

TWO YEAR REPORT
ON
THE SAN FRANCISCO
EQUAL BENEFITS ORDINANCE



SAN FRANCISCO
HUMAN RIGHTS COMMISSION

August 12, 1999

Marivic S. Bamba
Executive Director

Report prepared by:

Cynthia G. Goldstein, Contract Compliance Officer

with assistance from
other members of the staff of

The Lesbian Gay Bisexual Transgender & HIV Division

Larry Brinkin, Division Coordinator
Carol Ackles, Clerk Typist
Ron Capistrano, New Ways Worker
Marianna Balquiedra, Representative
Kabir Hypolite, Representative
Kim Iwamoto, Intern
David Treanor, Senior Management Assistant
Tamra Winchester, Representative

TABLE OF CONTENTS

Executive Summary	1
I. Introduction	
A. A Brief History of the Domestic Partnership Movement in the U.S.....	4
B. A Brief History of the San Francisco Equal Benefits Ordinance	5
II. Overview of the Equal Benefits Ordinance	
A. What the Law Requires	
1. Equal Pay for Equal Work.....	6
2. Domestic Partner Defined	6
3. Reasonable Measures	6
4. Jurisdiction	6
B. Implementation Efforts	
1. Role of the Human Rights Commission.....	7
2. Education and Outreach	7
3. Helping Businesses Find Insurance Coverage.....	7
4. Determining Compliance	8
5. Implementation Challenges	8
C. Rules of Procedure	8
1. Building in Flexibility	8
2. Recognizing Different Options for Compliance	8
3. Addressing Other Issues.....	9
III. Compliance Experience	
A. Compliance Statistics	9
B. Covered Employees.....	10
C. Company Size	10
D. Geography	11
E. Insurance Industry Response.....	11
F. Union Response.....	12
G. Waivers and Exceptions.....	12
IV. Related Legislative Activity	
A. Contracting Legislation	15
B. Other Domestic Partner Legislation	
1. State of California	15
2. City and County of San Francisco.....	16

V. Lawsuits and Congressional Challenges	
A. Lawsuits	
1. <u>Air Transport Association, et. al. v. City and County of San Francisco, et. al.</u>	16
a. Jurisdictional Limitations.....	17
b. Benefits Covered by the Law	17
2. <u>P.M. & M. Electric v. City and County of San Francisco, et. al.</u>	18
3. <u>S.D. Myers, Inc. v. City and County of San Francisco, et. al.</u>	18
B. Congressional Challenges	18
VI. Impact of Ordinance	18
VII. Current Challenges	19
Appendices	
A. Twenty Largest Complying Companies	
B. Resource Materials	
C. Resource Materials Order Form	

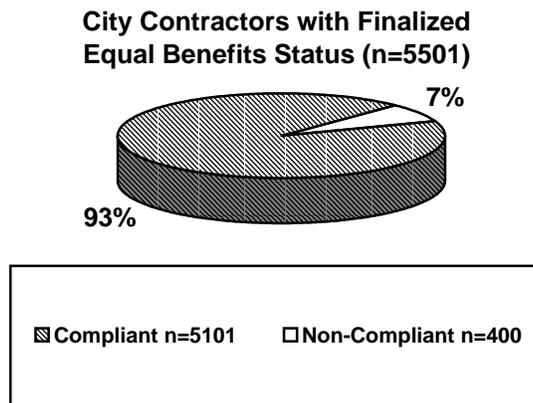
EXECUTIVE SUMMARY

On June 1, 1997, revisions to San Francisco Administrative Code sections governing nondiscrimination in City contracts took effect, creating the first such program in the United States designed to end discrimination in employee benefits for employees with domestic partners. The success of the Ordinance two years later is seen in the ever-growing number of employers across the country that offer domestic partner benefits. This success has been brought about by the vision of community and City leaders, the dedicated efforts of many City departments, the responsiveness of the insurance industry and an understanding by the business community that nondiscriminatory employment practices make good business sense.

At the time the Equal Benefits Ordinance took effect, approximately **500** companies nationwide offered domestic partner benefits to their employees. As of June 30, 1999, that number has increased dramatically. There are now over **2300** City contractors offering domestic partner benefits, and this number does not reflect the many companies across the country that have followed suit even though they don't contract with the City.

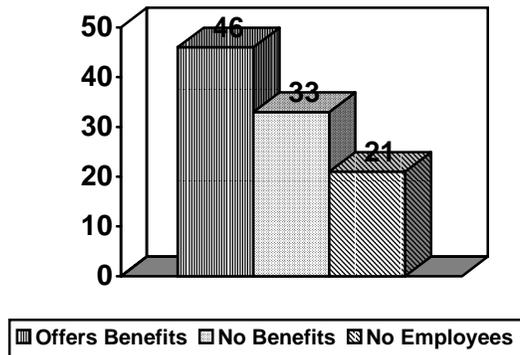
City contractors offering domestic partner benefits employ a nationwide pool of approximately one million (1,000,000) people. With actuarial statistics showing an enrollment rate in private sector domestic partner medical benefits averaging three percent, that means there are approximately 30,000 people now covered by employer-sponsored medical plans as a result of the Equal Benefits Ordinance.

Currently, of the 5501 compliance declarations that have been fully reviewed as of this date, 93% comply with the requirements of the Equal Benefits Ordinance.



City contractors may comply with the Ordinance in one of three ways: (1) offer employee benefits that don't discriminate between spouses and domestic partners; (2) offer no employee benefits that extend to spouses or domestic partners (or to

TYPES OF COMPLIANCE BY PERCENTAGE



employees because they have a spouse or domestic partner); or (3) by carrying no employees on their payroll. To date, out of all complying companies, 46% comply by offering nondiscriminatory benefits, 33% comply by offering no employee benefits, and 21% comply because they have no employees.

The Ordinance has had a tremendous impact in the availability of domestic partner insurance coverage. To assist City contractors in their efforts to comply, the Commission compiled a list of insurance providers offering domestic partner coverage to employee groups. Research conducted prior to the effective date turned up only **14** insurance companies willing to provide this coverage. By June 30, 1999, the Commission has identified over **130** insurance companies who have joined the domestic partner insurance market. Recently, the statewide insurance pool created for small businesses (2 to 50 employees) began to offer domestic partner coverage to its **8,000** participating employers, potentially covering an additional **150,000** employees in California alone.

The impact of this growth in the insurance industry has been felt across the country as all businesses, not just those seeking City contracts, have a larger and more competitive insurance market from which to purchase domestic partner coverage. In addition, the options available to small businesses have increased dramatically, making it much more feasible for these businesses to provide coverage for small employee groups.

There have been three lawsuits challenging the Ordinance. Two of the challenges have stemmed from religious-based objections to the Ordinance, and have been supported by televangelist Pat Robertson's legal foundation, the American Center for Law and Justice. The third lawsuit, brought on behalf of a group of the nation's major airlines, asserts that the Ordinance oversteps the City's legislative authority. Because of the

outstanding skill and dedication of the City Attorney's Office and outside counsel, the Ordinance has survived these challenges with great success.

As the litigation moves through the Court system toward resolution, and the success of the compliance effort remains strong, other Cities have begun to develop policies similar to the Ordinance. They have heard the challenge emanating from San Francisco: there is more that City governments can do to advance and protect the rights of domestic partners.

I. INTRODUCTION

A. A Brief History of the Domestic Partnership Movement in the U.S.

The status of legal marriage confers many rights and responsibilities upon the married couple. A 1996 U.S. General Accounting Office report cited 1,049 different benefits given to married people by the federal government alone. For example, marriage dictates what taxes must be paid, who can adopt a child, the transfer and inheritance of property, and who can make medical decisions for an incapacitated loved one. It also governs the provision of certain employee benefits.

Employment-based benefits such as medical insurance coverage, retirement benefits and leave programs comprise 30-40% of the average employee's total compensation.¹ Because same-sex couples are denied the right to marry under the laws of all 50 United States, they are in effect denied the benefits associated with that legal status.

In the mid 1970s, a few same-sex couples went to their local county clerk's office and asked to be issued marriage licenses. They were denied. When litigating these denials failed, other means of garnering recognition for same-sex relationships were sought.² As a result of the ensuing discussion regarding how to get same-sex relationships to be recognized by the government and employers, the concept of domestic partners was developed.

In 1982, the term "domestic partner" was first used in a lawsuit filed by HRC employee Larry Brinkin. Mr. Brinkin, then an employee of Southern Pacific Railway, had recently suffered the loss of his partner of eleven years. When he was denied the three days of paid bereavement leave given to married employees, he filed suit with the assistance of the ACLU. Mr. Brinkin lost his case. Despite a great deal of evidence to the contrary,³ the judge agreed with his employer's claim that there was no way to know if his relationship was legitimate. Later that same year, the City and County of San Francisco Board of Supervisors attempted to enact a domestic partner registry. Diane Feinstein, who was Mayor at the time, vetoed that effort.

In 1985 the City of Berkeley became the first municipality in the country to enact a domestic partner registry and the first employer to offer domestic partner benefits. During the years that followed, progressive nonprofit organizations and businesses, such as the ACLU and the *Village Voice*, joined Berkeley in offering domestic partner benefits to their employees. After several attempts, in 1991 San Francisco's registry

¹ 1992 U.S. Census Bureau study.

² The California legislature's response to this effort was to amend its state law so that a marriage would no longer be defined as a union "between two people" but only as one "between a man and a woman."

³ Mr. Brinkin introduced evidence of joint bank accounts, car ownership and a joint mortgage.

was finally enacted;⁴ later that year the City began offering domestic partner benefits to its employees. Today, there are at least 44 municipal or state domestic partner registries across the country, and that number is growing.⁵

B. A Brief History of the San Francisco Equal Benefits Ordinance

With the increasing number of employers, both public and private, offering domestic partner benefits, community activists began looking at new ways to increase the recognition of same-sex couples. Litigation efforts were renewed in the fight for same-sex marriage, and individuals denied employee or other benefits because of the unequal legal status of their domestic partnerships began using the legal system to advocate for themselves. On the legislative front, people in San Francisco began looking at the possibility of expanding the local laws addressing discrimination against domestic partners.

After working closely with members of the Harvey Milk Lesbian Gay Bisexual Transgender Democratic Club and other interested community groups, and receiving public testimony, the San Francisco Board of Supervisors on November 4, 1996, passed a law that, in an unprecedented way, attempted to address one aspect of this discrimination. This law, which amended the City's Nondiscrimination in Contracts Ordinances (Chapters 12B and 12C of the Administrative Code), prohibits the City from entering into contracts or leases with any business that discriminates between employees with spouses and employees with domestic partners with respect to any benefits they provide. On December 8, 1996, Mayor Willie L. Brown, Jr. signed these amendments into law. To allow for the development of implementation and enforcement tools, the effective date of the Ordinance was June 1, 1997.

Known as "The Equal Benefits Ordinance," these amendments require City contractors to provide the same benefits to their employees with spouses and their employees with domestic partners, as well as to the spouses and domestic partners of employees. Compliance with the Ordinance also requires that each City contractor agree to not discriminate in employment or against members of the public on the basis of a specified list of protected categories.⁶

Charged with implementing the Ordinance, the Human Rights Commission, in conjunction with several other City departments and community and business groups, created a flexible implementation plan designed to recognize the business reality of making benefits changes. Resource materials and implementation guidelines were developed to assist businesses to comply.

⁴ As of June 30, 1999, over 5500 couples have enrolled in San Francisco's domestic partner registry.

⁵ A table of domestic partner registries is available from the Commission and is posted on the Commission's website. See Appendix C for ordering information and for the website address.

⁶ These categories are: race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or AIDS/HIV status.

II. Overview of the Equal Benefits Ordinance

A. What the Law Requires

Equal Pay for Equal Work. The main premise of the Equal Benefits Ordinance is equal treatment. Employees with spouses and employees with domestic partners should receive the same total compensation: salary plus benefits. Benefits provided by the employer directly to the spouse or domestic partner should be provided equally. The law does not require City contractors to begin offering benefits not previously offered. Instead, if a City contractor offers benefits to the spouse of an employee (such as medical insurance), or to an employee because he or she is married (such as bereavement leave taken because of the death of a spouse or parent-in-law), then the City contractor must offer the same benefits to the domestic partners of an employee or to the employee with a domestic partner. Of course, if a business offered benefits to domestic partners and not spouses, that discrimination also would have to end before a City contract could be awarded.

Domestic Partner Defined. The ordinance defines the term “domestic partner” to mean any person whose domestic partnership is currently registered with a governmental domestic partnership registry. The ordinance requires nondiscriminatory benefits for both same- and opposite-sex couples.

Reasonable Measures. Where ending discrimination is outside a contractor’s control, the contractor may still comply with the law by taking all reasonable measures to end discrimination and by offering a cash equivalent to those employees for whom providing benefits equally is not possible. For example, if no insurance company was willing to sell domestic partner medical insurance to an employer, the employer could comply with the Ordinance by paying the employee with a domestic partner the same amount of money the employer would pay toward the medical insurance premium for an employee’s spouse.⁷

Jurisdiction. Originally, the law was written to apply to the entire U.S. operation of a company with whom the City is contracting. This was modified by an April 1998 U.S. District Court decision (discussed in section V.A.1., below). Current compliance standards mandate that nondiscrimination take place (1) at a contractor’s locations in San Francisco, (2) at a contractor’s locations on City-owned property located outside of San Francisco (such as at San Francisco International Airport or Hetch Hetchy Reservoir), and (3) anywhere else in the U.S. where work related to the City’s contract is being performed. Despite this change in the Ordinance, the vast majority of companies still choose to comply at all of their U.S. locations. Subcontractors are not required to comply, nor are contractors with whom the City does less than \$5,000 of business per year.

⁷ With the widespread availability of domestic partner medical insurance, this example is not common.

B. Implementation Efforts⁸

Role of the Human Rights Commission. As the City department responsible for enforcing the City's previously existing nondiscrimination laws, including Administrative Code Chapters 12B and 12C, the responsibility of implementing and enforcing the Ordinance was given to the Human Rights Commission. The Commission outlined a strategy that sought to implement the Ordinance in a business-friendly manner with a streamlined approach designed to ease compliance efforts of City departments and City contractors.

Education and Outreach. To inform the public about the change in the law, and to educate contractors and City departmental personnel, the first phase of implementation focused on education and outreach. Written materials⁹ were prepared and distributed and a series of educational workshops were held at which City contractors and departmental personnel were given detailed information about the requirements of the ordinance. Commission staff fielded thousands of telephone calls with individual businesses seeking compliance information.

To sustain this outreach and education effort, the Commission maintains a website where resource materials, compliance forms and the relevant Administrative Code chapters are available.¹⁰ In addition, a Corporate Mentors Program was initiated to provide research data and resources to companies that are considering whether to extend benefits to domestic partners. Such research data includes access to information about corporate professionals who have successfully completed the evaluation and compliance process.

Helping Businesses Find Insurance Coverage. Prior to the enactment of the Ordinance, some businesses seeking to provide domestic partner medical coverage, especially small businesses, experienced difficulty finding an insurance company willing to issue such a policy. To address this deficit and the increased need for such insurance created by the Ordinance, the San Francisco Chamber of Commerce developed a group insurance plan that was made available to any of its member businesses, regardless of size. To complement this effort, the Human Rights Commission held an insurance fair prior to the Ordinance's effective date, bringing together businesses seeking to add domestic partner coverage with a dozen insurance providers which offer domestic partner insurance coverage. In an effort to continue this assistance, the Commission maintains a list of insurance providers willing to offer domestic partner coverage to their customers. This list has over 100 carriers and reflects carriers in all 50 states and the District of Columbia.

⁸ For a more detailed description of the implementation process, see The Equal Benefits Ordinance, A Six Month Report, City and County of San Francisco Human Rights Commission, January 6, 1998.

⁹ For a description of available resource materials, see Appendix B.

¹⁰ The website can be found at www.ci.sf.ca.us/sfhumanrights.

Determining Compliance. In order to determine whether a particular City contractor complies with the Ordinance, a series of forms was developed. One of these forms was designed as a Declaration and must be completed by all contractors seeking to demonstrate compliance. For most contractors, supporting documentation must also be submitted, such as a copy of the eligibility section of their insurance policy which verifies equal coverage, and copies of personnel policies. A comprehensive database was designed to capture all of the information gathered from contractors and to communicate this information on a daily basis to the City's contracting officers through an interface with the City's mainframe computer.

Implementation Challenges. In addition to maintaining a large volume of files and a complex database, Commission staff must review compliance documents and evaluate a variety of employment policies for compliance. This involves learning the intricacies of pension and medical plans, as well as other benefit policies. Further, compliance efforts include working with companies reluctant to end their discriminatory practices. As a result, staff must address the frustrations of companies that would prefer to enter into contracts without deference to the City's contracting requirements.

C. Rules of Procedure

To define some of the essential terms of the Ordinance and to further its goal of implementing the Ordinance in a business-friendly manner, the Commission developed Rules of Procedure that both informed the contracting public of the details of compliance and recognized the business reality of benefits changes.

Building in Flexibility. The Rules recognize that an instant end to discrimination in benefits is not always possible. They were written to accommodate a contractor that is committed to ending discrimination but needs time to make the necessary changes to its benefits policies. For instance, a contractor may prefer to wait until its next open enrollment before benefits are implemented so it doesn't have to incur the cost and disruption of a change in benefits in the middle of the plan year. This is especially true of large companies that must communicate changes and enrollment procedures to a large group of employees. Delay also may be warranted where substantial change is needed to a contractor's personnel policies, or where benefits are governed by a collective bargaining agreement.

Recognizing Different Options for Complying. The Rules recognize that as long as discrimination is stopped, compliance can mean different things to different contractors. Some contractors comply with the requirements of the Ordinance by offering benefits to a broader group of individuals, in addition to or instead of spouses and domestic partners. For example, Bank of America has created a policy that, in addition to spouses and domestic partners, 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." Some contractors comply by offering benefits on a basis unrelated to both marital status and domestic partner status, for

instance by allowing each employee to select one adult living in their household to receive benefits. Other contractors comply by providing no benefits that extend to spouses or domestic partners; or by providing no employee benefits whatsoever.

Addressing Other Issues. The Rules articulate the acceptability of a contractor creating an internal domestic partnership registry for employees to use who do not have access to, or prefer not to use a governmental registry, so long as governmental registration also is honored. The Rules also explain that verification of domestic partnership should only be made to the same extent as verification of marriage. Further, it is not enough for a contractor to institute benefits; the contractor must also inform its employees of the availability of such benefits. The Rules explain the procedures to be followed when waiver of the Ordinance is sought, set out the contractor's obligation to make all reasonable efforts to comply, and explain the payment of a cash equivalent when compliance is not possible.

III. Compliance Experience

A. Compliance Statistics

As of June 30, 1999, 8005 contractors have submitted compliance paperwork to the Commission. Of the Declarations received, the status of 5510 has been finalized. Of those, 5101 (92.73%) have been found to be in compliance (having ended any existing discrimination in the provision of benefits), and 400 (7.27%) have been found to be out of compliance.¹¹ Of the complying contractors, 2328 (45.64%) offer nondiscriminatory benefits to their employees, 1682 (32.97%) do not offer any benefits to their employees,¹² and 1091 (21.39%) do not have any employees.

These statistics reflect companies complying throughout their U.S. operations. Compliance information for companies that have limited their compliance geographically or have limited the benefits offered in a nondiscriminatory manner (as allowed by the April 1998 District Court ruling) is captured separately. Since the Court's ruling changed compliance requirements, only 27 companies have elected to comply on a limited basis and continue discriminating in certain locales or with respect to certain benefits. This represents only .01% of the total number of companies complying with the Ordinance by offering nondiscriminatory benefits, and .005% of all complying companies.

¹¹ Of the 2504 contractors whose status is still pending (which reflects 31.28% of the Declarations received to date), the vast majority, 2404, are pending *because the contractor has not yet responded to the Commission's request for more information*. With new Declarations received each week, some pending contractors will exist at any given time.

¹² The majority of these contractors have fewer than twenty employees in their workforce.

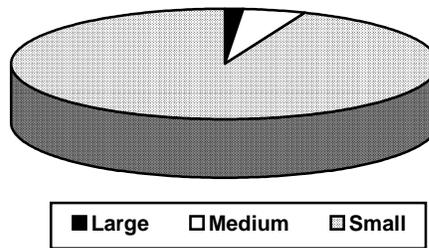
B. Covered Employees

Contractors offering nondiscriminatory benefits employ approximately one million individuals nationwide. With actuarial statistics indicating an enrollment rate in domestic partner medical benefits offered to both same and opposite sex couples averaging 3% in the private sector, this means that nearly 30,000 domestic partners have taken advantage of this benefit through the programs offered by City contractors.

C. Company Size

Twenty-eight large companies (5000 or more employees), 106 medium sized companies (500 to 4999 employees) and 2078 small companies (under 500 employees) comply by offering nondiscriminatory benefits.¹³

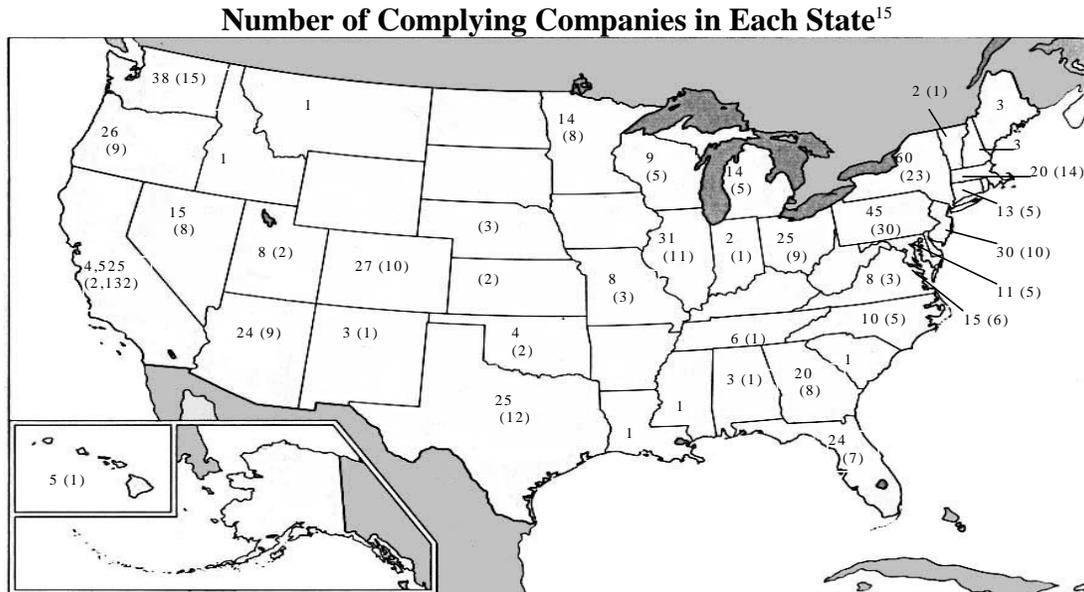
Compliant Companies By Size



¹³ An employee count currently is not available for all companies. A list of the twenty largest compliant companies that offer benefits is attached as Appendix A to this report.

D. Geography

Complying companies may be found in at least 41 states and the District of Columbia, and in over 700 cities across the country.¹⁴ Eighty-eight percent are located in California, with approximately 43% in San Francisco. Companies offering nondiscriminatory benefits can be found in at least 33 states and the District of Columbia.



E. Insurance Industry Response

In 1997, when the Ordinance first went into effect, the Commission was able to identify only 14 insurance providers willing to offer domestic partner coverage. As of the date of this report, over 129 companies now offer such benefits.

A significant change in the California domestic partners insurance market took place on July 1, 1999. Until earlier this year, the State of California operated an insurance plan designed to address the difficulty small businesses face in obtaining quality medical benefits at an affordable price. Serving about 8,000 companies with 150,000 employees and dependents, the Health Insurance Plan of California (HIPC) refused to include domestic partner coverage in its plan, even though the insurance carriers who served the plan offer this coverage elsewhere. As a result of a legislative mandate,

¹⁴ Many compliant companies have multiple locations not reflected here. The numbers and locations reported reflect the mailing address information given by companies to the City and do not include branch offices where equal benefits also are provided.

¹⁵ Numbers without parentheses indicate total number of compliant companies in each state; numbers within parentheses indicate compliant companies offering nondiscriminatory benefits. The slight variation in the numbers reflected in this chart as compared to the compliance statistics above is due to a database conversion taking place at the time this report is being prepared.

HIPC recently was privatized. Now called Pacific Health Advantage, it is being operated by the Pacific Business Group on Health, a San Francisco firm that has worked with the state's largest employers to negotiate insurance plans. One of the first changes made to the plan was the inclusion of domestic partner coverage as a plan option.

While the practice is declining, some insurance companies still impose surcharges on companies adding domestic partner coverage. The actuarial data gathered since the domestic partners benefits were first offered in 1985 clearly demonstrate that such a charge is unfounded. In fact, in the vast majority of cases, the insurance claims filed by domestic partners are *less costly* than those filed by spouses.¹⁶ Also, insurance companies routinely require additional qualifying criteria and documentation from domestic partners. Often requiring that the partners complete an affidavit, requirements can include demonstration of financial interdependence (joint lease or mortgage, joint bank accounts, insurance policies with partners named as beneficiary) and that the partners have lived together for a certain amount of time (usually from 6 to 18 months). These requirements are not imposed on married couples, who often become eligible for benefits (by simply stating they have married) on the very day they marry, without regard to their financial situation.

F. 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, at least 35 unions have changed their policies to include domestic partner coverage.

G. Waivers and Exceptions

To allow the City to continue to conduct needed business where there are no contractors willing to comply, the Ordinance includes the opportunity for City departments to request that waivers be applied in certain circumstances. Use of the majority of these waivers is contingent upon an effort to get the prospective contractor to comply and on the Human Rights Commission's review and approval.

Waivers are permissible where:

- there is only one source for a needed good or service or only one party with an interest in real property;
- there is an emergency that threatens public health or safety;

¹⁶ This is true, in part, because there are fewer pregnancy and childbirth-related medical expenses associate with domestic partners.

- a public entity offers the City needed goods or services of a quality or accessibility that is unavailable from another source;
- there are multiple sources for a needed good, service or interest in real property but none is willing to comply;
- a transaction entered into through a bulk purchasing arrangement established by a governmental or regional entity would actually reduce the City's purchasing costs and would be in the City's best interest;
- it is necessary to avoid conducting business with an entity that was set up or is being used for the purpose of evading the intent of the Ordinance.

In the first 13 months of implementation (June 1, 1997 – June 30, 1998),¹⁷ City departments requested 1,474 waivers, as follows:

Sole Source

520 approved
56 denied
15 withdrawn¹⁸

Emergency

11 approved
2 denied
2 withdrawn

Public Entity Contractors

42 approved

Multiple Non-compliant Prospective

43 approved
1 withdrawn

Bulk Purchasing Arrangement

1 approved

In addition, 781 Blanket Sole Source Forms (HRC-12B-104) were filed by at least 26 different departments.¹⁹

¹⁷ The month of June 1997 has been incorporated into the first year of experience to account for the fact that the Ordinance was enacted on June 1, 1997, one month before the start of the City's fiscal year.

¹⁸ Waivers are usually withdrawn because the contractor came into compliance.

¹⁹ This form was developed to address the repetition of waiver requests for items that would routinely be approved as a sole source, such as subscriptions to professional journals or certain governmental permits and licensing fees.

In the second year of implementation (July 1, 1998 – June 30, 1999), City departments requested a total of 1,393 waivers, as follows:

Sole Source

284 approved
8 denied
2 withdrawn

Emergency

6 approved

Public Entity

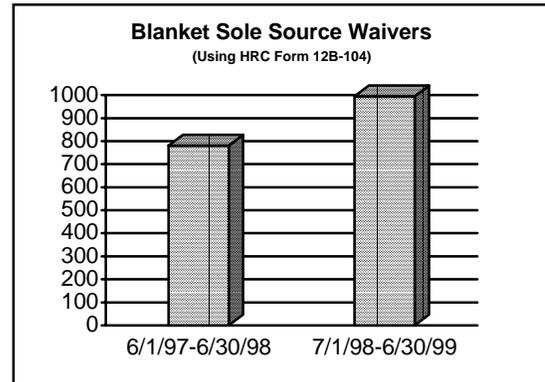
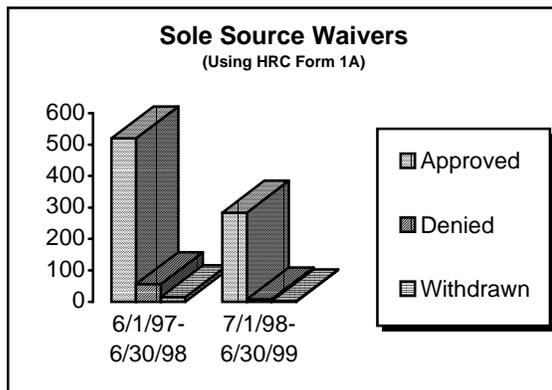
Contractors

33 approved

Multiple Non-compliant Prospective

66 approved

In addition, 994 Blanket Sole Source Forms were filed by over 27 different departments.



The decrease in the total number of waivers requested and granted from the first fiscal year (which includes 13 months) to the second can be attributed to an increase in the number of compliant contracting sources. The increase in the number of Blanket Sole Source forms filed in the second year can be attributed to this form's introduction part-way through the first fiscal year.

To further reduce the use of non-compliant contractors, outreach needs to be conducted to industries where no compliant entities are found. A concerted effort to educate non-complying companies could be undertaken, sending them letters each time a waiver is sought that reinforces the low-cost and high-value of ending discrimination in benefits and offers the City's assistance with compliance. In addition, non-compliant companies, especially those that serve the general public, can be publicly identified and encourage to comply through a published list of non-compliant companies.

IV. Related Legislative Activity

A. Contracting Legislation

As news of the Ordinance's success has spread, the Commission has begun receiving inquiries from other jurisdictions considering the adoption of similar provisions. On July 1, 1998, the San Francisco Redevelopment Agency implemented contracting rules almost identical to those contained in the Ordinance. On May 17, 1999, the San Francisco County Transportation Authority adopted a similar policy, which went into effect on July 1, 1999.²⁰

The first jurisdiction outside of San Francisco to enact similar legislation was Broward County, Florida, the county encompassing the city of Ft. Lauderdale. Taking a slightly different approach, that law, which was enacted in January 1999, gives an advantage in bidding to businesses offering domestic partner benefits. To date, legal challenges to Broward County's efforts have failed; however, opponents have stated their intent to pursue their legal claims on appeal.

The Cities of Berkeley, Los Angeles and Seattle are actively pursuing the enactment of legislation similar to the Equal Benefits Ordinance. Commission staff has assisted in this effort by providing resource information and expertise to representatives from both cities. Consideration of Equal Benefits legislation is taking place in a variety of other cities, including New York, West Hollywood and Boston.

B. Other Domestic Partner Legislation

State of California. The California legislature currently is considering several bills that would significantly impact the rights of domestic partners. Currently pending measures include:

- SB 75,²¹ that would:
 - establish a state-wide domestic partnership registry for same-sex couples
 - provide health facility visitation rights to domestic partners
 - provide domestic partners eligibility for health insurance benefits through the Public Employees Retirement System

- AB 901, that would:
 - amend the California Personal Income Tax Law to provide to employees with domestic partners the same tax benefit now available to employees

²⁰ Both the Redevelopment Agency and the Transportation Authority are quasi-state entities with Commissioners or committee members appointed by the San Francisco Mayor or Board of Supervisors.

²¹ AB 26 and AB 107 contain similar provisions.

with spouses allowing an exclusion from gross income tax for certain costs of medical care, employer-provided health or accident insurance and health insurance costs of self-employed individuals

- SB 118, that would:
 - amend the California Family Rights Act to allow employees time off work to care for an “individual who depends on the employee for immediate care and support”

City and County of San Francisco. In March 1998, Mayor Brown issued an executive order mandating that domestic partners and spouses be treated equally by City departments serving the public. In August 1998, San Francisco amended its nondiscrimination laws to prohibit public accommodations discrimination based on domestic partner & marital status. In July 1999, legislation was enacted that prohibits discrimination, in any City programs and services, between members of the public with spouses and those with domestic partners. This ordinance also requires City departments to include the term “domestic partner” wherever the term “spouse” is used on City forms. A second piece of legislation passed that month permits anyone authorized by state law to perform marriage ceremonies (such as members of the clergy) to also perform domestic partner ceremonies.

V. Lawsuits and Congressional Challenges

A. Lawsuits

Three lawsuits have been filed against the City challenging the legality of the Ordinance.

Air Transport Association, et. al. v. City and County of San Francisco, et. al. The first was filed by the Air Transport Association, 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 City Charter.

After a motion for summary judgment was filed by the ATA, a hearing was held before 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 what benefits the 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.

For companies such as the airlines, the Court found that 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 acts as a regulator, it cannot require that contractors provide nondiscriminatory health and pension benefits.

The second part of the case addressed the provision of benefits not covered by ERISA, such as bereavement leave, family medical leave, and company discounts (such as the flight benefits offered by the airlines). The Court established a test requiring the airlines to show that providing these non-ERISA benefits would burden them so heavily that their routes in and out of San Francisco would be impacted. In a decision issued by Judge Wilken on May 27, 1999, the City's ability to enforce the provision of non-ERISA benefits was upheld; the Court found that the airlines had not met their burden.

Attorneys for the airlines filed a motion with the Court to enjoin this decision until the case could be heard on appeal. On July 2, 1999, the City won its motion opposing an injunction. The Court's order stated that "the public has a strong interest in preventing discrimination, and the denial of equal compensation causes significant injury both to the public and to the individuals employed by [the Airlines]." The airlines appealed the denial of the injunction as well as the Court's ruling on the merits of the case. On July 30, the U.S. Court of Appeals for the Ninth Circuit once again denied the Airlines' request. Within hours, United Airlines, one of the nation's largest airlines and the largest airline-employer in San Francisco, announced that it would be offering domestic partners benefits to the same-sex partners of its employee population worldwide. United further stated that benefits for opposite-sex couples would be limited to employees in San Francisco and might be withdrawn if a Court decision allows them to do so. It also announced that, along with the rest of the airlines, United would be continuing its appeal of the Court's rulings. A few days later, American Airlines followed suit.

P. M. & M. Electric v. City and County of San Francisco, et. al. 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. Because the company had never sought a City contract, the case was voluntarily dismissed based on the company's lack of standing.

S.D. Myers, Inc. v. City and County of San Francisco, et. al. The third lawsuit was filed in December 1997 by an Ohio-based company claiming they were denied a City contract because their anti-gay 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. On May 27, 1999, the U.S. District Court issued a decision upholding the application of the Equal Benefits Ordinance to this contractor. Contrary to the arguments made on behalf of S.D. Myers, the Court found that California's marriage and community property laws do not override the City's ability to enact legislation that protects the rights of domestic partners and spouses. An appeal of this decision has been filed with the U.S. Court of Appeals for the Ninth Circuit.

B. Congressional Challenges

On July 29, 1998, the U.S. House of Representatives voted 214-212 to amend a housing appropriations bill to prevent the City from spending any federal housing money to implement the Equal Benefits Ordinance. Frank Riggs, who at the time was the outgoing Republican Representative from Windsor, CA, initiated the attempt. At risk was \$260 million in federal HUD and VA funds. This amendment was dropped during the House-Senate conference.

VI. **Impact of the Ordinance**

The Equal Benefits Ordinance has created major changes across the country. In the past twenty-five months of implementation, the Ordinance has propelled the issue of domestic partner benefits from the fringe toward center-stage of the employee benefits discussion. It has created a new market in the insurance industry, to which well over one hundred insurers from across the country have responded. It has become an issue for unions to address, as more and more union members and their employers are seeking recognition for domestic partners.

Close to a million people work for companies offering domestic partner coverage as part of the City's program, which means that approximately 30,000 domestic partners receive medical insurance coverage as a result. And hundreds of individuals grieving

over the death of a loved-one, or facing the need to care for a loved-one who has a serious illness, now are guaranteed the time they need to do so, without fear of discrimination or reprisal.

San Francisco's demonstrated commitment to conducting business only with companies that do not discriminate is contagious. Other Cities are developing similar programs, which will continue to increase the number of people eligible for equality at work and will continue to prompt companies across the country to end their discriminatory practices.

VIII. Current Challenges

The Equal Benefits Ordinance's great success leads to more that can be done in this fight for equality. In addition to continuing to assist other jurisdictions with their analysis and adoption of similar legislation, the Human Rights Commission and City officials must work to reduce the number of waivers used. This can be done by focused outreach to industries where compliance is low, and by continuing to enlist the support of other City departments in order to step up their role in fostering compliance with the contractors they frequent. Nondiscrimination in contracting can be a policy adopted by private industry as well as the government, and the City can play a role in educating business owners and interested employee groups about that possibility. The problem of insurance companies imposing surcharges, while diminishing, still exists. The City can play a role in working with the insurance industry and state insurance regulators to curb this unfounded practice. A similar role can be played in working to eliminate the imposition of additional qualifying requirements on domestic partners seeking insurance coverage.

APPENDIX A

Twenty Largest Complying Companies

<u>Name of Company</u>	<u>No. of Employees</u>
1. Bank of America/NationsBank	167,000
2. Wells Fargo Bank/Norwest Bank	100,000
3. Hewlett-Packard	65,000
4. Chase Manhattan Bank	51,000
5. Pacific Bell	45,000
6. Xerox Corporation	40,000
7. IKON Office Solutions	35,000
8. Digital Equipment Corp	26,000
9. SmithKline Beecham	20,000
10. KMPG Peat Marwick	19,000
11. Danka Corporation	15,000
12. State Street Corporation	13,000
13. Follett Campus Resources	10,000
14. Parsons Corporation	10,000
15. Union Bank of California	10,000
16. Wang Laboratories	10,000
17. Service America Corporation	8,313
18. Cisco Systems	8,000
19. Booz Allen & Hamilton	6,000
20. Nextel of California	6,000

APPENDIX B

Resource Materials

Domestic Partner Registry Chart – provides overview of domestic partnership registries across the United States; lists how to register, rights and responsibilities involved.

Corporate Mentors Program – a pool of corporate directors and human resources personnel who have completed the Equal Benefits compliance process and are willing to speak with representatives from other companies where domestic partner benefits and Equal Benefits compliance are being considered.

Equal Benefits Brochure – answers frequently asked questions and provides list of resource materials and website address.

Insurance List – a reference guide to insurance companies from across the United States that are willing to write insurance policies inclusive of domestic partner coverage. The list currently includes companies in all fifty states and the District of Columbia.

Overview – a four page overview of the Equal Benefits Ordinance, compliance requirements, litigation challenges and available resources.

Quick Reference Guide to Equal Benefits Compliance – answers frequently asked questions and assists reader with completing basic forms and identifying documents required for compliance.

Resource Materials Booklet

- Fact Sheets – provides in-depth information on providing nondiscriminatory health insurance and pension plans to employees with spouses and employees with domestic partners, and the tax implications of doing so.

- Sample Policies – provides model language for employers looking to:
 - Create or modify leave and nondiscrimination policies
 - Establish an affidavit of domestic partnership
 - Explain the tax consequences of some domestic partners benefits

Rules of Procedure – implementation guidelines adopted by the Human Rights Commission that establish compliance criteria and provide useful information on a wide variety of compliance-related topics.

Six Month Report – issued January 6, 1998, this report gives a detailed summary of the Commission’s implementation efforts and the compliance experience of the Ordinance’s first six months.

Website – found at www.ci.sf.ca.us/sfhumanrights this site offers access to compliance forms, resource materials and the text of San Francisco Administrative Code Chapters 12B and 12C.

Or return via facsimile to: 415-431-5764