

FIVE YEAR REPORT

ON

THE SAN FRANCISCO EQUAL BENEFITS ORDINANCE

**SAN FRANCISCO
HUMAN RIGHTS COMMISSION**



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I. Executive Summary

On June 1, 1997, the City and County of San Francisco set in motion a revolution. With its longstanding history of anti-discrimination laws as a foundation,¹ San Francisco enacted the first law in the United States to address discrimination in employee benefits for employees with domestic partners. Referred to as the Equal Benefits Ordinance, the law requires San Francisco's City contractors to provide the same benefits to employees who have domestic partners² and employees who are married. This report looks at the first five years of implementation – studying the law's impact in San Francisco and across the country.

Despite the fact that the concept of offering domestic partner benefits to employees was already over a dozen years old at the time the Equal Benefits Ordinance was enacted, only 500 employers in the U.S. offered such benefits. Today, over 4,500 employers extend these benefits. The San Francisco Equal Benefits Ordinance has been credited with playing a major role in this explosion of domestic partner benefits³ with over 75% of the companies offering domestic partner benefits doing so in compliance with the City's contracting requirements. During the first five years of implementation, the concept of employer-provided domestic partner benefits moved from the far fringes of the fringe-benefit landscape to become commonplace among employee benefits offerings.

The number of employees working for City contractors that have utilized medical benefits for their domestic partners has surpassed 50,000 and can be found in at least 39 states and 500 cities across the country. Even when, a year after the law went into effect, a court decision gave companies the option to limit where they extended nondiscriminatory benefits, just over one percent of the complying companies chose to do so.

By prompting a surge in the number of employers offering domestic partner benefits, the San Francisco Equal Benefits Ordinance played a key role in building a foundation for the dramatic expansion of California laws protecting the rights of domestic partners.

Geoff Kors, Executive Director
California Alliance for Pride and Equality

The legal landscape for domestic partners has changed significantly during the past five years. The number of governmental domestic partnership registries has nearly doubled since the Equal Benefits Ordinance was passed and the benefits associated with registration continue to expand.⁴ While at first these registries represented a symbolic means for recognizing committed relationship, more and more registration now

brings with it some of the rights associated with marriage. With the opportunity for domestic partners to identify themselves in the U.S. Census, growth in the

¹ In 1972, San Francisco became the first government in the United States to pass a law barring discrimination on the basis of sexual orientation. (S.F. Administrative Code Chapter 12B.)

² The term "domestic partner" is defined in the Ordinance as any person who has "a currently registered domestic partnership with a governmental body pursuant to state or local law authorizing such registration." (S.F. Admin. Code Chapter 12b.1(c).) This includes both same- and opposite-sex couples.

³ "State of the Workplace" Human Rights Campaign 1999.

⁴ See page 11 for a discussion of the recent enhancement of the rights of domestic partners in California.

number of domestic partnerships cannot be disputed. In fact, the 2000 Census noted the presence of same-sex domestic partnerships in all Congressional districts and in all but 22 counties in the entire United States.

Even as the U.S. economy has experienced a downturn, the number of City contractors extending domestic partner benefits continues to increase and the use of waivers to contract with non-compliant companies steadily decreases. Also impressive in this economic climate, is the continued growth in the number of other cities across the United States enacting Equal Benefits Ordinances in their jurisdictions.⁵

II. Compliance Update

This report examines the implementation effort of fiscal year 2001-2002 as well as the impact and performance of the Equal Benefits Ordinance since its enactment five years ago.

A. Employers Offering Domestic Partner Benefits

From the first offering of domestic partner benefits by the Village Voice Newspaper in 1982 until the introduction of the Equal Benefits Ordinance fifteen years later, only 500 companies extended domestic partner benefits to their employees. Five years later, that number has surged. As of June 30, 2002, the Human Rights Commission helped 3,500 City Contractors extend benefits to the domestic partners of their employees. Nationwide, over 4,500 employers have been documented as offering such benefits. (See Fig. 1.)

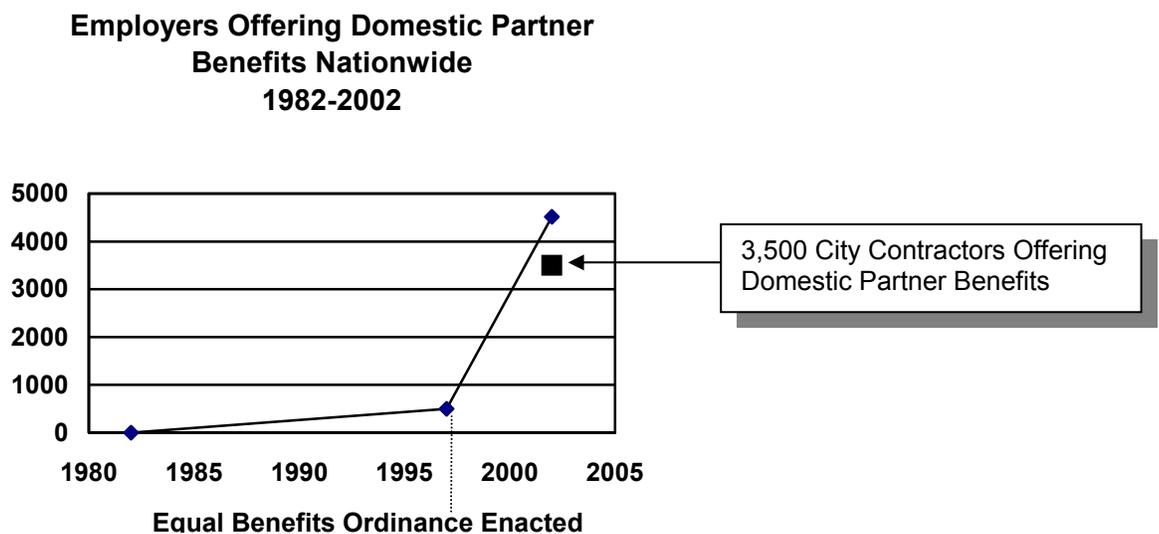


Fig. 1

⁵ See page 10 for a list of jurisdictions with Equal Benefits Ordinances.

B. Complying Companies

As of June 30, 2002, 11,233 contractors submitted compliance paperwork to the Commission. Of those, the status of 8,163 has been finalized with 7,669 (94%) of them having been placed into compliance (having ended any existing discrimination in the provision of benefits) and only 494 (6%) determined to be non-compliant. (See Fig. 2.) This rate of compliance has slowly increased over the past five years. (See Fig. 3.) The remaining 3,070 are still pending.⁶

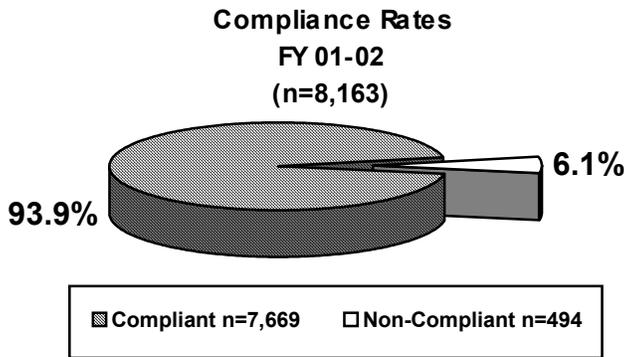


Fig. 2

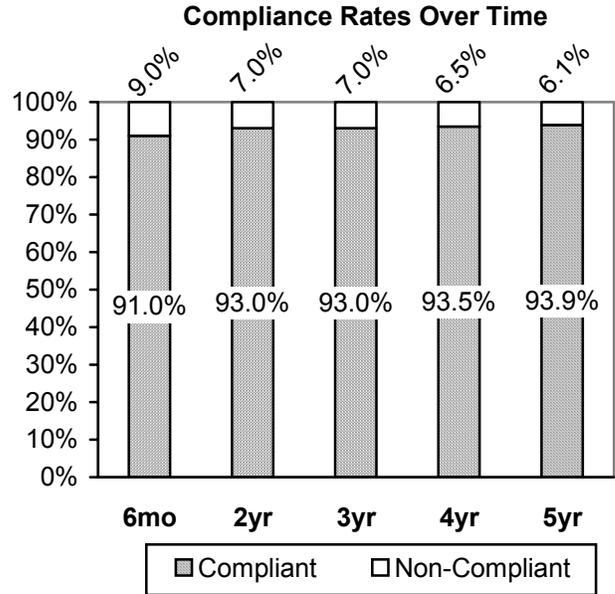


Fig. 3

C. Compliance By Type

The goal of the Equal Benefits Ordinance is to eliminate discrimination in the provision of employee benefits offered to married employees and employees with domestic partners. Contractors may avoid discriminating, and thereby comply with the Ordinance, in one of three ways. They may: (1) offer employee benefits that don't discriminate between spouses and domestic partners; (2) offer no employee benefits based on marriage or domestic partnership; or (3) have no employees. Of the 7,669 contractors complying by the end of fiscal year 2001-2002, forty-six percent (3,501) offer nondiscriminatory benefits to their employees, twenty-nine

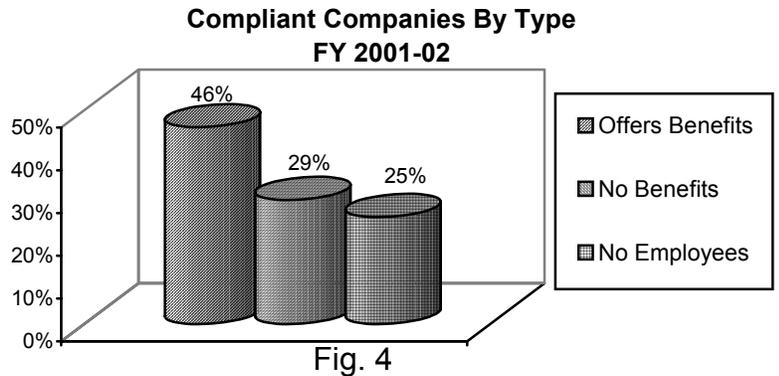


Fig. 4

⁶ Of the pending contractors (which reflects 27% of the Declarations received to date), the vast majority (3,026) are pending because the contractor has not yet responded to the Commission's request for more information. The bulk of these contractors most likely are those that at one time sought to do business with the City but are no longer interested. (For instance, a company that bid on a contract but was not the successful bidder.)

percent (2,216) do not offer any benefits based on marriage or domestic partnership to their employees,⁷ and twenty-five percent (1,952) do not have any employees (such as sole proprietors). (See Fig. 4.)

Over the past five years, the proportion of contractors complying with the Equal Benefits Ordinance in each of these three ways has remained fairly constant. There has been a slight increase in the percentage of companies offering nondiscriminatory benefits, mostly reflected within the first two years, and a rise in the percentage of contractors without employees. The most significant change has been a 6% decrease in the number of companies not offering benefits. This decline has continued over the five years of implementation and refutes the assertion that Equal Benefits legislation encourages employers to take away benefits they might otherwise offer. (See Fig. 5.)

Compliance Type Over Time

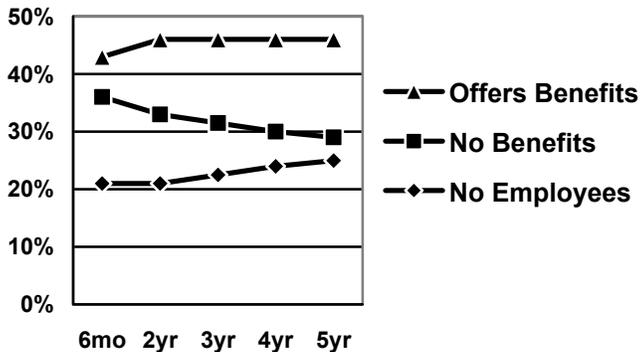


Fig. 5

D. Company Size

As of the 2001-2002 fiscal year, 52 large companies (5,000 or more employees), 173 medium sized companies (500 to 4,999 employees) and 3,219 small companies (under 500 employees) comply by offering nondiscriminatory benefits.⁸ (See Fig. 6.) These proportions have remained fairly consistent during the life of the Ordinance (see Fig. 7) and because they are reflective of the U.S. business community in general,⁹ they indicate that, regardless of company size, compliance with the Equal Benefits Ordinance is equally feasible.

**Compliant Companies By Size
FY 01-02**

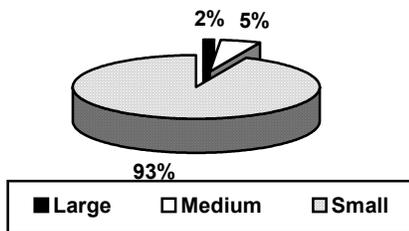


Fig. 6

Compliant Companies By Size Over Time

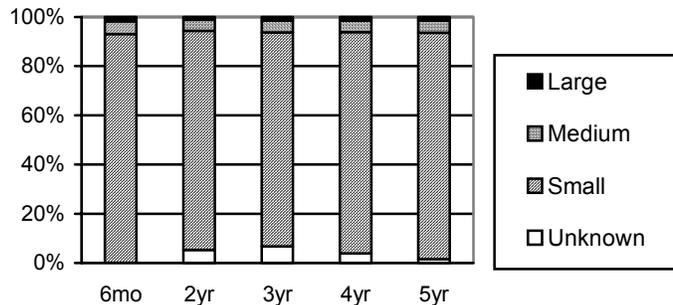


Fig. 7

⁷ The majority of these contractors have fewer than twenty employees in their workforce and offer no employee benefits.

⁸ An employee count currently is not available for 57 of the complying companies.

⁹ Statistics of U.S. Businesses (SUSB), U.S. Census Bureau, 1999.

E. Employees Covered

City contractors offering domestic partner benefits employ a nationwide pool of approximately 1,722,000 people, reflecting an increase of almost 246,000 people in fiscal year 2001-2002. 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 there are

approximately 51,660 people who have taken advantage of this benefit through the programs offered by City contractors. This is an increase of approximately 7,380 insured domestic partners in the past year alone and reflects a steady growth in the number of individuals assisted by the City's policy. (See Fig. 8.) Of course, these figures don't take into account the children of domestic partners who also become eligible for insurance coverage, nor are other types of benefits, such as bereavement leave or retirement benefits, reflected here.

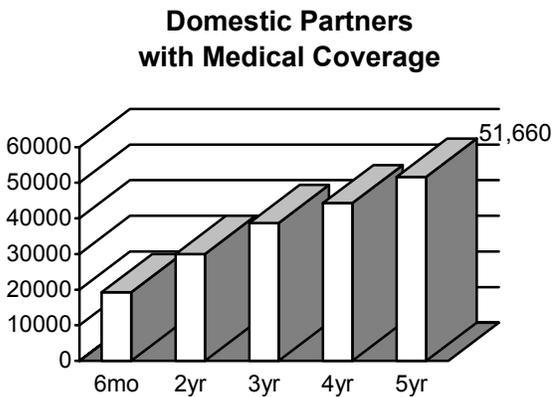


Fig. 8

F. Companies Limiting Compliance

In April 1998, a U.S. District Court ruling¹⁰ changed the scope of the Ordinance by allowing companies to limit their compliance geographically and allowing some companies to limit which benefits they offer in a nondiscriminatory manner.¹¹ When a company elects to comply on this basis, their compliance effort must be reviewed each time a new contract is contemplated to ensure that the scope of compliance is appropriate to the anticipated scope of work. Hence, this form of compliance is considered to be on a "contract-by-contract" basis.

Since the 1998 ruling, only 95 companies have elected to comply on a limited basis by continuing to discriminate in certain locales or in how certain benefits are offered. This reflects an increase of only 18 companies in the past year. Companies complying on a limited basis comprise just slightly more than one percent of the total number of complying companies (which includes those offering nondiscriminatory benefits as well as those not offering benefits or having no employees), and only 2.7% of complying companies that offer benefits. Sixty-two of these companies have limited the geographic reach of their compliance; five have limited

Shortly after my employer extended domestic partner benefits, my partner's father died. Without the Equal Benefits Ordinance, I wouldn't have had the opportunity to travel with my partner and support him and his family during a difficult time.

Crispin Hollings

¹⁰ Air Transport Association, et.al., v. City and County of San Francisco, et.al., 992 F.Supp.1149 (N.D. Cal. 1998).

¹¹ See page 12 for a discussion of litigation challenges to the Equal Benefits Ordinance.

the benefits offered and twenty-eight have limited both.¹² Since 1998, the use of contract-by-contract compliance has not risen significantly. (See Fig. 9.) In the first year it was available, it represented slightly less than one percent of the total number of compliant companies (.9%). In the fifth year, it represents just slightly more than one percent (1.2%).

Contract-by-Contract Compliance Over Time

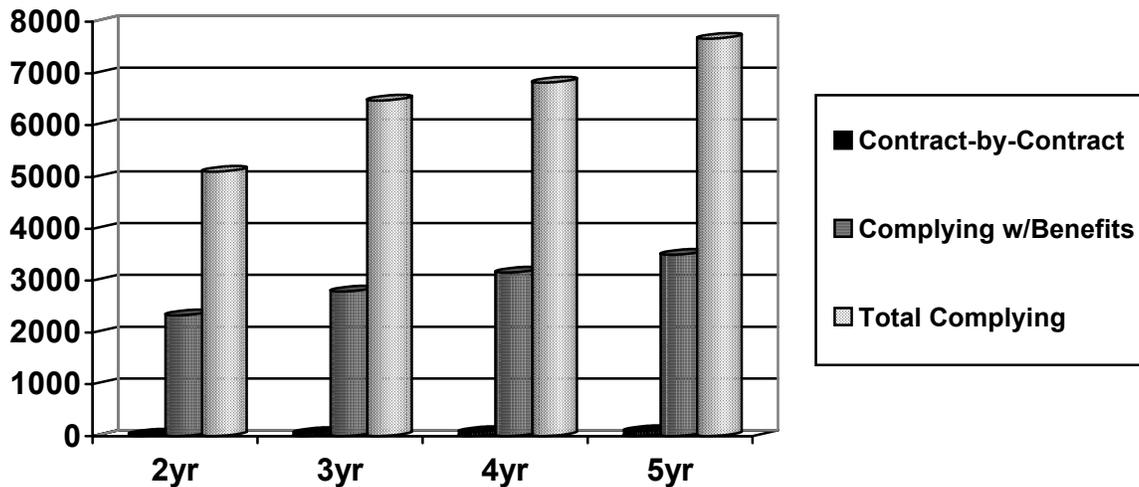


Fig. 9

G. Geography

The national impact of the Equal Benefits Ordinance is perhaps best seen when looking at where in the United States complying companies are located. Since the City and County of San Francisco conducts business in a broad range of industries (from operating a hospital, airport, power plant and train system to issuing bonds, running museums and feeding the bison residing in Golden Gate Park) it attracts contractors from every state in the nation.

After five years of Equal Benefits implementation, compliant contractors can be found in at least 44 states, plus the District of Columbia, and in over 900 cities across the country.¹³ The majority, approximately 87%, are located in California, with 41.5% located in San Francisco. Companies that comply by offering benefits can be found in at least 39 states and the District of Columbia, and in almost 500 cities nationwide. (See Fig. 10.)

¹² The vast majority of companies limiting compliance in both location and type of benefits offered are tenants at San Francisco International Airport.

¹³ 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.

Compliant Companies by State



Fig. 10

H. Waivers

In limited circumstances, when the City has no choice but to contract with a company that refuses to end its discriminatory behavior, a waiver of the ordinance may be granted. Primarily, this occurs when the contractor is the sole source for needed services or goods. Occasionally, there will be more than one potential contractor and all will refuse to comply. When this circumstance occurs, competitive market forces are used to encourage at least one potential contractor to comply.

Other types of waivers permitted by the Ordinance include when:

- there is an emergency that threatens public health or safety;

- a public entity offers the City needed goods or services of a quality or accessibility that is unavailable from another source, or the proposed contract is necessary to serve a substantial public interest;
- 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.

This past year, City departments requested a total of 1,287 waivers, 1,263 of which were approved. Use of the different types of waivers over the past five years breaks down as follows:

	1 YR ¹⁴			2 YR			3 YR			4 YR			5 YR		
	A	D	W	A	D	W	A	D	W	A	D	W	A	D	W
Sole Source	1301	56	15	1278	8	2	1238	14	2	1133	10	3	1154	13	6
Public Entity	42	-	-	33	-	-	40	-	-	26	1	-	31	-	-
Emergency	11	2	2	6	-	-	2	-	-	2	-	-	6	-	1
Bulk Purchasing¹⁵	1	-	-	-	-	-	1	-	-	1	-	-	-	-	-
No Co. Complies	43	-	-	66	-	-	90	-	2	54	2	-	72	3	1
Sham/Shell	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL	1398	40	17	1383	8	2	1371	14	4	1216	13	3	1263	16	8

A = Approved, D = Denied, W = Withdrawn

Table 1

While waiver use in fiscal year 2001-2002 reflects a slight increase of 3.9% in waivers approved, there has been a much larger decrease of 10.7% since the Ordinance became effective. (See Table 1 and Fig. 11.)

It is important to note that some waivers are granted in situations where the contracting entity does in fact offer domestic partner benefits, but those benefits are offered on a basis that is more limited than what the Equal Benefits Ordinance requires. For instance, some companies

¹⁴ The month of June 1997 has been incorporated into the first year of experience reflected on this table as well as in Fig. 11, below, to account for the fact that the Ordinance was enacted on June 1, 1997.

¹⁵ The authority to review waivers where there are no compliant companies, where the contractor is a governmental bulk purchasing agency, or to avoid use of a sham/shell company, was granted to the Human Rights Commission on December 22, 1997.

extend domestic partner benefits only to same-sex domestic partners. Other companies may extend medical insurance benefits to domestic partners, but refuse to amend their leave policies or retirement plans so that employees with domestic partners are treated in the same manner as employees with spouses.

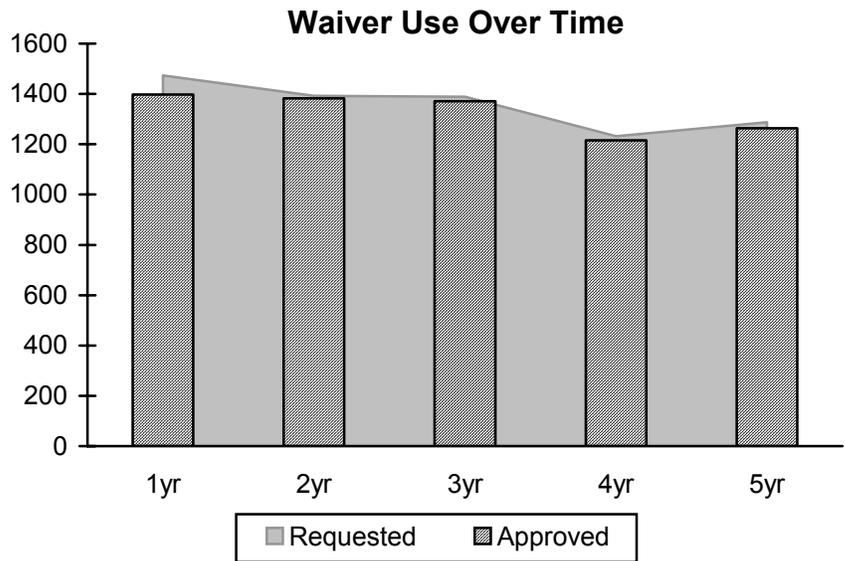


Fig. 11

The University of California (UC), which over the past five years has received the most City dollars as a result of waivers, is an example of this circumstance. UC offers medical insurance benefits to same-sex domestic partners and retirement benefits to all domestic partners. While their benefits scheme is not eligible for Equal Benefits compliance status (at a minimum because opposite-sex domestic partners are not fully included) their policies are more in line with the intent of the legislation than would be a company that offers no domestic partner benefits whatsoever.

Of the ten entities receiving the largest amount of City money as a result of waivers, one¹⁶ has since become compliant with the requirements of the Ordinance, five¹⁷ offer domestic partner benefits that are not fully compliant with the City's requirements, and the remaining four¹⁸ offer no domestic partner benefits. Of these four, three are public entities. It is common for the City to contract with other public entities in order to satisfy a Federal or State mandate. For instance, all three public entities were contracted with to fund noise insulation projects that were mandated by the State of California in order for the City to be permitted to continue to operate its airport.

The Commission continues to work with departments and contractors to reduce the number of waivers granted each year. Even for contracts where a waiver might be appropriate, the Commission and contracting departments work together to convince companies to comply so that a waiver is unnecessary.

I. Insurance Industry

In addition to influencing the employee benefit policies of City contractors, the Equal Benefits Ordinance has had a noticeable impact on the insurance industry. When the Ordinance was first enacted, only a handful of insurance companies were willing to write policies that covered domestic partners. Even fewer were willing to do so for employers with a small number of employees and many insurers charged an additional fee when domestic partners were included.

¹⁶ McKesson HBOC, Inc.

¹⁷ University of California, Raytheon Company, Electronic Data Systems, Avaya, Inc., and IBM.

¹⁸ Allegiance/Cardinal Healthcare, City of Daly City, South San Francisco Unified School District, City of San Bruno.

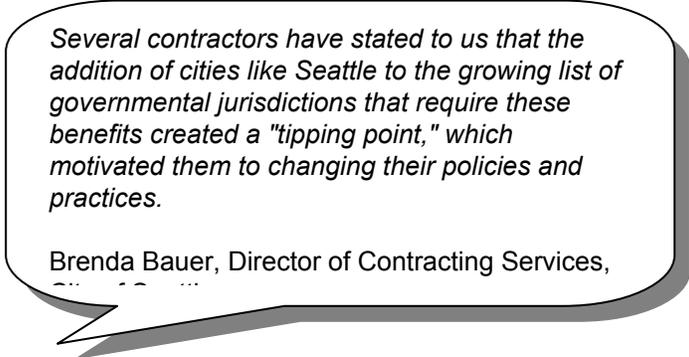
As more and more companies from across the country approach insurers requesting domestic partner coverage, the insurance industry has responded. Today, it is much easier for employers to find insurance plans inclusive of domestic partners. With market competition at play, and clear actuarial statistics indicating that claims for domestic partners are no more expensive than those of spouses, the practice of levying surcharges has virtually been eliminated. In California and Maine, laws are in effect requiring insurance companies that provide spousal coverage to provide the same coverage to domestic partners.¹⁹

III. Legislative Update

The legislative landscape concerning domestic partners has expanded dramatically over the past five years with an increase in the number of domestic partnership registries and equal benefits laws, and the creation of new rights for domestic partners.

A. Contracting Legislation

Since San Francisco enacted the Equal Benefits Ordinance in 1997, the law has been replicated in six other jurisdictions up and down the Western seaboard.²⁰ Most recently, Oakland, California passed an Equal Benefits law that took effect on July 1, 2002. Broward County Florida enacted a provision in 1999 giving an advantage in bidding to businesses offering domestic partner benefits.²¹ In 2001, Portland, Maine passed a law requiring organizations accepting City funds for certain housing and neighborhood services programs to offer domestic partner benefits to their employees.²²



Several contractors have stated to us that the addition of cities like Seattle to the growing list of governmental jurisdictions that require these benefits created a "tipping point," which motivated them to changing their policies and practices.

Brenda Bauer, Director of Contracting Services,

Other cities continue to contact the Commission for information as they consider enacting Equal Benefits Ordinances. These include the cities of Atlanta, Georgia²³ as well as New York City, where an Equal Benefits Ordinance was introduced for consideration by the City Council in September 2002. As more and more cities enact such measures, not only will more city contractors offer domestic partner coverage to their employees, the availability of domestic partner insurance products will increase as well.

¹⁹ California Government Code Section 31780.2; City of Portland Code of Ordinances Chapter 13.6-34.

²⁰ Equal Benefits Ordinances are in force in Berkeley, City of Los Angeles, Oakland and San Mateo County California, Seattle and Tumwater Washington. In addition, on July 1, 1998, the San Francisco Redevelopment Agency implemented contracting rules almost identical to those contained in the Ordinance, and the San Francisco County Transportation Authority adopted a similar policy, which went into effect on July 1, 1999. Both of these bodies are quasi-state entities with commissioners or committee members appointed by the San Francisco Mayor or Board of Supervisors.

²¹ Broward County Code Article VI, Chapter 16½-157 (1999).

²² Chapter 347, H.P. 1256, L.D. 1703, Sec. 1.24 MRSA Section 2319-A, et. seq. (2001).

²³ Atlanta's City Council passed a one-paragraph version of an Equal Benefits Ordinance on the last day of its 2001 session, which subsequently was vetoed by the Mayor.

B. Domestic Partnership Registries

When the ordinance was first enacted, there were only 33 jurisdictions where domestic partners could register their relationships. Now, there are at least 63 such registries, 58 local government registries (in 21 different states), and five states registries.²⁴ Some of these registries allow partnerships to be formed even when neither partner lives or works in the jurisdiction (which is similar to most marriage laws). This makes it possible for couples to register even when there is no registry in their city or state.²⁵

In addition to giving domestic partners a place where their relationships may be formalized, government-sponsored registries act as an important stepping stone in the path to creating legal rights for domestic partners. Having a mechanism by which partnerships may be counted helps elected officials demonstrate the existence of a constituency in need of such legal protections. In forty-one of the jurisdictions with registries, some legal right or protection is extended along with registration. These rights are diverse and include hospital and jail visitation, the power to make medical decisions for an incapacitated partner, rent control and eviction protections, access to children in school, tax exemptions and more.

C. California Domestic Partnership Legislation

The California legislature continues to aggressively pursue expanding the rights of domestic partners under State law. Each session, several bills are introduced that, if passed, would significantly enhance the rights of domestic partners within the State. On January 1, 2002, the legal protections contained in one such measure, Assembly Bill 25 (Migden), went into effect. This law offers a variety of new legal protections and benefits for domestic partners in California. Three of the new law's provisions are particularly significant to the Equal Benefits Ordinance. The first exempts domestic partner health insurance benefits from state income taxation. The second allows use of employer-sponsored sick leave to care for an ill domestic partner or child of a domestic partner. The third, mentioned above, requires that health insurers doing business in California offer domestic partner coverage whenever spousal coverage is offered.

In the most recent legislative session four domestic partner-related bills were successfully passed by both houses of the Legislature and signed into law by Governor Davis. Among them is Assembly Bill 2216 (Keeley), which gives registered domestic partners the right to inherit a specified share of a partner's property if the partner dies without a will. Also included is Senate Bill 1661 (Kuehl), that establishes an insurance program to provide up to 6 weeks of partially paid leave for people to take time off work to care for a seriously ill domestic partner, spouse, child, or parent, or to bond with a newborn or newly adopted child.

Other domestic partner bills did not fare as well. Assembly Bill 1080 (Kehoe), which would have created a State version of an Equal Benefits law, successfully passed out of the Senate but reached the Assembly just three days before the end of the legislative session, which

²⁴ Two of the state registries (Massachusetts and New York) are for state employees only. The other three are California, Hawaii and Vermont.

²⁵ The West Hollywood, California registry, for example, allows registration by mail.

proved too late for consideration. Governor Davis vetoed Assembly Bill 2862 (Migden), which would have made changes to existing domestic partner laws affecting the health care and retirement benefits of state employees. Finally, Senate Constitutional Amendment 9 (Speier) would have, under certain circumstances, exempted co-owners of a primary residence from property tax reassessment if a transfer occurs due to the death of one of the co-owners. This would have eased a tax burden on surviving domestic partners that is not faced by surviving spouses. This measure was passed by the Senate but got held up in the Assembly Appropriations Committee.

D. Domestic Partnership Rights in San Francisco

San Francisco continues to be in the forefront of expanding the rights of domestic partners. In October 2002, San Francisco became the first county in California to end the practice of reassessing domestic partners' shared property after one partner dies. Previously, the reassessment of property occurred when the deceased partner's interest in the property was transferred to the surviving partner. Married couples are exempt from this reassessment.

Under the prior system, the surviving domestic partner could face financially burdensome tax bills, especially older individuals who may have owned a home for many years and find that it is assessed at a much higher value. For some, it has meant selling their homes because the increased taxes were too onerous. As mentioned above, legislation that would make this change on a statewide basis was unsuccessful but its proponents have expressed their intent to raise it again during the next legislative session.

IV. **Litigation Update**

This past year brought successful closure to most of the litigation challenges facing the Equal Benefits Ordinance since its enactment. Two of the three the lawsuits filed against the City challenging the legality of the Ordinance have concluded with the majority of the law intact. The third remains on appeal.

A. Air Transport Association

The first lawsuit was filed by the Air Transport Association (ATA), representing a collection of the nation's largest airlines. They alleged that the Ordinance violated 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 violated the Due Process and Commerce Clauses of the U.S. Constitution and sections of the California Constitution and San Francisco City Charter. A partial decision was issued on April 10, 1998²⁶ upholding the ordinance in large part, and creating two areas of limited application with respect to particular types of City contractors.

One area of limitation created by the 1998 Court decision affects the City's ability to enforce the Ordinance with respect to a contractor's operations throughout the United States. While it

²⁶ 992 F. Supp. 1149 (N.D. Cal 1998).

is still City policy to encourage contractors to comply throughout the U.S., the City may 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. As described on page 5, very few complying contractors have chosen to comply on this limited basis.

For an even smaller group of City contractors, the 1998 decision created changes to the scope of benefits covered by the Equal Benefits Ordinance. Most often, when the City goes into the marketplace for goods, services or an interest in real property, it is acting in the role of an ordinary consumer because it wields no more power in the marketplace than other contracting entities. As such, it can require that contractors provide all benefits, including health and pension benefits, in a nondiscriminatory way.

However, in certain situations the Court felt that the City wields more power than an ordinary consumer and instead acts as a regulator. In those rare instances, the City cannot require that its contractors provide nondiscriminatory health and pension benefits; the City is preempted from doing so by a federal law regulating employer-provided health and pension plans (ERISA).²⁷ The primary effect of this ruling has been on the airlines leasing space at the City's airport.

Despite the limited impact of the law on them, the airline plaintiffs pursued an appeal of the Court decision to the extent the City was allowed to require that the airlines offer *other* (non-ERISA) benefits in a nondiscriminatory manner. This includes bereavement leave, family medical leave, and company discounts such as the flight benefits offered by the airlines. The airlines also alleged that the State of California's domestic partnership registry preempts the City's ability to enforce the Equal Benefits Ordinance. Their appeal regarding the non-ERISA benefits was unsuccessful and the preemption question was remanded to the District Court for consideration. In June 2002, the District Court rejected the preemption argument, and no appeal was filed. In the interim, many of the nation's largest airlines, including American, Delta, United and others, extended some domestic partner benefits to their employees, including the much fought-over health insurance benefits.

B. Religious-Based Lawsuits

The second and third lawsuits were filed in the names of businesses expressing religious objections to the Ordinance. Attorneys in both cases were affiliated with the American Center for Law and Justice, a non-profit legal organization associated with televangelist Pat Robertson, and both filed causes of action similar to those filed by the airlines. The first suit was filed by an electrical contracting company alleging it would be denied City contracts because of its refusal to comply with the Ordinance. Their case was voluntarily dismissed because of a lack of standing; the company had never sought a City contract. The third lawsuit, filed by S.D. Myers, Inc. an Ohio-based company, suffered defeat at both the District Court level and on appeal to the U.S. Court of Appeals for the Ninth Circuit; however, they appealed the District Court's ruling on whether the State of California's domestic partnership registry preempts the Equal Benefits Ordinance. That appeal is pending.

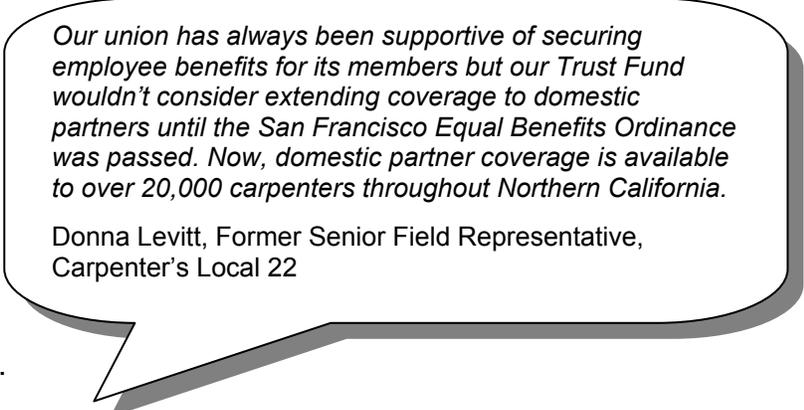
²⁷ Only 33 companies comply on this basis.

V. Impact of the Ordinance

Over the past five years, the country has witnessed a dramatic shift in the treatment of domestic partners, both in the workplace and elsewhere. There has been nearly a ten-fold increase in the number of employers offering domestic partner benefits. Currently, thirty-six percent of the Fortune 500 companies offer domestic partner benefits with that number increasing the closer the company is to the top of the Fortune list; fifty-eight percent of the Fortune 50 companies offer domestic partner benefits.

There has been a forty percent increase in the number of domestic partnership registries, and a significant expansion of the rights that come with registration. In Vermont, same-sex couples may form Civil Unions giving them all the rights conferred by the State on married couples (although no federal marriage rights are conferred). Domestic partners may now announce their relationships right alongside marriage announcements in over 144 newspapers including the *New York Times*, *Boston Globe*, *Los Angeles Times* and *Washington Post*.

In addition to San Francisco, eight other government bodies have enacted Equal Benefits Ordinances. Many more, including the key East Coast cities of New York and Atlanta, are considering such legislation, all using San Francisco's law as a model. As the number of Equal Benefits Ordinances continues to grow, more employers in a broader range of industries will find that offering domestic partner benefits makes sense. In addition, the ripple effects felt in the insurance industry and among unions will continue to spread, causing more insurers to offer domestic partner insurance products and more unions to bring domestic partner benefits to the bargaining table.



Our union has always been supportive of securing employee benefits for its members but our Trust Fund wouldn't consider extending coverage to domestic partners until the San Francisco Equal Benefits Ordinance was passed. Now, domestic partner coverage is available to over 20,000 carpenters throughout Northern California.

Donna Levitt, Former Senior Field Representative,
Carpenter's Local 22

In articulating the impact of the Equal Benefits Ordinance, perhaps the most significant fact to consider – but the hardest to quantify – is what it means to individual employees and their domestic partners to receive benefits equivalent to those given to married employees and their spouses. While it is easy to approximate the number of people employed by City contractors who are benefiting from domestic partner medical insurance (51,660), placing a value on this insurance coverage or any of the other benefits offered is much harder. The dollar amount paid for medical claims doesn't reflect the peace of mind gained by knowing that your partner will receive medical care when needed. The cost of a few days of paid bereavement leave doesn't include the value of the support provided to a domestic partner who is dealing with a death in their family. The dollar amount of retirement distributions doesn't reflect the comfort felt when structuring your retirement income to provide for the financial needs of your partner if you die first. Perhaps most importantly, any financial analysis of the impact of the Equal Benefits Ordinance can't include the added dignity felt when discriminatory treatment ends and you begin to receive equal pay for equal work.

APPENDIX A

Resource Materials

Resource materials available from the Human Rights Commission include:

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

Compliance Reports –gives detailed summaries of the Commission’s implementation efforts and compliance experience.

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