




U.S. Department of Justice

AUG 25 2009

Washington, D.C. 20530

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: Lee J. Lofthus
Assistant Attorney General
for Administration 

SUBJECT: Benefits for Same-Sex Domestic Partners of Department of Justice
Employees Stationed Overseas

On June 17, 2009, the President issued a memorandum directing executive departments and agencies to extend benefits to qualified same-sex domestic partners of Federal employees where doing so is consistent with Federal law. The Department of State and Office of Personnel Management (OPM), in consultation with the Department of Justice (DOJ), are working to identify government-wide benefits that may be extended to same-sex domestic partners of Federal employees, and DOJ is working to identify DOJ-specific benefits that may be extended in the near future. Certain benefits, as outlined in this memorandum, may be extended immediately. Component heads are advised that, once DOJ and OPM complete the review of all potentially available benefits, further guidance will be provided for provision of benefits not addressed in this memorandum.

DOJ employees stationed overseas and their family members are entitled to receive, among other benefits, rest and relaxation travel and family visitation travel, as outlined in DOJ Order 1200.1, Chapter 13-1. To define entitlement to benefits, Chapter 13-1 refers to Department of State regulations, specifically, the Foreign Affairs Manual (FAM) and Department of State Standardized Regulations (DSSR). The Department of State has updated the FAM and DSSR to implement the President's June 17 memorandum, and DOJ is therefore providing the benefits triggered by this update, namely rest and relaxation travel and family visitation travel for qualified same-sex domestic partners.

Furthermore, it is DOJ policy that employees stationed overseas who receive overseas differentials and allowances pursuant to 5 U.S.C. Chapter 59, Subchapter III, shall have their differentials and allowances calculated using the DSSR as updated in light of the President's memorandum. DOJ is also authorized to pay for health care for employees stationed overseas and their family members, in accordance with 28 U.S.C. § 530A and 22 U.S.C. § 4084, and Components with employees stationed overseas should arrange to modify any reimbursement agreements with the Department of State so that qualified same-sex partners of DOJ employees will have access to health care provided through the Department of State.

DOJ employees who seek benefits for their same-sex domestic partners should work with their servicing Human Resources Specialist. To qualify for these benefits and allowances on behalf of a same-sex domestic partner, the FAM requires an employee file an affidavit identifying his or her same-sex domestic partner and certifying to certain eligibility requirements. The Head of the Component in which the individual is employed, or his or her designee, is authorized to accept the affidavit and approve the employee's eligibility for available benefits.

A sample affidavit adapted from the declaration required by the FAM is attached. The affidavit must affirm that the employee and his/her domestic partner:

- ✓ are each other's sole domestic partner and intend to remain committed to one another indefinitely;
- ✓ meet the common residency requirements outlined in the FAM;
- ✓ are at least 18 years of age and mentally competent to consent to contract;
- ✓ share responsibility for a significant measure of each other's common welfare and financial obligations;
- ✓ are not married to, joined in civil union with, or domestic partners with anyone else; and
- ✓ are same-sex domestic partners, and not related in a way that would prohibit legal marriage in the State in which the employee and domestic partner reside.

For purposes of affording benefits, any child or children of a domestic partner of an employee shall be deemed a stepchild of the employee. The terms "child" or "children" shall include actual offspring, stepchildren, adopted children, and those under permanent legal guardianship (at least until age 18), or a comparable permanent custody arrangement, of the employee or domestic partner when dependent upon and normally residing with the guardian or custodial party.

Components must retain affidavits with the employee's servicing human resources office.

We will issue a Department Order Chapter at a later date.

If you have any questions, please contact Jeanarta McEachron, Assistant Director, DOJ Human Resources Policy and Advisory Services at (202) 514-3663.

Attachment

Affidavit Declaring Domestic Partner Relationship

For the purposes of obtaining benefits, I _____ (print or type name of employee), declare that _____ (print or type name of same-sex domestic partner) and I:

1. are each other's sole domestic partner and intend to remain committed to one another indefinitely;
2. with regard to a common residence (initial next to appropriate response):
 - a. Have a common residence and intend to continue the arrangement; _____
 - b. Have had a common residence and intend to resume having a common residence after an assignment abroad for which the domestic partner did not accompany the employee; _____
 - c. Would have a common residence, but are prevented from having one for reasons described by the employee, and the official approving this affidavit determines that the circumstances described are sufficient to justify the waiver of the common residence requirement. Unless and until such a determination is made, the domestic partner relationship does not qualify for benefits and obligations; _____
3. are at least 18 years of age and mentally competent to consent to contract;
4. share responsibility for a significant measure of each other's common welfare and financial obligations;
5. are not married to, joined in civil union with, or domestic partners with anyone else; and
6. are same-sex domestic partners, and not related in a way that would prohibit legal marriage in the State in which I and my domestic partner reside.

I further declare that I:

1. agree to file a statement of dissolution of the domestic partnership not later than 30 days after the death of my domestic partner or the date of dissolution of the domestic partnership;
2. understand that falsification of information within this affidavit may constitute a criminal violation under 18 U.S.C. 1001, and may lead to disciplinary action.

Employee's Signature: _____ Date: _____

Approved by: _____ Date: _____

Title: _____