

# Domino Effect

San Francisco Equal Benefits Ordinance Served As Catalyst for Domestic Partners Revolution

by Jamie Wolters

This summer's domino-effect transformation of the airline industry, which quickly instituted domestic partners benefits as a standard part of the leading companies' employment packages, was just an accelerated reflection of a broader trend that has taken place in the nation's collective workplace in the '90s, according to a new Human Rights Campaign report.

The report cites the same catalyst for both transformations—the San Francisco Equal Benefits Ordinance.

The HRC report, "The State of the Workplace for Lesbian, Gay, Bisexual and Transgendered Workers," called the rapid adoption of domestic partners policies "one of the most stunning gains for gay, lesbian, bisexual and transgendered workers in the 1990s."

Over the course of the decade, the number of employers offering domestic partners benefits has grown from less than two dozen to several thousand private companies, colleges and universities, the report said. Most of that growth—2,168 of 2,855 policies—has taken place in the past two years and is directly attributable to the San Francisco law, it said.

"A steadily increasing number of American workplaces had been adding domestic partner insurance coverage to their benefits packages through the second half of the decade," said Kim I. Mills, HRC's education director and principal author of the report. "Even without the San Francisco law, we were seeing an average of two employers a week instituting domestic partner coverage."

The San Francisco law requires any company doing business with the city or county to offer the same benefits to the domestic partners of its employees that it offers to employees' legal spouses. Upon going into effect in 1997, it faced immediate legal challenges—the most tenacious of which was from United Airlines and the Air Transport Association, which fought the policy for two years.

But on July 30, just hours after a federal appeals court ruled that airlines must comply with the ordinance and pay non-salary benefits (family medical leave, bereavement leave and discount travel) to their employees, United conceded the battle.

Not only did they agree to grant the court-mandated non-salary benefits to the same-sex partners of its 97,000 employees, they agreed to provide full health and retirement benefits to the partners of its gay employees. Within a week of the decision, American Airlines and U.S. Airways announced they would follow suit.

According to the HRC report, the San Francisco ordinance was also directly responsible for the spread of domestic partner benefits in the oil industry. San Francisco-based Chevron offered them first, then was quickly followed by Shell, BP Amoco and Mobil.

Such policies are also becoming more common among public employers. The report found that six states, seven local government entities (such as libraries and utility commissions) and 60 city and county governments offer domestic partner health benefits. This year alone, at least eight additional governments instituted policies for their employees.

With the success has come a backlash. The opposition ranges from those who attack same-sex only domestic partner policies for discriminating against heterosexuals to religious conservatives who argue that any extension of benefits to unwed partners is an attack on the institution of marriage.

Pat Robertson's American Center for Law and Justice (ACLJ) has already tasted victory with a July 8 ruling that threw out a domestic partners policy the city of Boston established for its municipal employees. The Massachusetts state Supreme Judicial Court ruled that state law limited cities to providing such benefits only to legal spouses and dependents of employees.

In September, the ACLJ sought to expand that ruling to cover other Massachusetts cities—Brookline, Cambridge and Northampton—that currently offer such benefits.

The Center is also continuing to press a legal case against the San Francisco Equal Benefits Ordinance and has pending challenges against laws in New York City and Santa Barbara. ACLJ Chief Counsel Jay Sekulow agreed that the San Francisco law is central to the domestic partners benefits debate.

"We filed that lawsuit in San Francisco because our fear was that, out of overreaction, companies would start introducing these plans," he told the *San Francisco Chronicle*.

Similar battles are underway in Virginia, where the state Supreme Court announced in September that it will hear an appeal of a lawsuit involving Arlington County's extension of health insurance benefits to the same-sex partners of its county employees.

Three Arlington residents challenged the policy earlier this year in Arlington County Circuit Court. In early March, Judge Benjamin N. A. Kendrick struck down the policy, saying the benefits violated Virginia's "Dillon Rule," which prohibits localities from acting without prior authorization from the state Legislature.



Taking the opposite tact are groups such as attorney Thomas F. Coleman's American Association of Single People, which argues that policies which extend benefits only to same-sex couples are just as discriminatory as married-only benefits policies. Coleman was one of the attorneys for Paul Foray, a Bell Atlantic employee who filed suit against the company after his request for health benefits for his live-in girlfriend was denied. Bell Atlantic has a domestic partners benefits policy for same-sex couples.

In June, a federal judge threw out Foray's suit, ruling that employers can offer benefits to same-sex domestic partners and not to opposite-sex domestic partners without running afoul of civil rights laws. The key point in the ruling by U.S. District Court Judge Robert Patterson was that heterosexual couples can qualify for the benefits by getting married. Same-sex couples cannot.

"This difference in ability to marry, which does not bear on the quality or stability of the relationship, is material in the context of a compensation plan which grants benefits to employees' chosen partners," Patterson wrote in his ruling. "[The Bell Atlantic policy] reflects and remedies differences between these persons in this particular context, and does not discriminate between similarly situated men and women."

Despite losing the court case, the Los Angeles-based Coleman is continuing his battle for sexual orientation-neutral domestic partners policies. In August, he issued a press statement attacking AB 26, California state Assemblywoman Carole Migden's bill to establish a statewide domestic partners registry. As currently written, the registry would recognize only same-sex couples and seniors (heterosexual couples 62 years of age or older).

"Refusing reciprocity to opposite-sex domestic partners is inconsistent with one of the goals of the pro-marriage rights movement," Coleman said.

According to the HRC report, more than two-thirds of domestic partner benefits policies cover both same-sex and opposite-sex couples.

Despite the patchwork of rulings, no clear legal trend has emerged from courts in regards to domestic partnership issues. While most portions of the San Francisco ordinance were upheld, a federal judge did rule that federal law superceded the city policy when it came to salary benefits for airline employees. And while the Massachusetts high court struck down Boston's benefits program, similar policies have overcome legal challenges in Atlanta and Chicago.