FOURTH YEAR REPORT

ON

THE SAN FRANCISCO
EQUAL BENEFITS ORDINANCE

SAN FRANCISCO
HUMAN RIGHTS COMMISSION
October 25, 2001
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Interim Director

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# TABLE OF CONTENTS

I. Introduction................................................................................................................................1

II. Compliance Update....................................................................................................................1
   A. Employers Offering Domestic Partner Benefits in the United States....................................1
   B. Complying Companies.....................................................................................................2
   C. Compliance By Type........................................................................................................2
   D. Company Size..................................................................................................................3
   E. Employees Covered.........................................................................................................3
   F. Companies Limiting Compliance.......................................................................................3
   G. Geography.......................................................................................................................4
   H. Waivers and Exceptions .................................................................................................4

III. Legislative Update......................................................................................................................6
   A. Contracting Legislation.....................................................................................................6
   B. Domestic Partnership Registries........................................................................................6
   C. California Domestic Partnership Legislation.......................................................................6

IV. Litigation Update........................................................................................................................7

V. Impact of Ordinance...................................................................................................................7

Appendix A. Resource Materials
I. Introduction

On June 1, 1997, revisions to San Francisco Administrative Code chapters governing nondiscrimination in City contracts took effect, creating the first program of its kind in the United States designed to end discrimination in employee benefits for employees with domestic partners. Referred to as the Equal Benefits Ordinance, the law has played a significant role in dramatically increasing the number of employers across the country offering domestic partner benefits. It has been the Human Rights Commission’s charge to implement this historic legislation.

This report, which documents the fourth year of the Commission’s implementation efforts, comes at a time when the number of registered domestic partnerships in the United States is at an all-time high. With an increase in the number of governmental domestic partnership registries and a more concerted effort by the U.S. Census Bureau to count unmarried couples, growth in the number of domestic partnerships cannot be disputed.¹

This past year has seen a steady increase in the number of compliant City contractors, and a decrease in the number of waivers utilized. Even though the economy has weakened, and the rush to recruit and retain employees has quieted, the number of private and public employers offering domestic partner benefits continues to grow as does the number of other Cities across the United States enacting Equal Benefits Ordinances in their jurisdictions.

II. Compliance Update

A. Employers Offering Domestic Partner Benefits in the United States

When the concept of domestic partner benefits was first introduced, only a handful of employers were willing to offer such benefits. From the first offering in 1982 until the introduction of the Equal Benefits Ordinance fifteen years later, only 500 companies extended domestic partner benefits to their employees. In the four years since the Ordinance took effect, that number has surged. As of the close of fiscal year 2000-2001, the Human Rights Commission has helped over 3,100 City Contractors extend benefits to the domestic partners of their employees.

¹ The 2000 Census noted the presence of same-sex domestic partnerships in all but 22 counties in the entire United States.
Nationwide, over 4,200 private employers have been documented as offering such benefits.

B. Complying Companies

As of June 30, 2001, 10,110 contractors have submitted compliance paperwork to the Commission. Of those, the status of 7,299 has been finalized\(^2\) and 6,824 (93.5%) have been placed into compliance (having ended any existing discrimination in the provision of benefits). Only 475 (6.5%) have been determined to be non-compliant.

\[
\text{Companies with Finalized Equal Benefits}
\]

\[
\begin{array}{c}
\text{Status} \\
(n=7,299)
\end{array}
\]

\[
\begin{array}{c}
93.5\% \\
6.5\%
\end{array}
\]

\[
\text{Compliant n=6,824} \quad \text{Non-Compliant n=475}
\]

C. Compliance By Type

Contractors may comply with the Ordinance in one of three ways, by: (1) offering employee benefits that don't discriminate between spouses and domestic partners; (2) offering no employee benefits that extend to spouses or domestic partners (or to employees because they have a spouse or domestic partner); or (3) having no employees. Of the complying contractors, 3,157 (46%) offer nondiscriminatory benefits to their employees, 2,044 (30%) do not offer any benefits to their employees,\(^3\) and 1,623 (24%) do not have any employees.

\[
\text{Compliant Companies By Type}
\]

\[
\begin{array}{c}
\text{Offers Benefits} \\
\text{No Benefits} \\
\text{No Employees}
\end{array}
\]

\[
\text{FY 00-01}
\]

\[
\begin{array}{c}
46 \\
30 \\
24
\end{array}
\]

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\(^2\) Of the 2,071 contractors whose status is still pending (which represents 28% of the Declarations received to date), the vast majority (2,775) are pending because the contractor has not yet responded to the Commission's request for more information. The bulk of these pending contractors are likely to be those who at one time sought to do business with the City but who no longer are interested. (For instance, a company that bid on a contract but was not the successful bidder.)

\(^3\) The majority of these contractors have fewer than twenty employees in their workforce.
D. Company Size

Forty-eight large companies (5,000 or more employees), 151 medium sized companies (500 to 4,999 employees) and 2,829 small companies (under 500 employees) comply by offering nondiscriminatory benefits.\(^4\)

\begin{figure}[h]
\centering
\includegraphics[width=0.5\textwidth]{compliant_companies_by_size.png}
\caption{Compliant Companies By Size}
\end{figure}

E. Employees Covered

City contractors offering domestic partner benefits employ a nationwide pool of approximately 1,476,000 people, reflecting an increase of almost 186,000 people in fiscal year 2000-2001. 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 44,280 people who have taken advantage of this benefit through the programs offered by City contractors. This is an increase of approximately 5,580 insured people in the past year alone.\(^5\)

F. Companies Limiting Compliance

In April 1998, a U.S. District Court ruling\(^6\) 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. Since this ruling, only 77 companies have elected to comply on a limited basis by continuing to discriminate in certain locales or with respect to certain benefits. This reflects an increase of only 19 companies in the past year. Companies complying on a limited basis comprise just slightly more than 1% 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 2.4% of complying companies that offer benefits. Forty-seven of these companies have limited the geographic reach of their compliance; two have limited the benefits offered and twenty-seven have limited both.\(^7\)

\(^4\) An employee count currently is not available for 129 of the complying companies.

\(^5\) Use of non-insurance benefits, such as bereavement leave, family medical leave, company discounts (including flight discounts used by airline employees) and others, is not reflected in this figure.

\(^6\) Air Transport Association, et.al., v. City and County of San Francisco, et.al., 992 F.Supp.1149 (N.D. Cal. 1998).

\(^7\) The vast majority of companies limiting compliance in both location and type of benefits offered are tenants at San Francisco International Airport.
G. Geography

Complying companies are located in at least 44 states plus the District of Columbia and in almost 900 cities across the country. Approximately 87% are located in California and 41% in San Francisco. Companies that comply by offering nondiscriminatory benefits can be found in at least 39 states and the District of Columbia.

Number of Complying Companies in Each State

H. Waivers and Exceptions

Unfortunately, there are some instances when the City has no choice but to contract with a company that refuses to end its discriminatory behavior. 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.

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8 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.

9 Numbers without parentheses indicate the total number of compliant companies in each state; numbers within parentheses indicate compliant companies offering nondiscriminatory benefits. The slight variation in the numbers reflected here as compared to the compliance statistics above is due to the foreign vendors not reflected in this chart.
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;

- 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.

Since the Ordinance became effective, the total number of waivers used each year has slowly declined. In the fourth year of implementation, City departments requested a total of 1,232 waivers, 1,216 of which were approved.

<table>
<thead>
<tr>
<th>Sole Source</th>
<th>Public Entity</th>
<th>Sham/Shell Entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>293 approved</td>
<td>26 approved</td>
<td>0 approved</td>
</tr>
<tr>
<td>10 denied</td>
<td>1 denied</td>
<td></td>
</tr>
<tr>
<td>3 withdrawn</td>
<td></td>
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</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Blanket Sole Source</th>
<th>Bulk Purchasing Arrangement</th>
<th>Multiple Non-compliant Prospective Contractors</th>
</tr>
</thead>
<tbody>
<tr>
<td>840 approved(^\text{10})</td>
<td>1 approved</td>
<td>54 approved</td>
</tr>
<tr>
<td>Emergency</td>
<td></td>
<td>2 denied</td>
</tr>
<tr>
<td>2 approved</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\(^{10}\) The Blanket Sole Source form was designed to assist the City in processing requests for sole source waivers where the type of contract at issue is always a sole source and is a routine transaction. This past year, such forms were filed by 28 departments.
III. Legislative Update

A. Contracting Legislation

In the past year, San Mateo County and the Cities of Berkeley, California and Tumwater, Washington have enacted Equal Benefits measures that are largely similar to San Francisco’s law. They join the cities of Los Angeles and Seattle that had enacted similar measures in the previous year.\(^{11}\) Other cities have contacted the Commission for information as they consider enacting Equal Benefits Ordinances. These include the neighboring City of Oakland, California, as well as Atlanta, Georgia, which has become the first city outside of the West to introduce such a measure.\(^{12}\)

B. Domestic Partnership Registries

The number of governmental domestic partner registries also continues to increase. At least a dozen new registries have been created in the past year, raising the total number to 61 registries in 21 states. 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 means that it is possible for couples to register even if there is no registry in their city or state.\(^{13}\)

C. California Domestic Partnership Legislation

In the past year, the California legislature considered several bills that would have significantly enhanced the rights of domestic partners within the State. Recently, Governor Gray Davis signed one such measure, Assembly Bill 25. This new law, which goes into effect on January 1, 2002, will offer a variety of new legal protections and benefits for domestic partners in California. Those most pertinent to the workplace include the exemption of domestic partner health insurance benefits from state income taxation, the right to use employer-sponsored sick leave to care for an ill domestic partner or child of a domestic partner, and the requirement that health insurers doing business in California offer domestic partner coverage whenever spousal coverage is offered. In addition, this measure changes the statewide domestic partner registry so that opposite-sex couples may register where at least one partner is over the age of 62. (Previously, both partners in an opposite-sex couple were required to meet this age requirement.)

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\(^{11}\) In addition, the San Francisco Redevelopment Agency implemented contracting rules almost identical to those contained in the Ordinance on July 1, 1998 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.

\(^{12}\) Broward County, Florida, enacted a provision in 1999, which gives an advantage in bidding to businesses offering domestic partner benefits.

\(^{13}\) The West Hollywood, California registry, for example, allows registration by mail.
IV. Litigation Update

Successes have been achieved in the past year in both of the lawsuits challenging the Ordinance. The U.S. Court of Appeals for the Ninth Circuit issued opinions in both cases in the City’s favor. In both matters, the Court remanded to the trial court the question of whether the California domestic partnership registry preempts the Equal Benefits Ordinance. That matter is still pending before the U.S. District Court. United Airlines and the other members of the Air Transport Association (ATA) recently filed a petition to have the Circuit Court’s decision reheard. If this petition is denied, it is possible that the ATA will petition to be heard by the U.S. Supreme Court.

V. Impact of the Ordinance

The impact of the San Francisco Equal Benefits Ordinance is being felt across the United States, transforming the concept of domestic partner benefits from a cutting-edge employee benefit to more of a mainstay. Included among the four thousand-plus companies extending domestic partner benefits in the United States are over one hundred and fifty Fortune 500 companies. This represents thirty percent of the largest companies in the United States and includes 42 companies that have added domestic partner benefits during this calendar year alone.

As Equal Benefits Ordinances are enacted in other cities, the positive impact created by San Francisco’s model will continue to expand. Once cities outside of the West Coast begin implementing this type of legislation, the number of companies offering domestic partner benefits will likely experience another surge. For companies engaged in municipal contracting, the cost of discriminating will continue to mount as more and more cities enact Equal Benefits measures and subsequently place potential contract dollars out of reach.

While it is easy to quantify the number of people employed by City contractors who are benefiting from domestic partner medical insurance, the positive impact of having access to other workplace benefits is much less tangible. Yet there is great value derived by employees with domestic partners who know they are entitled to the same benefits as their married coworkers if they need time off work to care for or grieve over a domestic partner. Likewise, having the same retirement options and being able to enjoy the same company perks as married coworkers, such as the valuable flight discounts given by many airlines to their employees, is also of real value to employees. Offering all of these benefits helps create an environment where employees are paid equally for the work they perform and where employees can feel respected for who they are and for the types of families to which they belong.

\[\text{14 The two lawsuits currently challenging the Equal Benefits Ordinance were filed by the Air Transport Association, on behalf of the nation’s largest airlines, and S.D. Myers, Inc., an Ohio-based company whose suit is sponsored by the American Center for Law and Justice, a legal group founded by anti-gay Christian Coalition leader Pat Robertson.}\]
APPENDIX A

Resource Materials

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 – issued at six months, two, three and four years. These reports give detailed summaries of the Commission’s implementation efforts and compliance experience.

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.