1, 2005, their registered domestic partner will qualify for the survivor continuance death benefit IF their partnership is registered for at least one year before the employee's service retirement effective date or on the employee's disability retirement effective date. Survivor continuance is available to public agency employees only if your agency contracts for it. Survivor continuance is an amount equal to one-quarter or one-half of the unmodified retirement amount, depending on whether the employee's service is coordinated with Social Security or not. The survivor continuance benefit may be paid to a qualifying survivor in addition to any other death benefit that may be payable in accordance with the option the employee elected when he/she retired. A qualifying survivor includes natural or adopted unmarried children under age 18, born or adopted after the establishment of a domestic partnership.

**If a person retired *before* January 1, 2005, is there any specific information they should be aware of?**

If a retiree elected Option 2, 2W, 3, 3W or 4 and they have a registered domestic partner, they may be entitled to a 15 percent increase to their monthly retirement allowance in lieu of the survivor continuance benefit that could have been included in their allowance if they had retired on or after January 1, 2005. Please note that this increase only applies if your agency contracts for the survivor continuance benefit

AND if the retiree and their partner were **registered** for at least one year before the retiree's service retirement effective date or on the date of the retiree's disability retirement and the registered domestic partner is the named beneficiary of the lifetime option allowance.

If a retiree elected the Unmodified or Option 1 benefit, their surviving registered domestic partner may qualify for the survivor continuance allowance equal to one-quarter or one-half of the Unmodified allowance amount, depending on whether your agency was coordinated with Social Security or not. This monthly death benefit is available for eligible registered domestic partners of state and school retirees and public agency retirees if your agency contracts for survivor continuance. A registered domestic partner qualifies for this benefit if all of the following conditions apply: the partnership was registered for at least one year prior to the retiree's service retirement effective date or on the retiree's disability retirement date AND the partnership continues without interruption until the retiree's death.

If your employee may be entitled to an increase in their monthly allowance or their registered domestic partner may qualify in the future for a survivor continuance allowance, a *Survivor Continuance Application Questionnaire* can be obtained by contacting us toll-free at (888) CalPERS (225-7377). The form will need to be completed and returned to CalPERS.

**What if the person entered into a registered domestic partnership *after* they retired, will the registered domestic partner automatically receive a monthly death benefit?**

If the registered domestic partnership was registered after retirement, the registered domestic partner is NOT automatically entitled to a monthly death benefit. However, the retiree can modify their original retirement option and name their partner for a lifetime monthly death benefit allowance. To do this, the retiree must complete the "Application to Modify Option and/or Life Option Beneficiary" form contained in the **Changing Your Beneficiary or Monthly Benefit after Retirement booklet** (PUB-98). This publication may be ordered by calling our toll-free number, (888) CalPERS (225-7377) or by visiting the CalPERS' Web site, [www.calpers.ca.gov](http://www.calpers.ca.gov).

A registered domestic partner will only be entitled to a monthly allowance, with health and dental coverage, if applicable, if the retiree elects a new option that will provide them with a monthly death benefit. However, this type of option modification will cause the retiree's allowance to decrease. If the retiree waits until after December 31, 2005 to elect the new option for their partner, a twelve month deferred effective date will be imposed. (A new option may be elected within twelve months of entering into a registered domestic partnership and not be subject to the deferred effective date requirement.) If the retiree should die before the new option takes effect, the registered domestic partner will NOT be entitled to a monthly death benefit or continued health/dental coverage.

**After retirement will a registered domestic partner be entitled to any lump sum benefits payable upon the retiree's death?**

If there is no valid "lump sum" beneficiary designation at the time of the retiree's death, the lump sum benefits will be paid to the surviving registered domestic partner as the closest family member. Beneficiary Designation forms, BSD-509, are available via the CalPERS' Web site [www.calpers.ca.gov](http://www.calpers.ca.gov), or by calling our toll-free number, (888) CalPERS (225-7377).

**What if at retirement the retiree has a beneficiary designation on file and then enters into a registered domestic partnership?**

A lump sum beneficiary designation form is automatically revoked if the retiree enters into or legally terminates a registered domestic partnership after the designation form is filed. However, a designation form filed after initiation of partnership termination is not revoked when the termination is finalized. When a designation form is revoked, the lump sum benefits are payable to the closest family member based on the following order: 1) spouse or registered domestic partner, or if none, 2) children, or if none, 3) parents, or if none, 4) siblings, or if none, 5) estate.

**Does a registered domestic partner have a community property interest in the employee's Option 1 lump sum death benefit?**

A registered domestic partner may be entitled to a community property share of the lump sum Option 1 benefit, "return of unused contributions". Therefore, if an employee has a registered domestic partner to whom they were registered prior to retirement and the employee wishes to name someone other than their partner as their beneficiary for the Option 1 lump sum death benefit they may do so. However, their registered domestic partner may be entitled to a share of the Option 1 benefit and the remaining amount would then be paid to the employee's designated beneficiary(ies).

**What are the tax implications of the retired lump sum death benefits for a registered domestic partner?**

The federal government does not recognize registered domestic partners as a "spouse". Therefore, a registered domestic partner who is entitled to a taxable lump sum death benefit may not elect to roll it into an IRA. Federal tax withholding is not mandatory when a benefit is paid to a registered domestic partner. If the partner elects to have federal tax withheld from the lump sum payment, it will be deducted based on 10 percent of the taxable amount.

## **HEALTH BENEFITS**

### **Does this bill impact benefits available in the CalPERS Health Program?**

Yes, effective January 1, 2005, employees and annuitants of the state or a contracting agency may enroll a validly registered domestic partner in the same manner as other eligible family members. For contracting agencies, a resolution allowing domestic partner coverage is no longer required. Members will no longer be required to complete a **Statement of Financial Liability for Domestic Partner Health Benefits** (Form PERS-HBD- 35) in order to enroll a domestic partner. In addition, an **Affidavit of Eligibility** (Form PERS-HBD-108) for enrolling the children of a domestic partner will not be required.

### **How can a member add a domestic partner to his or her health enrollment?**

In general, domestic partners must first register with the California Secretary of State. Information about domestic partnership registration is available at the Secretary of State's Web site at [www.ss.ca.gov](http://www.ss.ca.gov). Upon completion of the registration process, active CalPERS' members may submit an application for enrollment of a domestic partner to their Personnel Office, and retirees may submit applications to the CalPERS' Office of Employer and Member Health Services. A copy of the finalized *Declaration of Domestic Partnership* provided by the Office of the Secretary of State must accompany any application for enrollment of a domestic partner. An employee or annuitant must submit an application for enrollment of a domestic partner within 60 days of receipt of their Certificate of Registered Domestic Partnership from the Secretary of State or anytime during an open enrollment period.

A legal union of two persons of the same sex, other than marriage, validly formed in another jurisdiction, may also be deemed to be sufficient to establish eligibility for Health Program enrollment. Employees or annuitants who believe they meet this requirement and wish to add a domestic partner to their health enrollment should contact the CalPERS Customer Contact Center by calling our toll-free number, (888) CalPERS (225-7377).

### **Can the member also enroll the children of a domestic partner?**

Yes, children of a domestic partner may be covered if they meet other criteria for coverage (i.e., under age 23 years old, never married, not in the military, not covered in this Health Program in their own right through qualifying employment.)

### **Following the death of the member, can the surviving domestic partner continue coverage in this Health Program?**

Yes, in the same manner as a surviving spouse, a domestic partner may enroll or continue enrollment in the CalPERS' Health Program if they satisfy eligibility criteria.

**What are the responsibilities of a member if his or her domestic partnership is terminated?**

Following termination of the partnership, the former partner is no longer an eligible family member and must be deleted from coverage. An active member must promptly notify his employer, and a retiree must notify CalPERS' that the domestic partnership is terminated. The effective date of the mandatory health enrollment cancellation is the first day of the month following the date of the termination of the partnership. The member is liable for any costs for health services utilized by the former partner after the effective date of the mandatory cancellation.

The former partner may be eligible for a period of limited coverage equivalent to COBRA provisions. The active member's Personnel Office will provide information and enrollment forms for this continuation coverage. Retired members will receive this information from CalPERS'.

**Are there tax implications due to health coverage for a registered domestic partner?**

Providing health benefits to a domestic partner and children of a domestic partner is a taxable benefit for the enrolled individual(s). Employees, annuitants and their partners should consult their tax counselors regarding withholding requirements for these additional benefits.