

SEVEN YEAR UPDATE

ON

**THE SAN FRANCISCO
EQUAL BENEFITS ORDINANCE**



**CITY & COUNTY OF SAN FRANCISCO
HUMAN RIGHTS COMMISSION**



July 1, 2003 – June 30, 2004

I. Introduction

This *Update* documents the performance of the San Francisco Equal Benefits Ordinance in its seventh year of implementation. Enacted on June 1, 1997, the City and County of San Francisco’s Equal Benefits law was the first in the United States to address the discrimination perpetuated by City contractors against their employees with domestic partners. By requiring City contractors to provide the same benefits to married employees and employees who have domestic partners¹ this law diverts tax dollars away from employers that continue to discriminate and toward those that treat their employees equally.

II. Compliance Update

A. Compliance Rates

As of June 30, 2004, the end of the City’s 2003-3004 fiscal year, 13,591 contractors had submitted Equal Benefits compliance paperwork to the Human Rights Commission, the department of the San Francisco City government responsible for enforcing this law. Of those, the status of 9,943 has been finalized with 94.6%² (9,404) determined to be compliant (having ended any existing discrimination in the provision of benefits) and 5.4% (539) deemed non-compliant.³ (See Fig. 1.) The rate of compliance has consistently increased over the past seven years, from 91% after the first six months of implementation to 94.6% after seven years. (See Fig. 2.)

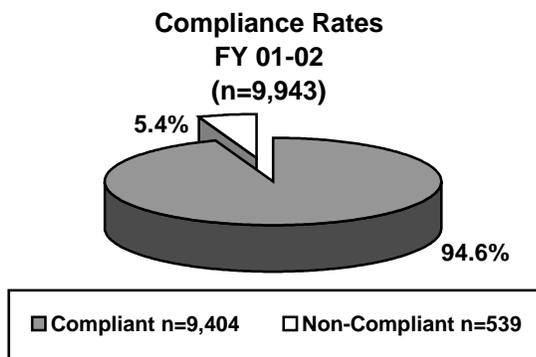


Fig. 1

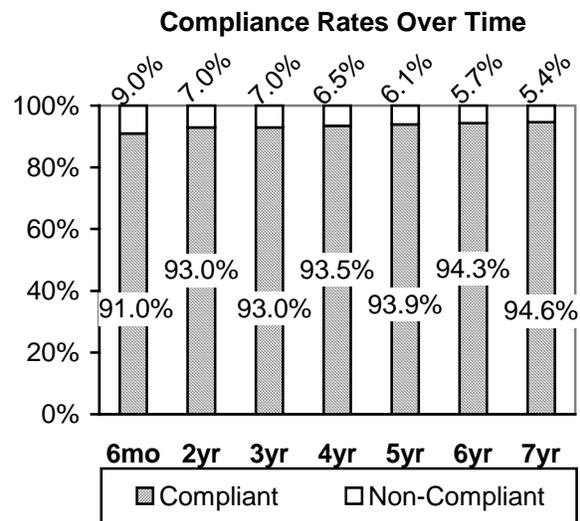


Fig. 2

¹ 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.

² This number does not include companies that are compliant on a contract-by-contract basis. See page 4.

³ The remaining 27% (3,648) are pending, with 98% (3,593) of these pending *because the contractor has not responded to the Commission’s request for more information*. These contractors most likely at one time sought to do business with the City but no longer are interested; for instance, companies that were unsuccessful bidders on a contract. The remaining two percent (55) are files awaiting review the Commission staff.

B. Types of Compliance

Since the Equal Benefits Ordinance is designed to eliminate discrimination in the provision of employee benefits, contractors may comply with the Ordinance in one of three ways. Of the 9,404 compliant contractors: 45% (4,261) offer employee benefits that don't discriminate between spouses and domestic partners; 28% (2,595) offer no benefits based on marital or domestic partnership status⁴; and 27% (2,548) do not have any employees (e.g., sole proprietorships). (See Fig. 3.)

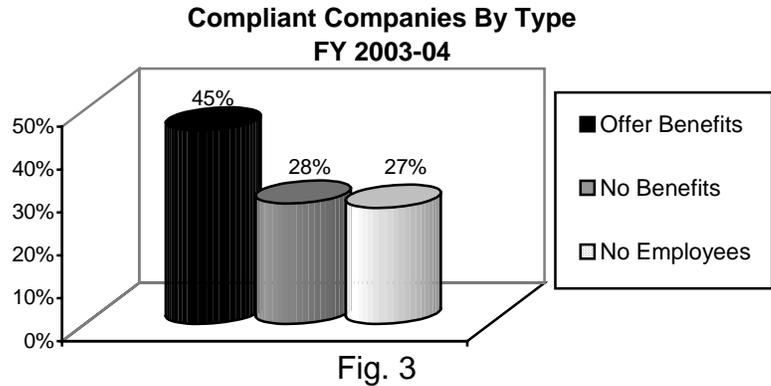


Fig. 3

Since implementation began, the proportion of contractors complying with the Equal Benefits Ordinance in each of these three ways has remained fairly constant. However, over time there has been an eight percent decrease in the number of companies that offer no employee benefits. This decline refutes the assertion that Equal Benefits legislation encourages employers to take away benefits they might otherwise offer. (See Fig. 4.)

Compliance Type Over Time

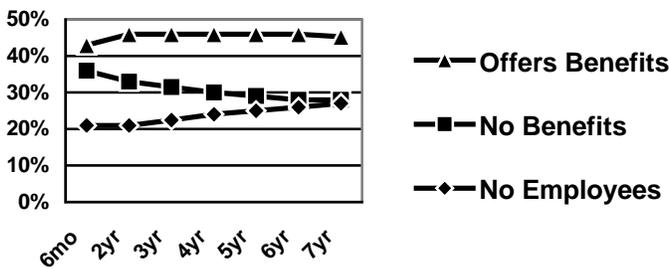


Fig. 4

C. Company Size

By the end of fiscal year 2003-2004, 72 large companies (5,000 or more employees), 218 medium sized companies (500 to 4,999 employees) and 3,872 small companies (under 500 employees) comply by offering nondiscriminatory benefits.⁵ (See Fig. 5.) These proportions are reflective of the U.S. business community in general,⁶ thereby indicating that, regardless of company size, compliance with the Equal Benefits Ordinance is equally feasible.

Compliant Companies By Size FY 02-03

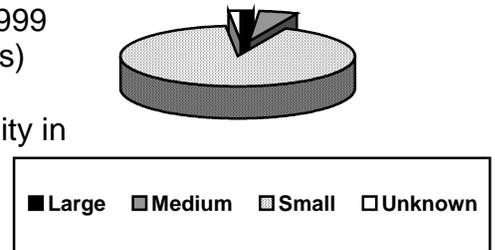


Fig. 5

⁴ Most of these contractors have fewer than twenty employees and offer no employee benefits.

⁵ An employee count currently is not available for 99 of the complying companies.

⁶ Statistics of U.S. Businesses (SUSB), U.S. Census Bureau, 2001.

D. Employees Covered

City contractors offering domestic partner benefits employ a nationwide pool of approximately 2,216,390 people, reflecting an increase of over 284,000 people during fiscal year 2003-2004. Based on 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, there are approximately 66,492 people who have taken advantage of this benefit through the programs offered by City contractors. This represents an increase of over 8,520 insured domestic partners in the past year. (Unfortunately, statistical information is unavailable for other significant gains resulting from this legislation, such as insurance coverage for the children of domestic partners, or the utilization of other benefits, such as leave and retirement benefits.)

E. Companies Limiting Compliance

Pursuant to litigation,⁷ companies may limit their compliance geographically and, in some situations, they may limit which benefits are offered in a nondiscriminatory manner. 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 Court decision that created this form of compliance, only 121 companies have elected to use it, with only eight additional companies complying in this manner during the past year. These companies comprise just 1.3% of the total number of complying companies and only three percent of compliant companies offering benefits. Eighty-eight of these companies have limited the geographic reach of their compliance; two have limited the benefits offered and 31 have limited both.

F. Geography

The national impact of the Equal Benefits Ordinance is best viewed when examining where in the United States complying companies are located. Currently, compliant contractors can be found in at least 47 states,⁸ plus the District of Columbia and in over 1,100 cities across the country.⁹ Companies that comply by offering benefits can be found in at least 40 states¹⁰ and the District of Columbia and in over 600 cities nationwide.

⁷ Air Transport Ass’n of America v. City and County of San Francisco 266 F.3d 1064 C.A.9 (Cal.), 2001.

⁸ The states with no complying companies are: Alaska, South Dakota and West Virginia.

⁹ 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.

¹⁰ The states with no complying companies offering benefits are: Alaska, Kentucky, Maine, Mississippi, Montana, North Dakota, Rhode Island, South Dakota, West Virginia and Wyoming.

G. 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 or the City will need to contract with a public entity that offers the City goods or services of a quality that is unavailable from another source. Less commonly, waivers may be granted to address an emergency that threatens public health or safety, to allow the City to participate in a government-run bulk purchasing arrangement, or to avoid contracting with a sham company that has been created as a means of evading the intent of the Ordinance.

This past year, City departments requested a total of 1,604 waivers, of which 1,527 were approved. Waiver requests were made as follows:

	Sole Source	Public Entity	Emergency	No Compliant Co.	Bulk Purchasing	Sham/Shell	TOTAL
Approved	1,412	50	0	61	4	0	1,527
Denied	40	2	0	10	0	0	52
Withdrawn	23	2	0	0	0	0	25

III. Conclusion

The additional 284,000 people who came under the protections of San Francisco's Equal Benefits Ordinance during its seventh year of enforcement are perhaps the best example of its impact. Whether in domestic partnerships or not, each one of these individuals benefits from participating in a workforce that has rid itself of this form of discrimination.

Including San Francisco, by the end of FY 2003-2004 there were thirteen government bodies with Equal Benefits legislation on the books.¹¹ Several more 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-inclusive insurance products and more unions to bring domestic partner benefits to the bargaining table.

¹¹ Berkeley, CA; State of California; King County, WA; City of Los Angeles, CA; Minneapolis, MN; Oakland, CA; City and County of San Francisco; San Francisco Redevelopment Agency; San Francisco County Transportation Authority; San Mateo County, CA; Seattle, WA; Transbay Joint Powers Authority (CA); Tumwater, WA.

APPENDIX A

Resource Materials

Resource materials available from the Human Rights Commission include:

Domestic Partner Insurance Database – provides users with an on-line resource for researching insurance companies willing to write insurance policies inclusive of domestic partner coverage.

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

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

Quick Reference Guide to Equal Benefits Compliance – answers frequently asked questions, describes how to complete basic forms and identifies documents required for compliance.

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

Resource Materials Booklet

- **Fact Sheets** – provides in-depth information on how to provide health insurance and pension benefits equally to employees with spouses and employees with domestic partners, including the cost and 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.

Website – found at www.sfhrc.org, this site provides access to the items listed above, as well as compliance forms and the text of San Francisco Administrative Code Chapters 12B and 12C.