

California Domestic Partnership Rights and Responsibilities Act of 2003 Q & A

THE LAW

What is the California Domestic Partnership Rights and Responsibilities Act of 2003?

It is an Act passed by the California legislature and signed by Governor Davis in September of 2003 that is designed to give persons living in registered domestic partnerships rights and responsibilities more similar to those of marriage. The Act is sometimes referred to by its bill designation of "AB 205." It is in California's Family Code beginning at section 297.

When does the Act go into effect?

Even though the Act was passed in 2003, its provisions do not go into effect until January 1, 2005. It will not affect Cal Grants issued in the 2004-05 cycle, but will affect UC institutional aid that will be disbursed in the 2005 Winter and Spring terms. This will be discussed in more detail below.

Who is affected by the Act?

The Act provides persons in registered Domestic Partnerships on or before January 1, 2005, and those entering into Domestic Partnerships after January 1, with many of the rights and responsibilities of married couples. The law also applies to persons who entered into the equivalent of a California Domestic Partnership in another state or country.

Who is considered a "partner" under the Act?

The Act applies to individuals who register as domestic partners with the California Domestic Partners Registry, which is maintained by the California Secretary of State, or who are in a similar legal union (other than marriage) formed elsewhere. For the purposes of this document, the terms "partner" or "Domestic Partner" shall be used when referring to someone in a registered Domestic Partnership.

In general, what rights does the Act provide for Domestic Partners?

Generally, partners "shall have the same rights, protections, and benefits . . . under law as are granted to . . . spouses." Specifically, partners have rights equal to those of spouses under probate law, employment law, and discrimination law. Public entities are required to extend to Domestic Partners any rights extended to spouses in terms of insurance and retirement benefits and any other employment rights mandated by law.

For purposes of state and institutional student financial aid, a student in a Domestic Partnerships should be eligible for the aid, as would a similarly situated married student.

In general, what responsibilities does the Act create for Domestic partners?

Persons in registered Domestic Partnerships “shall be subject to the same responsibilities, obligations, and duties under law . . . as are . . . imposed upon spouses.” This includes responsibility for financial support and child support both during, and after termination of, the Domestic Partnership.

Regarding financial aid, persons in a Domestic Partnership should be treated exactly as a similarly situated married person would be treated.

THE PROCESS: CREATING OR ENDING A DOMESTIC PARTNERSHIP

How is a Domestic Partnership created?

For the Domestic Partnership Rights and Responsibilities Act to apply, the parties must register the partnership with the California Secretary of State. Persons are eligible to enter into registered Domestic Partnerships if:

They share a common residence;

They agree to be jointly responsible for each other’s basic living expenses;

They are not related by blood in such a way that would make them ineligible to be married;

They are both over the age of 18;

Either

they are both members of the same sex, or
they are of different sexes and one is either over 62 years old or eligible for Social Security old age benefits.

For more details, consult the Secretary of State’s Domestic Partnership website at <http://www.ss.ca.gov/dpreistry/>

How were people in domestic partnerships notified of the Act’s provisions?

Persons in a registered Domestic Partnership received a letter from the California Secretary of State’s office advising them that their rights and responsibilities were being changed by the Act and that they should formally dissolve their Domestic Partnership if they did not wish to continue the partnership under the terms of the Act.

How are Domestic Partnerships dissolved?

Before the passage of the Domestic Partnership Act, one member of the partnership sending a letter to the California Secretary of State stating the desire to terminate the relationship could terminate registered domestic partnerships. One of the key changes brought about by the Act is to make the process of terminating a Domestic Partnership closer to that of terminating a marriage.

Under the Act, in some cases a Domestic Partnerships can be dissolved by the parties sending a “Notice of Termination of Domestic Partnership” form to the California Secretary of State announcing the intention of terminating the relationship, but only if:

Both partners sign the form; and

Neither party of the domestic partnership has produced or adopted a child or is pregnant; and

The partnership was registered for fewer than five years; and

Neither party has any interest in real property, except for most residential leases; and

Community property assets and outstanding debts are less than the limits placed on summary dissolution of a marriage (as of January 1, 2005, community property of \$32,000 and outstanding debts of \$4,000); and

The parties have agreed on the division of assets and have waived any rights to support from the other partner;

Both parties agree they wish the relationship to be terminated.

If all of these conditions are met, the Domestic Partnership is considered automatically terminated six months after the California Secretary of State’s office receives the letter.

If any of these conditions are not met, only filing a proceeding for dissolution of a domestic partnership in superior court can terminate a Domestic Partnership.

THE EFFECT ON STUDENT FINANCIAL AID

Regarding student financial aid, who will be affected by the Act?

Just as with marriage, the existence of a Domestic Partnership may affect financial aid in two possible circumstances—either when a student (dependent or independent as defined by federal financial aid rules) is in a Domestic

Partnership, or when a dependent student's custodial parent (again, as defined by federal financial aid rules) is in a Domestic Partnership. For a student's award to be affected, the student (or the student's custodial parent) must be in the Domestic Partnership at the time the FAFSA is filed for the current academic year.

A domestic partnership (or, similarly, a marriage) that is established after the FAFSA is filed will not affect the student's financial aid award that year.

Does the Domestic Partnership Act affect a student's federal award?

The Domestic Partnership Act is a state law and does not directly affect federal financial aid awards, such as the Pell Grant.

However, if a student's Domestic Partnership results in a change in state or UC institutional grant assistance, the student's eligibility for other need-based federal aid, such as subsidized federal loans, might be indirectly affected. Whatever the impact, the total size of the student's aid package should remain the same.

How will a student's state and UC institutional financial aid award be affected?

As with a married student, if a student who would otherwise be considered a dependent is in a Domestic Partnership, their financial aid package will be calculated as if they were an independent student. The income and assets of the student's parents would not be considered, but the income and assets of the partner would be considered in the same manner as a spouse. Similarly, an independent student would be treated as if the Domestic Partner were his or her spouse, and the partner's incomes and assets would be considered in determining the student's financial aid package.

If a dependent student's custodial parent is in a Domestic Partnership, then the parent's partner would be treated as a spouse and their combined income and assets would be considered, as in the case of married couples. Whether or not the non-custodial parent of the student is in a Domestic Partnership is not relevant.

Will the Act increase or decrease a student's eligibility for financial aid?

It depends. It is possible that if a student's partner (or the custodial parent's partner) has significant income or assets, the student's eligibility for state and institutional aid will decline. Conversely, if the partner has few financial resources, or if the partner is also enrolled full time in college, the student's eligibility may increase.

If a student (or a student's custodial parent) is in a Domestic Partnership, must the student disclose that fact and disclose information about the income, assets, or student status of the Domestic Partner?

For 2004-05, UC students who are in a Domestic Partnership, or whose custodial parent is in a Domestic Partnership, as of March 2, 2004, are expected to disclose that fact and the associated income, asset, and student status information. The new information will be used to determine remaining institutional financial aid for the 2004-05 academic year (Winter and Spring 2005 terms).

After the 2004-05 academic year, all UC students in a Domestic Partnership (or with a custodial parent in a Domestic Partnership) must report this fact in the course of the application process involving the FAFSA, the UC Domestic Partnership declaration, and any forms that CSAC may require, the latter in the case of a California resident only.

How does a student report a Domestic Partnership?

A student in a Domestic Partnership, or whose custodial parent is in a Domestic Partnership, must notify both the campus Financial Aid office and CSAC.

In order to process a student's financial aid application, the campus Financial Aid office needs information regarding a student's (or his or her parent's) Domestic Partnership. However, the FAFSA does not have any provision for reporting the existence of a Domestic Partnership or the income/asset information on the school attendance status of a Domestic Partner. Financial aid applicants who are in a Partnership, or whose custodial parent is in a Partnership, must report the Domestic Partnership to the campus Financial Aid Office by means of forms developed by the campus. The campus must then notify CSAC if the new information results in a change in the student's Cal Grant eligibility.

In addition, a student in a Domestic Partnership (or one whose custodial parent is in a Domestic Partnership) should report its existence as well as information on the partner's income, assets and student status to CSAC using the reporting form available on their website at <http://www.csac.ca.gov/doc.asp?id=1149>.

Is there a deadline for reporting a Domestic Partnership?

In recognition that information about the new financial aid requirements under AB 205 may not reach all potentially affected students in a timely way, CSAC will include in their award letters a notice that any student in a Domestic Partnership (or those whose parent is in a Domestic Partnership) should contact CSAC within 30 days of the notice and request CASC's Domestic Partnership Information Form, fill it out, and return it to CSAC. CSAC will then notify the applicant as well as the applicant's home campus if the Domestic Partnership information affects the Cal Grant award.

UC Financial Aid offices will not observe any deadline for reporting Domestic Partnerships for 2004-05 or 2005-06. In future years campuses may institute a deadline.

Does documentation on the status of a Domestic Partnership need to be provided beyond the attestations and information on the CSAC Domestic Partnership Information Form?

CSAC is requiring that documentation be submitted to them along with their "Cal Grant Registered Domestic Partner Reporting Form." Campus Financial Aid Offices will require documentation on Domestic Partnerships in the same manner and to the same extent that they currently require documentation on marriage. Most campuses require documentation of marital status (especially for the parents of dependent students) only in limited situations. Generally, those same campus standards will be used for requiring documentation of Domestic Partnerships, CSAC's rules notwithstanding.

If required, what documentation will serve to verify that a Domestic Partnership has been entered into/dissolved?

To establish that a Domestic partnership exists, a student must produce either the Declaration of Domestic Partnership that was filed with the California Secretary of State's office or a copy of the Certification of Domestic Partnership issued by the California Secretary of State's office. UC General Counsel will determine the validity of partnerships entered into outside of California on a case-by-case basis.

When a domestic partnership is terminated by the parties notifying the California Secretary of State of their wish to end the partnership (see above), a copy of the form is the only documentation that will exist. A copy of the form is available from the Secretary of State for a nominal fee. Where the partnership is dissolved by judicial action, the student must produce a copy of the dissolution decree from the court.

How does CSAC plan on handling students whose Cal Grants packages are affected by Domestic Partnerships?

CSAC has interpreted the Act as not requiring that awards made for the 2004-05 school year (which were made before AB 205 went into effect) be revised subsequent to AB 205 becoming effective. Therefore, Cal Grants awarded for 2004-05 will not be affected by AB 205. CSAC will implement AB 205 in beginning with the 2005-06 awards.

CSAC has developed a "Cal Grant Registered Domestic Partner Reporting Form" (available at <http://www.csac.ca.gov/doc.asp?id=1149>) for their 2005-06 award cycle, along with a document explaining the effect on AB 205 on Cal Grant applicants. CSAC will include information on AB 205 in each award letter, with an advisory that students should contact the Commission within 30 days of the award letter to request a form for filing Domestic Partner information. Students with a Domestic Partner or whose custodial parent is in a Domestic Partnership must fill out the form, which asks for financial information on the Domestic

Partner of the student or the student's parent, and then return the completed, signed form to CSAC, along with the necessary documentation.

CSAC will then consider whether the Domestic Partnership will alter the Cal Grant and will notify the student of any change in the Cal Grant award. Although CSAC will accept forms for filing Domestic Partnership information prior to the Cal Grant award notification process, CSAC will award the initial Cal Grant based on the information reported on a student's FAFSA and then revise the award, as appropriate, using information from the "Cal Grant Registered Domestic Partner Reporting Form."

How are Domestic Partnerships and same-sex marriages from other jurisdictions affected by the Act?

UC General Counsel will determine, on a case-by-case basis, whether Domestic Partnerships and same-sex marriages from other jurisdictions qualify under the California law. Campuses will forward application to UCOP for Counsel's review as they receive them from students.

The FAFSA contains a statement warning of criminal penalties for false information—do these same provisions apply to students who supply information about Domestic Partnerships via means other than the FAFSA?

The "Cal Grant Registered Domestic Partner Reporting Form" that notifies CSAC of any Domestic Partnership that would affect a student's eligibility contains a notice that the information is true and correct under penalty of perjury. Campuses should include similar warnings on their forms.

Will my 2004-05 financial aid package be revised because of AB 205?

CSAC will not revise Cal Grants awarded before January 1, 2005. For Cal Grants, AB 205 will be implemented beginning with the 2005-06 award cycle.

UC institutional awards made in the 2005 Winter or Spring terms will be revised based on the new information about the student's (or the student's custodial parent's) Domestic Partnership.

If a student loses eligibility for state or institutional aid because of a Domestic Partnership, can the campus Financial Aid Office ignore the Partnership and process the student's application as if they were single?

No, the Financial Aid Office has no discretion to disregard the existence of a Domestic Partnership after they learn of its existence, just as the Financial Aid office has no discretion to disregard knowledge of the existence of a marriage.

IMPLEMENTATION ISSUES

How does a financial aid office report Domestic Partnership information?

In reporting student information to OP on the corporate student system - financial aid database, there are two flags that indicate a student's eligibility for financial aid is affected by AB 205. Under special programs, Flag 5 indicates that the students Domestic Partners resources are included in institutional need-analysis, and Flag 6 where the student's custodial parents Domestic Partners resources are included in institutional need-analysis.

The values transmitted by the campus for a students Federal Dependent Status, Parental Contribution, Student Contribution, Expected Family Contribution, Parent Income and Student Income should all continue to be the values calculated under federal methodology and should not be affected by the a student's circumstances under AB 205.

How will students learn about the effect of AB 205 on their financial aid?

Campus Financial Aid Offices are working with their campus' GLBT Centers to inform students about the impact of AB 205. Campuses are also posting information on their websites and having articles published in the campus newspaper. UC Student Financial Support will also include information on AB 205 in the mailing that goes to all new UC students applying for financial aid.

CSAC is including an announcement regarding AB 205 in the award letter they send to students with respect to CAL GRANTS for 2005-2006.

If students or their parent were in a Domestic Partnership at the time that they filed their FAFSAs (prior to March 2, 2004) for the 2004 – 2005 school year, they should complete the forms provided by their campus. The campus will determine if the new information results in any change to the students's 2004 –2005 UC aid awards that have not yet been disbursed.

For the 2005-2006 school year, students or their parent who are in a Domestic Partnership, irrespective of when it started, should complete the forms provided by their respective campus. The campus will determine if the new information results in any change to the students's UC award or CAL GRANTS for 2005-2006. If a change to any CAL GRANT is warranted, the campus will let CSAC know about the determinations. If these applicants provide the updated Domestic Partnership status information only to CSAC and not to the campus, the campus will not be notified by CSAC unless CAL GRANTS are affected. CSAC requirements for documentation may exceed those of UC.

Based on information available at this time, this same process will be in place for future school (award) years; the process will continue to require additional action

with respect the UC campuses and CSAC on the part of students who themselves or whose parent is in a Domestic Partnership. Applicants must repeat these additional steps for each school year for which they are seeking financial aid if they or their parent are in a Domestic Partnership.