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Spectrum Institute, Research and Policy Division  
P.O. Box 65756 • Los Angeles, CA 90065 • (323) 258-8955  
Fax (323) 258-8099 • [www.singlepeople.org](http://www.singlepeople.org) • [unmarried@earthlink.net](mailto:unmarried@earthlink.net)

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**Legislative Summary:**

**Domestic Partnership  
Bills Pending in States  
Throughout the Nation**

*Special Report to the Vermont Legislature*

Presented to the  
House Judiciary Committee  
January 27, 2000

Special Report No. V-6

# **Summary of domestic partnership bills pending in states throughout the nation**

By Thomas F. Coleman, Esq.  
American Association for Single People

## **Wisconsin**

This is the only state, other than Vermont, where a comprehensive domestic partnership bill is currently pending. AB 608 is very similar to the bill recently introduced in Vermont (SB 248).

Both the Wisconsin bill and the Vermont bill seem to be patterned after a measure introduced in Hawaii in 1999 (HB 884). All of these bills follow the path of the model bill proposed in the report of the Hawaii Commission on Sexual Orientation and the Law which was issued in December 1995. Wisconsin also has a bill pending (AB 609) which is more limited. That bill would give domestic partner benefits to government employees. Both of the bills pending in Wisconsin are gender-neutral and would apply equally to same-sex and heterosexual unmarried couples who meet the eligibility criteria.

## **Washington**

HB 2037 deals with state employment benefits. It is gender neutral and open to all unmarried couples regardless of sexual orientation.

## **Rhode Island**

HB 5619 would give benefits to domestic partners of state employees. It applies to same and opposite-sex couples alike.

## **New York**

This state has five bills pending. AB 7463 would amend the election law to treat domestic partners the same as spouses and other close family members. SB 2670 would allow a surviving dp to use his or her deceased partner's sick leave if the deceased partner is a state civil servant. SB 2745 establishes priority for the designation of persons who may control the disposition of remains of a deceased person. SB 3273 would create a state registry, prohibit discrimination against dp's in employment, housing, and business transactions, and require insurance companies to offer coverage to dp's just as they offer coverage to spouses. AB 6286 is the same as SB 3273. All of these bills apply equally to same-sex and opposite-sex domestic partners.

## **New Hampshire**

HB 1567 would give benefits to the domestic partners of public employees. It is gender neutral and applies to same and opposite-sex domestic partners.

## **Massachusetts**

This state has five bills pending. Only one (HB 308) is limited to same-sex couples. The rest are gender neutral. HB 3377 relates to equal employment benefits for public service employees. SB 2044 covers the same topic, but has been merged into SB 2048. SB 2048 has passed the Senate and is pending in the House. HB 4947 is limited to authorizing the town of Amherst to give dp benefits to its employees.

## **Florida**

There are two bills pending in this state. Both are identical. SB 686 and HB 29 would create a state registry for domestic partners, entitle them to hospital visitation rights, and require health insurance companies to offer dp coverage on the same terms as they offer spousal coverage. The definition of dp in these bills is broader than usual in that it does not contain a blood-relative exclusion. Any two unmarried adults who meet the criteria are included in the bills. By not excluding blood relatives, the bills remove any presumption that domestic partnership is a sexual relationship. It may be or it may not be, depending on the circumstances. The definition is similar to SB 118 in California.

## **California**

There are three bills pending in California. AB 901 would remove state income tax on dp employment benefits, just as they are not taxable for spouses. SB 118, which has passed the Senate and is pending in the Assembly, would grant extended family leave rights to domestic partners, just as they are granted now for other close family relationships.

SB 1050 would amend the statutory will form to provide a place for domestic partners and would amend procedural law in conservatorship proceedings to give dp's notice, a right to participate, and priority to be named a conservator. The definition in all three bills is different. SB 118 is super-inclusive (open to same sex and opposite-sex couples as well as unmarried blood relatives) and as a result is actually being supported by the California Catholic Conference (the association of bishops in the state). They can support this dp bill because the definition does not assume that dp's are in a sexual relationship. AB 901 is gender neutral and applies to same and opposite sex couples alike. SB 1050 tracks the definition of the new state registry which is open to same-sex couples over the age of 18 and to heterosexual couples over the age of 62. This definition is rather strange since it excludes unmarried opposite-sex couples between the ages of 18 and 62, it is inconsistent with the state Legislature's own benefits program (which is gender neutral) and is inconsistent with all local government programs in the state (which are gender neutral).

*Summary prepared January 6, 2000*

## MUNICIPALITIES WITH DOMESTIC PARTNERSHIP REGISTRIES

### Opposite-Sex and Same-Sex Partners Can Register:

Albany, New York  
Atlanta, Georgia  
Berkeley, California  
Boston, Massachusetts  
Boulder, Colorado  
Broward County, Florida  
Cambridge, Massachusetts  
Carraboro, North Carolina  
Chapel Hill, North Carolina  
Hartford, Connecticut  
Ithaca, New York  
Key West, Florida  
Laguna Beach, California  
Long Beach, California  
Los Angeles County, California  
Madison, Wisconsin  
Marin County, California  
New Orleans, Louisiana  
New York City, New York  
Oakland, California  
Palo Alto, California  
Petaluma, California  
Provincetown, Massachusetts  
Rochester, New York  
Sacramento, California  
San Francisco, California  
Santa Barbara City, California  
Santa Barbara County, California  
Santa Monica, California  
Seattle, Washington  
St. Louis, Missouri  
Washington, DC (suspended by Congress)  
West Hollywood, California

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### Only Same-Sex Partners Can Register:

Ann Arbor, Michigan  
Ashland, Oregon  
Brookline, Massachusetts  
Milwaukee, Wisconsin  
Oak Park, Illinois

## STATES WITH DOMESTIC PARTNERSHIP REGISTRIES

### Bills Pending:

Florida\*\*  
New York\*\*  
Wisconsin\*\*

### Enacted into Law:

California\*

\*\* Same and opposite-sex partners / \* same-sex adults of any age and opposite-sex over 62

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Research Division of the American Association for Single People

P.O. Box 65756, Los Angeles, CA 90065 / (323) 258-8955 / e-mail: coleman@singlesrights.com

(Rev. 1-18-00)

## **Governments Extending Health Benefits to Domestic Partners**

### **Opposite-Sex and Same-Sex Partners Included in Plan:**

Arlington County, Virginia  
Atlanta, Georgia  
Berkeley, California  
Bloomington, Indiana  
Boston, Massachusetts  
Broward County, Florida  
Burlington, Vermont  
California State Legislature  
Carroboro, North Carolina  
Chapel Hill, North Carolina  
Columbus, Ohio  
Key West, Florida  
King County, Washington  
Laguna Beach, California  
Los Angeles City, California  
Los Angeles County, California  
Madison, Wisconsin  
Middlebury, Vermont  
Monroe County, Florida  
Multnomah County, Oregon  
New York City, New York  
**New York State**  
Oakland, California  
**Oregon State**  
Olympia, Washington  
Pima County, Arizona  
Portland, Oregon  
Rochester, New York  
Sacramento, California  
San Diego, California  
San Francisco, California  
San Mateo County, California  
Santa Barbara City, California  
Santa Barbara County, California  
Santa Cruz City, California  
Santa Cruz County, California  
Santa Monica, California  
Seattle, Washington  
Tacoma Park, Maryland  
Tumwater, Washington  
Vancouver, Washington  
**Vermont State**  
West Hollywood, California

### **Same-Sex Partners Only:**

Amherst, Massachusetts  
Ashland, Oregon  
Baltimore, Maryland  
Brattleboro, Vermont  
Chicago, Illinois  
Cook County, Illinois  
Denver, Colorado  
Gresham, Oregon  
Iowa City, Iowa  
Montgomery County, Maryland  
New Orleans, Louisiana  
Philadelphia, Pennsylvania  
Tucson, Arizona



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18% of employers  
in the nation now  
offer DP benefits

## California Workers Lagging in Health Coverage Firms in state are less likely to offer their employees insurance

Tom Abate, Chronicle Staff Writer

Tuesday, January 18, 2000

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URL: <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2000/01/18/MN16666.DTL>

California companies are less likely to offer health insurance to their employees than companies in other states, but those that do offer it provide richer benefits than employers elsewhere, according to a study being released today.

Only 48 percent of California firms offered their workers health insurance in 1999, compared with 61 percent of firms nationwide, the report from the Kaiser Family Foundation said.

The study said the state's low rate of employer-provided coverage is one reason 7 million Californians, or 22 percent of the population, remain uninsured. "That is in part why California ranks fifth among states in terms of the percentage of population that is uninsured," the study said.

"The bad news is that Californians are not offered health insurance as frequently as their counterparts across the country," said Drew Altman, president of the Kaiser Foundation, a nonprofit research group in Menlo Park that is independent of the Oakland health maintenance organization.

"The good news is that when they are offered (health insurance), it costs them much less," Altman said.

The survey said it is unclear why California lags in employer-sponsored health insurance. Conventional wisdom suggests that the state's workforce is concentrated in smaller firms and in industries less likely to make insurance available.

"However, California firms are only slightly smaller on average than national companies and are not skewed toward industries with low rates of health insurance," the report stated, adding, "California firms of all sizes and industry categories offer health insurance at lower rates than firms nationally."

Mark Hyde, president of Lifeguard Inc., a nonprofit health plan in San Jose, said the findings were particularly perplexing given that employers in California generally pay lower premiums than employers in other states.

If the cost of insurance were the key, he said, California should have a higher percentage of people who are covered.

Hyde said he suspects that the findings may be skewed by Southern California, which has a much higher percentage of immigrant workers who haven't yet won insurance coverage as a routine benefit.

“What's going on in the Bay Area may be different (from) what's going on in East L.A.,” he said.

When California firms do provide health insurance, they are more likely to cover part-time and temporary workers and domestic partners of employees. Also, California employees pay a smaller portion of premiums and have a greater choice of plans than workers in other states, the study found.

In California, 81 percent of employees who are covered have a choice of two or more plans, compared with 65 percent nationally.

Single California workers with health benefits paid an average of only \$21 per month for coverage, or 11 percent of the actual insurance cost; the national average was \$35 per month, or 16 percent of the premium.

For family coverage, the average Californian paid \$117, or 24 percent of the premium cost, compared with a national average of \$145, or 32 percent of the insurance cost.

California employers also defined family more broadly; 31 percent of employer-paid plans in California covered unmarried or same-sex partners, compared with 18 percent nationally. ←

Employers in California were also more likely to offer health benefits to part-time workers (55 percent in California versus 41 percent nationally) and temporary workers (6 percent here, 3 percent across the nation).

The findings are based on interviews with benefits managers at 743 private-sector California firms chosen at random. Their responses were compared with data from an earlier national employers' survey done by Kaiser. The Health Research and Educational Trust and the Center for Health and Public Policy Studies at the University of California at Berkeley helped prepare the latest report.

The report found that in California, as in the nation, employers experienced an average 4.8 percent increase in insurance premiums to 1999. Small businesses got steeper increases (6.1 percent in California versus 7.6 percent nationally).

The survey found one other difference between California and the nation as a whole. HMOs are the most common insurance plan in California, whereas preferred provider organizations were the most popular plan nationwide.

HMOs require insured patients to visit physicians and specialists who are part of the HMO. PPO plans also try to steer patients toward selected physicians, but patients can see physicians outside the PPO, if they are willing to pay extra or the doctor is willing to accept PPO rates.

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CHART:  
DISPARITIES IN HEALTH INSURANCE  
Percentage of companies that offer insurance

California firms are less likely to offer health insurance...

	California firms	U.S. firms
3-9 workers	41%	55%
10-50 workers	62%	75%
51-999 workers	94%	98%
1000+ workers	94%	99%
All firm sizes	48%	61%

...but are more generous when they do.

	California	United States
Firms that offer health insurance	48%	61%
Offers coverage to:		
Nontraditional partners	31%	18%
Part-time employees	55%	41%
Temporary employees	6%	3%
Monthly employee portion of premium		
Single	\$21	\$35
Family	\$117	\$145

Source: Kaiser Family Foundation  
CHRONICLE GRAPHIC

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## More Companies Offering Benefits to Domestic Partners

One-of-out-ten organizations now offers domestic partner benefits, a trend that's expected to continue, according to a new Society for Human Resource Management mini-survey report.

The most widely offered benefits include medical (85%), dental (74%) and vision (55%) care. Roughly 43% of survey respondents say their organizations provide these benefits to opposite-sex and same-sex couples; 26% limit the benefits to opposite-sex couples; and 21% limit the benefits to same-sex couples.

Before granting domestic partner benefits, 42% say their organizations require proof of common residency, and 38% require a notarized affidavit of partnership status. Just over one-quarter say their organizations do not require any certification.

At organizations where domestic partner benefits aren't being offered, 30% of survey respondents say the main reason is concern about rising health care costs. More than half (56%) of respondents said their organizations don't provide such benefits because of a lack of employee interest. Only 21% cite moral objections.

Social trends suggest that interest in domestic partner benefits is on the rise. In November, San Francisco Mayor Willie Brown signed a bill compelling city contractors to provide the same benefits for employees' domestic partners as they do for employees' spouses. Seattle, West Hollywood, Boston and New York have expressed interest in adopting similar legislation.

The Domestic Partner Benefits Mini-Survey is part of the SHRM Issues Management Survey Series providing human resource management data on issues and trends. The survey was faxed to 3,000 SHRM members and returned by 777. The survey report is available to SHRM members for \$30 and to non-members for \$40. To purchase a copy, contact Andrew Ludlow at (703) 548-3440, ext. 3611 or send e-mail to [andrew@shrm.org](mailto:andrew@shrm.org).

*Released by the Society for Human Resource Management in January, 1997.*

Research Paper

*Domestic Partners  
and Employee Benefits*

1994



Hewitt Associates

## **Employer Experience and Costs**

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"What will it cost"? This question tops the list of employer concerns when discussion turns to offering domestic partner benefits. With health costs rising, employers tread lightly when expanding coverage and exposing themselves to additional risks. Generally speaking, and contrary to warnings and predictions by insurers and others, extending coverage to domestic partners has not resulted in statistically significant differences in cost. Adverse selection has not been a problem.

Experience thus far indicates employers are at no more risk when adding domestic partners than when adding spouses. In fact, experience indicates the cost of domestic partner benefits is lower than was anticipated. Part of the lower cost can be attributed to the fact that eligible employees tend to be younger and, as a result, healthier. Enrollment rates among domestic partners have been lower than predicted, probably because many domestic partners are already covered by their own employers' plans. Also, any increased risk of AIDS among male same-sex couples appears to be offset by a decreased risk among female same-sex partners. And same-sex domestic partners have a near-zero risk of pregnancy.

Typically, only up to 2% to 3% or less of all employees elect domestic partner coverage at organizations offering the benefit. In planning for domestic partner coverage, many employers had assumed or anticipated enrollment rates of around 10%. For example, fourteen Lotus employees initially signed up for domestic partner coverage, for a 0.45% sign-up rate. Montefiore Medical Center in the Bronx, NY reported a 0.29% enrollment rate (20 out of 7,000 employees). Apple Computer reported a 0.9% initial enrollment figure, or 42 employees out of approximately 4,700 eligible employees. Levi Strauss had 230 out of 25,000 employees enroll their domestic partners for a 1.0% sign-up rate. Public sector employers experienced somewhat higher enrollment rates: 5.6% for West Hollywood, CA; 2.3% for Seattle, WA; and 1.4% for Berkeley, CA. However, it should be noted that all three public employers extend coverage to both same-sex and opposite-sex domestic partners. Only Levi Strauss does so among the private employers mentioned above.

Overall, approximately 67% of the couples electing domestic partner coverage are opposite-sex couples. In Berkeley, CA, 80% of the couples were opposite-sex couples; in Seattle, WA, 70% were opposite-sex; and at Levi Strauss, 60% were opposite-sex couples. This enrollment pattern lowers the risk of catastrophic claims from AIDS victims. Proponents of domestic partner coverage also point out that, according to the most recent Federal AIDS Cost and Utilization Survey, the average lifetime medical cost of HIV treatment is

\$119,000 per patient. By way of comparison, the cost of a kidney transplant can be as high as \$200,000 and the cost of premature infant care can run anywhere from \$50,000 to \$1,000,000.

Insurance company attitudes have not changed much over the last few years as some experience data becomes available. Many of the large, well-known insurers still refuse to cover domestic partners, although some (including Aetna Life & Casualty, CIGNA, and Prudential) have now started offering the coverage in at least some parts of the country.

Self-insured employers have an advantage when it comes to covering domestic partner health benefits. A self-insured employer can generally expand coverage without regard to any limitations that may be imposed by an insurance company, HMO, etc.

# Partner benefits have few takers

## Participation rate well below 3%-4% of the workforce

New York Times

Although businesses are increasingly offering health benefits to the partners of unmarried employees, few workers are taking advantage of the plans.

Participation was expected to be about 3 percent to 4 percent of the workforce where such coverage was available, but it has turned out to range from half of a percent to 1 percent, said Andrew D. Sherman, a vice president in Boston for the Segal Co., an international benefits consulting firm that has worked with many companies on their plans.

Generally, the fight for such benefits has been led by gay activists. But unmarried heterosexual couples can also qualify under some of these company policies.

Hewitt Associates, a benefits consulting firm in Lincolnshire, Ill., has seen similar participation rates for partner policies, although it found that when heterosexual couples were included, the rate sometimes reached the expected 3 to 4 percent.

An estimated 500 companies, including International Business Machines Corp., Apple Computer Inc., Walt Disney Co. and Levi Strauss & Co., as well as many colleges, universities, states and municipalities, now offer health and other benefits to domestic partners. By all accounts, the number has grown rapidly over the last two years.

At Apple, participation has run well below the 5 percent predicted when the benefits program was first offered

in mid-1992. Gustavo De La Torre, director of multicultural programs there, said that only about 45 of the company's nearly 9,600 employees were using the program.

Xerox, which offers employees \$1,000 to buy health insurance on their own for a partner or dependent, said that only 200 of about 47,000 employees, or four-tenths of 1 percent, had signed up for that program. About half the participants are domestic partners.

So companies are finding that even though the benefits can be controversial, angering some conservative groups, they are not terribly expensive.

Why aren't more employees persuaded to take the benefits? In part, because both partners in the relationships tend to have jobs and access to health insurance on their own. That, De La Torre said, appeared to be the case at Apple.

Elizabeth Birch, executive director of the Human Rights Campaign, a Washington lobbying group on gay and lesbian issues, said there were several deterrents as well: Unmarried employees generally have to pay tax on the value of their partner's benefits and lesbian and gay employees may be wary about revealing their sexual orientation to an employer out of fear of discrimination.

Clearly, cost is a big factor. The Internal Revenue Service considers benefits awarded to an unmarried partner as taxable compensation unless the partner qualifies as a "dependent," meaning that the employee provides more than half of the partner's financial support. Married couples do not owe taxes on such benefits.

Jenifa Johnson, an employee of Apple Computer for 10 years, said she took advantage of Apple's health benefits for her partner for one year before canceling.

"I did not know how big the taxes were going to be," said Johnson, a project manager with a team that is developing software for Apple's PowerBook. "It ended up being about \$1,200 taken out of my paycheck," she said, in taxes based on the \$2,500 value the IRS put on her partner's benefits.

The taxes were deducted quarterly, meaning a hit of \$300 every three months.

Her partner, Bertina Bryant, now receives her own health insurance and other benefits as a high school English teacher, but she preferred the health coverage at Apple. Johnson said her Apple coverage allows her to visit the doctor of her choice and covers chiropractic care, among other things. Bryant's school policy requires her to use a health maintenance organization; the plan does not include vision care, and her dental benefits are half those of Apple's plan.

Taxes are not the only cost barrier. Some employees have found their companies' domestic-benefit premiums to be too expensive.

Lauren Black, who manages hardware testing and evaluation at Macworld magazine in San Francisco, found that health insurance for her partner would cost more through her company, the International Data Group, than from the outside. Her partner, Meredith Steiner, was unemployed, having been laid off from her job with a group raising funds to combat AIDS.

But she remains a believer in the concept. "If I was looking to change jobs or go to another company, I'd look for a company that offers domestic partner benefits," she said.

Some supporters of such benefits complain that the tax burden creates an inequitable situation in the workplace.

"It's a matter of equal pay for work," said Richard Jennings, executive director of Hollywood Supports, a group focusing on issues confronting gay people in the entertainment business. "Until the federal government starts recognizing where companies are today, people are not going to be able to take advantage of these benefits as heterosexuals can."

The disparity between married and unmarried couples is made more glaring because employers can treat their payments for health insurance as deductible business-related expenses, no matter the employee's relationship to the insured.

The Human Rights Campaign is studying the tax code to decide whether to mount some kind of challenge. "I think it would take congressional action," Birch said.

For many employees, like Johnson and Bryant, the real value of partners' benefits is as a safety net if one of them loses a job.

**I SAN JOSE MERCURY NEWS**

**WEDNESDAY APRIL 30, 1997**

**EMPLOYERS PROVIDING DOMESTIC PARTNER BENEFITS  
TO SAME-SEX AND OPPOSITE-SEX PARTNERS: COST ANALYSIS**

Employer	Year DP Plan Began	Total in Workforce	Number Signed Up as DPs	% signed Up as DPs	Information Reported Regarding Costs including portion paid by employer, and experience with DP benefits plan
Blue Cross of Mass. (MA)	1994	6,000	78	1.3%	Cost information not reported by research source
Cambridge City (MA)	1993	500	4	.8%	Cost information not reported by research source
Internat. Data Group (MA)	1993	1,600	14	.9%	Cost information not reported by research source
King County (WA)**	1993	11,400	300	2.6%	Pays 100% of basic plan; no adverse effects
Levi Straus & Co. (CA)	1992	23,000	690	3.0%	Costs are same as <i>or less than</i> spouses
Laguna Beach City (CA)	1990	226	6	2.7%	Costs are same as spouses
Los Angeles City (CA)**	1994	34,500	448	1.3%	Costs are same as spouses; no adverse effects
Los Angeles County**	1996	75,000	1,347	1.8%	Costs are same as spouses; no adverse effects
Multnomah County (OR)**	1993	4,000	132	3.3%	Cost information not reported by research source
New York City**	1994	497,210*	2,790	.6%	Pays 100% of basic plan; no adverse experience
New York State**	1995	320,000*	2,000	.6%	Pays 25% of cost / no adverse experience
Olympia (WA)**	1995	530	12	2.3%	Pays portion for dependents; nothing adverse
Pima County (AZ)	1998	6,000	81	1.4%	Cost information not reported by research source
Rochester (NY)**	1994	2,900	100	3.4%	Costs are same as spouses / no adverse effects
Sacramento City (CA)**	1995	4,000	15	.4%	City doesn't pay for DPs; worker gets group rate
San Diego City (CA)**	1993	9,300	50	.5%	City doesn't pay for DPs; worker gets group rate
San Francisco City (CA)	1991	32,900	296	.9%	City doesn't pay for DPs; worker gets group rate
San Mateo County (CA)**	1992	4,200	138	3.3%	Cost information not reported by research source
Santa Cruz City (CA)**	1986	800	23	2.9%	Costs are same as spouses / non-union ineligible
Santa Cruz County (CA)	1990	2,100	33	1.6%	Costs are same as spouses
Santa Monica (CA)**	1994	1,100	34	3.1%	City pays for DPs; costs are the same as spouses
Seattle City (WA)**	1990	10,000	500	5.3%	2.5% of total health costs; less than spouses
Vermont State**	1994	9,000	280	3.1%	State pays 80% for dependents; nothing adverse
Xerox Corporation	1995	47,000	100	0.2%	Pays \$1,000 per year toward DP health coverage
Ziff Communications (NY)	1993	3,500	75	2.1%	Cost information not reported by research source
Total		1,102,726	9,546	0.9%	Costs are same <i>or less than</i> for spouses. No adverse consequences reported by any employer.

\*\* Benefits managers at these employers were interviewed by Spectrum Institute during March and April 1997. Other data was gathered from employee benefits publications, e.g., Hewitt Associates, Bureau of National Affairs, Commerce Clearing House, International Foundation of Employee Benefits Plans, etc. The average ratio of opposite-sex enrollees to same-sex enrollees is about 2 to 1.

\* Includes retirees.

(Revised 2-9-99)

Spectrum Institute  
Research & Policy Division of the American Association for Single People  
P.O. Box 65756, Los Angeles, CA 90065 / (323) 258-8955 / unmarried@earthlink.net



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## Report: Domestic partner benefits cost same as heterosexual married couples

( Gannett News Service )

WASHINGTON -- A new report says the cost of offering medical benefits to same-sex partners is less burdensome than many employers had feared.

In large part that is because two-thirds of those signing up for benefits are opposite-sex couples who bring to the insurance pool the potential costs of pregnancy, childbirth and expensive treatment for premature children.

A kidney transplant can cost about \$200,000; one complicated premature birth can run up to \$1 million, said the report by the Employee Benefit Research Institute, while the cost of treating AIDS -- even with costly new drugs -- is about \$150,000 to \$200,000.

"Employers currently offering benefits to domestic partners have not experienced higher risks or costs in the health insurance coverage than they have with legally married spouses," said the report, published this month. The study confirms the findings of earlier studies.

Employers offering the benefits include more than 30 Fortune 500 firms, nearly 70 states, cities and counties, about 80 colleges and universities, and dozens of high-tech and entertainment companies. The Democratic National Committee has them; so do El Al Israel Airlines, tampon makers Tanbrands, the San Francisco 49ers, and the Vermont Girl Scout Council.

Other reports have been even more specific than the new study. A survey of employers by the Society for Human Resource Management earlier this year found that 85 percent saw no increase in health care costs after instituting domestic partner benefits.

And KPMG Peat Marwick's annual health benefits survey found 13 percent of all firms offer domestic partner benefits -- including as many as one in four employers with more than 5,000 workers.

"The difference in cost between firms offering and denying this type of coverage appears slight," that report said.

Research by the National Gay and Lesbian Journalists Association found that coverage for same-sex couples accounted for 0.5 percent of an average company's annual medical benefits budget; companies that cover opposite-sex partners as well find the coverage costs 1 to 3 percent of their medical benefits budget.

"Our findings were after a couple of years of doing it was that it cost less than spousal benefits," said Paul LaBelle, a spokesman for Lotus Development Corp., the first publicly traded company to offer the benefits. "But less than 1 percent of our employees take advantage of it."

One big drawback that doesn't fit in with the usual political, moral and financial complaints: The benefits for the partner not employed by the company count as taxable income for the employee.

So the worker pays additional money for family coverage (which costs more than single coverage no matter the family structure); sees an increase in his tax burden because -- unlike coverage for legally recognized marriages -- the benefit counts as additional income; and doesn't see more money in the paycheck.

Ken McDonnell, author of the EBRI report, said that until they start examining the benefits in detail, most workers do not realize it could cost them more than they expect.

Yet the number of employers offering the benefits is increasing so rapidly that the Human Rights Campaign, a gay and lesbian political organization which tracks the issue, says it is difficult to keep an exact count.

About 43 percent of companies surveyed by the Society for Human Resource Management offer benefits to all domestic partners. Another 21 percent (including Lotus) limit them to same-sex partners. And 26 percent offer them only to opposite-sex partners in legally recognized relationships such as a common-law marriage.

Most famously, the Walt Disney Co. is the target of a boycott by the Southern Baptist Convention and the Assemblies of God, which -- among other problems the two denominations have with the company -- consider the entertainment giant's domestic partner benefits package immoral.

And United Airlines, the largest carrier at San Francisco International Airport and the official airline of the AIDS quilt, is in a fight with the city, which requires its contractors to offer domestic partner benefits. United does not.

About 21 percent of firms who don't offer them have a moral objection to the benefits; another 7 percent fear public backlash, according to the Society for Human Resource Management.

"Boycotts and political actions ... have received attention of late, but are not effective," said David Smith, a spokesman for the Human Rights Campaign. "The trend is still growing in large and small companies. This is a way to equalize the workplace for gay people."

Most domestic partners benefits programs begin with a request from an employee or group of employees, he said. In fact, more than half the companies who do not offer the benefits told the Society for Human Resource Management it was because workers weren't interested.

But the EBRI report says that many employers also extend the benefits for reasons "which involve the company's image and its competitiveness in the marketplace ... Today, projecting the 'right' corporate image is important to most companies."

That may be true in fields such as technology and entertainment, where a company's biggest asset is its employees.

"All of our benefits are set up with the recognition that the employees are our resources," said Lotus' LaBelle. "Our resources go out the door every night, and we hope they come back."

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ELIZABETH NEUS, Report: Domestic partner benefits cost same as heterosexual married couples.,  
Gannett News Service, 07-22-1997.



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## Mayor signs bill securing rights, benefits for gay partners

By Michael Blood, Associated Press, 07/07/98 19:12

NEW YORK (AP) - Mayor Rudolph Giuliani signed legislation Tuesday intended to ensure that the city treats domestic partners the same as married couples, a law gay advocates called the most comprehensive of its type in the nation.

"The passage of this bill into law is a significant step on the long road toward full equality," said Matt Foreman, executive director of the Empire State Pride Agenda, a gay advocacy group.

The law, which impacts everything from burial rights at a city cemetery to parking permits, was crafted by Republican Mayor Rudolph Giuliani in concert with homosexual activists.

Much of it cements into law what has been long-standing city policy, such as visitation rights in city jails and hospitals, and succession for city-supervised housing.

But the law also ventures into new areas, like allowing domestic partners of police and other uniformed city employees to be eligible for death benefits if the employee is killed in the line of duty.

"This landmark legislation represents a logical step forward in ensuring that those couples who choose to live in economically dependent and committed relationships continue to receive these important rights, benefits and protections and equal treatment under the law," Giuliani said.

The law, which amends dozens of sections of city statutes, applies to heterosexual and homosexual domestic partnerships registered with the City Clerk. There are about 8,700 registered domestic partners in the city, and at least 55 percent are heterosexual couples.

Since the settlement of a lawsuit in 1993, the city has provided health and dental benefits to the domestic partners of city workers. Under the new law, labor negotiations would be required to extend to employees' partners the identical benefits provided for employees' spouses, potentially opening the way for those benefits to be expanded.

Gay advocates said the law also carried important symbolic significance at a time when gay rights have been under assault by conservatives in Congress and elsewhere.

The legislation encountered token opposition in the overwhelmingly Democratic City Council, but it placed the mayor at odds with Cardinal John O'Connor, who argued that "an institution as fundamental as the family cannot be manipulated."

# CITYLAW

CENTER FOR NEW YORK CITY LAW AT NEW YORK LAW SCHOOL

## CAMPAIGN PLEDGE

### ***Mayor Giuliani Proposes His Domestic Partnership Policy***

*By Arthur S. Leonard\**



On May 11, 1998, Mayor Rudolph W. Giuliani proposed legislation and administrative changes that would expand and solidify New York City's recognition of domestic partnership relationships of City residents and employees. Under the Mayor's proposal, registered partners would be accorded the same treatment under City policies as legally married couples. The Mayor's proposal covers both same-sex and opposite-sex partnerships.

A bill incorporating the legislative changes, Intro. 303, was drafted by the Mayor's office and formally introduced in the Council by Speaker Peter Vallone with the initial co-sponsorship of seventeen other members. By its first hearing date on June 2, it had 33 co-sponsors, and quick enactment has been forecasted. The Mayor also directed City agencies to continue identifying regulations affecting legal spouses and proposing changes to incorporate recognition of domestic partners.

Intro. 303 would be one of the most comprehensive local domestic partnership ordinances in the United States, both in extending benefits and in imposing responsibilities on domestic partners. When administrative changes are considered as well, the City will have gone far toward according registered domestic partners (continued on page 51)

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\*Arthur Leonard is a Professor of Law at New York Law School.

## ■ **Domestic Partnership**

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treatment equal to married couples. Of course, many legal incidents of marriage are preempted by state or federal law and cannot be changed at the municipal level. Perhaps most significantly, because private sector employee benefit plans are governed by federal law, Intro. 303's direct impact on employee benefits is limited to City employees. However, with the City setting an example as an employer, Intro. 303 could also encourage more private employers to adopt domestic partnership plans, using the City registry as a mechanism to identify qualifying partners.

### **DOMESTIC PARTNER REGISTRY**

Intro. 303 codifies an existing partner registration system that evolved during the Koch and Dinkins Administrations. In 1989, Mayor Edward I. Koch ordered City agencies to recognize domestic partners for purposes of municipal employee sick leave and bereavement leave, as well as hospital and prison visitation rights normally accorded to spouses. Executive Order No. 123 of 1989. The Koch order set the following minimum standards for qualifying as domestic partners: (1) that either both partners are residents of the City or at least one of the partners is a City employee; (2) that they both be at least eighteen years old; (3) that neither of them be legally married; (4) that they have a close and committed personal relationship exhibiting mutual responsibility; (5) that they have lived together for at least one year on a continuous basis at the time of registration; (6) that they have registered their relationship with the City agency by which they were employed. In January 1993, Mayor David N. Dinkins ordered the City Clerk to establish a central domestic partnership registry and reaffirmed the terms of the Koch order.

Intro. 303 makes some adjustments to these requirements, most significantly dropping the requirement that partners must have lived together continuously for the previous year, and substituting the requirement that they have lived together on a continuing basis, but without specifying a period of time. Intro. 303 also requires that there be a period of at least six months between successive partnerships, and that statements concerning termination of partnerships be filed with the City Clerk.

Intro. 303 also embodies the City's 1993 settlement of a lawsuit brought by the Gay Teachers Association of New York. The City agreed to negotiate with its unions about domestic partner participation in employee health benefit programs, and extended that benefit to non-union employees through executive action. Mayor Dinkins authorized negotiation of such agreements and issued the necessary orders to implement the settlement. Mayor Giuliani, elected shortly

after these developments, stated just days before the 1993 election that he would abide by the settlement, and subsequently reaffirmed the Dinkins orders.

The timing of these developments has been significantly keyed to the City's complex mayoral politics.

### **THE KOCH INITIATIVES**

In 1989 Mayor Koch sought the Democratic Party's nomination for a fourth term in opposition to then-Borough President Dinkins. Dinkins had endorsed domestic partnership, and had been endorsed in turn by several lesbian and gay Democratic clubs. The New York Court of Appeals then lent credibility to domestic partnership with *Braschi v. Stahl Associates Co.*, 74 N.Y.2d 201, 544 N.Y.S.2d 784 (July 6, 1989). In *Braschi*, the court extended recognition to domestic partners through interpretation of housing regulations governing the right of surviving family members to continue to occupy rent-controlled apartments after the lessee's death. Koch's 1989 executive order, issued a month after *Braschi*, and just weeks before the Democratic primary vote, was seen by some as a political bid to win gay voters. Koch, however, was no last-minute convert to lesbian and gay rights, having co-sponsored federal gay rights bills as a Congressman, and having issued executive orders early in his administration banning anti-gay discrimination as well as endorsing a local law on that subject, which was enacted in 1986. Koch's resistance to employee benefits eligibility for domestic partners, however, had combined with other issues to make Dinkins the favorite of many politically active gay New Yorkers. Koch's resistance also led to the lawsuit that ultimately provided the vehicle for extension of partnership benefits.

### **DINKIN'S RECORD**

Soon after his election, gay advocates called on Mayor Dinkins to redeem his domestic partnership promise. The mayor hesitated for several reasons: the City's poor financial situation and the perceived costs of extending health benefits coverage, concerns about the willingness of municipal unions to go along, concerns about whether such coverage would be lawful under the State's insurance laws and regulations, and concerns about whether state or local legislation would be needed to make such a change.

As the 1993 City election year approached without mayoral action on benefits, the State courts again intervened by refusing to dismiss the teachers' case in *Gay Teachers Association v. Board of Education*, 585 N.Y.S.2d 1016 (1st Dep't 1992). Attorneys for the teachers' initiated discovery, and the City confronted the reality that its refusal to extend benefits might be held unlawful.

A settlement began to fall into place on September 19, 1993, when State Insurance Superintendent Salvatore Curiale issued a letter interpreting insurance reg-

ulations to bring financially interdependent domestic partners within the definition of "dependents" who could be covered under group plans. Curiale's letter set off a furious round of negotiations, producing an agreement on October 29, 1993, just days before the election. The City undertook, effective January 1, 1994, to make health insurance benefits and options available to domestic partners and dependent children of active and retired employees in every way identical to the benefits and options offered to married spouses (and their dependent children). To comply with Curiale's ruling, the agreement required that applicants show proof of financial interdependence.

The next year state politics brought another development. Governor Mario Cuomo announced shortly before the general election that he would authorize state agencies to negotiate with their unions to provide benefits for same-sex partners and he initiated the same coverage for non-union managerial employees by executive order. The Democratic leadership of the State Assembly authorized a similar program for Assembly staff, but the Republican-controlled State Senate did not go along. The Unified Court System also adopted a domestic partnership policy for its employees.

The two openly-gay members of the City Council subsequently introduced new domestic partnership bills. Council member Antonio Pagan proposed a measure that would codify the municipal status quo. Council member Thomas Duane suggested a measure that would adopt a broader policy of non-discrimination under which the City would bind itself to treat domestic partners as equal to legally-married spouses in all its policies, present and future. (This was similar to a bill introduced during the Dinkins Administration that had never advanced to a vote.) Neither measure was enacted.

### THE GIULIANI PROMISE

During the 1997 mayoral elections Giuliani promised the Empire State Pride Agenda, New York's state-wide lesbian and gay political lobbying organization, that he would propose a wide-ranging domestic partnership bill if re-elected. Even with this written assurance, ESPA decided not to make an endorsement. The Democratic candidate, Manhattan Borough President Ruth Messinger, who had been a principal sponsor of gay rights bills in the Council and had been among the most reliable would otherwise have been ESPA's logical candidate. The local gay political clubs were split in their endorsements, but most favored Messenger.

After the election, Mayor Giuliani launched a project to identify municipal policies, rules and regulations that provided benefits or imposed responsibilities based on marital status, in order to draft a comprehensive bill. Intro. 303 and accompanying anticipated regulatory changes are the fruits of that project.

A detailed listing of the policies that would be affected can be found in the table accompanying this article. Intro. 303 goes beyond the simple benefits bills adopted in other jurisdictions by its comprehensive policy coverage and, most notably, by imposing responsibilities, some rather onerous, on registered partners of City employees and officials, including the same financial disclosure requirements that are now imposed on spouses of those appointed, even to non-paying positions that have decision-making authority.

The Mayor announced his proposal on May 11, 1998. On May 24, John Cardinal O'Connor, Archbishop of New York's Roman Catholic Archdiocese, preached a homily at St. Patrick's Cathedral strongly opposing Intro. 303. The Cardinal contended that the measure was contrary to "natural moral law" by equating unmarried couples with married couples. He also asserted that Intro. 303 would undermine the institution of marriage by making official recognition and entitlements available to opposite-sex couples who were not married, and warned that Intro. 303 portended a major change in social ordering that might have unforeseen social consequences. The Cardinal's position was consistent with that of Catholic prelates in other areas; his counterpart in Philadelphia strongly opposed a more limited partnership ordinance enacted by that city's council on May 7, 1998.

The Mayor's proposal raises interesting policy questions for the City. The financial impact was expected to be minor, as the largest financial components were already covered by prior orders and had been absorbed by the City without discernible difficulty. Only 8,842 couples had registered with the Clerk's office, and only 40 percent of those sought employee health insurance coverage from the City. More than 55 percent of the registered couples were opposite-sex couples, mirroring the experience in other cities with domestic partnership ordinances, such as Seattle and San Francisco.

Dozens of municipalities have adopted limited domestic partnership policies, usually extending only to health insurance and a few non-economic employee benefits. The state of Hawaii has adopted a wide-ranging "reciprocal beneficiaries" law that has been delayed in taking effect due to legal challenges. The countries that have gone farthest in establishing policies equating same-sex partners with married couples are in Scandinavia and the Netherlands. To the extent one can judge by newspaper reports from Europe, there has not been any significant impact on those societies, but the policies have not been in effect long enough to judge their long-term consequences. The less comprehensive policies adopted in other American cities have not led to any easily noticeable social changes.

In many ways Giuliani's proposal can be seen as quite conservative in attempting to assimilate unmar-

ried couples further into civil society. One proponent of same-sex marriage, Georgetown University Professor William Eskridge, gives the game away by having titled his 1996 book *THE CASE FOR SAME-SEX MARRIAGE: FROM SEXUAL LIBERTY TO CIVILIZED COMMITMENT*.

Contrary to those theorists of lesbian and gay rights who emphasize sexual freedom and diversity as hallmark issues, advocates of same-sex marriage (and, by extension, domestic partnership, which many of them see as a halfway measure toward marriage) are seen as the more conservatizing, assimilationist part of the gay rights movement.

Possibly the more controversial was the Mayor's decision to include opposite-sex couples, for as to them, the Cardinal may have a point. If any aspect of this proposal will have an effect on traditional marriage, it might be the inclusion of opposite-sex couples. Who can say whether any opposite-sex couples who would otherwise have married might refrain because of this measure? There is no conclusive research to support an answer either way.

The most significant components of the valuable bundle of rights and benefits identified with marriage are outside the scope of municipal legislation or regulation, so it seems unlikely that anything done on the

municipal level would have a significant impact on the decisions of opposite-sex couples about whether to marry. The speedy passage in 1996 of the federal Defense of Marriage Act, which denies federal recognition to same-sex marriages and purportedly excuses the states from any obligation to do so under the Constitution's full faith and credit clause, suggests that federal recognition of anything other than traditional marriage is far off.

Despite its broad sweep, the Mayor's proposal is also conservative in not taking the next step of refusing to contract with private sector companies unless they provide domestic partnership benefits to their employees. San Francisco's ordinance to that effect has stimulated hundreds of businesses in the San Francisco Bay Area to adopt domestic partnership benefit plans. Although the measure has been challenged in the courts, it has so far survived, albeit in somewhat truncated form. See *Air Transport Association of America v. City and County of San Francisco*, 1998 U.S. Dist. LEXIS 4837 (N.D. Cal., April 10, 1998). Perhaps a smooth adoption of Intro. 303 and accompanying regulations may encourage the City to follow San Francisco's lead, which would significantly amplify the effect of City policy. ┘

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INTRO. 303

## ■ ***Proposed Domestic Partner Legislation and Rule Changes***

*The following list summarizes all Administrative Code provisions proposed to be amended by this bill. It also lists all regulatory provisions relating to marital status which have been identified under Mayor Rudolph W. Giuliani's direction. Many of these regulatory amendments require the authority embodied in this bill in order to be proposed. The regulatory amendments are expected to be proposed after the enactment of this legislation and will undergo normal rulemaking notice and comment procedures. The list below is arranged alphabetically by agency.*

**Banking Commission.** Banks desiring to be depositories for City funds must list domestic partners of all individuals who hold a beneficial interest greater than 5 percent or who hold public office. 22 RCNY §1-03 (*anticipated amendment*).

**Department of Buildings.** The definition section of the Building Code would now include domestic partners as one of the individuals considered a member of a family. Section 25 of the bill, *amending* NYC Admin. Code §27-232.

**Department of Business Services.** Domestic partners added to ownership disclosure requirements for Fulton Fish Market licensing and photo ID applications. Section 24 of the bill, *amending* NYC Admin. Code §22-202 and 22-216; 66 RCNY §1-22 (*anticipated amendment*).

**Campaign Finance Board.** Definition of intermediary, an individual or entity which collects and delivers contributions to a candidate, will now

exclude domestic partners. Section 10 of the bill, *amending* NYC Admin. Code §3-702.

Candidate expenditures of personal funds of his/her family members, including domestic partners, are subject to contribution limits. Section 11, *amending* NYC Admin. Code §3-703.

Public funds may not be used for payments to family members, including domestic partners. Section 12 of the bill, *amending* NYC Admin. Code §3-704; 52 RCNY §1-08(g) (*anticipated amendment*).

**Commission on Human Rights.** Employers are not subject to discrimination claims of their own family members, including domestic partners. Section 13 of the bill, *amending* NYC Admin. Code §107(1)(f).

Private clubs are not subject to discrimination claims. Commission will review club membership, including family members like domestic partners, to assess whether the club is genuinely private. 47 RCNY §2-01 (*anticipated amendment*).

**City Clerk.** Establish domestic partnership registry, which provides eligibility criteria, partnership termination procedures, confidentiality, and bereavement, visitation, tenant succession and health benefits. Sections 2, 3, and 4 of the bill, *adding* NYC Admin. Code §§1-112 and 3-240 to 3-244, and *codifying* Executive Order No. 123 of 1989, and Nos. 48 and 49 of 1993.

City Clerk may sell the chair last occupied by a Council Member to his/her surviving spouse or domestic partner. Section 8 of the bill, *amending* NYC Admin. Code §3-204.2.

**Commissioner of Deeds.** Use of domestic partnership name by Commissioner authorized. 51 RCNY §2-06 (*anticipated amendment*).

**Department of Citywide Administrative Services.** Canarsie Cemetery: Surviving domestic partner has right to be buried with his/her partner. 55 RCNY §7-07 (*anticipated amendment*).

A civil service or license applicant may request to take the exam late if he or she missed the exam due to the death of a close family member, including domestic partner. 55 RCNY §§11-01, 11-02; 59 RCNY Appendix A, Rule 4.4.5 (*anticipated amendments*).

**Conflicts of Interest Board.** Rules on persons "associated" with a public servant, on blind trusts, and on ownership interests will add domestic partners. Section 5 of the bill, *amending* Charter §§2601 (5), (6), and (16); 52 RCNY §1-08 (*anticipated amendment*).

The annual financial disclosure requirements of City employees will now include domestic partner disclosures. Section 14 and 15 of the bill, *amending* NYC Admin. Code §12-110.

**Department of Consumer Affairs.** Veteran benefits for vendor licenses extended to surviving domestic partners. Section 21 of the bill, *adding* NYC Admin. Code §20-455.1.

Truth in Pricing Law excludes stores where the only full-time employee is the owner or certain other family members, including domestic partner. Section 22 of the bill, *amending* NYC Admin. Code §20-708(a)(3).

A newsstand license may be transferred to certain dependent family members, including domestic partner of an incapacitated or deceased licensee. 6 RCNY §2-62 (*anticipated amendment*).

The definition of consumer includes a debtor's family members, such as domestic partner, for purposes of prohibiting certain debt collection practices. 6 RCNY §5-77 (*anticipated amendment*).

**Department of Finance.** Letter rulings may be requested by taxpayer's domestic partner. 19 RCNY §16-02 (*anticipated amendment*).

For exemption of City parking tax, primary residence is defined to include dwelling owned or rented by the car owner's domestic partner. 19 RCNY §19-01 (*anticipated amendment*).

Domestic partner added to list of family members who may represent a taxpayer at a Finance conciliation conference. 19 RCNY §38-03 (*anticipated amendment*).

**Gambling Commission.** Shipboard gambling: Domestic partners added to ownership disclosure requirements for licensing. Section 24 of the bill, *amending* NYC Admin. Code §22-202.

**Department of Health.** Food vendor license fees waived for veterans, and their surviving domestic partners. 24 RCNY §89.03 (*anticipated amendment*).

A food vendor permit may be transferred to certain dependent family members, including the domestic partner of an incapacitated or deceased permittee. Section 20 of the bill, *amending* NYC Admin. Code §17-314.1.

**Board of Health.** An applicant for family day care certificate must provide three references from individuals not related by blood, marriage, or domestic partnership. 24 RCNY §53.05 (*anticipated amendment*).

A funeral director must follow the instructions of the next of kin in order of priority. Domestic partners to be included with spouses as first priority. 24 RCNY §205.01 (*anticipated amendment*).

**Department of Housing Preservation and Development.** Income limits applicable to tenants of redevelopment companies will include the income of an applicant's domestic partner.

Housing maintenance code imposes duties and liabilities on tenants and their families, including a tenant's domestic partner. Section 26 of the bill, *amending* NYC Admin. Code §27-2004.

Relocation benefits provided to persons displaced when the City condemns property, extended to families, including domestic partners. 28 RCNY §18-04 (*anticipated amendment*).

HPD property managers may permit illegal occupants and certain family members, including domestic partners, to become legal tenants. 28 RCNY §19-03 (*anticipated amendment*).

For purposes of succession rights to HPD housing, the definition of family or household members will now include domestic partners. 28 RCNY §24-01 (*anticipated amendment*).

**Loft Board.** Requires additional documentation when a loan is obtained from a non-institutional lender who is related by blood, marriage or domestic partnership. 29 RCNY §2-01 (*anticipated amendment*).

**Office of Labor Relations.** Establishes policy of making benefits available to domestic partners of City employees on par with spousal benefits as is permitted by law. Section 16 of the bill, *adding* NYC Admin. Code §12-307.

Domestic partners added to list of surviving family members to whom Mayor may bestow money awards when firefighters, police officers, transit police officers, uniformed correctional and sanitation officers, and school crossing guards are killed in the line-of-duty (up

to one year's salary). Section 9 of the bill; *amending* NYC Admin. Code §§3-401 through 3-403.

Same as above, for any officer or employee of the City killed in the line of duty who was not in the retirement system at the time. Section 9 of the bill, *amending* NYC Admin. Code §3-404.

**Office of Management and Budget.** City funded charities must make financial disclosure of their governing board members, including the ownership interests of the board member's domestic partners. Section 4 of the bill, *amending* Charter §11(a)(3).

**Office of the Mayor.** Domestic partner added to the list of surviving family members upon which the Mayor may bestow a Good Samaritan award. Section 9 of the bill, *amending* NYC Admin. Code §3-405.

**Police Department.** Law enforcement organizations may not solicit contributions based on the promise of aid to slain officers' surviving family members, including surviving domestic partners. Section 17 of the bill, *amending* NYC Admin. Code §14-204(2).

Handgun licensees must notify domestic partner's

name change. 38 RCNY §5-29 (*anticipated amendment*).

**Department of Sanitation.** A member of Recycling Advisory Boards must disclose ownership interests in firms dealing with Sanitation, including interests of a domestic partner.

For purposes of setting waste collection rules, nursing home is defined to exclude homes caring for individuals related by domestic partnership. 16 RCNY §1-01 (*anticipated amendment*).

**Tax Appeals Tribunal.** Domestic partner added to the list of adult family members who may represent a child taxpayer before the Tribunal. 20 RCNY §1-03 (*anticipated amendment*).

**Trade Waste Commission.** Domestic partner added to ownership disclosure requirements for carting licensees. Section 19 of the bill, *amending* NYC Admin. Code §16-501; 17 RCNY §1-01 (*anticipated amendment*).

**Department of Transportation.** Domestic partners of disabled persons may apply for a special parking permit. Section 6 of the bill, *amending* Charter §2903(a)(15)(a); 34 RCNY §4-08(o) (*anticipated amendment*).





# CITY AND COUNTY OF SAN FRANCISCO HUMAN RIGHTS COMMISSION

## OVERVIEW OF THE EQUAL BENEFITS ORDINANCE

### ► *Introduction*

In 1996, the U.S. General Accounting Office issued a report citing 1,049 different federally based benefits given to people because they are married. There are many other governmental and societal benefits associated with the status of being married, not the least of which are employment-based benefits such as medical insurance coverage and retirement benefits. Because same-sex couples are forbidden the right to marry under the laws of all 50 states, the benefits associated with that legal status are largely denied them.

After working closely with local political clubs and community groups, on November 4, 1996, the San Francisco Board of Supervisors passed a law that, in an unprecedented way, attempted to address one aspect of this discrimination: employee benefits. Commonly called the Equal Benefits Ordinance, this law amended the City's Nondiscrimination in Contracts Ordinances (Chapters 12B and 12C of the San Francisco Administrative Code). On December 8, 1996, Mayor Willie L. Brown, Jr. signed these amendments into law. A six month implementation period was instituted, and the law became effective on June 1, 1997.

At the time the Equal Benefits Ordinance took effect, approximately 500 companies nation-wide offered domestic partner benefits to their employees. As of October 1998, almost 2,000 City contractors offer domestic partner benefits, the smallest with one employee and the largest with over 84,000. This covers a nationwide pool of approximately 700,000 employees and reflects nearly a fourfold increase in the number of companies offering domestic partner benefits.

### ► *Understanding the Law*

#### What the law requires

The Equal Benefits Ordinance prohibits the City and County of San Francisco from entering into contracts or leases with any entity that discriminates in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of employees.

#### Who is covered by this law

All entities who hold or seek to enter into contracts with the City and County of San Francisco for public works or improvements, for a franchise, concession or lease of City property, or for goods, services or supplies to be purchased at the expense of the City and County are covered by this law.

The law does not cover entities with which the City does less than \$5,000 worth of business per year. Subcontractors are not required to comply with this law. Each party to a joint venture must comply independently.

#### What benefits are covered

In most cases, the law applies to all benefits offered by a contractor to its employees who have spouses or domestic partners and all benefits offered directly to such spouses or domestic partners, even when the employee pays the entire cost of the benefit. This includes, but is not limited to, medical insurance, retirement plans, leaves of absence (such as bereavement and family medical leave), use of company facilities, and company discounts.

#### Defining a domestic partner

The law defines a domestic partner as any person whose domestic partnership is currently registered with a governmental body pursuant to state or local law. This includes both same-sex and opposite-sex couples. To comply with the law, verification of domestic partnerships may take place only to the same degree and in the same manner as marriages are verified.

### ► *Business-Friendly Implementation*

#### Designing Rules of Procedure

The Rules of Procedure were developed to accomplish two goals: to inform the contracting public of the details of compliance and to accommodate the business reality of making benefit changes. The Rules define the essential terms of the Ordinance and, to further the City's goal of implementing the Ordinance in a business-friendly manner, they outline a flexible approach to implementation.

#### Delaying the implementation of benefits

Once a contractor makes it clear that it will comply with Chapter 12B, in certain situations ending discrimination in benefits may be delayed. For instance, offering some benefits, such as medical insurance, may be delayed until the contractor's next open enrollment period. Offering other benefits, such as bereavement leave, may be delayed briefly so that the contractor's personnel policies may be revised. Where benefits are governed by a collective bargaining agreement, a delay may be possible until the next bargaining cycle, so long as the contractor seeks the union's permission to offer the benefits sooner.

### **When ending discrimination is not possible**

Some contractors may be unable to find an insurance company willing to offer domestic partner coverage. Others may find that a federal law (such as the tax code) prohibits extending a particular benefit to domestic partners on the same basis as it is extended to spouses. When a contractor takes all reasonable measures to stop discriminating, but can't for reasons outside of its control, it can comply with the Equal Benefits Ordinance if it agrees to pay a cash equivalent to those employees for whom equal benefits are not available. The City decides whether reasonable measures have been taken. The cash equivalent required is the amount of money paid by an employer for the spousal benefit that is unavailable for domestic partners, or *vice versa*.

### **Recognizing compliance in a variety of ways**

So long as discrimination is ended, compliance can mean different things for different contractors. Some contractors comply with the requirements of the Ordinance by offering benefits to spouses, domestic partners and other individuals. One company, for example, has created a policy that extends some benefits to "other individuals if the relationship with [the employee] is especially close and it would be normal for them to turn to [the employee] for care and assistance." Other contractors comply by allowing each employee to extend benefits to one adult living in their household. Compliance also is possible where the benefits offered do not extend to spouses or domestic partners, or where no employee benefits are offered.

### **Waivers and exceptions**

The Ordinance and Rules of Procedure articulate the terms under which a contract may be awarded to a non-compliant contractor. This occurs primarily where a contractor is the sole provider of a needed good or service, or where there is an emergency that threatens the public health or safety. Waiver may also be possible where a contract with a public entity provides the City with a good or service that would not be of the same quality or accessibility if obtained in the private sector, or where all possible contractors that could provide a needed good or service refuse to comply.

### **Insurance industry response**

Research conducted prior to the effective date of the Ordinance turned up only 14 insurance companies willing to provide domestic partner medical coverage. Of those companies, only 3 were willing to cover small employee groups (under 50 employees). Today, the Commission has identified over 100 insurance companies who have joined the domestic partner insurance market, and of these, at least 35 will write policies in the small group market. Domestic partner coverage is now available in all 50 states.

### **Union response**

Because many employees receive benefits through their collective bargaining agreements or through union trust funds, contractors and the Commission have tried to persuade

unions to include domestic partner benefits in their agreements. To date, dozens of unions have changed their policies to include domestic partner coverage. These include Locals affiliated with the Teamsters, Sheet Metal Workers, Operating Engineers, Carpenters, Cement Masons, Laborers and others.

## **► Costs of Compliance**

### **The actuarial data is in – it doesn't cost a lot**

Domestic partner medical insurance has been offered since 1982 when the *Village Voice* and a few other employers extended this benefit to their employees. In 1985, the City of Berkeley became the first municipality to follow suit. The actuarial data collected since 1982 show that neither claims experience nor enrollment rates create a significant increase in expenses. The cost of including domestic partners in other benefits programs (such as bereavement or family medical leave) is negligible.

### **Claims experience**

Claims experience for domestic partner medical insurance is generally the same as – or less than – that for spouses. This is true because there are more childbirth-related medical expenses for spouses than for domestic partners, and these expenses are often quite high. Also, while some people fear that there will be a large number of people with HIV/AIDS enrolling in domestic partner medical insurance, this has not proven true. (In fact, the overall risk of adverse selection has not been borne out in the actuarial statistics.) In addition, the costs associated with covering HIV-related medical claims are no more than those for other major medical expenses, such as heart disease or cancer.

### **Enrollment rates**

Enrollment rates for domestic partner medical insurance are low. When employers provide medical insurance for both same and opposite sex domestic partners of their employees, there is an average enrollment rate of approximately four percent (4%); when only same-sex coverage is provided, the enrollment rate is often less than one percent (1%). This is true for several reasons. Some employees in same-sex relationships are reluctant to disclose their sexual orientation because of the possibility of discrimination by their employer or coworkers. Also, there is a financial disincentive created by the fact that tax laws treat the value of the insurance premium paid by the employer for domestic partner coverage as taxable income to the employee. This is not true for spousal insurance premiums, where no taxable income is created and employees pay for spousal insurance premiums with pre-tax dollars. The imputed income associated with domestic partner medical insurance can be prohibitive and discourages many employees from electing domestic partner coverage, especially when the domestic partner already has coverage through his or her own employer.

## **Administrative costs**

When companies look at the administrative costs associated with implementing domestic partner benefits, it is important to emphasize that the changes being made to an employer's benefits plan are to the list of people eligible for a particular benefit, and not to benefit plan structure itself. Some computer modifications may be necessary to capture the imputed income tax associated with domestic partner medical insurance. Also, while at one time it may have been common for insurance companies to place surcharges on medical plans that cover domestic partners, this is no longer common. Where a surcharge is requested, employers can use as a negotiating tool the actuarial data that clearly demonstrates a lack of added claims exposure.

## **► Reasons for Compliance**

Many companies complying with the Equal Benefits Ordinance realize that providing domestic partner benefits means more to them than getting City contracts. These companies understand that offering domestic partner benefits addresses issues of fairness, market competition, employee retention and diversity, all of which impact the success of a business operation.

### **Equal pay for equal work**

A 1992 U.S. Census Bureau study estimated that 37-40% of all employee compensation comes in the form of benefits. In order to truly provide equal pay for equal work, many employers recognize that they must equalize the value of benefits offered to employees. Offering benefits for domestic partners takes a giant step in this direction.

### **Market competition & employee retention**

Many companies realize that one way to attract and retain talented employees is to offer them the most competitive benefits package. They also realize that employee retention lowers turnover and recruitment costs, and helps to improve employee job satisfaction and performance. Employees often look for the inclusion of domestic partner benefits as a sign that an employer is committed to providing the most comprehensive and competitive benefits package. This is true even for those employees who don't have a domestic partner or don't intend to take advantage of the benefits. Because of these results, when one company in an industry extends benefits to domestic partners, it is common for others to follow.

### **Valuing diversity**

Many companies understand that the U.S. workforce is increasingly diverse and that employees come from a wide variety of family structures. Many employees place a high value on their employer's commitment to diversity and will look for that commitment when choosing where to work. The inclusion of domestic partners in an employer's benefits

package demonstrates a commitment to diversity and sends a message to all employees that their unique qualities and individual circumstances will be appreciated.

## **► Litigation**

Three lawsuits have been filed against the City challenging the legality of the Ordinance. The first was filed by the Air Transport Association (ATA), representing a collection of the nation's largest airlines. Claims raised in their complaint include allegations that the Ordinance violates preemption language found in the Employee Retirement Income Security Act (ERISA), the Airline Deregulation Act and the Railway Labor Act, as well as that the Ordinance violates the Due Process and Commerce Clauses of the U.S. Constitution and sections of the California Constitution and San Francisco City Charter. After a motion for summary judgment was filed by the ATA, a hearing was held on October 10, 1997 by Judge Claudia Wilken in Federal District Court. A partial decision was issued on April 10, 1998 upholding the ordinance in large part, and created two areas of limited application with respect to particular types of City contractors.

### **Jurisdictional limitations**

The Court decision held that the City could no longer enforce the Ordinance with respect to a contractor's operations throughout the United States. While it is still City policy to encourage contractors to comply throughout their entire operations, the City can only require compliance in a contractor's operations located (a) in San Francisco; (b) on real property outside of San Francisco owned by the City or which the City has a right to occupy; and (c) elsewhere in the United States where work relating to a City contract is being performed.

### **Benefits covered by the law**

For a limited number of contractors, the April 1998 court decision also created some changes in which benefits the Equal Benefits Ordinance may cover. When the City is acting as an ordinary consumer of goods and services, as compared to acting as a regulator, it can require that contractors provide all benefits, including health and pension benefits, in a nondiscriminatory way. The City acts as an ordinary consumer where it wields no more power in the marketplace than other entities contracting for similar goods, services or interests in real property.

For companies such as the airlines, the Court found that with respect to leasing property at the airport, the City is acting as a regulator because it owns and operates the Airport, which the Court described as similar to a monopoly. Based on the Court's interpretation of the preemption provisions and case law associated with ERISA, which governs employer-

sponsored medical and pension benefits, in situations where the City wields more power than an ordinary consumer, it cannot require that contractors provide nondiscriminatory health and pension benefits. The Court held that benefits not covered by ERISA, such as bereavement leave, family medical leave, and company discounts (such as the flight benefits offered by the airlines), still must be offered in a nondiscriminatory manner unless the airlines can show that to do so would be so burdensome that they would be forced to change their routes. The provision of non-ERISA benefits continues to be litigated.

#### **Other lawsuits**

The second lawsuit was filed by an electrical contracting business that alleged it would be denied City contracts because of its refusal to comply with the Ordinance. The attorneys representing the company were connected to the American Center for Law and Justice, a non-profit legal organization associated with televangelist Pat Robertson. Their causes of action were very similar to those raised by the airlines. This case was voluntarily dismissed by the company because of a lack of standing; the company had never sought a City contract.

The third lawsuit was filed in December 1997 by S.D. Myers, Inc. an Ohio-based company claiming that they were denied a City contract because their religious beliefs preclude their compliance with the Ordinance. The causes of action are similar to those filed in the earlier two suits, and like the second plaintiff, they are represented by the American Center for Law and Justice. Discovery is occurring in this case and a status conference is scheduled for October 1998.

### **► Available Resources**

The Human Rights Commission has developed resources to help businesses seeking to comply with the Equal Benefits Ordinance:

**Rules of Procedure** for guidelines on how the Ordinance is being implemented; detailed explanations of the terms used in the Ordinance and information on jurisdiction and other matters.

**Resource Materials** for in-depth answers to commonly asked questions on the Ordinance's impact on medical benefits, pensions plans, taxation; information on the cost of providing domestic partner benefits; model employee policies; model domestic partnership registry, and a list of domestic partner registries.

**Insurance List** of over 100 insurance providers around the country willing to write policies inclusive of domestic partners. Providers are available in all 50 states.

**Table of Domestic Partner Registries** listing all of the governmental registries in the U.S., how and where to register, the requirements of registration, and the rights and responsibilities associated with registering. (This item is not available on the website.)

You can get free copies of these documents and of the ordinance itself by calling the Human Rights Commission at 415-252-2500, or download them from the Commission's website at: <http://www.ci.sf.ca.us/sfhumanrights>.

9/98

PRINT-VIEW RECORD(S)	Next Record
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Record 1 of 4

**DOCID**

99-0908

**STATUS**

o

**CHNGDATE**

1/13/00

**TITLE**

COMPARABLE EMPLOYEE BENEFITS - DOMESTIC PARTNERS

**AUTHOR**

Goldberg Mover 1999 / Galanter

**SUBJECT**

Mo - The City of Los Angeles currently has contracts for goods and services with hundreds of independent contractors employing thousands of workers. Because the City of Los Angeles receives the benefit of these employees' labor and in keeping with the City's commitment to equality of opportunity and treatment in the workplace, the City only enters into contracts with businesses that agree not to discriminate in their employment practices based on the "race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status or medical condition" of their respective employees.

In 1996-97, the City and County of San Francisco enacted measures recognizing that employee benefits constitute a significant part of employee compensation, and that discrimination based on marital status in the provision of such benefits results in unfair disparities among similarly situated workers (SF Administrative Code Chapter 12B). Accordingly, San Francisco limits eligibility for city contracts to those applicants for contracts which agree to provide comparable benefits to all of their similarly situated employees; in most instances, this involves provision of benefits to employees with domestic partners that are comparable to the benefits provided to employees with spouses. The San Francisco ordinance imposing this limitation was challenged in federal court and in April 1998, it was upheld in relevant part. *Air Transport Ass'n v. City and County of San Francisco*, 992 F.Supp.1149,76 Fair Empl.Prac.Cas. (BNA) 1008.

Recognizing that "unmarried couple constitute an increasing proposition of American households, including those within Los Angeles County", and that a mechanism for allowing couples to give public notice to their relationships will provide a valuable service both to the persons in those relationships and to society generally, the County of Los Angeles is establishing a countywide public registry of domestic partnerships for those who live or work within Los Angeles County.

In light of the number of unmarried couples who live and work within Los Angeles, and in keeping with the City of Los Angeles' longstanding commitment to workplace equity, it would be appropriate for the City of Los Angeles to consider expanding the scope of Section 10.8.2 of the LAAC to forbid discrimination based upon marital status in the provision of employee benefits, in order to insist that companies which receive the benefit of city contracts cease this form of unfair employment discrimination.

The countywide registry of domestic partnerships will assist in the successful implementation of such an ordinance.

Prior to enactment of such an ordinance, however, City staff should analyze the impact of such a proposal and present a report to the City Council for its consideration.

THEREFORE MOVE that the City Council request the CAO and CLA to prepare and present a report to the City Ccl within 45 days analyzing the projected impact of a City policy that would require all contractors, subcontractors, lessees and sublessees that either provide goods or services to the City of Los Angeles or enjoy the use of City-owned real property to offer comparable employee benefits to those of their employees with domestic partners as they offer to their employees with spouses.

FURTHER MOVE that the City Ccl request that the City Attorney prepare and present an ordinance for consideration concurrently with the above report which would require all contractors, subcontractors, lessees and sublessees that either provide goods or services to the City of Los Angeles or enjoy the use of City-owned real property to offer comparable employee benefits to those of their employees with domestic partners as they offer to their employees with spouses, similar in effect to San Francisco Administrative Code Chapter 12B

**DATEREC**

5/21/99

**ACTIONS**

5-21-99 - This days Ccl session - File to Cal Clk for placement on next available Ccl agenda

5-21-99 - Ref to Personnel Comt

5-25-99 - File to Personnel Comt Clk

5-25-99 - File to City Atty per Personnel Comt Clk

10-26-99 - CAO & CLA rept re: Impact of Domestic Partner benefits Ordinance Update - to Personnel Comt Clk

10-28-99 - File to Personnel Comt Clk

10-28-99 - City Atty R99-0344 rept re: Draft of **Equal Benefits** Ord - to Personnel Comt Clk; City Atty

11-17-99 - Personnel Comt rept ADOPTED to:

1. PRESENT and ADOPT accompanying four (4) ORDINANCES to effectuate the following:

- a. Add Section 10.8.2.1 to the Los Angeles Administrative Code to provide that City contractors and sub-contractors shall not discriminate in the provision of employee benefits between employees with spouses and employees with domestic partners.
- b. Amend Section 10.8.1 of the Los Angeles Administrative Code to add the definition of "Domestic Partners".
- c. Amend Section 22.359.1 of the Los Angeles Administrative Code to add enforcement of the **Equal Benefits** Ordinance to the powers and duties of the Office of Contract Compliance.
- d. Amend Section 10.8.2 of the Los Angeles Administrative Code to add "domestic partner status" to the list of prohibited forms of discrimination in City contracts.

2. NOTE and FILE the October 25, 1999 joint City Administrative Officer and Chief Legislative Analyst report relative to the **Equal Benefits** Ordinance.

11-19-99 - File to Mayor for signature

12-2-99 - File to Personnel Comt Clk OK

12-2-99 - File in files

1-12-00 - This days Ccl session - Mo - Goldberg Mover 2000 / Galanter - The **Equal Benefits** Ordinance (No. 172908 - 172911) was adopted by the Council on November 17, 1999 (CF 99-0908). The Mayor approved the ordinance on November 23, 1999. The ordinance became effective on January 9, 2000. The Council approved the Ordinance which allows domestic partners to seek health benefits from employers who already offer health benefits and have City contracts worth at least \$5,000. The Contractor Evaluation Ordinance (No. 173018) was adopted by the Council on December 15, 1999 (CF 98-0202). The ordinance became effective on January 5, 1999. The "Council approved Ordinance mandates the implementation of a contractor evaluation program to establish data bases on contractor performance. The ordinance indicates that the contractor evaluation program will assure that contractors are routinely evaluation in accordance with approved criteria. The evaluation data will be catalogued and readily accessible to and considered by contract awarding authorities prior to entering into contracts. The above mentioned ordinances, however, need to be adopted by the City Proprietary Department Commissions (i.e. Departments of Water & Power, Harbor, and Airports), as well as the Community Redevelopment Agency (CRA) Board. THEREFORE MOVE that the Council request that effective immediately the City Proprietary Department Commissions (i.e. Departments of Water and Power, Harbor, and Airports) and its Department Management, as well as the Community Redevelopment Agency (CRA) Board take all necessary steps to fully implement, monitor, and comply with the provisions and policies of the **Equal Benefits** Ordinance (No. 172908 - 172911) and the Contractor Evaluation Ordinance (173018). FURTHER MOVE that the Council instruct the City Clerk to transmit this motion to the Commissions, Management and Board referenced above with attached copies of the **Equal Benefits** Ordinance and the Contractor Evaluation Ordinance.

1-12-00 - File to Cal Clk for placement on next available Ccl agenda

#### ORD

172908 thru 172911 (Adopted 11-17-99; Effective 1-9-00)

[Simple Search](#)

[Advanced Search](#)

PRINT-VIEW RECORD(S)

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Retrieval software: DB/Text *WebPublisher*, provided by





WRITER'S DIRECT DIAL: (213) 485-4096  
FAX: (213) 485-6560  
TTY:

Office of the City Attorney  
Los Angeles, California

JAMES K. HAHN  
CITY ATTORNEY

REPORT NO. R 99 - 0 3 4 5  
**OCT 28 1999**

REPORT RE:

**AN ORDINANCE AMENDING SECTION 10.8.2  
OF THE LOS ANGELES ADMINISTRATIVE CODE**

The Honorable City Council  
of the City of Los Angeles  
Room 615, City Hall  
Los Angeles, California 90012

BY \_\_\_\_\_  
CITY CLERK

RECEIVED  
CITY CLERK'S OFFICE  
99 OCT 28 AM 11:00

Honorable Members:

Pursuant to your instructions, we have prepared and transmit herewith, approved as to form and legality, an Ordinance amending Section 10.8.2 of the Los Angeles Administrative Code to add "domestic partner status" to the list of prohibited forms of discrimination in City contracts.

Very truly yours,

JAMES K. HAHN, City Attorney

By  
LESLIE E. BROWN  
Assistant City Attorney

LEB:lh

#49094

AN EQUAL EMPLOYMENT OPPORTUNITY — AFFIRMATIVE ACTION EMPLOYER

1800 CITY HALL EAST • 200 N. MAIN STREET • LOS ANGELES, CA 90012-4131 • (213) 485-6370

ORDINANCE NO. \_\_\_\_\_

An ordinance amending Section 10.8.2 of the Los Angeles Administrative Code to add "domestic partner status" to the list of prohibited forms of discrimination in City contracts.

**THE PEOPLE OF THE CITY OF LOS ANGELES  
DO ORDAIN AS FOLLOWS:**

**Section 1.** Section 10.8.2 is hereby amended to read as follows:

**Sec. 10.8.2. All Contracts: Non-discrimination and Equal Benefits Clause.**

**a. Non-discrimination.**

Notwithstanding any other provision of any ordinance of the City of Los Angeles to the contrary, every contract which is let, awarded, or entered into with or on behalf of the City of Los Angeles, shall contain by insertion therein a provision obligating the contractor in the performance of such contract not to discriminate in his employment practices against any employee or applicant for employment because of the applicant's race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status, domestic partner status, or medical condition. All subcontracts awarded under any contract mentioned in this section shall contain a like provision.



Sec. 2. The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, by a vote of not less than two-thirds of all of its members, at its meeting of

\_\_\_\_\_.

J. MICHAEL CAREY, City Clerk


By \_\_\_\_\_  
Deputy

Approved \_\_\_\_\_

\_\_\_\_\_  
Mayor

Approved as to Form and Legality

\_\_\_\_\_  
JAMES K. HAHN, City Attorney

By   
\_\_\_\_\_  
LESLIE E. BROWN  
Assistant City Attorney

File No. \_\_\_\_\_



JAMES K. HAHN  
CITY ATTORNEY

WRITER'S DIRECT DIAL (213) 485-4096  
FAX: (213) 485-6560  
TTY:

Office of the City Attorney  
Los Angeles, California

REPORT NO. R 99-0346  
**OCT 28 1999**

REPORT RE:

**AN ORDINANCE AMENDING SECTION 10.8.1  
OF THE LOS ANGELES ADMINISTRATIVE CODE**

The Honorable City Council  
of the City of Los Angeles  
Room 615, City Hall  
Los Angeles, California 90012

RECEIVED  
CITY CLERK'S OFFICE  
99 OCT 28 AM 10:59  
BY \_\_\_\_\_  
CITY CLERK

Honorable Members:

Pursuant to your instructions, we have prepared and transmit herewith, approved as to form and legality, an Ordinance amending Section 10.8.1 of the Los Angeles Administrative Code to add the definitions of "Domestic Partners."

Very truly yours,

JAMES K. HAHN, City Attorney

By  
LESLIE E. BROWN  
Assistant City Attorney

LEB:lh  
#49093

ORDINANCE NO. \_\_\_\_\_

An ordinance amending Section 10.8.1 of the Los Angeles Administrative Code to add the definitions of "Domestic Partners."

**THE PEOPLE OF THE CITY OF LOS ANGELES  
DO ORDAIN AS FOLLOWS**

**Section 1.** Section 10.8.1 of the Los Angeles Administrative Code is hereby amended by adding the following subsection:

"Domestic partners" means, for purposes of this Article, any two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring, who live together, and who have agreed to be jointly responsible for basic living expenses incurred during the domestic partnership. For purposes of this Article, domestic partners must be registered with a governmental entity pursuant to state or local law authorizing such registration or with a internal registry maintained by an employer of at least one of the domestic partners.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, by a vote of not less than two-thirds of all of its members, at its meeting of \_\_\_\_\_.

J. MICHAEL CAREY, City Clerk


By \_\_\_\_\_  
Deputy

Approved \_\_\_\_\_

\_\_\_\_\_  
Mayor

Approved as to Form and Legality

\_\_\_\_\_  
JAMES K. HAHN, City Attorney

By   
LESLIE E. BROWN  
Assistant City Attorney

File No. \_\_\_\_\_

**Tina's Home**

**Pod People**

**Biography**

**Committees**

**Equal Benefits**

## EQUAL BENEFITS ORDINANCE

AN ORDINANCE related to contracts; creating a new Seattle Municipal Code Chapter 20.45 requiring contractors on City contracts to provide employee benefits to their employees with domestic partners equivalent to those provided to their employees with spouses.

The Equal Benefits Ordinance was passed unanimously by the City Council on Monday, November 22, 1999. The information below addresses basic questions about this new law. Over the next three months, the Contracting Services Department (CSD) will be drafting Rules of Procedure that will govern the implementation of the equal benefits requirement. After these Rules are finalized and adopted, CSD will be able to answer more specific questions regarding the contracting process (i.e. waiver criteria, mandatory contract language, etc.).

If you have questions about what this new law will require, please contact Erin Healy at the Pod Office: 206.684.8808

## EQUAL BENEFITS ORDINANCE

1. [View the Equal Benefits Ordinance](#)

### FREQUENTLY ASKED QUESTIONS:

1. [What will this new law require?](#)
2. [What businesses will be affected by this ordinance?](#)
3. [What are employee benefits?](#)
4. [Why is Seattle adding this new contracting requirement?](#)
5. [Won't this negatively impact competition and make the City unable to execute vital contracts?](#)
6. [What about small businesses? How much will it cost to make this change?](#)
7. [Are there any insurance companies in Washington State that will cover domestic partners?](#)
8. [How will an employer know what constitutes a domestic partnership?](#)
9. [What about fraud? How will an employer know if a domestic partner relationship is valid?](#)

## 1. What will this new law require?

The Equal Benefits ordinance will require contractors with the City of Seattle to comply with a policy of nondiscrimination in the provision of employee benefits. To comply with the new law, a contractor who already offers an employee benefits package that includes spousal coverage must offer an equivalent benefits package to employees with domestic partners (includes same and opposite sex domestic partners). In short, the contractor must amend their existing benefits eligibility criteria to include employee domestic partners. If a business is not contracting with the City of Seattle, this law will not apply to them. Contractors who do not provide any employee benefits will not be required to change that policy. This new law does not apply to subcontractors. This requirements of this new law do not go into effect until September 30, 2000.

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## 2. What businesses will be affected by this ordinance?

In its initial phase, the ordinance applies only to contractors in the Public Works, Consulting, and Purchasing arena who meet all of the following criteria:

1. they are seeking to enter a contract with the City of Seattle on or after September 30, 2000;
2. the contract is worth over \$33,000 (the city's competitive bid threshold); and
3. they offer a benefits plan to their employees that includes coverage for employee spouses.

On October 1, 2001, the contracting department will present an Equal Benefits status report to the Full Council. At that time, options for expanding the program to cover additional contracts will be discussed

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### 3. What are employee benefits?

Employee benefits typically include: bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; and travel benefits. According to standard professional estimates, employee benefits routinely comprise between 30 and 40% of total employee compensation. An employer's benefits plan may include all, or just a few, of the above benefits. Whatever the size or shape of the benefits package, the Equal Benefits ordinance simply requires parity—that the same package offered to employees with spouses be offered to employees with domestic partners.

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### 4. Why is Seattle adding this new contracting requirement?

Seattle law prohibits discrimination based on sexual orientation and marital status. Contractors with the City are already required to affirm that they do not discriminate based on sexual orientation and marital status (as well as other protected categories). It is certainly true that Seattle would not support an employer practice of paying a higher cash salary to a married employee than the employer pays to an unmarried employee, simply based on marital status. Discrimination in the provision of benefits has the identical effect and the result is unequal pay for equal work. Recognizing that this practice would violate Seattle's own nondiscrimination policy, the City, as an employer, has had a policy of nondiscrimination in the provision of employee benefits since 1990. If the Equal Benefits ordinance is passed, Seattle will no longer be subsidizing a discriminatory practice by doing business with companies that discriminate in the provision of employee benefits.

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**5. Won't this negatively impact competition and make the City unable to execute vital contracts?**

**The City will have significant flexibility with respect to contracting. The ordinance includes a variety of waiver situations and will allow the City to conduct essential business even if there are no contractors willing to comply with the equal benefits requirement. The requirement may be waived when:**

- **Award of a contract or amendment is necessary to respond to an emergency;**
- **The contractor is a sole source;**
- **No compliant contractors are capable of providing goods or services that respond to the City's requirements;**
- **The contractor is a public entity;**
- **The requirements are inconsistent with a grant, subvention or agreement with a public agency;**
- **The City is purchasing through a cooperative or joint purchasing agreement;**

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6. What about small businesses? How much will it cost to make this change?

Small contracts (under \$33,000) will be exempt from the equal benefits requirement. If an employer provides no employee benefits, this ordinance will not require the employer to change that policy in order to be eligible for City contracts. If an employer provides a benefits plan that does not include spousal coverage, this ordinance will not require the employer to change that policy in order to be eligible for City contracts. If the employer does provide a benefits plan that includes spousal coverage, in order to be eligible for City contracts, the employer must offer an equivalent benefits package to employees with domestic partners. Small businesses that allow spouses to enroll in a benefits plan typically have the enrollee pay the premium. This does not cost the employer anything, but it is extremely valuable to the enrollee, as individual health insurance coverage is unavailable in Washington state.

Domestic partner enrollment rates are generally very low (usually less than 2%). Enrollment rates will vary from region to region, however, and some areas of the country may experience enrollment rates higher than 2%. From an insurance standpoint, domestic partner coverage is, on average, less expensive than the coverage of spouses. Therefore, a business can expect its healthcare costs to increase, if at all, approximately 1 or 2%. In addition, ending discrimination simply makes good business sense:

- **Employee Morale:** With unemployment at a twenty-four year low, demand for labor is acute and businesses must be able to attract qualified job candidates, as well as hold onto their best employees. Thousands of businesses already provide domestic partner benefits because they know that it enhances their ability to recruit and retain top-flight talent.
- **Employee Productivity:** Nondiscrimination in the workplace improves productivity and competitiveness because employees feel motivated, supported, and will produce higher quality work. Having insurance and other employee benefits for oneself and one's family can significantly reduce personal stress and anxiety. This, in turn, will improve one's concentration and productivity at work.

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7. Are there any insurance companies in Washington State that will cover domestic partners?

Yes. According to the Washington State Insurance Commissioner's office, domestic partner coverage is available to large groups (over 50) at the consumer's request. The Commissioner's office knows of no insurance provider operating in Washington State who, as a rule, would not provide such coverage if their customer requested it. In Washington, currently there are at least 12 insurance companies who do underwrite policies that include domestic partner coverage. Several insurance providers are currently reviewing their policy of not providing the option of domestic partner coverage for small groups (under 50 employees). If the insurance industry does not respond to a potential small group demand for domestic partner coverage, these small companies will still be able to contract with the city. As long as they provide the employee with a cash equivalent (based on the value of the insurance coverage provided to employees with spouses), the contractor will be in compliance.

If San Francisco's experience tells us anything, the market for domestic partner coverage is only going to increase. After San Francisco enacted its equal benefits ordinance, the insurance market for domestic partnership coverage in California rapidly increased from 14 to nearly 150 insurance companies who will underwrite policies that include domestic partnership coverage.

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**8. How will an employer know what constitutes a domestic partnership?**

To be eligible for domestic partner coverage under an employee benefits program, the employee and his/her domestic partner must affirm their domestic partnership in one of two ways. An employee must register with an employer's internal domestic partner registry, if one is available.

For example, the City of Seattle has its own affidavit of domestic partnership for the purpose of enrolling employees in its benefits program. As an employer, the City's criteria for domestic partnership stipulates that the applicants must: 1) share the same regular and permanent address; 2) have a close, personal relationship; 3) not be married to anyone; 4) be jointly responsible for basic living expenses; 5) each be eighteen years of age or older; 6) not be related by blood closer than would bar marriage in the State of Washington; 7) have been mentally competent to contract when their domestic partnership began; and 8) be each other's sole domestic partner and are responsible for each other's common welfare. Employer-provided registries must comply with criteria specified by rule.

If no employer-provided registry is available, an employee must be registered with a governmental registry. The City of Seattle provides such a registry and it is open to all who may wish to register their domestic partnership.

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**9. What about fraud? How will an employer know if a domestic partner relationship is valid?**

The truth is, in the context of employee benefits, domestic partnerships are more closely scrutinized than marriages. For example:

- When enrolling his or her family in a benefits plan, a married employee need only write in the name of his or her spouse and/or dependents on the enrollment form. An employee with a domestic partner usually must produce a written, notarized affidavit of domestic partnership before his or her partner and/or dependents will be enrolled. By contrast, an employer rarely, if ever, asks to see a marriage license.
- In most cases, an affidavit of domestic partnership must stipulate that the couple occupies the same residence. In order to be eligible for spousal benefits, a married couple need not occupy the same residence.

As you can see, the level of risk for benefits fraud will not be increased by the addition of coverage for domestic partners.

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# **The Concept of Domestic Partnership Began in San Francisco**

## ***A Short History of the Philosophy of Inclusiveness, and the Refusal to Limit Domestic Partnerships to Gay and Lesbian Couples***

1982 \* The original domestic partnership ordinance would have allowed two adults of either gender, who were not closely related by blood, to register as domestic partners and thereby gain family benefits.

1982 \* Mayor Feinstein vetoed the ordinance, because the benefits it conferred were not spelled out in detail, and because the ordinance did not require partners to assume binding obligations for each other's general welfare.

1984 \* The Mayor's Health Benefits Task Force recommended that the city extend health benefits to city employees who have a same-sex partner, but not to extend such benefits to employees with an opposite-sex partner.

1984 \* Mayor Feinstein rejected the proposal, stating: "It clearly suggests the creation of a special interest category of employees, and would deny benefits to others with similar needs. . . . I cannot, in good conscience, accept a recommendation that does not provide fair treatment for all."

1989 \* The Human Rights Commission held a hearing on Domestic Partnership, Marital Status, and Extended Family Policies, and then issued a report with its findings. The hearing focused on family diversity, the need for public policies recognizing the validity of non-traditional families, and the need to end discrimination against those families. It recommended the enactment of legislation "rectifying discrimination on account of domestic partnerships, marital status, or extended family status." It said the new law should "offer protection to all parties involved" and that any definition of domestic partnership be "inclusive in its letter and intent."

1989 \* A domestic partnership proposal was introduced into the Board of Supervisor in May 1989. It was open to any two adults who were not closely related by blood. The parties were required to be jointly responsible for basic living expenses incurred while they lived together. In return, the city offered the partners various benefits, including some employment benefits such as family sick leave and bereavement leave. The proposal passed on June 5, 1989.

1989 \* Mayor Agnos signed the domestic partnership ordinance into law, stating: "Today marks an important milestone in San Francisco's effort to adopt policies that recognize the diversity of families and extend to all people in our city the basic human right to form families of their own choosing." He added: "Supervisor Britt's legislation has created a framework that clarifies the serious nature of family relationships in the lesbian and gay community and for other couples in committed relationships." The mayor created a Task Force on Family Policy to study: (1) whether the employment benefits provided to city workers should be expanded to include health coverage for domestic partners, and (2) whether the operation of city government should be altered in an effort to be more supportive of the diverse family structures found in the city.

1990 \* The Task Force on Family Policy issued its report and recommendations on June 13, 1990. The report recommended that the city adopt a broad and flexible definition of "family" in its policies, laws, and programs, that would include persons who are not related by blood, marriage, or adoption, but who are socially and economically interdependent. In the context of employment, it recommended that health benefits be extended to domestic partners (same-sex and opposite-sex) based on the principle of "equal pay for equal work for similarly situated persons."

1990 \* The voters approved a domestic partnership registry for city residents in November 1990. The registry is open to same-sex and opposite-sex couples who live together and who have agreed to be jointly responsible for basic living expenses incurred during the domestic partnership.

1991 \* The Health Service Board approved a plan to give health benefits to city employees with domestic partners (same-sex and opposite-sex) on May 7, 1991, and Mayor Agnos signed the measure into law on June 21, 1991.

1994 \* The Board of Supervisors voted on May 31, 1994, to exempt registered domestic partners from real estate transfer taxes if they end their partnerships, thus giving them the same exemption offered to spouses when they divorce.

1996 \* The Board of Supervisors voted to stop doing city business with firms that fail to offer the same benefits to domestic partners -- same-sex and opposite-sex -- as they do to spouses. Mayor Brown signed the measure into law on November 8, 1996.

1997 \* Mayor Brown and three members of the Board of Supervisors (Ammiano, Katz, and Leal) met with a major lobbying group for corporations in San Francisco on February 20, 1997. The Committee on Jobs, asked the city to exclude unmarried opposite-sex domestic partners from the new city contractor law.

1997 \* Harvey Milk Democratic Club opposed the exclusion of opposite sex couples from the domestic partner law. Openly gay supervisor Ammiano opposed the "gays only" proposal. It was then withdrawn by Katz and Leal.

**AMERICAN ASSOCIATION  
FOR  
PERSONAL PRIVACY  
18 OBER ROAD  
PRINCETON, NEW JERSEY 08540  
(609) 924-1950**

10 April 1997

The Honorable Thomas Amiano  
San Francisco Board of Supervisors  
City Hall  
401 Van Ness Avenue  
San Francisco, California 94102

Dear Mr. Amiano:

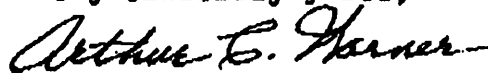
This Committee has just learned of your courageous action in preventing an amendment's being offered to the San Francisco city contractor law, which would have had the effect of barring unmarried opposite-gender couples from its provisions.

What you have succeeded in doing has national implications. It reaffirms the American principle of equal justice under law. Redressing the grievances of one group at the expense of another group similarly circumstanced not only violates our constitutional principle of equal protection, but offends one's rudimentary sense of equity as well.

In your case, your actions were especially praiseworthy. Although a member of the prime group for whom the law was drafted, you were prepared to jeopardize your own parochial interests out of respect for the fundamental involved.

Principled gay people throughout this land will applaud your integrity.

Very sincerely yours,



Arthur C. Warner  
Director

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## Partners Law Won't Exclude Straights Gay supervisor refuses to back plan suggested by some S.F. companies

*Yumi Wilson, Chronicle Staff Writer*

A corporate-backed proposal to amend San Francisco's domestic partners benefits law to exclude straight, unmarried couples collapsed after an openly gay supervisor refused yesterday to go along with the idea.

Supervisor Tom Ammiano said everyone -- regardless of sexual orientation -- should be able to apply for benefits under the new law, which requires city contractors to offer domestic partners the same benefits offered to married couples.

Several months ago, Ammiano and the board's two lesbian supervisors, Susan Leal and Leslie Katz, were asked by a group of business leaders to consider the exclusion of straight couples. The group argued that such a proposal would cut costs by cutting the number of people eligible under the new law.

Leal and Katz decided to proceed, reasoning that straight couples could get benefits through marriage -- an option that gay men and lesbians do not have.

But Ammiano still had not made up his mind when a draft of the ordinance became public last week, sparking outrage from many in the straight community -- which had supported the domestic partners law.

Yesterday, after Ammiano declared his opposition, Katz and Leal said the idea is now dead.

"I feel like I killed it, and I'm so happy," Ammiano told a reporter.

Although some City Hall insiders speculate that discord among the board's gay and lesbian supervisors led to the scrapping of the plan, Katz maintained that the idea was never finalized.



**“What was ignored was that the proposal was a draft . . . for discussion only,” Katz said.**

**In a press release yesterday, the Harvey Milk Lesbian/Gay/Bisexual Democratic Club also disputed reports that there was dissension among the “leadership in the queer community.”**

**“Despite reports to the contrary, all parties agree that the Domestic Partners Benefits legislation will remain as it is written,” the statement said.**

**As written, the law requires that city contractors who provide health insurance to married couples must also offer those benefits to the gay, lesbian and unmarried domestic partners of their employees.**

**The law, which was passed last fall, also stipulates that any lease with the city for more than two years should contain the language, or at least a pledge by the business, to move toward compliance.**

**While many companies are trying to comply with the law, which takes effect in June, some businesses like United Airlines and nonprofit groups like Catholic Charities have raised objections.**

**The city, trying to ease the burden on business and bring everyone into compliance, has reached compromises with both United and Catholic Charities. And concerns that some small businesses would not be able to afford insurance coverage have been addressed by the Chamber of Commerce, which is offering its own domestic partners insurance plan.**

**“We have created our own health insurance plan that offers domestic partner benefits for companies with few as three employees,” said Carol Piasente, the chamber's spokeswoman.**

**Katz said supervisors have been working on several other changes -- dealing with open enrollment period and collective bargaining concerns -- to make sure all city contractors can comply with the law. Those changes, she said, will be introduced at Monday's board meeting.**

**“This is cleanup language,” Katz said. “Now that we've had more time to work with people, we're making sure the language is clean and clear as possible.”**

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“Dear Abby” Column  
May 12, 1998**

“Legally recognized domestic  
partnerships carrying equal legal  
entitlements should be available to  
everyone.”