Strong healthy families, we all can agree, are an essential backbone of society. The fact that we as a people are constantly worrying about "family" and what it means is a clear sign that we think about and care for our future —our children. In Alaska this debate is highly energetic. But Alaskans do not want and will not lightly tolerate a government that TELLS us what the answers should be.

As our society has evolved and changed many types of families have developed. Unfortunately, HB-226, in attempting to honor one type, does so by denigrating and disadvantaging all others. While many families today may look different than those which Representative Kelly wants to honor, the strongest of them are based on the American values of mutual support, financial interdependency and love.

I truly urge all the members of this committee to stop and consider the high political cost that you as legislators may have to pay to pass this bill in an election year. I ask that you simply kill this bill. The reality is, there is no problem, and no reason for this legislature to gut the Human Rights Act in an attempt to enforce one type of family structure over another.

Continued consideration of HB-226 will only result in less time spent on the real problems facing Alaska. I ask you, as my elected officials, to spend your limited time in Juneau addressing critical issues like a growing budget deficit, over-extended government, and decreasing oil revenues —not the imaginary one of social decay because of domestic partnership benefits.

Thank you for your time and attention. Once again, thank you for this opportunity to speak to you from the bottom of the world. I would be more than happy to stay on line for a while longer to answer any questions you may have.

Attachment #4
1/30/96

PFLAG
Parents, Families and Friends of Lesbians and Gays

Statement for the House Finance Committee on HB 226
by Dixie Hood Co-Chair PFLAG-Juneau

PFLAG (Parents, Families, Friends of Lesbians and Gays) is an organized group that supports, advocates and educate the community regarding the life of children and friends. We have PFLAG Chapters in Anchorage, Wasilla, and Fairbanks as well as Juneau. We are also affiliated with other Chapters around the nation.

We are here today to request that you allow this bill to stay in your Committee because this issue should not be legislated. The matter that Rep. Kelly is attempting to legislate is before the State Supreme Court on appeal and the University has developed a policy to implement the court order. Based on the information we have received, the implementation has not created a financial hardship for the University. We have heard many of you state your position that you would take government out of the lives of citizens of the State; clearly this bill puts government directly in people's lives. This issue should be addressed between the employer and the employee and if there is a dispute, the court system is there to interpret the laws and the Constitution. That is how this matter is being addressed. We strongly suggest that this is a matter that should be left in the Judicial arena. If the legislature starts legislating every time there is a dispute between employers and employees, we will soon have volumes of laws on every labor issue.

In closing, our request is that the Finance Committee hold CSHB 226 in committee and take no action on this bill. Thank you for the opportunity to testify regarding this bill. Please vote to keep this bill in your Committee

Dixie A. Hood
Co-Chair, PFLAG

Sara Boesser -- Testimony on CS-226, House Finance, 1-30-96
Committee for Equality Board Member
9365 View Drive, Juneau, AK 99801; 586-5230(w)

Thank you. My name is Sara Boesser, and I'm a board member of the statewide organization, the Committee for Equality. I appreciate the opportunity to testify, but I find it unfortunate that we're here at all today, about this bill, because at present it is not necessary for you to spend your precious time and energy on unnecessary bills like CS-226.

Don't get me wrong -- we support 226 as it came from Judiciary, with its domestic partners language intact. It's simply that since the Alaska court system has already implemented coverage to married and domestic partners alike, this bill is not needed. The courts found, and rightfully so, that to deny health benefits on the basis of marital status is illegal discrimination. Thus, as this bill comes from Judiciary, it matches that court action, so is redundant and without need of your time. That court decision is under appeal, so **you would be best served to take no action on this bill until the court process is complete.**

However, we're here today because Representative Kelly wants this body to disregard the court's ruling. He appears determined to revert this bill back to its discriminatory origin -- where it would restrict health benefits only to those couples he approves of. He has posed many "reasons" for his stand, but when facts are reviewed, none of his claims stand up. Several are in the Committee for Equality position paper you've received, and you've heard or will hear more from those testifying today. **Today, if for any reason you consider amending CS-226, we strongly urge that you send it to a subcommittee to research the legal and financial implications of any changes that would cross the court proceedings now in process.**

In past committee hearings, untrue charges have been made against inclusion of domestic partner health care coverage. I'll touch on a few of them. And your subcommittee should research these issues and more.

You've heard testimony that **domestic partner benefits will not cost the state money** and in fact may well save money, since more Alaskans would be covered by private health care, leaving fewer citizens to seek Medicaid at state expense.

You've received data that other universities find minimal increase of enrollment and no significant premium increases when these benefits are extended. The start of the U of A program bears this out -- to date only 1/2 of 1% enrollment increase has occurred due to its domestic partners policy.

And there is no truth to assertions that 226 discriminates on the basis of economic status. Rather, since it addresses *employees* (not indigent people, not unemployed people), any *employee* regardless of income level could qualify for at least five of the bill's criteria -- all that is needed for domestic partner status -- at no cost. So for employees, there is no economic barrier to receiving health benefits for a domestic partner.

To the extent that Representative Kelly opposes equal benefits for domestic partnerships on religious beliefs he may hold, the committee should remember that while the US Constitution does protect people from discrimination on the basis of religion, that protection includes not just freedom of religion, but also freedom *from* religion. Thus Rep. Kelly's religious or religion-inspired beliefs are his to practice for himself, but not to impose on others. Especially when he starts trying to amend state non-discrimination law to say Alaska won't discriminate *except* for a group he disagrees with. How would he and others feel if it were their group being exempted, say, as in legislating that the University wouldn't discriminate against employees except on the basis of religion, or age, or national origin?

I hope you are aware that this issue is not rare in America. Representative Hanley's office received a lengthy and fast-growing list of jurisdictions, companies and colleges that have some form of domestic partnership benefits. Universities on the list include Columbia University, General Theological Seminary, Harvard, Teacher's College in New York, Thomas Jefferson University and Hospital, University of Washington, Yale, and many others. Companies offering health benefits range from phone companies like Nynex Corp, to breweries like Coors, to Children's Hospital of Boston, to Dow Chemical, Xerox Corp, and even to the Walt Disney Company.

Why are benefits extended? A Nynex Telephone company spokesman says, "this helps us retain and attract the best employees."

As Finance Committee, your concern for a well-staffed and productive University organization should recognize that these benefits increase the value of the University system, while discriminatory actions like Rep. Kelly's lessen the program not just for the individuals he disagrees with, but for all staff and students when good employees look elsewhere to find employment. If pro-family companies like Walt Disney can see this, I'm sure you can too.

One final but very important point. The Alaska Legislature is currently considering extending its ethics bill coverage to include the domestic partners of lobbyists. Thus the state finally recognizes that domestic partners are equivalent to married persons in regards to the ethics of lobbying. So, **to be ethical** in health benefits at the University, domestic partners should be considered equivalent as well.

In conclusion: CS-226 as it passed in Judiciary is a good bill, but unnecessary due to court actions at this time. You can do the public and the legislature a favor and take no action on it at this time. Save the state money by not passing a bad bill that would cause more court cases to arise. The legislature does not need unnecessary contentious bills before it when matters of genuine concern need its time and attention, matters like the budget, welfare reform, etc. **Most important -- if for any reason this bill is amended, it should go to subcommittee for thorough review of the legal implications of discriminatory language, and the financial implications of additional lawsuits against the state that would surely arise.**

FINANCE COMMITTEE TESTIMONY on Judiciary's CS226
January, 1996

Chairman and Members of the House Finance Committee,

I am Marsha Buck, parent of daughter who is in a domestic partner relationship with another woman. I am a member of PFLAG Juneau. PFLAG stands for parents, families and friends of lesbians and gays.

Like Dixie, whose testimony I have just read, I would ask that you let this bill die in your committee. As a parent, I think the bill is great as it now stands with the Judiciary Committee substitute, but knowing the overall tone of the legislature of which this committee is a part, I can not imagine this bill ever passing on the floor as it now stands.

This bill, by its very nature is divisive because it deals with matters of personal freedom, constitutional rights, and the ever changing definition of "family." There is no way for a legislator to win on this issue no matter how you vote! Most Alaskan voters, both Republican and Democrat, disagree with Rep. Kelly on his definition of family and most voters support the Constitution in its emphasis on human rights.

You would be most wise not to get into this battle during this session if you want to be back here again during the next session to deal with the important issues that need your energy -- issues like the budget and welfare reform. Let the courts handle the issues before them and stay out of the personal lives of your voters who are people like me, my friends, and my family.

Please, let this bill die.

/Marsha Buck
1-30-96

America On-Line 11-29-95

By Diana Kunde, The Dallas Morning News Knight-Ridder/Tribune Business News

Nov. 28--What do Nynex Corp., Coors Brewing Co. and Walt Disney Co. have in common?

They represent mainstream corporate America, of course. Few things are more central to the U.S. consumer's experience than the phone company, a cold beer or a Disney movie.

But the giants also are pioneers in extending health insurance benefits to partners of their gay and lesbian employees. They recently joined a short list of publicly traded companies offering "domestic partner benefits."

"I definitely think the next wave of civil rights for gay and lesbian people in this country is going to be the workplace," said Garrett Hicks, a Disney employee who is co-chairman of California-based Progress, a national coalition of gay and lesbian employee groups.

In this politically sensitive time for gay rights, progress is being made not in state legislatures, but in the workplace. Only eight states prohibit employment discrimination on the basis of sexual orientation, but more and more companies are adopting anti-discrimination policies.

Although relatively few companies allow gay employees to claim their partners as dependents for benefits, that too is slowly and steadily changing, said Liz Winfield, principal in the consulting firm Common Ground and author of Straight Talk About Gays in the Workplace.

"Since 1990, the number of North American employers that have extended domestic partner benefits has risen from five to 426," said Ms. Winfield. She includes public employers, such as universities and cities, and privately held firms in that number. Twenty-three publicly traded companies offer the benefits, according to V Management of Oakland, Calif.

No major companies based in Texas offer full domestic partner benefits, but several with operations in the state do, including Apple Computer Co.,

Contributed by Sara Bresser

Northern Telecom and Advanced Micro Devices.

Employers said they're making the changes to recruit and keep workers, along with trying to equalize benefits throughout their companies. Gay and lesbian partners can't marry legally in any state, so they're prohibited from including partners as spouses in standard benefit plans.

"This helps us retain and attract the best employees. We don't want to exclude any group because of their sexual orientation," said Sharon Beadle, a spokeswoman for Nynex.

The change hasn't been without controversy. Fifteen Florida legislators protested to Disney in a letter that they made public. Disney spokesman John Dreyer said there was "no chance" the company would rescind the new policy.

Coors spokesman Joe Fuentes said telephone calls in the summer were running 3-to-1 against the new policy, but that overall response has been slight. On the other hand, some distributors that wouldn't stock Coors in the past changed their minds in support, Mr. Fuentes said.

In Texas, there have been heated public battles over the benefits. Two years ago, Williamson County commissioners voted 3-2 against tax breaks for an $80 million plant that Apple Computer planned north of Austin. Opponents of the tax breaks had packed commission chambers, wearing buttons that read "Just say no! An Apple Today will take Family Values Away." One commissioner later changed his mind, and the tax breaks were approved. More recently, Austin voters overturned domestic partner benefits for the city of Austin. Supporters have taken the matter to court.

For their part, gay employees say they simply want to be treated equally. "The point is that we work as hard as anyone else. It isn't as though our supervisors say, 'Since you're homosexual, you can go home at 3 o'clock because you don't get the fringe benefits,'" said Louise Young, co-chairwoman of Lesbian and Gay Employee Network Dallas, an employee group at Texas Instruments, Inc.

Another reason the benefits continue to spread: Experience at companies

such as Apple Computer shows that cost increases are negligible. When the benefits are offered, about 3 percent of employees sign up, said a 1994 study by Hewitt Associates, a benefit consulting firm. Cost increases have ranged from less than one-half percent to 3 percent, depending on the workplace studied.

Even AIDS is less of a concern to employers from a cost standpoint, said Ms. Winfield, the consultant. The lifetime treatment cost for AIDS, which can go as high as $120,000, compares with $200,000 for a kidney transplant and as much as $1 million for a premature baby, according to Hewitt, which cited a federal AIDS Cost and Utilization Survey.

When Canada-based Northern Telecom implemented its domestic partner benefits more than a year ago, it was a "nonevent" in the financial sense,

said Rich Blasing, director of employee relations at the company's Richardson site. So far, only 16 out of 5,000 employees have signed up, Mr. Blasing said.

The high-technology company decided to offer domestic partner benefits "for a variety of reasons, but most important, for recruiting," Mr. Blasing said.

Craig Leger, a software engineer at Telecom's Bell Northern Research unit, enrolled his partner, Randy Viator, as soon as the benefit was available.

"I was waiting for it to happen," he said. Companies typically require proof of joint financial responsibility and residence joint checking and savings accounts, a will or joint ownership of automobiles or a home.

Mr. Leger said more gay and lesbian employees don't sign up for benefits because they have to pay income tax on the value of the benefit, unlike married employees. Many gay and lesbian partners are both employed, and it's usually less expensive for each person to enroll at his or her own employer.

More important, say many gay and lesbian employees, is that the benefits are a symbol of equal treatment and provide a safety net if a partner loses

a job.

At Coors, community relations specialist Earl Nissan said his partner doesn't need health care benefits. But the statement Coors made when its board adopted full domestic partner benefits in May was very important to him, Mr. Nissan said.

"It makes me proud to work for my company. They're standing with their dollars behind *my* needs as a gay person," Mr. Nissan said.

There's a typical progression in a company that adopts domestic partner benefits, Mr. Nissan said. First, gay and lesbian employees have to feel comfortable about being "out," or openly gay. That usually happens after the firm adopts a nondiscrimination policy or in states that have such policies to cover all employers. When they're no longer fearful about being fired for their sexual orientation, employees are far more likely to speak out about benefits.

Fear on the part of gay and lesbian employees may be one reason no major Texas-based companies have domestic partner benefits, said Cece Cox, president of the Dallas Gay and Lesbian Alliance.

Unlike California and Massachusetts, where many of the companies extending domestic partner benefits are based, Texas doesn't ban employment discrimination on the basis of sexual orientation.

"I don't always believe in the stereotype, but the Texas climate is more conservative. It takes longer to educate. And it also takes longer, I think,

for the gay and lesbian people to feel brave enough themselves to take a stand at work," Ms. Cox said.

A number of Texas-based companies, including Texas Instruments Inc., American Airlines, Continental Airlines and A.H. Belo Corp., which owns The Dallas Morning News and WFAA-TV (Channel 8), have anti-discrimination clauses in their ethics statements or employment policies.

American Airlines recently extended its popular flight benefits to nonrelatives, which could include partners of gay and lesbian workers, spokeswoman Andrea Rader said.

Xerox Corp. offers a modified version of domestic partner benefits. The Rochester N.Y., company will reimburse an employee up to $1,000 a year to purchase health care coverage for a partner outside of the Xerox plan. "We wanted to recognize these 1/8gay and lesbian3/8 employees. This seemed like the perfect vehicle to do it," said spokeswoman Wendy Starr.

Mr. Hicks, the Disney employee, hopes that business will be a model for the rest of the country.

"When people in America see that business sees it as advantageous to treat gay and lesbian people respectfully," perhaps legislators will follow, he said. "It's a trickle-up theory."

ENDIC$2?DA-BENEFITS

MEMORANDUM

Rep Hanley
Fax 465-2418

TO: HB 386 Committee
FROM: LYNN STIMLER, ACLU

In her decision Judge Green stated:

The question is not whether "state or federal law requires the University to offer coverage to unmarried individuals," as the University claims. Rather, the question is whether state or federal law prohibits the university from using marital status as a classification for determining which of its employees will receive additional compensation in the form of third-party health coverage. This court holds that such a classification violates state laws prohibiting marital status discrimination. and that therefore the university's current definition of "dependent" is unlawful.

I apologize for the lack of a pont cite.

TO: House Finance Committee - all members
Via Mark S. Hanley, Co-Chair Fax: 465-2418
Date: January 30, 1996 - for the record of teleconference held at 10:30 a.m.
RE: HB 226 - "An Act permitting the provision of different retirement and health benefits to employees based on marital status except to marital or domestic partners of employees."

Copies of this testimony are being transmitted to all House members via Gail Phillips, Speaker of the House

TESTIMONY on HB 226(JUD) Presented by Celia M. Hunter, 1819 Muskox Trail, Fairbanks, AK 99709-6626 Phone: (907) 479-2754

This bill as presented is confusing, even in its title. It has been written with a malicious intent of interjecting the Legislature of the State of Alaska into a matter which is none of its business, ie: the question within the University of Alaska as an institution and its faculty and staff over the provision of health and other benefits to duly recognized domestic partners who are not legally married, but who fulfill all of the other criteria for a durable relationship.

I object strenuously to passage of this bill. It is unnecessary and irrelevant. The particular situation which instigated it is being settled by the courts, and is now before the Supreme Court of Alaska. Why should the Legislature get involved?

Furthermore, the way this bill is written, its coverage is so broad and ambiguous that it will affect a great many more people than the small handful of cases for which its authors were aiming. If the Legislature attempts to legislate in this area of human relationships, it will discover to its dismay that it is striking at the lives of countless citizens far beyond the limited

target of its animosity.

Human beings have long since ceased to set up their personal relationships within the constraints of the nuclear family. Probably one quarter of all households within Alaska and the U. S. consist of a married couple and their offspring. This may be the ideal in many people's minds, but for a lot of us, it doesn't exist, and we are not therefore to be discarded, deprived of our civil rights, and penalized by being deprived of the benefits normally provided within employment contracts.

The financial consequences of leaving these matters to be decided by the institutions involved is extremely limited. Where domestic partnerships have been recognized and accepted and provided with health coverage and retirement benefits, the positive effects on employee morale and productivity have more than made up for the small costs. More and more corporations are expanding their definition of domestic partnerships as a matter of fairness and equity.

Here in Alaska there are many variations of domestic partnerships. This is a difficult land to cope with in all of its exigencies and financial costs. Having a partner on whom you can depend - to come and rescue you if your car breaks down, to house-sit and dog-sit and even baby-sit is a survival tactic. As you become older, the question of maintaining a durable power of attorney with a trusted friend and partner for carrying out the provisions of a Living Will is a vital decision. In many more ways living with someone makes life much more worthwhile, and the particular status of the relationship is immaterial.

IN CONCLUSION, MY ADVICE TO THE MEMBERS OF THE LEGISLATURE IS TO BURY THIS BILL DEEP, AND LET ALASKAN CITIZENS WORK OUT THEIR OWN PROBLEMS UNBURDENED BY YOUR SHOTGUN SOLUTIONS WHICH WILL AFFECT SO MANY MORE

PEOPLE THAN YOU ARE SEEKING TO REGULATE.

I find it incredible that in our state which puts so much stress upon keeping government out of people's lives, that you in the Legislature would waste your time - and ours - with such an irrelevant and useless proposition.

Thank you for the opportunity to express my feelings on this matter.

Signed Celia M. Hunter

Celia M. Hunter, a resident of Alaska since 1947

1819 Muskox Trail
Fairbanks, Alaska 99709-6626
Phone: 907/479-2754

Alaska State Legislature

REPRESENTATIVE
PETER KELLY
Mailing Address:
[illegible] N. Cushman, Suite 203
Fairbanks, Alaska 99701
(907) 456-3161

House Of Representatives

While in Juneau
State Capitol
Juneau, Alaska
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House District 31

Sponsor Statement

House Bill 226

A recent court decision ordered the University of Alaska to extend health insurance coverage and benefits to domestic partners. HB 226 addresses this decision by reasserting the rights of employers, including the state, to exclude domestic partners from health insurance benefits, unless they choose otherwise.

Various labor and union contracts negotiate pension funds and health benefits as a part of the compensation package for workers. Now we find the workers benefit package is targeted for distribution to an unknown panoply of partners not recognized by existing contractual relationships, such as marriage.

HB 226 also intends to reduce the uncertainty employers now face in planning their group insurance program. Without HB 226, the court suggests employers in Alaska "could simply refuse to provide health care coverage for spouses." Or, their "health care plan could be rewritten to indicate that health care coverage would be available for all employees domestic partners."

The court decision leaves unclear who is, and who is not, entitled to family benefits. Employers may find themselves in court determining how many "partners", roommates, cohabitants, associates, boy or girl friends, acquaintances, or relatives have the same status as married persons. HB 226 seeks to close the door on a possible onslaught of domestic partnerships created just to gain benefits.

I urge your support of House Bill 226.

REPRESENTATIVE
PETER KELLY
Mailing Address:
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Alaska State Legislature

House Of Representatives

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House District 31

House Bill 226

Briefing Paper

The Human Rights Act and Marital Status

The Alaska Human Rights Commission was created in 1965. The Commission was given the power to accept, hear, and issue orders of compliance on complaints regarding discrimination throughout Alaska. The act established as unlawful employment practices the refusal of employment, or discrimination "in compensation or in a term, condition or privilege of employment because of his race, religion, color or national origin, or because of his age when the reasonable demands of the position do not require age distinction."

In 1969 the statutes empowering the Human Rights Commission were amended to include the goals of eliminating "discrimination because of race, religion, color, national ancestry, physical handicap, age, or sex." Employers were bared from discriminating for the reasons established in 1965 plus "age, physical handicap, or sex when the reasonable demands of the position do not require age, physical handicap of sex distinction."

The statutes were further amended in 1972. The 1972 act established that the "opportunity to obtain employment, public accommodations, housing accommodations and property without discrimination because of sex, race, religion, color, or national origin is a **civil right**."

In **1975** the prohibition against discrimination on the basis of **marital status or changes in marital status** was added to the statutes on human rights. It became "unlawful for an employer to refuse employment to a person, or to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, religion, color or national origin, or because of his age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood."

Human Rights Commission Decisions re: Marital Status.

The Alaska Human Rights Commission is the first point of referral for complaints of discrimination relating to the Human Rights Act. The Commission received eight complaints based solely on discrimination regarding marital status in 1993, four cases in 1992, and four cases in 1991. Of the 1,660 complaints filed during 1991, 1992 and 1993, 40 included marital status as a portion of the complaint.

Since the enactment of the marital status portion of the Human Rights Act in 1975, the Human Rights Commission has completed four decisions in which Marital Status played a part of the basis for the initial complaint of discrimination. Marital Status is clearly not a large portion of the case load of the Human Rights Commission.

Analysis of Human Rights Commission decisions on marital status.

1) Marie Scholle vs. City of Fairbanks, City Ordinances found irreconcilable with the Human Rights Act, 1977.

Marie Scholle argued that the City of Fairbanks discriminated in employment practices "because of a City ordinance prohibiting employment of a person when such person's spouse is employed by the City." The Commission found that the discrimination did not occur against Mrs. Scholle, because her complaint preceded the 1975 addition of the Marital status clause to the Human Rights statutes. The Commission did find, however, that the City "ordinances must be declared invalid and unenforceable as inconsistent with and contrary to State Law." It is clearly a violation of the Human Rights Act to refuse to hire someone because they are married.

2) Mikka Powell vs. Jacks Food Mart; Dismissed, Oct. 1980.

Mikka Powell asserted "that she was terminated in whole or in part because she was unmarried and pregnant, which charges, if true, would constitute illegal discrimination in violation of AS 18.80.220(1)." The Commission found against the complainant, finding evidence of continued tardiness, walking off the job for extended periods of time, and other reasons which could have been the sole reason for the termination. However it would be a violation of the Human Rights Act to discriminate by retaining a person who is married and pregnant, but fire someone who is not married and pregnant.

3) Anne Miller vs. Golden North Motel; Dismissed, Feb. 1980.

Anne Miller alleged the Golden North Motel discriminated in her firing, because one of the reasons given for her termination was a company policy preferring married personnel in her position.

The Commission found against the complainant, for reasons other than the allegation, which if true would have been a discriminatory practice. A policy that establishes a preference for married personnel over unmarried personnel is a clear violation of the Human Rights Act.

Attorney General's Opinion on a marital status case, January 4, 1980.

The Attorney General has issued one opinion on marital status discrimination in Alaska. This opinion discussed "cohabitation." The noted that "cohabitation per se. however, is not covered by the Alaska human rights law and it would appear, therefore, that the Commission cannot provide relief for discriminatory conduct based upon one's cohabitation without benefit of marriage when employment policy is applied across the board to all applicants."

The Attorney General opinion went on to caution against a simple interpretation in the specific case at hand, giving an example of a case from another state in which cohabiting was found to be an "espoused relationship, i.e., sharing bed and board, having children, sharing financial, recreational and social activities together plus the normal cares and woes of raising a family." If the Commission were to find cohabitation to be marital status for the purposes of AS 18.80.220(a) then it might be best for the Commission to amend its regulations "to include this espoused relationship in its definition of marital status."

Summary and relevance to Tumeo & Wattum vs. UA:

Tumeo and Wattum seek a court ruling for the establishment of medical benefits for "domestic partners." The litigants did not bring this issue before the legislature for addition to the Human Rights Act, nor for addition of domestic partners to Alaska Statutes 39.30.090(a)(2) which specify provisions for the state's health insurance plan. The University is free to negotiate a plan which includes domestic partners. Rather than successfully negotiate this form of compensation the litigants have gone to court seeking a solution outside the democratic process.

Tumeo and Wattum did not choose to have their case heard by the Human Rights Commission. It is difficult to speculate on difference in the outcome of their case had they chosen to place their complaint with the Human Rights Commission. Expansion of the marital status provision to include individuals who were not married, and were not raising a family, might well have been more difficult before the Human Rights Commission.

The Alaska Human Rights Act precludes discrimination based upon marital status. Clearly prohibited are employment preferences excluding persons from employment because they are or are not married. Single persons may not be preferentially hired over married persons. Married persons may not be preferentially hired over unmarried persons. A person who is unmarried and pregnant has the same employment of someone who is married and pregnant.

The cases to date are fairly straight forward interpretations of the Human Rights Act. The Tumeo & Wattum vs. UA case is not as straight forward. Tumeo & Wattum are not legally married. They are alleging that their "domestic partners" should receive the compensation benefits package granted to married individuals because each has submitted an "affidavit of marital equivalency" to the University.

It is difficult to see how Tumeo & Wattum have a case establishing discrimination based on marital status. Although neither Tumeo nor Wattum's domestic partnership is illegal, they are clearly not relationships with the legal recognition, certification and status of marriage. The Greene decision would expand the Human Rights law to protect or reward a relationship which lacks the legal and social stamp of recognition similar to those afforded by society to the institution of marriage.

Sec. 18.80.220. Unlawful employment practices. (a) It is unlawful for

(1) an employer to refuse employment to a person, or to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of the person's race, religion, color, or national origin, or because of the person's age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood;

(2) a labor organization, because of a person's sex, marital status, changes in marital status, pregnancy, parenthood, age, race, religion, physical or mental disability, color, or national origin, to exclude or to expel a person from its membership, or to discriminate in any way against one of its members or an employer or an employee;

(3) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication, or to use a form of application for employment or to make an inquiry in connection with prospective employment, that expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, physical or mental disability, marital status, changes in marital status, pregnancy, parenthood, age, race, creed, color, or national origin, or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(4) an employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against a person because the person has opposed any practices forbidden under AS 18.80.200 — 18.80.280 or because the person has filed a complaint, testified, or assisted in a proceeding under this chapter;

(5) an employer to discriminate in the payment of wages as between the sexes, or to employ a female in an occupation in this state at a salary or wage rate less than that paid to a male employee for work of comparable character or work in the same operation, business, or type of work in the same locality; or

(6) a person to print, publish, broadcast, or otherwise circulate a statement, inquiry, or advertisement in connection with prospective employment that expresses directly a limitation, specification, or discrimination as to sex, physical or mental disability, marital status, changes in marital status, pregnancy, parenthood, age, race, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(b) The state, employers, labor organizations, and employment agencies shall maintain records on age, sex, and race that are required to administer the civil rights laws and regulations. These records are confidential and available only to federal and state person-

nel legally charged with administering civil rights laws and regulations. However, statistical information compiled from records on age, sex, and race shall be made available to the general public. (§ 6 ch 117 SLA 1965; am § 4 ch 119 SLA 1969; am § 1 ch 237 SLA 1970; am §§ 5, 6 ch 42 SLA 1972; am § 1 ch 119 SLA 1974; am § 9 ch 104 SLA 1975; am § 9 ch 69 SLA 1987)

Cross references. — For original jurisdiction of the superior court over suits arising under this chapter, see AS 22.10.020.

Opinions of attorney general. — An employment decision not to hire one who lives with a person of the opposite sex does not come within the prohibition against employment decisions based on marital status. January 4, 1980 Op. Att'y Gen.

Subsection (a) preserves the nonassociational rights of those public employees whose sincere and conscientious beliefs forbid union membership but who, because they are not members of an organized religion, do not come within the coverage of AS 23.40.225. January 13, 1984 Op. Att'y Gen.

A state employee in a collective bargaining unit who does not belong to an organized religion is entitled to an accommodation of his religious opposition to the payment of union dues. January 13, 1984 Op. Att'y Gen.

Because discrimination on the basis of citizenship has the effect of discriminating on the basis of national origin, this section and AS 18.80.255 make it clear that an employer, including the state or any of its political subdivisions, may not discriminate against a potential or existing employee because that person is not a citizen of the United States. April 14, 1975 Op. Att'y Gen.

All questions on employment applications which inquire as to alienage or United States citizenship must be affirmatively stricken as legally impermissible questions; furthermore, should this information become available through a source other than by application, no use may be made of it. April 14, 1975 Op. Att'y Gen.

It is the opinion of the attorney general that State Deferred Compensation Plan options calculated by gender-based actuarial tables unlawfully discriminate against women employees. June 2, 1980 Op. Att'y Gen.

Subsection (b) should be interpreted to require the commission to keep confidential information from a survey for records maintained to administer civil rights laws and regulations until it is presented at public hearing unless the information is released in a format which does not identify individual responding employers or unions. May 14, 1979 Op. Att'y Gen.

NOTES TO DECISIONS

Discrimination need not be purposeful to be unlawful under paragraph (a)(1) of this section. Instead, unlawful discrimination may result as an "accidental byproduct of a traditional way of thinking about females." Alaska USA Fed. Credit Union v. Fridriksson, 642 P.2d 804 (Alaska 1982).

Coverage of anti-discrimination law is not limited to inhabitants. Adams v. Pipeliners Union 798, 699 P.2d 343 (Alaska 1985).

Consideration of federal decisions. — In the past, when considering the parameters of the Alaska anti-discrimination statute, the supreme court has examined the relevant federal Title VII decisions for guidance. Alaska State Comm'n for Human Rights v. Yellow Cab, 611 P.2d 487 (Alaska 1980).

Federal credit union is "employer". — A federal credit union with membership open to military and civilian personnel at Elmendorf, Adak and Shemya military bases, members of the Air National Guard, senior members of the Civil Air Patrol, shareholders in 10 native regional corporations, and employees of certain contractors of Alyeska Pipeline Service Company was held to be an "employer" within the meaning of AS 18.80.300(4) and not entitled to an exclusion as a "fraternal organization." Alaska USA Fed. Credit Union v. Fridriksson, 642 P.2d 804 (Alaska 1982).

Section applicable to unions. — This section, like 42 U.S.C. § 2000e et seq.,

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

MARK TUMEO AND KATE WATTUM,
Appellants,
vs.
UNIVERSITY OF ALASKA,
Appellee.

Case No. 4FA-94-43 Civil

MEMORANDUM DECISION AND ORDER

The appellants, Mark Tumeo and Kate Wattum, challenge the decision of University of Alaska President Jerome B. Komisar dismissing their grievances. Tumeo and Wattum had grieved the University's denial of their requests to enroll their same-sex domestic partners in the University's health care program. Tumeo and Wattum maintain that the University's refusal to include their domestic partners when the University includes husbands and wives violates Board of Regents policies because (1) the health plan discriminates against employees on the basis of marital status, (2) the health plan discriminates against employees on the basis of sex, and (3) the health plan is not merit-based and is arbitrary and capricious.

I. FACTS

Tumeo and Wattum are both University of Alaska employees. Tumeo is Associate Professor of Engineering at the University of Alaska Fairbanks. Wattum is Publications Assistant, Statewide Public Affairs in Fairbanks. R. 23.

Both Tumeo and Wattum have applied for health insurance coverage for their same-sex domestic partners. R. 1, 3.

Tumeo's partner is Bruce Anders ("Anders"). R. 2. Tumeo and Anders have jointly executed an "Affidavit of Spousal Equivalency". R. 2. The affidavit sets out in detail the nature of the Tumeo/Anders relationship, essentially asserting that Tumeo and Anders are same-sex domestic partners who are "jointly responsible for each other's common welfare and financial obligations." R. 2. It indicates that Tumeo and Anders provided the University's Benefits Office with the affidavit "for the sole purpose of demonstrating [their] eligibility for spousal benefits." R. 2.

Wattum's partner is Beverly McClendon ("McClendon"). R. 1, 7. When Wattum grieved the University's September 17, 1993, decision denying benefits to McClendon, she offered "to provide alternative documentation of the committed nature of my relationship [with McClendon]." R. 20. There is no evidence in the record that the University responded to this offer. However, the record is similarly devoid of evidence that the University challenged the committed nature of Wattum's relationship with McClendon.

The University provides employer-funded health coverage for its employees and for the employees' "dependents." R. 72-73. The University defines "dependent", in part, as "your spouse (husband or wife)." R. 71. Tumeo and Wattum claim that the University is subsidizing at least part of the cost of health care coverage of

an employee's spouse.[1] The University has not disputed this claim, but instead it argues that such a subsidy is not unlawful.

II. ADMINISTRATIVE PROCEEDINGS

The University denied both Tumeo's and Wattum's applications for health care coverage for their partners, stating that "the health care plan does not allow for coverage of a domestic partner." R. 5. Tumeo and Wattum grieved the University's decisions not to provide health care benefits to their partners. R. 6, 7.

Tumeo and Wattum argued in their grievance that because the University provides health care benefits to employees' spouses and not to employees' domestic partners, the University is discriminating on the basis of marital status, in violation of state law and University regulations. Additionally, they argued that the University provides health care coverage to an employee's partner only if the partner and the employee are of different sexes, in violation of state law and University regulations forbidding discrimination on the basis of sex. In upholding its decision to deny health care coverage to Anders and McClendon, the University stated that it "is under no obligation to provide health insurance coverage for same sex partners." R. 8.

The University's Grievance Council stated that there was "not

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[1]Apparently, the value of this subsidy is at least $150 per month. R. 31.

a reasonable likelihood that the matter complained of was a violation, misinterpretation, or improper application of a policy of the Board of Regents, or a university regulation or an abuse of discretion arising from the administration of such policy or regulation as applied to the grievants." R. 10. It explained, in part:

> [T]he Council concluded that since [the University] denied in equal measure, health care benefits sought by both a male and a female on behalf of their same sex partners, a male and a female, that the denial of benefits were [sic] made without regard to the sex of the applicants or the putative dependents for whom benefits were sought, and thus did not discriminate based upon sex and thus are not in violation of regent's policies which prohibit discrimination based upon sex.

R. 12. As to the plaintiffs' marital status argument, the Council stated, in part:

> The Council concluded that only if Alaska state law (which must be followed under the Regent's policy invoked by the grievants) provided for same-sex marriages could there be a reasonable likelihood the respondent violated, misinterpreted, or improperly applied Board of Regents policy in this regard. . . . The Council concluded that same-sex marriage is not recognized by Alaska law and hence the marital condition of being married is not fulfilled by the grievants and hence there was not a reasonable likelihood that respondent violated, misinterpreted, or improperly applied Board of Regents policy with regard to the marital status of the grievants. Only if grievants, not being in the marital status of marriage under state law, had been denied benefits only available to those falling under the marital states [sic, status?] of being single (or unmarried), could the grievants, unmarried under state law, be considered to have been discriminated against because of their marital condition.

R. 13-14. It was the recommendation of the Grievance Council that the President dismiss the grievances. R. 11.

The University's President, Jerome Komisar, accepted the recommendation of the Grievance Council and dismissed Tumeo and Wattum's grievances. R. 32. In so doing, the President stated that he did not "fully agree[] with the stated rationale offered by the Grievance Council in support of its recommendation that the grievances be dismissed." R. 32. However, he indicated that he did "agree with the Council's conclusion that there is not a reasonable likelihood that the matters complained of in the grievances constitute a violation, misinterpretation, or improper application of a Policy of the Board of Regents . . . ." R. 32. This appeal followed.

III. DISCUSSION

A. Standard of Review

The appropriate standard of review for this appeal is the "substitution of judgment" or "independent judgment" standard. Because this appeal involves questions of contract law, constitutional law, and statutory interpretation, the court need not give any weight to the University's conclusions with regard to the appellants' claims but must instead apply its own independent judgment in assessing the claims. E.g., Zuelsdorf V. University of Alaska, 794 P.2d 932, 934 (Alaska 1990); Earth Resources Co. of Alaska v. State Department of Revenue, 665 P.2d 960, 965 (Alaska 1983).

The court is restricted to reviewing the University's

interpretation of law; the court may not review the wisdom of the University's action. Groh v. Egan, 526 P.2d 863, 866-67 (Alaska 1974). That is, the court has the authority to review the lawfulness of the University's action but may not "substitute its judgment as to the sagacity of a regulation." Groh, 526 P.2d at 866.

B. Existence of a "Grievance"

The University argues that the "appellants' complaint did not constitute a 'grievance' within the meaning of the University's grievance policy." Appellee Br. at 9. The court disagrees.

Board of Regents ["BOR"] Policy 04.08.08(II)(A) defines "grievance" as:

> an allegation or complaint by an employee or a group of employees of the University that there has been a violation, misinterpretation or improper application of a policy of the Board of Regents or a University regulation, or abuse of discretion arising from the administration of such a policy or regulation which adversely affects the employee or group of employees.

R. 33. According to the University, in order for the appellants' complaint to constitute a "grievance", there must be "a likelihood" that the University violated, misinterpreted, or improperly applied a BOR policy or a University regulation. Appellee Br. at 9.

Obviously, the University's own definition of "grievance" does not include a "likelihood" requirement. Rather, the definition indicates that a grievance exists when an employee merely alleges or complains that there has been a violation of a law or a

University regulation.[2]

In this case, Tumeo and Wattum allege that the University violated: (1) article I, sections 1, 3, and 7 of the Alaska Constitution; (2) article XII, section 6 of the Alaska Constitution; (3) AS 18.80.220; (4) BOR Policy 01.01.04; and (5) BOR Policy 04.03.01. Because this amounts to an allegation that "there has been a violation, misinterpretation or improper application of a policy of the Board of Regents or a University regulation, or abuse of discretion arising from the administration of such a policy or regulation", their complaint is a "grievance" within the meaning of BOR Policy 04.08.08.

The University appears to have confused the definition of "grievance" with the actual basis on which the Grievance Council recommended dismissal, viz., that "there [was] not a reasonable likelihood that the matter complained of was violation, misinterpretation, or improper application of a policy of the Board of Regents, or a university regulation or an abuse of discretion arising from the administration of such policy or regulation as applied to the grievants." R. 10. This is not a determination that the purported grievance was not a "grievance"; it is a determination made before hearing of no reasonable ground of

[2]If the court were to accept the University's "likelihood" requirement, an employee would have to prove he or she was "likely" to succeed on appeal in order to gain access to the appellate process. If the employee could not show that his or her complaint or allegation was "likely" to succeed on appeal, the complaint would cease to be a "grievance".

success. BOR Policy 04.08.08(IV)(C) provides, in pertinent part:

> The chair of the grievance council shall promptly provide a copy of the request for hearing and all other documentation submitted with the request to the respondent. Copies shall also be provided to the university general counsel, the campus personnel director, and the system human resource executive director. Within ten (10) working days of receiving the request for a hearing, the grievance council shall meet to determine whether there is a reasonable likelihood that the matter complained of was a violation, misinterpretation, or improper application of a policy of the Board of Regents, or a university regulation, or abuse of discretion arising from the administration of such policy or regulation as applied to the grievant. A majority of the grievance council membership shall constitute a quorum.
>
> The grievance council's determination shall be based on a review of the written request for a hearing, all other documentation submitted, and the written responses of the respondent and/or the respondent's supervisor. The council may also direct questions to the grievant, if necessary.
>
> Within five (5) working days of the grievance council's determination, the grievance council chair shall provide a written explanation of the determination to the grievant, respondent, and chancellor. If the determination is made that there is no reasonable likelihood that there has been a violation, misinterpretation, improper application, or abuse of discretion arising from the administration of a Board of Regents policy or university regulation as applied to the grievant, the grievance council shall recommend that the chancellor dismiss the matter. If the chancellor accepts the recommendation to dismiss the matter, notification of the dismissal shall be transmitted by the chancellor to the grievant within five (5) working days.

R. 37-38. Thus, the decision that there is no reasonable likelihood of a violation, misinterpretation or misapplication is a decision on the merits. It is not a decision that the parties' complaint was not a "grievance."

C. Marital Status Discrimination

Alaska Statute 18.80.220(a)(1) makes it unlawful for an employer:

> to discriminate against a person in compensation or in a term, condition, or privilege of employment because of the person's . . . marital status . . . .

Similarly, under BOR Policy 04.03.01(B)(1)(a):

> The University of Alaska does not engage in impermissible discrimination. In accordance with federal and state law, the University of Alaska makes its programs and activities available without discrimination on the basis of . . . marital status . . . .

If the University is discriminating against Tumeo and Wattum based on their marital status in violation of AS 18.80.220(a)(1), it is also violating BOR Policy 04.03.01(B)(1)(a). If the University's health care plan does discriminate on the basis of marital status in violation of 18.80.220(a)(1), the President's decision in this case must be reversed.

The appellants argue that the University extends eligibility for health care coverage to an employee's domestic partner only if the partner and the employee are married. They note that employer-provided benefits are considered "compensation" to an employee. See Newport News Shipbuilding and Dry Dock Co. v. EEOC, 462 U.S. 669, 682, 77 L.Ed.2d 89, 101 (1983) (health insurance benefits are "compensation, terms, conditions, or privileges of employment" for purposes of Title VII)[3]; Ragland v. Morrison-Knudsen Co., 724 P.2d

[3]The Alaska Human Rights Act (AS 18.80.220) offers broader protection to employees than does Title VII. Luedtke v. Nabors Alaska Drilling, Inc., 768 P.2d 1123, 1132 (Alaska 1989); Wondzell

519 (Alaska 1986) (vested fringe benefits including health insurance plans are "wages" for purposes of Alaska Workers' Compensation Acts); Gorman v. City of Haines, 675 P.2d 646, 649 n.5 (Alaska 1984) ("the city had the power to include disability pension benefits in the compensation provided to its employees").[4]

The Alaska Supreme Court has decided two cases regarding discrimination on the basis of marital status in violation of the Alaska Human Rights Act, Foreman v. Anchorage Equal Rights Commission, 779 P.2d 11 (Alaska 1989), and Swanner v. Anchorage Equal Rights Commission, - 4 P.2d 274 (Alaska 1994). Both cases involve AS 18.80.240, which prohibits discrimination in housing.[5]

In Foreman, an unmarried woman attempted to rent an apartment for her family, which consisted of her baby, the baby's father and herself. The Foremans' refused to rent to her because she and the father were not married. They would have rented to her if she had been married or if only the baby and the woman planned to reside in the apartment. The Foremans maintained that the refusal was not discrimination because the statute did not reach discrimination against two cohabiting people. The court ruled that AS 18.80.240 was intended to protect unmarried couples. The court stated:

We conclude that state and municipal prohibitions

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v. Alaska Wood Products, Inc., 601 P.2d 584, 585 (Alaska 1979).

[4]The University has not challenged the assertion that such benefits are "compensation" to the employee.

[5]AS 18.30.220, at issue here, precludes discrimination in employment.

> against discrimination based on marital status protect the rights of unmarried couples. The Foremans would have rented the apartment to Hohman, Kiefer and the infant had Hohman and Kiefer been married; the Foremans refused to rent the apartment only after they learned that Hohman and Kiefer were not married. This constitutes unlawful discrimination based on marital status.

Foreman, 779 P.2d at 1203.

In Swanner, a landlord refused to rent to unmarried couples who were cohabiting outside of marriage. Swanner claimed he did not discriminate based on marital status, but rather based on conduct, cohabiting. The court rejected this argument:

> Swanner cannot reasonably claim that he does not rent or show property to cohabitating couples based on their conduct (living together outside of marriage) and not their marital status when their marital status (unmarried) is what makes their conduct immoral in his opinion. The undisputed facts demonstrate that Swanner would have rented to the prospective tenants if they were married. Swanner's argument that he discriminated against the prospective tenants based on their conduct and not their marital status is without merit.

874 P.2d at 278 n.4. Swanner also maintained that enforcement of the antidiscrimination statutes violated his right to free exercise of his religion. The court also rejected this argument as well. 874 P.2d at 284.

Tumeo and Wattum correctly argue that Swanner and Foreman are compelling authorities for this case. Here, the University would provide health care coverage to these couples if they were married and is refusing to provide health care coverage only because they are not married. The University stands in the shoes as the Foremans and Swanner.

The University, by providing added health care coverage for

married employees but not for unmarried employees, is compensating married employees to a greater extent than it compensates unmarried employees. As a result, the definition of "dependent" in the University's health care plan plainly results in discrimination on the basis of marital status.[6]

The University's Grievance Council (and the University's President, to the extent that he relied on the Grievance Council's rationale) misapplied state law in making the decision in this case. The Grievance Council explained its holding that the University had not discriminated against the appellants on the basis of marital status:

> [S]ame-sex marriage is not recognized by Alaska law and hence the marital condition of being married is not fulfilled by the grievants and hence there was not a reasonable likelihood that respondent violated, misinterpreted, or improperly applied Board of Regents policy with regard to the marital status of the grievants. Only if grievants, not being in the marital status of marriage under state law, had been denied benefits only available to those falling under the marital [status] of being single (or unmarried), could the grievants, unmarried under state law, be considered to have been discriminated against because of their marital condition.

R. 13-14 (emphasis added). Apparently, the Grievance Council thought that to prove marital status discrimination, a person was required to show that he or she was denied benefits available only to employees who are of the same marital status. Instead, marital

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[6]The University has not suggested any "reasonable demands of the position" held by either Tumeo or Wattum that would require distinction on the basis of marital status. See AS 18.80.220(a)(1); McLean v. State, 583 P.2d 867, 869 (Alaska 1978).

status discrimination may be proved by a showing that a person was denied benefits available only to employees who are of a different marital status. See, e.g., Swanner, 874 P.2d at 278. That is, a single person may show that he or she is being denied benefits only available to married persons. Such a showing has been made here.

Whether Tumeo and Anders or Wattum and McClendon are able to obtain a marriage licence in Alaska is irrelevant to this court's holding. Discrimination against unmarried couples, even when they are of the same sex, constitutes discrimination based on marital status. See, e.g., Zahorian v. Russell Fitt Real Estate Agency, 301 A.2d 754, 757 (N.J. 1973); cited by Foreman, 779 P.2d at 1202 n.7.

The University claims that the couples in question in this case are not "similarly situated" to married employees because married employees are legally obligated to support their spouses while unmarried employees are not legally required to support their partners. See Vovles v. Vovles, 644 P.2d 847, 849 (Alaska 1982) (there is a legal obligation of support embodied in a marital relationship). The University states:

> In the State of Alaska, there is a mutual duty of general financial support between married individuals. There is no similar obligation between unmarried couples of any gender. This obligation may be compelled by the state and enforced in the courts. Because of the obligation of general financial support, appellants' legal statuses are not similar to those of married University employees. Accordingly, the disparate treatment alleged by appellants in the application of the University's definition of "dependent," although "discriminatory," is not violative of AS 18.80.220.

Appellee's Br. at 20.

The University's argument apparently goes like this: (1) It may lawfully discriminate among its employees by offering health care benefits to those persons for whom its employees are obligated to provide financial support. (2) Married employees are legally obligated to support their spouses. (3) Therefore, the University may discriminate on the basis of marital status.

The University's argument is flawed.[7] The University's argument is based on the same logical error that plagued Swanner; the logic is tautological. The University says that it is not discriminating based on marital status but rather on the legal obligation of mutual support. However, by the University's logic the only way to have a legal obligation of mutual support is through marriage. Thus, this is a distinction without meaning, just as Swanner's "conduct" argument was a distinction without meaning.

The University argues that Swanner and Foreman are "clearly distinguishable from the instant case" because in those cases "there was no distinction between the unmarried applicants and married renters." Appellee Br. at 21. The University claims that "although the Alaska Supreme Court did not articulate this fact,

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[7]The logical extension of the University's argument would permit the University to pay extra to employees for their work based on their legal obligation to support a spouse. Thus, a single person might be paid $50 for a job for which a married person might be paid $100. Such a result would plainly be unlawful discrimination based on marital status.

the applicants for rental property were 'similarly situated' to married renters." Appellee Br. at 21. It argues that "[i]n order to be unlawful, discriminatory treatment must be directed toward individuals who are 'similarly situated.'" Appellant Br. at 16.

The University does not explain why it believes that the heterosexual couples in Swanner and Foreman were similarly situated to married renters while the homosexual couples in this case are not similarly situated to married employees. Two possibilities come to mind. First, it may be that the University believes that the Swanner/Foreman couples were "similarly situated" to married couples because they would have been allowed to marry but chose not to, unlike the couples in this case who the University claims are not permitted to marry. Such a distinction is irrelevant.[8]

Next, it may be that the University believes that the Swanner/Foreman couples were "similarly situated" to married couples because they were financially interdependent while the couples in this case are not. Certainly, unmarried heterosexuals have no more claim to financial interdependence than unmarried homosexuals. Therefore, this rationale does not indicate that the Swanner/Foreman couples were "similarly situated" to married

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[8]Even if this distinction were relevant, the University would have to show that same-sex marriages are prohibited in Alaska. The Alaska Supreme Court has not been asked to decide whether Alaska's marriage statute allows for same-sex marriages. The memorandum from the presiding judge of the Third Judicial District is not a conclusive statement of the law in this regard. Appellee Exh. A. The University has provided no legal argument that such marriages are prohibited.

couples while the couples in this case are not.

The University also argues that "[a]n almost identical set of facts as those presented here was before the Wisconsin Court of Appeals in Phillips v. Wisconsin Personnel Commission," 167 Wis.2d 205, 482 N.W.2d 121 (Wis.App. 1992). In response, Tumeo and Wattum claim that the Phillips opinion rests upon a materially different statutory scheme.

The court does not regard Phillips as persuasive authority. The court in Phillips faced a much different statutory scheme. There the court was faced with two potentially inconsistent statutes: one prohibited discrimination based on marital status, the other defined "dependent" for the state health insurance plan as "spouse." Where two statutes are inconsistent, the court's task is to reconcile them in such a way as not to nullify either. Here there is only one statement of legislative intent: AS 18.80.220 prohibits discrimination based on marital status. There is no competing statute which requires interpretative gymnastics.

The University also argues:

> the question before this court is not whether the University should provide coverage to unmarried individuals or whether state or federal law prevents the University from doing so. Instead, the question before the court is whether state or federal law requires the University to offer coverage to unmarried individuals.

Appellee Br. at 25. The University misstates the question before this court. The question is not whether "state or federal law requires the University to offer coverage to unmarried individuals," as the University claims. Rather, the question is

whether state or federal law prohibits the University from using marital status as a classification for determining which of its employees will receive additional compensation in the form of third-party health coverage. This court holds that such a classification violates state laws prohibiting marital status discrimination, and that therefore the University's current definition of "dependent" is unlawful.

This holding is not tantamount to requiring the University to offer coverage to unmarried individuals. The holding does nothing more than prohibit the University from using marital status to determine whether or not to provide its employees with additional compensation in the form of subsidized health care coverage for the employees' partners. This holding need not result in radical changes in the University's existing policy, nor need it result in significant administrative burdens.

The University, confronted with a ruling from this court that its current plan violates AS 18.80.220, would have many options. First, it could simply refuse to provide health care coverage for spouses. That is, it could eliminate "spouse" from its definition of "dependent". Second, the University could rewrite its plan to indicate that "dependents" include all persons for whom its employees provide the majority of financial support. The University could adopt Tumeo and Anders' "Affidavit of Spousal Equivalency". The health care plan could be rewritten to indicate that health care coverage would be available for all employees and

for employees' domestic partners, provided the employee and the partner were willing to sign an affidavit such as Tumeo and Anders' affidavit. Certainly, married employees would be willing to sign such an affidavit. However, the plan would be nondiscriminatory because an unmarried employee could also sign the affidavit if he or she were in a domestic partnership involving financial interdependence. Other options are probably also available. Certainly the three mentioned above would not result in radical, sweeping changes in the University's existing policy. Further, the administrative problems associated with these options would likely be minimal. Finally, and perhaps most importantly, the University would not be in a position in which it would have to engage in intense scrutiny of its employees' relationships.

The University correctly notes that Thomas v. Anchorage Telephone Utility, 741 P.2d 613 (Alaska 1987) adopts a three-stage analysis for disparate treatment employment discrimination cases. In the first stage, the employee must show a prima facie case of employer discriminatory intent. If the employee does so, in the second stage the employer must articulate a legitimate, nondiscriminatory reason for the disparate treatment. If the employer does so, in the third stage the employee must prove that the proffered reasons are pretextual. The court has determined that Tumeo and Wattum have shown a prima facie case of disparate treatment. On its face, the University's health plan favors married couples over unmarried couples. The University has

articulated a basis for the discrimination: the legal mutual obligation of support that results from marriage. The court determines that this is pretextual. As noted before, to allow this basis for disparate treatment would be to eliminate the prohibition against marital status discrimination. Any employer could raise the argument with respect to any item of employee compensation. Recognition of the proffered reason for disparate treatment would result in circular reasoning. Accordingly, the court determines that Tumeo and Wattum have proven their allegation of discrimination based on marital status.

For these reasons, the court concludes that President Komisar's decision must be REVERSED. The matter will be REMANDED or further proceedings consistent with this opinion.[9]

DATED at Fairbanks, Alaska this 11 day of January, 1995.

MARY E. GREENE
Superior Court Judge

[9]Because of the disposition of this issue it is not necessary to reach the other two issues raised by appellants. In the interest of completeness the court notes that the Grievance Council misstated the law of sexual discrimination; mere "equal application" does not render a regulation nondiscriminatory. See Loving v. Virginia, 388 U.S. 1, 8, 18 L.Ed.2d 1010, 1016 (1967). However, the court concludes that the health plan does not discriminate on the basis of sex.

The court does not reach the argument that the plan violates the requirement of merit-based employment because the University never addressed the issue and the case is remanded for further proceedings, where, if necessary, the University may consider the allegation in the first instance.

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

AT FAIRBANKS

MARK TUMEO and KATE WATTUM, Appellants, v. UNIVERSITY OF ALASKA, Appellee.	Case No. 4FA-94-43 Civil

APPELLEE UNIVERSITY OF ALASKA'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RECONSIDERATION

I. INTRODUCTION

This case stems from the University of Alaska's ("University") denial of dependent health care benefits for the same sex domestic partners of appellants Mark Tumeo and Kate Wattum, University employees. The University's denial of appellants' requests to enroll their same sex domestic partners in the University's health care program was based upon the definition of "dependent" in the University's health care plan, which allows for dependent coverage only for spouses, not for unmarried domestic partners.

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On January 11, 1995, this court issued a Memorandum Decision and Order in which it ruled that the University's definition of dependent in its employee health care plan violated AS 18.80.220's prohibition against discrimination in employment on the basis of marital status. In this motion for reconsideration, the University respectfully submits that, in assuming that AS 18.80.220's ban on marital discrimination is absolute, the court overlooked or failed to consider the Alaska legislature's explicit license to the State of Alaska and others, as employers, to discriminate in the provision of employee dependent health care coverage on the basis of marital status. Accordingly, in light of the clear evidence of the legislature's intent to allow public employers to discriminate in the provision of dependent health care coverage on the basis of marital status, this court should reconsider its January 11, 1995 order and uphold the University's denial of appellants' grievance.

II. ARGUMENT

A. The Court Overlooked or Failed to Consider Clear Evidence of Legislative Intent to Allow Discrimination on the Basis of Marital Status in the Provision of Dependent Health Care Coverage

Implicit throughout the court's January 11, 1995 decision is the premise that, in enacting AS 18.80.220, the Alaska legislature intended to issue a prohibition against discrimination on the basis of marital status that is absolute and incapable of exception. Indeed, the court's opinion that the Alaska legislature has evidenced no intent to allow a deviation from its ban on marital status discrimination is explicit as well as implicit. In distinguishing Phillips v. Wisconsin Personnel Commission[1/] from the instant case, the court stated:

> The court does not regard Phillips as persuasive authority. The court in Phillips faced a much different statutory scheme. There the court was faced with two

[1/] 167 Wis.2d 205, 482 N.W.2d 121 (Wis. App. 1992).

potentially inconsistent statutes: one prohibited discrimination based on marital status, the other defined "dependent" for the state health insurance plan as "spouse." Where two statutes are inconsistent, the court's task is to reconcile them in such a way as not to nullify either. Here there is only one statement of legislative intent: AS 18.80.220 prohibits discrimination based on marital status. There is no competing statute which requires interpretive gymnastics.[1]

The court's implicit and explicit premise that the Alaska legislature's ban on marital status is unconditional is faulty, however. In AS 39.30.090, the legislature's mandate to the State of Alaska to provide health benefits for its employees, there is clear evidence of the legislature's intent that the ban on marital status not be absolute, pointedly with regard to an employer's provision of insurance benefits. AS 39.30.090 states in relevant part:

> **Sec. 39.30.090. Procurement of group insurance.** (a) The Department of Administration may obtain a policy or policies of group insurance covering state employees, persons entitled to coverage under AS 14.25.168 [the Teachers' Retirement System], AS 22.25.090 [the Judicial Retirement System], AS 39.35.535 [the Public Employees' Retirement System] ..., or employees of other participating governmental units, subject to the following conditions:
>
> * * *
>
> (2) Each eligible employee of the state, the spouse and the unmarried children chiefly dependent upon the eligible employee for support and each eligible employee of another participating governmental unit shall be covered by the group policy, unless exempt under regulations adopted by the commissioner of administration.

Clearly, AS 39.30.090 is clear evidence of legislative intent that the ban on marital status discrimination in employment not be absolute. In the statute, the legislature did not state that dependent benefits would be available to "anyone who is financially dependent on the employee" or "anyone who is in a marriage-like relationship" or "anyone who signs an affidavit of spousal equivalency." Instead, the legislature mandated that dependent health care benefits shall be available

[1] Memorandum Decision and Order at 16.

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to the state employees' "spouse," the person who is in a state-created and state-enforceable marital relationship with the employee.

In addition to AS 39.30.090, the other statutes enumerated in AS 39.30.090 restrict dependent health care coverage to spouses as well. AS 14.25.168, the medical benefits provision of the Teachers' Retirement System, states:

> **Sec. 14.25.168. Medical benefits.** (a) Except as provided in (c) of this section, the following persons are entitled to major medical insurance coverage if a benefit recipient elects coverage under this section:
>
> (1) A person receiving a monthly benefit from the system;
>
> (2) The spouse of a person receiving a monthly benefit from the system;
>
> (3) A natural or adopted child of a person receiving a monthly benefit, if the child is a dependent child as defined [by the Teachers' Retirement System].

Similarly, AS 22.25.090, the medical benefits provision of the Judicial Retirement System, states:

> **Sec. 22.25.090. Medical benefits.** (a) Except as provided in (d) of this section, the following persons are entitled to major medical insurance coverage:
>
> (1) A person receiving a monthly benefit under this chapter;
>
> (2) The spouse of a person receiving a monthly benefit under this chapter;
>
> (3) A natural or adopted child of a person receiving a monthly benefit under this chapter, if the child is a dependent child under [this section].

Alaska Statute 39.35.535, the medical benefits provision of the Public Employees' Retirement System, states:

> **Sec. 39.35.535. Medical benefits.** (a) Except as provided in (d) of this section, the following persons are entitled to coverage if a benefit recipient elects major medical insurance coverage under this section:

(1) A person receiving a monthly benefit from the system;

(2) The spouse of a person receiving a monthly benefit from the system;

(3) A natural or adopted child of a person receiving a monthly benefit from the system, if the child is a dependent child as defined in [the Public Employees' Retirement System].

As this court stated in its Memorandum Decision and Order, "Where two statutes are inconsistent, the court's task is to reconcile them in such a way as not to nullify either."[4] Here, there are not only two statutes, but at least four that are inconsistent with AS 18.80.220's ban on marital status discrimination. The University respectfully submits that these statutes evidence clear legislative intent that AS 18.80.220's ban on marital status discrimination not be absolute, and that it be subject to deviation, explicitly with regard to the provision of dependent health care coverage by a public employer. Accordingly, this court should reconsider the line of reasoning used by it in its January 11, 1995 Memorandum Decision and Order and uphold the University's denial of dependent health care coverage to appellants' domestic partners.

RESPECTFULLY SUBMITTED at Fairbanks, Alaska this 23rd day of January, 1995.

OWENS & TURNER, P.C.
Attorneys for Appellee
University of Alaska

By _____
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[4] Memorandum Decision and Order at 16.

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Defining 'domestic partners'

Judge Mary Greene, who ruled last week that the university cannot discriminate on the basis of marital status when providing health benefits, has made a legally correct but politically untenable decision.

Two university employees—Mark Tumeo and Kate Wattum—sued the institution because it would not extend health benefits to their same-sex domestic partners. They said the university was discriminating against them, and Greene agreed.

The judge's decision seems unassailable from a legal standpoint. The university pays part of the health insurance bill for employee spouses. That means a married employee is "paid" more than an unmarried employee. That's discrimination on the basis of marital status, and that's illegal under state law.

The university used some convoluted reasoning to obscure the essential issue. It argued that married people have a legal obligation to support their spouses, so the university can help them with health benefits. But Greene noted that under the university's logic "a single person might be paid $50 for a job for which a married person might be paid $100. Such a result would plainly be unlawful . . ."

So what happens next?

Judge Greene suggested a few options for the university. It could stop subsidizing health benefits for spouses of university employees. Or it could extend benefits to anyone who signs an "affadavit of spousal equivalency," as Tumeo and Wattum have done with their partners.

Neither option is politically realistic.

Barring employer subsidies of health benefits for married couples would create a huge uproar.

But formally accepting an "affadavit of spousal equivalency" would create a greater outcry because it essentially would recognize gay and lesbian marriages. Currently, that idea is in legal limbo, Greene noted. It likely will stay there, given the threat to strong, healthy families that many people believe such marriages represent.

There is another, broader option not expressed by Greene. We could make a decision that, as a society, we want our laws to encourage heterosexual marriages by allowing employers to pay such couples better. However, such an effort could require statutory and constitutional amendments at the state and federal level. And it is fraught with risk—do we really want government to enter the business of deciding (with apologies to Dr. Seuss) "who's better than who?"

Greene's decision could have immense ramifications because her reasoning may be applied to any government or private employer.

And any action spurred by the decision will be extremely controversial. This issue has been simmering for some time. Judge Greene, in defining the dispute precisely, just brought it to a boil.

FACTS ABOUT DOMESTIC PARTNERSHIP BENEFITS

Contacts for further information:
Fairbanks: Mark Tumeo, 474-6090
Juneau: Sara Boesser, 586-5230
Anchorage: Allison Mendel, 279-5001

Domestic Partnerships are NOT the Same as Marriage

The establishment of a domestic partnership is NOT a substitute for marriage nor does it provide the same rights and privileges bestowed upon a married couple. A domestic partnership is a contractual relationship between two individuals who share long-term financial commitments with each other, and agree to share liabilities and assets. While such a contractual arrangement may provide such benefits as insurance coverage through one of the individual's employers, there are numerous rights which accrue to married couples which do not accrue to domestic partners and which cannot be gained through contractual arrangements outside marriage. Examples of some of these benefits are provided below.

Examples of Rights and Privileges Gained Through Marriage (NOT available through Domestic Partnerships)

- Joint parenting, joint adoption, joint foster care or custody.
- Dissolution and divorce protections, including child support.
- Immigration and residency for foreign partners.
- Crime victims recovery benefits.
- Veterans discounts on medical care, education and home loans.
- Wrongful death benefits for surviving partner and children.
- Bereavement or sick leave to care for partner or child.
- Visitation status as next of kin for hospital visits.
- Joint insurance policies for home, auto and health.
- Inheritance in the absence of will.
- Rights to social security and medicare benefits.
- Joint filing of tax returns.
- Joint filing of customs claim when travelling.
- Joint leases with automatic renewal rights in event of death or departure of one partner.
- Inheritance of jointly-owned real and personal property through survivorship, avoiding taxes and probate.
- Spousal exemptions to property tax increases upon death of co-owner.

Domestic Partnership Benefits DO NOT Cause Economic Hardship

Currently, over 50 cities or municipalities, 60 universities and 100 private companies offer domestic partnership benefits. A complete listing of these organizations is provided in the attached information. As a result of their experiences, extensive data have been collected on the economic impact of extending health benefits to unmarried domestic partners. Without exception, there has been little to no economic impact when benefits were extended. Average enrollment increases ranged between 0.3% to 2%. There have been no associated increases in insurance premiums.

Using the data collected from the extensive experience of other universities, municipalities and private companies, if the University of Alaska extended domestic partnership benefits to its approximately 6000 employees, it could realistically expect an increased enrollment of approximately 60 people (1%). At the average additional cost to the University of approximately $150 per month, this represents a total increase of only $108,000 per year. This is less than a 0.6% increase over the approximately $ 16.7 million the University expended in FY 1994 on benefits.

FACTS ABOUT DOMESTIC PARTNERSHIP BENEFITS

Contacts for further information:
Fairbanks: Mark Tumeo, 474-6090
Juneau: Sara Boesser, 586-5230
Anchorage: Allison Mendel, 279-5001

The Fairbanks Superior Court Decision DOES NOT threaten Private Companies

The recent Superior Court decision in Tumeo and Wattum v. The University of Alaska, is an Administrative Law decision that applies only to the case brought by Tumeo and Wattum. While it does set precedent for all public employers in the State, it does not open up a channel for litigation against private companies. All private employers are subject to the Employee Retirement Income Security Act of 1974 (ERISA). This law explicitly pre-empts any State law or State Court ruling regarding employee benefits. Only the State (therefore only public employees) are affected by this ruling.

Furthermore, in her decision, Judge Mary Greene did NOT order the University, or any other employer, to provide domestic partnership benefits. What she said was that providing benefits to a third party based only on the possession of a marriage license is unlawful. Many employers recognize that benefits are part of the compensation of their employees. This is a fact also recognized by the Supreme Court of the United States (see Newport News Shipbuilding and Dry Dock Corp. v. EEOC, 462 U.S. 669, 682, 77L.Ed.2d.89, 101 [1983]). Many private and public employers across the country ensure that equal work gets equal pay, without regard to marital status through a "cafeteria style" benefits program in which all employees receive the same value benefit package. Each employee is free to select the type of benefits they want within that value. If an employee wants additional benefits, then they are charged. This avoids having to pry into an employee's private life when determining compensation.

Providing Domestic Partnership Benefits Would NOT be an Administrative Burden

Extending domestic partnership benefits does not add additional administrative responsibilities. In the numerous public institutions that offer such benefits, a standard form is used. This form requires the applicant to certify or provide evidence of financial interdependency and provides legal protections to the institution against fraudulent claims. Examples of such forms used at the University of Iowa, Princeton University and Lotus Corporation are provided in the attached information. The application for benefits is then processed exactly like all other applications for the addition of a third party to a benefits package.

It is important to note that the same procedure is followed whenever an employee changes her or his status through marriage, death of a spouse or dependant or the birth of a child. Additionally, it is only a one-time event. After the change is made and the domestic partner is added, no other administrative burden accrues to the institution.

FACTS ON DOMESTIC PARTNERSHIPS

House Bill 226, is a response to the concept that domestic partnerships would be recognized under the Superior Court ruling. The sponsor of the bill, Representative Kelly stated that "**The motivation [for the bill] is really economic.**" He stated a concern that employer benefit costs would "skyrocket" because anyone could claim a domestic partnership relationship and ask for benefits. However, there is a **large body of evidence that the recognition of domestic partnerships, when done in an organized and concise manner, does NOT result in increased benefit costs.**

Benefit packages, which are are traditionally used to attract and retain good employees, continue to do just that when domestic partnership benefits are included, without increases in premium costs, and with only minimal increases in enrollment. In the cases where domestic partnership benefits have been approved for only same-sex partners, the average increase in enrollment is less than 0.3%. In those instances where domestic partner benefits were offered to same-sex and different sex couples, the average increase is approximately 2%. The data, collected by Harvard University, is shown in Table 1 below.

Table 1: Experience of Employers Offering Domestic Partnership Benefits (All data provided by Harvard University)

	Year Implemented	Same-Sex Only	Total Employees	Enrollment Increase	Premium Increase
UNIVERSITIES & HOSPITALS					
Chicago	1993	yes	6,060	0.1%	no [a]
Children's Hosp. (Boston)	1992	yes	4,300	0.4%	mixed [b]
Harvard	1993	yes	10,400	not avail.	no
Iowa	1993	yes	8,000	0.2%	no [a]
Montefiore (New York)	1991	yes	8,500	0.3%	no
Stanford	1993	yes	9,760	0.2%	yes
MUNICIPALITIES					
Berkeley, CA	1985	no	1,475	7.9%	no
Cambridge, MA	1993	no	900	1.9%	no
San Francisco, CA	1991	no	32,500	0.5%	no
Santa Cruz, CA	1986	no	700	2.8%	no [a]
Seattle, WA	1990	no	10,000	2.8%	no
COMPANIES					
Ben & Jerry's	1989	no	350	4.0%	no
International Data Group	1993	no	1,500	2.3%	no [a]
Levi Strauss	1992	no	23,000	0.6%	yes
Lotus	1991	yes	3,100	0.4%	yes
The Village Voice	1982	no	230	7.8%	no

a Self-insured.
b Offers four plans, only one increased premiums.

Domestic partnership benefits are a reality in over 50 cities and municipalities around the country. Three states, Massachusetts, Vermont and New York, offer state workers domestic partnership benefits. Over 100 companies, from Levi Strauss employing over 30,000 to small businesses, offer benefits to domestic partners the same as to married couples. Over 60 Universities offer some sort of domestic partnership benefits, including Harvard, The University of Iowa, The University of South Dakota, the University of Colorado, The State Universities of New York, and Duke University. A complete listing of municipalities, Universities and companies providing domestic partnership benefits is attached.

POSITION PAPER ~ Supporting Judiciary's CS-226 ~ January 28, 1996

For University Health Benefits for Married & Domestic Partner Couples

Organization: **Committee for Equality** -- Statewide organization.
PO Box 34202, Juneau, AK 99803

Board Contacts: **Anchorage:** Jackie Buckley, 279-5001 (w); 279-5437 (fax); 562-0046 (h).
Fairbanks: Louise Barnes, 479-0618 (w/h).
Juneau: Sara Boesser, 586-5230 (w); 789-7450 (home fax); 789-9604 (h).

Position: **CFE Supports House CS-226 as written, with domestic partners language intact.**

No action needs to be taken with this bill as presented from Judiciary, with equal protection of married and domestic partner couples intact, since the courts are deciding the constitutionality of this matter.

If any changes are proposed by the Finance Committee, it should go to a subcommittee to study the legal and financial implications.

As written, the bill will save the state money. If domestic partners were deleted, the bill would illegally discriminate on the basis of marital status, thus would cost the state money to defend additional court cases that would surely rise.

Committee for Equality is pleased to support CS-226 as written. By incorporating financially interdependent domestic partners into the University's health benefits plan, this bill no longer illegally discriminates on the basis of marital status. Including domestic partners is one of the recommendations made by Superior Court Judge Greene, and it is wise of this body to follow non-discrimination law in this case. **Actually, it would be best for this body to take no action on this bill at this time,** since it is in good shape -- and action is unnecessary since the courts have implemented domestic partner coverage at the University while the issue is under appeal. No action is needed by the Legislature -- so it is unfortunate that Representative Kelly has brought it forward now, when you have much more pressing business to deal with for the state. **This bill can rest unchanged as it is, but any amendments should cause it to go to a subcommittee to determine the legal and financial implications** of changes that cross the court proceedings in process.

Representative Kelly appears determined to revert this bill back to its discriminatory origin -- where it would restrict health benefits to only those couples he approves of. He has posed many "reasons" for his stand, but when facts are reviewed, none of his claims stand up. Several are addressed below for your review. To the extent that Rep. Kelly opposes equal rights for all equally financially interdependent partnerships on religious beliefs he may hold, the committee should remember that while the US Constitution does protect people from discrimination on the basis of religion, that protection includes not just freedom of religion, but also freedom *from* religion. Thus Rep. Kelly's religious or religion-inspired beliefs are his to practice for himself, but not to impose on others. Especially when he starts trying to amend state non-discrimination law to say Alaska won't discriminate *except* for a group he disagrees with. How would he and others feel if it were their group being exempted, say, as in legislating that the University wouldn't discriminate against employees except on the basis or religion, or age, or national origin?

Back to other facts of CS-226. It is important for you to know that **this bill will not cost the state money. In fact, it may well save money,** because by allowing more employees to pay for the health care coverage of their financially interdependent partners, more Alaskans will be covered by private health care coverage, and **there will be fewer citizens left to seek Medicaid** at state expense.

This bill does not, as a very few opponents suggest, portend either large numbers of people joining the health care plan or significantly increased premium costs to the University. You have access to studies done by many businesses and universities. All find from 1-3% increase in enrollment -- with **no negligible premium increase.** AETNA serves over 25 universities and businesses, and their study finds only 2% enrollment increase the first year, and less than 1% each year following; **AETNA sees no increase in premiums as a result of domestic partners inclusion.**

So -- get more people off Medicaid and paying for their health care coverage -- at no premium increase.

Also, as should be obvious, it will save the state even more money to not pass a bad bill, such as HB-226 originally was without the domestic partners language -- because, had that HB-226 passed, the state would then have been subject to more marital discrimination lawsuits. CS-226 does not discriminate on the basis of marital status, so its passage won't cost the state more wasted time and money on discrimination cases. And again, **with the courts already implementing this coverage, CS-226 is unnecessary at this time.**

Representative Kelly has in the past attempted to suggest that the domestic partners language discriminates on the basis of economic

(continued)

status. Sara Boesser's testimony to House HESS is attached, debunking that claim. In fact, since CS-226 addresses *employees* (not indigent people, not unemployed people), any *employee* regardless of income level could qualify for at least five of the criteria -- all that is needed for domestic partner status -- at no cost. So **for employees, there is no economic barrier** to receiving health benefits for a domestic partner.

At the end of the HESS meeting, Representative Kelly attempted to suggest further that the domestic partners language might somehow discriminate on the basis of race, or on the number of children a person might have. It is unfathomable what he had in mind with his comments. Because, once again, CS-226 deals with all employees. It doesn't say employees of only certain races receive health benefits for their domestic or married partners. It doesn't say that employees with or without certain numbers of children receive health benefits for their domestic or married partners. Quite the contrary: it clearly says the University must offer health benefits to *all* employees' married or domestic partners. All. Equally. That's what is good about this CS-226 law: it's about fairness, not about special benefits only for married people.

One final point. The Legislature is currently considering extending the ethics bill coverage to include the domestic partners of lobbyists. The state finally recognizes that **domestic partners are equivalent to married persons in regards to the ethics of lobbying. So, to be ethical in health benefits at the University, domestic partners should be considered equivalent as well.**

In conclusion: CS-226 as it passed in Judiciary is a good bill, but unnecessary due to court actions at this time. Do the public and the legislature a favor and take no action on it at this time. **The legislature does not need unnecessary contentious bills before it when matters of genuine concern need its time and attention,** matters like the budget, welfare reform, etc. **Most important -- if for any reason this bill is amended, it should go to subcommittee for thorough review of the legal implications of discriminatory language, and the financial implications of additional lawsuits against the state that would surely arise.**

[testimony attached regarding no financial discrimination in this bill]

Sara Boesser
Committee for Equality Board Member
9365 View Drive, Juneau, AK. 99801; 586-5230

**Testimony on HB-226 [University benefits]
given in House HE&SS, 4-18-95**

I totally support Amendment #1[for inclusion of domestic partners], plus clarification for health benefits as stipulated by the Human Rights Commission, and hope you will too. **If you don't, the bill should die here, today.**

In my few minutes, I want to correct a misconstruction of the amendment that Representative Kelly has made. He implied -- very wrongly let me assure you -- that this amendment would discriminate against possible domestic partners on the basis of their economic status. He could not be more wrong.

Since you've had time to read the amendment, by now you should know what the truth is too. Far from discriminating on a financial basis, **a domestic partnership can be formalized at no cost** (while a marriage license costs $25).

You see, **Amendment #1 lists 10 potential criteria**. And to be a qualified domestic partner, a **couple has to meet "at least five"** of those criteria. Well, for employees -- and this amendment addresses employees -- **six of the criteria are absolutely free. They are:**

1) Having entered into a legally binding domestic partnership agreement;
2) Being designated by the employee as a primary beneficiary of life insurance;
3) Being designated by the employee as primary beneficiary of the retirement benefits in case of the employee's death;
4) Being designated as the primary beneficiary under the employee's will;
5) Being named under a durable health care or property power of attorney.
6) Having a co-parenting agreement with an employee.

There you have it -- six criteria -- all free. Therefore, protests that this amendment might economically discriminate against anyone must be firmly disregarded.

I'd like to add that the remaining four criteria are also potentially of little or no cost to an employed person. For example, everyone lives somewhere -- so adding a partner's name to a lease or deed is not a large expense. Joint bank accounts can be entered into for as little as $5. Most employees have a car -- adding a partner's name to that deed is not a big expense. And for employees with credit, adding another person to an account or to a liability is not an expense.

That covers it -- all **ten criteria -- and any employee could meet at least five with little to no money.** Even so, despite the no cost feature, not "just anybody" will sign up -- the studies you've heard show just 1-3% sign up. Why? Because taking financial responsibility for someone is not something anyone takes lightly. It's a very serious venture, and "not just anyone" will do so.

In conclusion, this amendment should be welcomed by you all. It will guarantee more people paying for health care and fewer people on medicaid; it doesn't challenge the institution of marriage at all because *all* it grants is health benefits; extensive research shows it has had no economic impact in other states; and by passing this you won't gut State Human Rights law.

Please pass Amendment #1, for domestic partners. Without it, 226 must die. Thank you.

THE UNIVERSITY OF IOWA

March 23, 1995

Mr. Daniel Collison
P. O. Box 21466
Juneau, AK 99802

Dear Mr. Collison:

The University of Iowa offers a variety of benefits to its employees who work 50% time or greater. These benefits include health, dental, vision and hearing aid insurances. In addition to the employee, an individual is permitted to insure their spouse and dependent children. A spouse is defined as an individual to whom they are legally married, in a common law relationship, or in a domestic partner relationship. The State of Iowa has recognized the common law relationship since 1953. An individual and their heterosexual partner needs only to sign a common law statement (see attached) declaring that they are living and holding themselves out as a married couple. In 1992, The University of Iowa implemented a domestic partner program which recognized the relationship of the same sex couples. These individuals must sign an affidavit (see attached) stating that they are involved in a relationship and acknowledging that certain conditions do exist concerning that relationship.

The University of Iowa employs approximately 26,000 people with 14,000 eligible for benefits. Of this number, only .9% are in a common law relationship, while only .2% of the population is covered under the domestic partner relationship.

The University has found that there has been no effect on the claims as a result of these common law and domestic partner relationships. The last twelve months of domestic partner relationships have resulted in claims averaging only $224 per person versus a regular spouse claim average of approximately $2,700. There has been no premium increases as a result of enrolling these groups of individuals in the total medical plans at The University of Iowa.

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202 Eastlawn
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Personnel Administration 319/335-2667
Employment 319/335-2656
Job Analysis 319/335-2667
Staff Benefits 319/335-2670

Faculty and Staff Disability
Accommodation Services 319/335-2660
Text Telephone 319/335-3495

I have also enclosed a research study which was done when The University of Iowa investigated the inclusion of domestic partners into its insurance programs.

If you have any questions concerning any of the information presented, please feel free to contact me directly.

Sincerely,

Richard G. Saunders
Assistant Director
Personnel and Staff Benefits

RGS/ksk

Enclosures

THE NATIONAL LEGAL FOUNDATION

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April 4, 1995
Via Facsimile & U.S. Mail

Mr. Michael D. Johnston, Chairman
Alaskans Opposed To Pro-Homosexual Policies
P.O. Box 210056
Anchorage, AK 99521-0056

Dear Mr. Johnston:

We appreciate your inquiry. Upon review of the materials you provided, I am prepared to answer the three questions you posed.

First, the order of the *Tumeo* court is of course binding only on the parties to the case. The reasoning of the case however will undoubtedly be used in other cases, both in Alaska and other states, as persuasive, though incorrect authority on what constitutes marital status discrimination. Thus, *Tumeo* has far-reaching implications.

In response to your second and third questions, the Minnesota case to which you referred, *Lilly v. City of Minneapolis*, 527 N.W.2d 107 (Minn. Ct. App. 1995), is largely inapplicable. The *Lilly* court enjoined the city's provision of benefits to employees' same sex "domestic partners" because the court concluded that the city had no authority to provide benefits to domestic partners under state law. The case did not turn, as did *Tumeo*, on what constitutes marital status discrimination.

If H.B. 226 is made law it will nullify *Tumeo*'s result. This would be a political victory. However, this victory is limited in its scope because it reaches only the employment area. The proposed amendment does not affect the marital status provisions of other state statutes such as the prohibition on marital status discrimination in housing. Furthermore, H.B. 226 does not target the real danger -- *Tumeo*'s reasoning and definition of marital status discrimination.

The true problem with the *Tumeo* opinion is not so much its result as it is its shoddy definition of marital status discrimination. *See Tumeo v. University of Alaska*, No. 4F-94-43, slip op. at 12-13 (Alaska, Super. Ct., 4th Judicial Dist. Jan. 11, 1995). First, the reason the *Tumeo* court was free to conclude that the University of Alaska had discriminated on the basis of

marital status was because the legislature failed to tie the court's hands by defining what constitutes marital status discrimination. If the legislature defined marital status discrimination in all relevant statutes in a way that did not prohibit the type of action taken by the University of Tuneo, *Tuneo's* result as well as its reasoning would be nullified.

Whether it is politically prudent at this time to attempt a legislative definition of marital status discrimination as pointed out above or wait for a more opportune time is a matter left to your discretion. It may be prudent to await the outcome of H.B. 226 in order to make that decision.

I trust I have been of assistance in answering your questions. Should you have further questions or need assistance please feel free to contact me.

Sincerely,

Barry C. Hodge
Staff Attorney

[illegible]\correspd\1995\johnstak.doc

Monday, March 27, 1995

The Honorable Cynthia Toohey and Con Bunde
Co-Chairs, HE&SS Committee
House of Representatives
Capitol Building
Juneau, Alaska 99801

Dear Representatives Toohey and Bunde:

I am vice-president of SEAGLA, the Southeast Alaska Gay and Lesbian Alliance. Our organization includes members from Ketchikan, Petersburg, Sitka, Juneau, Haines and other Southeast Alaskan communities. As a representative of SEAGLA, I oppose passage of H.B. 226 which will deny domestic partner benefits to UAS employees.

The sole argument advanced by supporters of H.B. 226 is that to extend domestic partner benefits will necessarily result in an undue financial burden on the University's health care plan. The evidence overwhelmingly suggest otherwise. In particular, I submit for your review a letter and attachments from a University of Iowa benefits administrator, a packet of seven articles on this subject, and a comprehensive listing of corporations, universities and government entities which have extended domestic partner benefits to their employees.

Those who would deny domestic partner benefits predicate a financial burden on three myths:

* Myth #1: If UAS opens its health care plan to the domestic partners of its employees, the plan will be inundated with new enrollees.

  The experience of the University of Iowa counters this myth. The U of I extended benefits to an employee's common law marriage partner in 1353; in 1992, the same benefits were extended to an employee's same sex domestic partner. Currently, the University employs approximately 26,000 people with 14,000 eligible for benefits. Of this number, only .9% are in a common law marriage, while only .2% of the population is covered under the domestic partner relationship.

  The University of Iowa's experience is consistent with that of other employers. In 1993, *The Segal Company Executive Letter* reported that in those companies which extend benefits to domestic partners -- both straight and gay -- participation rates are less than 5% of the workforce and frequently less than 2%.

* Myth #2: Extending health care benefits to the domestic partners of UAS employees will be burdensome financially to the plan.

  A study appearing in the June 1994 *CCH Employee Benefits Management Directions* finds that plans offering domestic partner health coverage to same-sex couples experience about a 1% total increase in health care costs; plans offering health coverage to

all domestic partners experience approximately a 3% increase in health care costs.

* Myth #3: The medical bills of a gay male domestic partner -- example: AIDS-related claims -- are more costly than claims of an employee's spouse or dependent.

The authors of an article in *Employee Benefits Practices* report "there is no evidence to indicate that the average health care costs of a domestic partner (same sex and/or opposite sex) will be significantly higher than that of a spouse."

For example, the average AIDS-related claim currently figures at $119,000. A premature birth however can cost as much as $1 million. Two weeks in intensive care following a heart attack can cost in excess of $50,000. This figure doesn't include surgery, related expenses and follow-up.

In fact, the experience of the University of Iowa might suggest that a health plan benefits from enrolling domestic partners rather than spouses of employees. In 1994, the University of Iowa discovered that claims for persons in domestic partner relationships averaged only $224 per person; a regular spousal claim averaged approximately $2,700!

The facts overwhelmingly suggest that should UAS extend domestic partner benefits to its employees there would in fact be no significant added financial costs to the university health plan.

If the committee yet harbors concerns about the costs of such a benefit, I would suggest that it refer the matter to a subcommitte for a thorough examination of all financial considerations. Furthermore, I would suggest that the Robinson amendment -- which strictly defines a domestic partner relationship -- will prevent abuse of such benefits and minimize any costs to the University health plan.

Daniel Collison
PO Box 21466
Juneau, AK 99802
(home) 907/789-5001

Position Paper
of
Equality Under Alaskan Law (EQUAL)
Regarding
Domestic Partnership

Equality Under Alaskan Law (EQUAL) of Fairbanks would like you to consider a proposed amendment to House Bill 226 (attached). As it is currently written, House Bill 226 creates special rights for a closed group of people. By writing into law the right of the state and private businesses to discriminate against individuals based on their marital status, a dangerous precedent is being set- a precedent that may allow the majority to create special rights for one group at the expense of others.

It seems that the main goal of House Bill 226 is to promote committed, long-lasting relationships between two people. The proposed amendment not only helps to support those individuals who chose to enter into a committed relationship, it also shows that the Alaska State Legislature supports equality and civil rights for all of Alaska's citizens, regardless of marital status.

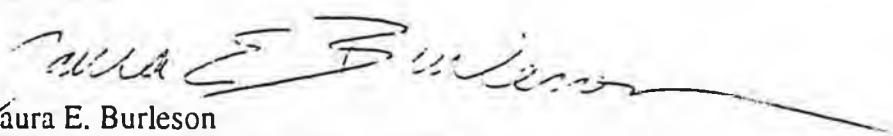
This amendment will help to eliminate possible abuses of domestic partnership benefits. By defining domestic partnership by a specific set of criteria, frivilous application of domestic partnership benefits programs will be eliminated.

Enclosed in this packet is draft language for the proposed amendment to House Bill 226. If this amendment is passed, not only will all parties involved be protected from abuse of domestic partnership programs, but non-discrimination based on marital status will be assured. This not only furthers the intent of the Human Rights laws of Alaska, it protects the State and its businesses from an explosion in frivilous benefits costs and it helps to support stable, long-term relationships.

Also enclosed in this packet is some general information on domestic partnership programs that have been implemented in other states and the costs involved.

We hope that you will support the proposed amendment to HB 226. If you have any questions please feel free to call me at (907) 474-6036 or fax (907) 474-5157.

Sincerely,



Laura E. Burleson
Vice-Chair of EQUAL (Fairbanks Chapter)

HUMAN RIGHTS COMMISSION
CITY AND BOROUGH OF JUNEAU

POSITION PAPER
HOUSE BILL 226

The City and Borough of Juneau Human Rights Commission opposes House Bill 226, legislation that permits employers to deny benefits to an employee's domestic partner other than a spouse and permits labor unions to negotiate such a denial of benefits. This bill amounts to discrimination on the basis of marital status.

The CBJ Human Rights Commission is charged with addressing unwarranted discrimination. We oppose the discrimination on the basis of marital status inherent in HB 226.

If HB 226 is intended to encourage people to make lifelong commitments, its goal is laudable but its aim is off target. Society benefits from the formation of unions between committed adults. Commitment, not marriage, is the hallmark of these unions, which can also entail shared finances, mutual dependence, and responsibility for children. The characteristics of a committed adult union do not depend on a marriage license.

Alaska is a state of individualists. When these independent people create a household, it often does not match a 1950s picture of the family. Many couples, in spite of their commitment to and dependence upon one another, are not married. In some cases, they are not free to marry. For example, one member of a couple may remain bound by law to a former spouse who will not cooperate, or cannot be located, to dissolve the marriage. If the remaining partner is unable to afford a lawyer to prosecute a default divorce, he or she remains married indefinitely. Likewise, same-sex couples are unable to marry regardless of the level of their mutual commitment and financial dependence.

If the State of Alaska is looking for ways to encourage committed unions between adults, it should not place undue emphasis on the legal fact of marriage. Doing so poses a barrier to the many unmarried partners who wish to take personal responsibility for their domestic partners.

The very first paragraph of Alaska's Constitution guarantees all of us "equal rights, opportunities, and protection under the law." The CBJ Human Rights Commission opposes HB 226 because it discriminates against committed partners who are not married, to the detriment of Alaska and in violation of the Constitution.

Current Domestic Partnership Policies

Forward

The movement toward domestic partnership benefits in the workplace is rooted in the egalitarian principal that equal work warrants equal pay, including employment benefits. For many employees, those benefits can amount to 25 percent of their total compensation. So when employers extend benefits to the spouses of heterosexual employees, the same benefits should go to the partners of homosexual employees. After all, gay and lesbian couples are functionally equivalent to married couples.

While domestic partnership benefits are a worthy goal, they don't assure full equality in the workplace because these benefits are subject to income tax, unlike benefits for married couples. Also, they don't begin to address the many other aspects of inequality — such as child custody, hospital visitation, inheritance — that would be addressed by legal same-sex marriage. In fact, same-sex marriage legislation could in one stroke assign to gay and lesbian couples all the equal rights and responsibilities guaranteed under the Constitution. This is why we have always advocated same-sex marriage.

All listings herein have been gleaned from news reports, information received directly from companies or their employees, and lists developed by the National Gay & Lesbian Task Force the Wall Street Project and others. Many, but not all, have been verified. All are subject to change.

Private Employers that Offer Benefits

In the past, nearly all companies extending benefits have been self-insured — this is now changing. After March 1994, national insurers like Aetna, CIGNA and Prudential include, at least in parts of the country, domestic partners in fully insured health plans.

Most of the plans noted below define domestic partners to include gay and lesbian couples as well as unmarried heterosexual partners. Benefits vary widely. Those entities marked with an asterisks (*) offer bereavement and/or family illness leave only. Unless otherwise noted, other listed employers offer benefits that include some form of health insurance coverage for domestic partners of employees.

Adamation, Inc., Oakland, Calif.
Adobe Systems, Mountain View, Calif.
Advanced Microdevices, Sunnyvale, Calif. & Austin, Texas
American Civil Liberties Union, Philadelphia, San Francisco, New York
American Cyanamid*
American Friends Service Committee, Philadelphia, Pa.
American Psychological Association, Washington, D.C.
American Red Cross, Minneapolis, Minn. branch
Apple Computer, Cupertino, Calif.
ASK Software Corp.
Atlantic Pictures, New York, N.Y.
Australia (all full-time workers regardless of orientation or employer's business)
Autodesk, Inc., Calif.
Bank America, San Francisco, Calif.*
Banyan Systems Inc., Westboro, Mass.
Ben & Jerry's Homemade, Waterbury, Vt.
Beth Isreal Medical Center, New York, N.Y.
Blue Cross and Blue Shield of Massachusetts
Blue Cross and Blue Shield of New Hampshire
Borland International Inc., Scotts Valley, Calif.
Boston Globe, Boston, Mass.
Bureau of National Affairs (BNA), Washington, D.C.
Cadance
Canadian Press/Boadcast News (wire service), Canada
Capital Cities/ABC, New York, N.Y.
Celestial Seasonings, Colo.
Colgate-Palmolive*
Computer Graphics, Inc.
Consumers United Insurance Company, Washington, D.C.
Cooley, Godward, Castro, Huddleson & Tatum Attorneys, San Francisco, Calif.
Counseling Service of Addison County, Vt.

Partners Task Force for Gay & Lesbian Couples, Box 9685, Seattle, WA 98109-0685; (206) 935-1206; demian@eskimo.com

Pacific Telesis Group*
PacifiCare, Calif. (HMO)
Para Transit, Inc., Sacramento, Calif.
Paramount Pictures, Los Angeles, Calif.
Planned Parenthood
Polaroid, Cambridge, Mass.*
Principle Mutual Life
Quark, Inc.
Research Triangle Park, N.C.
Riggs National Corporation*
RJR Nabisco Holdings (non-health coverage benefits)
San Francisco Chronicle, Calif. (Newspaper Guild members)
San Francisco Giants, Calif.
San Francisco Examiner, Calif. (Newspaper Guild members)
St. Paul Cos., St. Paul, Minn.
Schiff, Harden & Waite, Chicago, Ill.
Seattle Mental Health Institute, Seattle, Wash.
Seattle Times, Seattle, Wash.
Silicon Graphics, Mountain View, Calif. (non-health coverage benefits)
Smith & Hawkin, Marin County, Calif.
Sprint, Dallas, Texas (relocation aid only)
Sony Music Co.*
Sony Pictures Entertainment (Columbia, Tri-Star)
Starbucks Coffee Company, Seattle, Wash.
Sun Microsystems
Supermac Corp.
Sybase, Calif.
Teachers Insurance & Annuity*
Thinking Machines
Time Magazine Co., New York, N.Y.*
Time Warner* (corporate staff)
Trans America*
Trans America Occidental Life*
Unitarian Universalist Association
Unitarian Universalist Service Committee
United Church Board for Homeland Ministries (United Church of Christ)
University Students Cooperative Association, Berkeley, Calif.
US BanCorp*
US West*
Vermont Girl Scouts Council, Vt.
Viacom International (MTV, Showtime, Nickelodeon, Paramont), New York, N.Y.
Village of Oak Park, Ill.
Village Voice Newspaper, New York, N.Y.
Walker Art Center, Minneapolis, Minn.*
Warner Brothers (Time Warner, Inc.), Burbank, Calif.
Wells Fargo & Company*
WGBH, Boston, Mass.
Wilder Foundation, St. Paul, Minn.
Woodward and Lothrop, inc., Washington, D.C., (merchandise discounts only)
Wyatt Company
Ziff-Davis Publications, New york, N.Y.

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CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION

Central Microfilm Services
Departement of Education
State of Alaska

Rev. 6/98

Current Domestic Partnership Policies

Forward

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Most of the plans noted below define domestic partners to include gay and lesbian couples as well as unmarried heterosexual partners. Benefits vary widely. Those entities marked with an astensks (*) offer bereavement and/or family illness leave only. Unless otherwise noted, other listed employers offer benefits that include some form of health insurance coverage for domestic partners of employees.

Adamation, Inc., Oakland, Calif.
Adobe Systems, Mountain View, Calif.
Advanced Microdevices, Sunnyvale, Calif. & Austin, Texas
American Civil Liberties Union, Philadelphia, San Francisco, New York
American Cyanamid*
American Friends Service Committee, Philadelphia, Pa.
American Psychological Association, Washington, D.C.
American Red Cross, Minneapolis, Minn. branch
Apple Computer, Cupertino, Calif.
ASK Software Corp.
Atlantic Pictures, New York, N.Y.
Australia (all full-time workers regardless of orientation or employer's business)
Autodesk, Inc., Calif.
Bank America, San Francisco, Calif.*
Banyan Systems Inc., Westboro, Mass.
Ben & Jerry's Homemade, Waterbury, Vt.
Beth Isreal Medical Center, New York, N.Y.
Blue Cross and Blue Shield of Massachusetts
Blue Cross and Blue Shield of New Hampshire
Borland International Inc., Scotts Valley, Calif.
Boston Globe, Boston, Mass.
Bureau of National Affairs (BNA), Washington, D.C.
Cadance
Canadian Press/Boadcast News (wire service), Canada
Capital Cities/ABC, New York, N.Y.
Celestial Seasonings, Colo.
Colgate-Palmolive*
Computer Graphics, Inc.
Consumers United Insurance Company, Washington, D.C.
Cooley, Godward, Castro, Huddleson & Tatum Attorneys, San Francisco, Calif.
Counseling Service of Addison County, Vt.

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Cray Research*
Dayton Hudson
DEC-Belgium
Dow Chemical*
DuPont*
Eastman Kodak, Rochester, N.Y.*
Episcopal Diocese of Newark, N.J.*
Fannie Mae (Federal National Mortgage Association), Washington, D.C.
Federal National Mortgage Association
Field Museum of Natural History, Chicago, Ill.
First Bank System*
First Chicago Corporation*
Frame Technology, San Jose, Calif.
Fred Hutchinson Cancer Research, Seattle, Wash.
Gardener's Supply, Burlington, Vt.
Genentech, San Francisco, Calif.
Greenpeace International, Washington, D.C.
Group Health Cooperative of Puget Sound (HMO), Seattle, Wash.
Harley-Davidson (use of on-site facilities)
Home Box Office (HBO) (Time Warner, Inc.), New York, N.Y.
Howard, Rice, Nemerovski, Canady, Robertson & Falk, San Francisco, Calif.
Human Rights Campaign Fund, Washington, D.C.
IBM (non-health coverage benefits)
IDG
Interleaf Technology
InterMedia Partners, cable operators
International Data Group, Boston, Mass.
Irell & Manella, (entertainment law firm) Los Angeles, Calif.
Jet Propulsion Laboratory (JPL), Calif.
Kaiser Northern California (HMO)
Kaiser Southern California (HMO)
Krum & Forster Commercial Insurance (not for gay/lesbian; for unmarried heterosexuals in common law states)
KQED, San Francisco, Calif.
Lambda Legal Defense & Education Fund, New York, N.Y.
Levi Strauss & Co., San Francisco, Calif.
Lilienthal & Fowler, Attorneys, San Francisco, Calif.
Los Angeles Philharmonic, Calif.
Lotus Development Corp., Cambridge, Mass.
Mattel*
MCA/Universal, Universal City, Calif.
Microsoft Corporation, Redmond, Wash.
Minneapolis Star-Tribune, Minneapolis, Minn.
Minnesota Communications Group (Minnesota Public Radio), Minneapolis, Minn.
Milbank, Tweed, Hadley & McCloy, New York, N.Y.
Millennium Global Inc., Clearwater, Fla.
Montefiore Medical Center, Bronx, N.Y.
Morrison & Foerster (nationwide, all offices)
National Center for Lesbian Rights, San Francisco, Calif.
National Gay & Lesbian Task Force Policy Institute, Washington, D.C.
National Organization for Women, Washington, D.C.
National Public Radio, Washington, D.C.
New York Life & Annuity*
New York Times, New York, N.Y. (Newspaper Guild members)
NEXT Computer, Redwood City, Calif. (type unknown)
Northern States Power, St. Paul, Minn.
Northern Telecom, N.Carolina
Northwest Airlines (non-health coverage benefits)
Ontario, Canada (all private companies must provide dental, perscription and health care plans)
Oracle Systems Corp., Redwood City, Calif.
Orrick, Herrington & Sutcliffe, Attorneys, San Francisco, Calif.
Pacific Gas & Electric, San Francisco, Calif.*
Pacific Mutual Life*

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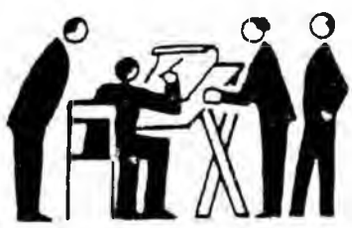
Pacific Telesis Group*
PacifiCare, Calif. (HMO)
Para Transit, Inc., Sacramento, Calif.
Paramount Pictures, Los Angeles, Calif.
Planned Parenthood
Polaroid, Cambridge, Mass.*
Principle Mutual Life
Quark, Inc.
Research Triangle Park, N.C.
Riggs National Corporation*
RJR Nabisco Holdings (non-health coverage benefits)
San Francisco Chronicle, Calif. (Newspaper Guild members)
San Francisco Giants, Calif.
San Francisco Examiner, Calif. (Newspaper Guild members)
St. Paul Cos., St. Paul, Minn.
Schiff, Harden & Waite, Chicago, Ill.
Seattle Mental Health Institute, Seattle, Wash.
Seattle Times, Seattle, Wash.
Silicon Graphics, Mountain View, Calif. (non-health coverage benefits)
Smith & Hawkin, Marin County, Calif.
Sprint, Dallas, Texas (relocation aid only)
Sony Music Co.*
Sony Pictures Entertainment (Columbia, Tri-Star)
Starbucks Coffee Company, Seattle, Wash.
Sun Microsystems
Supermac Corp.
Sybase, Calif.
Teachers Insurance & Annuity*
Thinking Machines
Time Magazine Co., New York, N.Y.*
Time Warner* (corporate staff)
Trans America*
Trans America Occidental Life*
Unitarian Universalist Association
Unitarian Universalist Service Committee
United Church Board for Homeland Ministries (United Church of Christ)
University Students Cooperative Association, Berkeley, Calif.
US BanCorp*
US West*
Vermont Girl Scouts Council, Vt.
Viacom International (MTV, Showtime, Nickelodeon, Paramont), New York, N.Y.
Village of Oak Park, Ill.
Village Voice Newspaper, New York, N.Y.
Walker Art Center, Minneapolis, Minn.*
Warner Brothers (Time Warner, Inc.), Burbank, Calif.
Wells Fargo & Company*
WGBH, Boston, Mass.
Wilder Foundation, St. Paul, Minn.
Woodward and Lothrop, Inc., Washington, D.C., (merchandise discounts only)
Wyatt Company
Ziff-Davis Publications, New york, N.Y.



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Colleges Recognizing Domestic Partners

Stanford University's farreaching domestic partner policy allows unmarried partners of students — same- or opposite sex — to qualify for married student housing and to use the university's health clinic, libraries and athletic facilities. In addition, the school provides benefits to partners of staff and faculty.

Numerous colleges provide health and other benefits for domestic partners of faculty and staff. In some cases, partners of students also get consideration, including eligibility for married student housing and use of college facilities. Conditions and benefits vary widely. An asterisk (*) means bereavement and/or family illness leave only.

Albert Einstein College of Medicine, New York, N.Y.
American University, Washington, D.C.
Amherst College, Amherst, Mass.
Bowdoin College, Brunswick, Maine
Brown University, Providence, R.I.
California Institute of Technology (Caltech), Pasadena, Calif.
Carnegie Mellon University, Pittsburgh, Pa.*
Clark University, Worcester, Mass.
Colby College, Waterville, Me.
Columbia University, New York, N.Y.
Columbia University Clerical Workers, New York, N.Y.
Dartmouth College, Hanover, N.H. (same-sex partners only)
DeAnza Community College, Cupertino, Calif.
Duke University, Durham, N.C.
Florida International University, Miami, Fla.
General Theological Seminary (Episcopal - Housing for same-sex committed couples who are students)
Georgia State University, Atlanta, Ga.
Grinnell College, Grinnell, Iowa
Harvard Law School, Cambridge, Mass.
Harvard University, Cambridge, Mass. (must register domestic partner in Cambridge or other city)
Hiram College, Hiram, Ohio (unofficial)
Ithaca College, Ithaca, N.Y. (Human Rights Commission found housing restrictions unfair to unmarrieds)
Massachusetts Institute of Technology, Cambridge, Mass.
Middlebury College, Middlebury, Vt.
Mission College, Santa Clara, Calif.
Moorehead State University, Moorhead, Minn. (unofficial)
New York University, New York, N.Y. (same-sex partners only)
New York University Law School, New York, N.Y.
North Dakota University, Grand Forks, N.D.
Northeastern University, Boston, Mass.
Oberlin College, Oberlin, Ohio
Occidental College, Los Angeles, Calif.
~~Ohio State University, Columbus, Ohio~~ (offered, then retracted campus family housing quarters for same-sex couples upon objection from some tenants and a state lawmaker.)
Pomona College, Claremont, Calif.
Pitzer College, Claremont, Calif.
Princeton University, Princeton, N.J.
Rutgers University, New Brunswick, N.J. (benefits stalled by administration, now in litigation)
Smith College, Northampton, Mass. (same-sex partners only)
Stanford University, Palo Alto, Calif.
SUNY Stony Brook, Stony Brook, N.Y.
Swarthmore College, Swarthmore, Pa.
Teachers College, Columbia University, New York, N.Y.
Thomas Jefferson University & Hospital, Phila., Pa. (Retirement benefits transfers to surving partner.)
Tufts University, Boston, Mass. (Same-sex faculty, staff, students only.
If legal marriage becomes available, partners must marry to retain benefits.)
Union Theological Seminary, New York, N.Y.
University of British Columbia, Vancouver, B.C., Canada
University of California, Irvine, Calif.
University of California, Los Angeles, Calif.
University of California, Santa Cruz, Calif.

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University of Chicago, Chicago, Ill. (same-sex partners only)
University of Colorado, Boulder, Colo.
University of Iowa, Iowa City, Iowa
University of Michigan, Ann Arbor, Mich.
University of Minnesota, Minneapolis, Minn.
University of New Brunswick, Fredericton, N.B., Canada
University of New Mexico, Albuquerque, N.M.
University of Oregon, Eugene, Ore. (student housing)
University of Pennsylvania, Philadelphia, Penn. (same-sex partners only)
University of Pittsburgh, Pittsburgh, Pa.
(tuition remission, facility access only for same-sex partners; no insurance)
University of Tampa, Tampa, Fla.
University of Toronto, Toronto, Ont., Canada
University of Vermont, Burlington, Vt.
University of Washington, Seattle, Wash. (bereavement; other benefits are pending)
University of Waterloo, Waterloo, Ont., Canada
University of Windsor, Windsor, Ont., Canada
University of Wisconsin, Madison, Wis.
Washington State University, Pullman, Wash.
Wesleyan University, Middletown, Conn.
Wilfred Laruer University, Waterloo, Ont., Canada
Write State University, Dayton, Ohio
Yale University, New Haven, Conn. (Health coverage for same-sex students, faculty, admin. & staff.)

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Govemments that Offer Benifits

"A family: Two or more persons who share resources, share responsibilities for decisions, share values and goals, and have commitments to one another over a period of time. The family is that climate that one comes home to; and it is that network of sharing and commitment that most accurately describes the family unit, regardless of blood, legalities, adoption or marriage."

Home Economics Association

The U.S. Office of Personnel Management published a new rule on Dec. 2, 1994 which defines family as souses, parents, children, including adopted children, brothers and sisters and their spouses and "any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship." This should allow federal workers to use sick leave to provide medical care for their domestic partners.

Cities, counties, states and countries have dual roles as employers and lawmakers. The most progressive of them have addessed the needs of domestic partners through both workplace benefits and laws that promote equality.

Benefits for Government Employees

As with private employers, most of these governmental plans define domestic partners to include gay and lesbian couples as well as unmarried heterosexual partners. Partners qualify for benefits under widely varying conditions. Those entities marked with an asterisks (*) offer bereavement and/or family illness leave only. Unless otherwise noted, others listed offer benefits that include some form of health insurance coverage.

Alameda County, Calif.*
Ann Arbor, Mich.
~~Atlanta, Ga.~~ (court declared unconstitutional, under appeal)
~~Austin, Texas~~ (citizens voted city charter benefits law restricted to heterosexuals only)
Australia (all full-time workers regardless of orientation or employer's business)
Baltimore, Mary. (same-sex partners only, health plan coverage starts Jan. 1995)
Bay Area Rapid Transit (BART), San Francisco, Calif.
Berkeley, Calif.
Berkeley Unified School District, Calif.
Boston, Mass (unpaid health insurance coverage)
Burlington, Vt.
Cambridge, Mass.
Canada (federal employees)
Chicago, Ill. (paid bereavement leave only)
Dane County, Wis.*
Dane Regional Planning Commission*
Delaware, N.J.*
Denmark (similar benefits as marriage for same-sex citizens who are "registered partners")
East Lansing, Mich. (was non-union employees only, all eligible after 1991)
Laguna Beach, Calif.
Le Al Airlines, Isreal (Nov. 1994 court ruled same benefits as heterosexuals. May impact other jobs)
Los Angeles, Calif.
France (medical benefits for non-working partner if citizens are French, three-year residents who have lived together at least one year)
Greenland (similar benefits as marriage for same-sex citizens who are "registered partners")
Hartford, Conn.
Hennepin County, Minn.*
Ithaca, N.Y.*
King County, Wash.
Laguna Beach, Calif.
Los Angeles, Calif.
Madison, Wis.*
Massachusetts* (management level only)
Metro Toronto Council, Canada
~~Minneapolis, Minn.~~ (court declared invalid, to be appealed)
(was to give cash payments until insurance could be arranged; excludes unmarried heterosexuals)
Minneapolis Public Library, Minn.
Minneapolis School District, Minn.
Multnomah County, Ore. (medical coverage for non-union)
Municipality of Metropolitan Seattle (Metro), Seattle, Wash.
New South Wales, Australia (all citizens: same-sex couples spousal rights to each other's property)
New York State (3 unions covered so far - all state workers may eventually be covered)
New York, N.Y.
Norway (similar benefits as marriage for same-sex citizens who are "registered partners")
Oak Park, Ill.
Oakland, Calif.* (dental and vision only)
Ontario, Canada
Ottawa, Ont., Canada
Olympia, WA
Portland, Ore.
Rochester, N.Y.
Sacramento, Calif.
San Diego, Calif.
San Francisco, Calif. (city & county)
San Jose School District, Calif., (certain unionized employees)*

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San Mateo County, Calif.
Santa Cruz, Calif.
Santa Cruz County, Calif.
Santa Cruz Metropolitan Transit System, Calif.
Santa Cruz Operation, Calif.
Seattle, Wash.
Sherwood Hills Village, Wis.*
Spain (lease protection for roommates, specifically includes same-sex couples)
Sweden (similar benefits as marriage for same-sex citizens who are "registered partners")
Takoma Park, Md.
Toronto, Ont., Canada
Travis County, Texas*
Vancouver, B.C., Canada
United States Civil Service*
United States Department of Housing (HUD)*
United States Office of Personnel Management* (sick leave only but can be used for any health care or funeral)
Vermont (all state workers)
Wayne County, Mich.
West Hollywood, Calif.
West Palm Beach, Fla.*
Yukon Territory, Canada

Public sector plans under development or consideration

Bellevue, Wash.
Boulder, Colo.
Denver, Colo.
~~District of Columbia~~ (killed by U.S. congress)
Harrisburg, Pa.
Illinois State

Domestic Partner Registration for Citizens

San Francisco instituted domestic partner registration in 1991. While having one of the largest gay and lesbian populations in America, after two years, only about 1,590 same-sex couples had signed on.

A domestic partnership was recognized by State Farm Insurance in 1994 after a fire destroyed a couple's home which had been insured only by one of the men. State Farm covered both partners' possessions upon learning they had registered as domestic partners in Laguna Beach. But it took months of arguments from Lambda Legal before Allstate issued a joint liability policy in 1995 for a gay couple registered as domestic partners in New York City.

Registrations attempt to redress long-standing inequality. While couples typically pay $30-$40, these registrations usually have only symbolic significance. In fact, registration may be more harmful should a court later interpret them as creating joint financial liability, thereby imposing responsibilities of marriage, without any benefits.

We have been contacted by a few companies which were considering benefits only to employees residing in cities which offer registration. To our knowledge, none have done this yet. While this removes the burden of devising benefit requirements or guidelines, it creates intra-city inequity. For instance, Delta Airlines, offers the transfer of frequent flyer awards to a same-sex partner only if they reside in a city with registration. What happens to their awards should the couple move or if a partner lives in a different city?

These registration programs are only for residents and offer no benefits unless noted.

Ann Arbor, Mich.
~~Atlanta, Ga.~~ (court declared unconstitutional, under appeal)
Austin, Texas (open to all Texans)
Berkeley, Calif.
Boston, Mass. (hospital, jail visitation, school record access, city employee benefits under study)
Brookline, Mass. (hospital and jail visitation, same-sex partners only)
Carrboro, N.C.
District of Columbia
Holland (a number of cities register domestic partners)
Ithaca, N.Y. (family rates at city-owned facilities)
Laguna Beach, Calif.
Madison, Wis.
Marin County, Calif.
Minneapolis, Minn. (hospital visitation)
New Orleans, La. (Deputy City Attorny claims law offers no new rights or benefits)
New York, N.Y.
Rochester, N.Y.
San Francisco, Calif. (originallly had hospital visitation, referenda voted it out)
Seattle, Wash.
Spain: cities of Barcelona, Cordoba, Granada, Ibiza, Madrid, Toledo, Valencia, Vitoria.
West Hollywood, Calif. (hospital and jail visitation, protection from housing eviction)

Partners Task Force for Gay & Lesbian Couples, Box 9685, Seattle, WA 98109-0685; (206) 935-1206; demian@eskimo.com

Unions That Have Negotiated Benefits

The IRS ruled in November 1994 that a multi-employer fund may offer health benefits to same-sex domestic partners without jeopardizing its tax-exempt status. However, the fund must limit its domestic partner benefit to just 3.4 percent of the amount it pays for all employee health benefits. Taxes are still paid on the benefits by the emplyee's partner.

Because they collectively negotiate for employee benefits, unions can be an important ally in winning equity for domestic partners. The unions listed here have negotiated benefits for same-sex partners, although some may provide benefits only in selected localities. Those entities marked with an asterisks (*) offer bereavement and/or family illness leave only. Unless otherwise noted, other listed employers offer benefits that include some form of health insurance coverage for domestic partners of employees.

AFSCME, Local 146, Sacramento, Calif.*
Amalgamated Workers Union, Local 88 (RWDSU)*
American Federation of Government Employees, Local 476/HUD*
American Federation of Teachers Staff Union (AFT), Wash., D.C.
Boston Hotel Worker's Union, Mass.
Canadian Union of Public Employees Local 932, Ontario, Canada
Columbia University clerical workers, New York, N.Y.*
Committee of Interns and Residents Staff Union, New York, N.Y.
Council 82 (prison guards - N.Y. State benefits)
DC Nurses' Association*
Hotel and Restaurant Employees Union, Local 2 (12 San Francisco hotels including the Mark Hopkins)
International Brotherhood of Electrical Workers, Local 18, Los Angeles, Calif.
Legal Aid Society, New York, N.Y.
Legal Services Corporation, Des Moines, Iowa*
Mt. Sinai Hospital, New York, N.Y.* (nurses)
Museum of Modern Art, New York, N.Y.*
National Treasury Employees Union*
New York/New Jersey (NYNEX), telephone company workers, New York, N.Y.
Newspaper Guild
Oil Chemical and Atomic Workers, (several locals in N.Y. and elsewhere)
Pacific Gas & Electric, San Francisco, Calif.*
Public Employees Federation (N.Y. State, SEIU/AFT)
Retail Store Employees Union Local 410R-8FCS, San Francisco, Calif.*
Seattle Public Library, Wash.*
United University Professors (professors, doctors & some nurses in teaching hospitals - N.Y. State)
Village Voice newspaper, New York, N.Y.
The Writers Guild of America West - Industry Health Fund (the "Fund")

Further Resources

"Any two people ... wishing to make a commitment to one another ... should be considered a family ... and receive those benefits accorded to families by society. Blood kinship should not be required of family members, nor should marriages."

American Humanist Association in a statement on the family, 1978.

Some organizations tracking benefits and civil rights protections in the workplace include the: Lambda Legal Defense & Education Fund, 666 Broadway, New York City, 10012; (212) 995-8585 National Gay & Lesbian Task Force, 2320 - 17th St.,NW, Washington, DC 20009; (202) 332-6483 The Wall Street Project, 80 Wall St., #1105, New York, NY 10005-3601; (212) 289-1741

Availability and costs of these documents change often, so it's best to inquire before ordering:

"Domestic Partner Benefits: Employer Considerations" (4th quarter 1994 of Employee Benefits Practices) $10, 12 pg. from **International Foundation of Employee Benefit Plans**, Box 69, Brookfield, WI 53008-0069; (414) 786-6700

"Domestic partner benefits in the media industry" $2, 3-pg. from **National Lesbian and Gay Journalists Association**, Box 423048, San Francisco, CA 94142-3048.

"Model policy for domestic partnership health insurance" from Hollywood Supports, 8455 Beverly Hills Blvd.,#305, Los Angeles, CA 90048; (213) 655-7705.

"Unmarried... with Benefits" article Dec. 1991 **Personnel Journal**; reprint information (714) 751-1883

Books

Approaching 2000: Meeting the challenges to San Francisco's families: The final report of the mayor's task force on family policy (June 13, 1990), Human Rights Commission, City and County of San Francisco, 1170 Market St., #500, San Francisco, CA 94102-4908; (415) 252-2500.

The BNA Special Report Series on Work & Family, #38: Recognizing non-traditional families, Feb. 1991 (ISBN 1-55871-212-7), $40, 32-pg. BNA PLUS. The Bureau of National Affairs, Inc., 9435 Key West Ave. Walkville, MD 20850; (800) 372-1033. Well-researched domestic partner benefit report.

Partners Task Force for Gay & Lesbian Couples, Box 9685, Seattle, WA 98109-0685; (206) 935-1206; demian@eskimo.com

District of Columbia Commission on Domestic Partnership Benefits for D.C. Government Employees; Final report and recommendations (July 1990), D.C. Office of Personnel, 613 G St., N.W., #414 Washington, DC 20001.

Domestic Partnership Benefits (Spring 1992), $4. Partners Task Force, Box 9685, Seattle, WA 98109; (206) 935-1206. Articles on history, legislative battles, benefits and pitfalls; anatomy of a domestic partnership affidavit; tips on gaining benefits at your workplace. *For a current list of businesses offering domestic partner benefits, add $7.50.*

Domestic Partnerships: Legal strategies for the 90s (1989), $30 (Washington residents add $2.43), supplies limited, Northwest Women's Law Center, 119 South Main St., #330, Seattle, WA 98104, 206-682-9552. For lawyers; 200-page collection based in part on Washington law.

Domestic Partnership Legislative Briefing Packet (1991), $5, Dept. of Public Education, ACLU, 132 W. 43rd St. New York, NY 10036. Basic information, resources and model ordinance.

Domestic Partnership Organizing Manual (1992), National Gay & Lesbian Task Force Policy Institute, 1734 - 14th St., N.W., Washington, DC 20009-4309; (202) 332-6483 Definitions, insurers and HMOs that cover domestic partners, contacts for organizing efforts, sample forms and press clips.

Domestic Partnership Packet (1993), $15, Lambda Legal Defence and Education Fund, 666 Broadway, New York, NY 10012-2317; (212) 995-8585. Summaries, highlights, analysis, and sample legislation.

Family Diversity Project publications: **Amicus Curiae Brief: Family Service America et al.** (1989); as filed in the landmark Braschi case; definition of family in U.S. law. **Legal Syllabus: Rights of Domestic Partners** (1989); outline for law school seminar. **Registration of Families with the Secretary of State** (1992); procedure for Calif. **Report of California's Joint Select Task Force on the Changing Family** (1989); extensive proposals to protect and benefit domestic partners. **Report of Los Angeles Consumer Task Force on Marital Status Discrimination** (1990); reform recommendations. **Strengthening Families: A model for community action.** Final Report of the Task Force on Family Diversity, City of Los Angeles (1988); substantial references to lesbian and gay families. $15 donation per document. Checks to: Spectrum Institute, Box 65756, Los Angeles, CA 90065; (213) 258-8955 or FAX/258-8099.

Pride at Work: Organizing for lesbian and gay rights by Miriam Frank & Desma Holcomb (1990), $5 -$1 p&h. $3 each ten or more copies. Lesbian and Gay Labor Network, Box 1159, Peter Stuyvesant Stn., New York NY 10009. How to secure partner benefits, other advances in union settings.

Recognizing Lesbian and Gay Families: Strategies for obtaining domestic partner benefits (1992), $15, National Center for Lesbian Rights, 870 Market St., #570, San Francisco, CA 94102-3012; (415) 621-0674.

Understanding the Domestic Partner Dilemma: Perspectives of employer and insurer by Elizabeth Murphy. (Second edition 1993). City of West Hollywood, 8611 Santa Monica Blvd., West Hollywood, CA 90069; (310) 854-7400.

Will You Be Mine? by Diane Whitmore, (1992), $19.95, Crooked Street Press, 2154 Taylor St., San Francisco, CA 94133; (415) 931-3990. History of the San Francisco domestic partnership ordinance (effective Feb. 14, 1991); interviews 41 same-sex and four heterosexual couples about their relationships.

Summary thoughts

There are other steps cities can take to protect domestic partners. For example, Washington, D.C., requires certain businesses to provide employees unpaid leave to care for sick family members, including domestic partners. The district's law also gives tax breaks to businesses that provide health insurance to employee's domestic partners.

Besides workplace benefits, some businesses offer discounts to household members once restricted only to a "spouse." The AAA Motor Clubs in a few states offer a second membership at reduced fees. Avis Rent-A-Car no longer charges a daily second driver fee for unmarried couples who declare they are a couple. The Minneapolis-based National Car Rental redefined its "additional authorized drivers" to include domestic partners, also without additional fees or insurance. Shorewood Hills, Wis., Seattle, Wash. and other cities allow domestic partners a family discount for user fees at various city facilities. And the Swiss Federated Railways (Switzerland) offers reduced-fare spouse passes to same-sex partners who live together.

Other domestic partner recognitions go beyond the workplace or minor public accommodations. For example, New York State covers domestic partners under family rent control law. And Oakland, Calif. has eliminated a property tranfer tax for domestic partners.

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ANSWERLINE

By Dawn Anfuso

Benefits, employee - Domestic partners 1995

Consider cost, controls and reasons for implementing domestic-partner benefits.

Today's HR professionals are required to have a vast amount of knowledge on a wide array of topics. Let PERSONNEL JOURNAL help. We'll find the experts to answer questions on the personnel issues important to you. Your colleagues asked: *What issues must I address when considering implementing domestic-partner benefits?*

Reese Smith, director of employee benefits at Levi Strauss & Co., which introduced domestic-partner benefits in June 1992, answers:

The first issue is to be clear about why you want to extend benefits to domestic partners. At Levi Strauss & Co., we wanted to align our practices with our non-discrimination policy, which includes non-discrimination based on sexual orientation and marital status.

The issue that most frequently concerns senior executives is the potential cost. Our experience at Levi has shown the cost for a domestic partner to be significantly lower than that for a spouse.

The next most significant issue is whether to extend benefits to same sex couples only or to both same and opposite sex couples. We extended benefits to both same and opposite sex couples. Had we limited extension to same sex couples only, we would still have had a discriminatory practice and that was unacceptable.

Securing insurance coverage for domestic partners is another issue. We, like many large companies, are self-insured and so we didn't have a problem securing coverage. Smaller companies may have a more difficult time.

The next issue to be faced is defining the eligibility requirements. Our definition includes two people who aren't related, aren't married to anybody else, live together in a committed relationship and are financially interdependent.

There also are administrative issues. Neither contributions nor payments for domestic partners can flow through the 501(C)(9) trust. In addition, the value of the benefit must be calculated as income to the employee.

Finally, you should be prepared to address the reactions from employees, customers and communities.

Ed Mickens, editor of *Working it Out: The Newsletter for Gay and Lesbian Employment Issues* and author of *The 100 Best Companies for Gay Men and Lesbians*, says:

There are three areas that HR people tend to be concerned about. The first is cost. People have great fears about what the costs of domestic partner benefits are. But in fact, now that we have data from case studies, it's been shown repeatedly that domestic partner benefits cost no more than spousal benefits do.

A lot of the fears about costs are fears about AIDS. But only a minority of gay men have AIDS, and lesbians are one of the lowest risk groups. And, even if you do look at the numbers regarding AIDS care, they're remarkably small. The overall lifetime cost of AIDS treatment per patient is estimated at less than $100,000. Problem pregnancies and chronic heart, lung and kidney diseases cost much more.

In addition, from studies of large companies that have these benefits, only about 1% to 2% of employees actually take advantage of a domestic partner plan. At companies that offer the benefits to all of their unmarried employees, same sex or opposite sex, the usage tends to be higher.

The second area of concern is fear about controlling the system. There's concern about abuse. I often ask HR people or benefits administrators how many of them actually ask employees to produce marriage licenses when applying for partnership benefits. One assumes if you say you're married then you are. Usually the employees just fill out an application which has some sort of affidavit attached to it. Then, if that should turn out to be wrong or inaccurate, the employee gets into a lot of trouble. There's no reason to expect anything different with domestic partner benefits. You create your criteria for eligibility and have the employees sign an affidavit agreeing to the terms. It simply falls under the same safeguards as any other system.

The last issue is one of prejudice. The fact is that there's simply a huge problem of prejudice affecting domestic partner benefits. Insurance companies, for one, have been unconscionably resistant to the whole idea. And employers themselves have failed to recognize that lesbian and gay families are just as important as traditional families. Companies that do show a sense of equality get enormous payback in terms of loyalty and productivity. I'm astonished at how gung-ho employees are when they're offered this kind of thing. They become the company's biggest boosters.

I find that there's a lot of undefined fear about losing clients, but besides the media-hyped Apple Computer case in which Apple ultimately triumphed over naysayers, I haven't seen any example of where a client relationship has interfered. ■

If you have a question that you would like an expert in the field to answer, you may fax it to Dawn Anfuso at 714/751-4106, mail it to PERSONNEL JOURNAL, *245 Fischer Ave. B-2, Costa Mesa, CA 92626, or E-mail it to DA0385@aol.com.*

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Domestic Partnership Benefits

by Mark E. Brossman and Rebecca K. Kramnick

Employers extending health insurance coverage to "domestic partners" of employees must be concerned with issues related to design, administration and cost as well as possible tax consequences.

Home Box Office and Warner Brothers recently became two of the latest companies to extend health insurance to "domestic partners" of their employees. While health and other employee benefits have traditionally been reserved for spouses of married employees, increasingly, employers are considering extending these benefits to the unmarried partners of their employees.

The trend toward coverage of domestic partners began in 1985 when the city of Berkeley, California first offered health insurance coverage to the unmarried partners of city employees. Since then a growing number of cities and municipalities in California, Oregon and Washington as well as the cities of New York, Boston, Ann Arbor and Minneapolis have begun to offer similar coverage. Lotus Development became the first private employer to offer coverage in 1991, and it has since been joined by Levi Strauss & Company, Apple Computer and MCA, Inc., among other companies. Stanford University, the University of Chicago and the University of Vermont are among the educational institutions with such programs.

While these policies have been hailed as social advancement by some, they have also sparked their share of controversy. Apple Computers' policy recently made headlines when a Texas county, citing concerns over "family values," voted to withhold a tax abatement from an $80 million office complex Apple planned to build in the community because of the company's policy of extending benefits to domestic partners of its gay and lesbian employees. The county eventually reversed its decision, agreeing to the tax rebate for the planned development.

This article will examine some of the issues facing employers considering domestic partnership benefits: the definition of *domestic partnership* and the administration and costs of programs extending these benefits. The article will then consider the status of legal challenges to compel employer coverage of domestic partners. Finally, the article will consider other legal issues surrounding extension of health coverage to domestic partners, including the tax consequences of such employer action.

Defining the Terms

The definition of *domestic partnership* varies under different employer plans. Apple Computer uses for its definition of a *domestic partner*: "a person over age 18 who shares living quarters with another adult in an exclusive, committed relationship in which the partners are responsible for each other's common welfare."[1] This definition is fairly standard in that it contains: (1) a minimum age requirement; (2) a requirement that the couple live together; (3) a financial interdependence requirement; and (4) a requirement that the relationship in question be an exclusive one. (Some employers require that the relationship be a "permanent" one.)

Other companies reject the term *domestic partnership* altogether. Levi Strauss & Company extends its health coverage to "unmarried couples," defined as an eligible employee and any other person who live together, are financially interdependent, jointly responsible for each other's common welfare and consider themselves life partners.[2]

A major distinction in employer definitions of *domestic partnership* is whether the concept is limited to same sex couples. Under the Home Box Office program, for example, health benefits are extended only to same sex couples who can establish that they live together and are financially interdependent. The company has said that it chose not to include unmarried heterosexual couples because they have the option to obtain health benefits through marriage.[3] Stanford University made a similar decision in December 1992 to limit its program to same sex couples. A spokesperson for the university said in an interview at that time that the university chose not to address "lifestyle choices" but instead to address "lack of access (to health care) because of sexual orientation."[4]

Other employers, such as Levi Strauss, have extended benefits to unmarried heterosexual couples as well as gay couples. Companies deciding to pursue this option may have concluded that excluding heterosexual couples would violate the company's policy of nondiscrimination on the basis of sexual orientation. Companies ex-

fencing benefits only to gay couples may be responding to the lobbying efforts of gay employees that do not appear to have been duplicated outside of the gay community.

Another distinction among employer domestic partnership plans is the extent to which employers offer nonhealth-related benefits to domestic partners. The majority of employers appear to have limited coverage to health care. Apple Computers is one employer that has made day-care center use and fitness center privileges available to domestic partners. Additionally, the company has made bereavement and family leave available to employees with domestic partners on the same terms that the leaves are made available to married employees.[5]

Employers have had the opportunity to consider the applicability of domestic partnership concepts to their leave policies as they adopted family leave policies to comply with the federal Family and Medical Leave Act, effective as of August 5, 1993.[6] Among other requirements, the act requires covered employers to provide up to a total of 12 weeks of unpaid leave to care for an immediate family member with a serious health condition. The act defines *immediate family* to include "spouse, child or parent." Employers may consider adopting leave policies that go beyond the requirements of the statute to include domestic partners in the definition of *immediate family.*

Administration and Costs of Programs

Employers that offer domestic partnership coverage typically require employees to sign a form or an affidavit attesting to the status of their relationship. For example, Levi Strauss offers an employee 31 days from the formation of a domestic partnership to add his or her domestic partner to the company's medical, dental and vision plans. The employee must sign a form certifying that the couple meets the company's eligibility requirements and must also promise to notify the company if the couple discontinues its relationship.

Although most employers simply require employees seeking the benefit to attest in writing that their relationship with the person to be covered fits the company's definition, other employers require some tangible proof of commitment such as a domestic partnership agreement; a joint mortgage or lease; designation of the partner as a beneficiary for the employee's life insurance, retirement contracts or will; durable power of attorney for property or health care; or joint ownership of property.

If the workplace is located in one of the 12 U.S. cities that have passed ordinances allowing individuals to formally register and dissolve domestic partnerships, an employer might additionally require that an employee and partner register under the ordinance in order to qualify for the benefits.[7]

As corporate extension of health benefits to domestic partners is relatively new, it is difficult to estimate the cost of such programs. A few employers have, however, made their cost estimates public. Apple Computer predicted that less than 1% of the company's 8,500 employees would sign up for the plan, at an overall cost to the plan of less than .5%.[8] Home Box Office estimated the additional cost to the company to be approximately $1,300 in taxes and health plan contributions for an employee earning $50,000. The company predicted that fewer than ten of its 1,600 employees would sign up for the plan.[9]

Employers have also considered as part of their cost projections the possible insurance risks of the individuals likely to be covered under such policies. In an interview with a campus newspaper, in response to the suggestion that the addition of gay men to the insurance pool might drive up the cost of the university's insurance because of the incidence of HIV-related illness, a Stanford University spokesperson said that the university did not consider such a factor in establishing its policy, adding that some evidence suggests that lesbian partnerships are at a lower risk for AIDS and that married couples can experience health care needs more costly than AIDS such as cardiac cases, transplants, cancers and premature babies.[10]

Apple Computers' experience in Texas may inevitably figure into employer decision making regarding domestic partnership policies. After the county's initial rejection of its tax abatement, Apple officials stood by the company policy, saying that as a matter of both "principle and economics" the company would not proceed with its planned building project unless the tax break was reinstated.[11] Gay rights groups said the action initially taken against Apple was the first time a government entity had sought to punish a company for a domestic partnership policy, calling the action a reflection of pervasive antigay bias in much of the country.[12]

Legal Status of Coverage

Extension of benefit coverage to domestic partners to date has typically been the result of collective bargaining in the case of city employees and voluntary employer action in the private sector. Attempts by employees to win benefit coverage through legal challenges to employer policies have met with some success.

Domestic partnership benefits were extended to New York City employees in November 1993 as part of a settlement of a lawsuit brought against the city by

The Authors

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a group of school teachers. In *Gay Teachers Ass'n v. Board of Education of City of New York*,[13] the teachers claimed that the benefit plans adopted by the New York City Board of Education constituted discrimination on the basis of marital status and sexual orientation under the New York State constitution and state human rights laws because the plans do not provide coverage for unmarried partners of school employees.

The settlement of the New York teachers' case calls for domestic partners and dependents of city employees to be offered health insurance coverage under the same terms and from the same providers as are available to married spouses. The settlement was made possible by a New York State Department of Insurance ruling reversing a policy prohibiting New York insurers from extending health insurance to domestic partners of covered individuals. Under the department's new approach, an insurance company can grant coverage to a domestic partner if the insured makes a showing of mutual dependency, demonstrating the existence of such factors as common ownership of property and sharing of household expenses.[14]

To qualify for the benefits under the New York City policy, couples will have to register as domestic partners in the city clerk's office and then submit a registration certificate, a sworn joint declaration of financial interdependence, and two items of proof of the interdependence.[15]

Legal challenges to compel private employers to adopt domestic partnership policies have not been successful to date. The U.S. District Court for the Southern District of New York ruled in a 1993 case that AT&T's policy banning discrimination on the basis of sexual orientation did not require the company to extend benefits to the surviving partner of a deceased gay employee.[16]

The Southern District found that the terms of the company's sickness death benefits plan limited eligible beneficiaries to legal spouses and to dependent adopted children, stepchildren or relatives of the participant. The court found that the plan did not require coverage of the employee's surviving partner or the surviving partner's natural children, who had resided with the couple for ten of the 12 years of their relationship. In deciding whether to include the employee's domestic partner in the plan, the court deferred to the express terms of the plan, which dictated that the law of the employee's state of residence would determine the legality of the marriage.

The court found that AT&T's nondiscrimination policies did not govern the plan's eligibility determinations. Rather, the court cited a Second Circuit Court of Appeals decision that found that for plans governed by the Employee Retirement Income Security Act (ERISA), employer obligations are exclusively derived from plan documents and summary plan descriptions.[17]

The court stated that if the plaintiff's arguments were to prevail, "defining the contours of the 'spousal relationship' would become a complex matter of administration" for employers. The court further stated that such matters would be "better addressed through legislative means or union-management negotiations rather than on an ad hoc basis."[18]

The plaintiffs in the AT&T case attempted, unsuccessfully, to rely on the definition of *family* adopted by the New York Court of Appeals in *Braschi v. Stahl Associates Co.*[19] In *Braschi*, a gay man sought to remain in the apartment he had shared for ten years with his partner who, until his death, was the sole named tenant on the lease. The court found that for the purposes of New York regulations barring eviction of a member of a tenant's family who had been living with the tenant, the definition of *family* should not be "rigidly restricted to those people who have formalized their relationship by obtaining, for instance, a marriage certificate or an adoption order."[20]

The *Braschi* court found that "a more realistic, and certainly equally valid view of a family includes two adult lifetime partners whose relationship is long term and characterized by an emotional and financial commitment and interdependence."[21] The Southern District in the AT&T case acknowledged the continuing viability of the *Braschi* case in the context of housing and eviction issues but refused to extend the definition of *family* to the health care coverage context.

Tax Consequences

The treatment of domestic partnership benefits under the Internal Revenue Code (the Code) may become a future subject of litigation. Currently, under Section 106 of the Code, the value of employer-provided health care coverage is excludable from an employee's gross income if the coverage is for the employee, the employee's spouse or the employee's dependents as defined by the Code. If this exclusion does not apply, the excess of the fair market value of the medical coverage over the amount paid by the employee for the coverage is includable in the employee's gross income under Section 61 of the Code.

In a series of private letter rulings, the Internal Revenue Service has determined that a domestic partner does not automatically qualify as a *dependent* under the Code.[22] Rather, to qualify as a dependent, the domestic partner must receive more than half of his or her financial support from the taxpayer, reside with the taxpayer and be a member of the taxpayer's household. Supporters of domestic partnership benefits have noted that the first of these requirements prevents employees with self-supporting domestic partners from taking advantage of the Section 106 exclusion.

The IRS rulings also state that a domestic partner who is considered a common-law spouse under an applicable state statute would be considered a *spouse* for the purposes of the income exclusion. This ruling will not, however, affect gay and lesbian partners who currently do not qualify for common-law spouse status under the law of any jurisdiction.

COBRA Rights

Employers considering extending health coverage to domestic partners of employees must also consider whether to extend rights under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) to these individuals. Currently, under the Code, employers are required to provide continuing health coverage under COBRA only to "qualified beneficiaries," defined under Section 607(3) of ERISA as the spouse or dependent child of the covered employee. Employers that adopt domestic partnership plans may wish to voluntarily extend COBRA rights to the domestic partners of employees so that the entire health care package offered to employees in domestic partner relationships is equal to that offered to married employees.

(Continued on page 29)

cause it is unsure of the female voters' reaction to such a move.

Employee Stock Plans

Table II gives a summary of the legality of stock plans in each country, along with a commentary on their incidence. In the United States, stock ownership is common, offering several tax incentives. Further, the United States is a market where buying and selling of stock by an individual is a simple and relatively inexpensive task. Contrast that to Europe where, although plans are legal, they are only widespread in the United Kingdom, Ireland and France. In fact, the United Kingdom is the biggest stock market in Europe and offers very generous tax incentives for stock ownership. However, most other countries do not offer similar tax advantages to either the employee or the employer, hence employers' reluctance to set up any plans. Why offer a benefit if it is not appreciated by the employees? Further, in several countries, it is an expensive and daunting task to buy and sell stock. U.S. multinationals with European employees encounter further problems. Employees may not know what the stock is worth because it is not quoted in Europe, or there may be potential exchange rate risk because the stock is quoted in dollar terms. Although the EC does not have any specific legislation on the agenda, it has a desire to encourage the use of stock ownership as a vehicle to widen employees' financial participation in their employers. There are many obstacles to overcome before this is widespread throughout Europe, but the intention is there. This trend is one for the long term, rather than the short term.

Conclusion

In summary, the benefit trends discussed in this article are interrelated with other factors, including cost containment and the role of the EC. The reason for concern about cost containment is the general expectation that local governments will decrease social security benefits as a result of the strain on financing caused by the aging population. The second factor is the EC's objective of imposing single legislation throughout Europe. The EC's influence is evident in the debates on Pan European pension funds, sex equality legislation and, to a lesser extent, on widening stock ownership. The combined effect of these factors will place an incremental burden on employees.

Employers will need to be creative in shifting specific benefits to employees who most need them, rather than offering them to the workforce as a whole, while striving to keep the overall costs to acceptable and affordable levels. –EBJ

Table II

Employee Stock Plans

Country	Comments
Belgium	Legal, but not widespread due to lack of tax incentives and lack of general familiarity with such plans.
Denmark	Legal, but not widespread due to complex requirements for approval.
France	Legal and widespread due to tax incentives available.
Germany	Legal, but not widespread due to lack of tax incentives.
Ireland	Legal and widespread due to the significant tax incentives available prior to 1992 budget. Many incentives now removed.
Netherlands	Legal, but not widespread due to lack of tax incentives.
Spain	Legal, but not widespread due to lack of tax incentives.
United Kingdom	Legal and widespread due to the tax incentives.

Domestic Partnership Benefits
(Continued from page 4)

Conclusion

Employers considering extending health coverage and other employee benefits to domestic partners can consult the experiences of an increasing number of employers. As more employers develop such programs and as the outstanding legal issues are resolved through litigation and legislative action, employers will have additional guidance for navigating this rapidly evolving area. –EBJ

Endnotes

1. *Daily Labor Reporter* (BNA), p. A18, February 2, 1993.
2. *Daily Labor Reporter*, p. A9, March 2, 1992.
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Employee Benefits

PRACTICES

Fourth Quarter 1994

Domestic Partner Benefits: Employer Considerations

Employers have witnessed and adapted to a continuum of changes over the years, but perhaps in no other area have they been as challenged as in domestic partner benefits. Whether progressive, status quo or somewhere in between, employers are dealing with an issue in transition.

Introduction

Unlike the development of other family-oriented benefits, including child care, flextime, telecommuting, and medical and family leave, the evolution of domestic partner benefits has been and continues to be fraught with controversy. The typically straightforward steps in instituting a new benefit, such as revisiting company policies, obtaining legal input, communicating with participants and setting up administrative changes, can become a battleground of deep-seated religious beliefs and/or ethical convictions. While those controversies are outside the scope of this writing, acknowledging their existence can help employers examine some of the most fundamental questions as to why they provide employee benefits in the first place.

What Is a Domestic Partnership?

In the generic sense, a *domestic partnership* is an ongoing, personal, intimate and committed relationship between two persons of the same or opposite sex who, for whatever reason, are not legal spouses. Persons or entities recognizing domestic partnerships, as well as persons in domestic partnerships, generally agree on a core set of criteria common to and defining these relationships. These include, but are not limited to: (1) both persons are over age 18, (2) neither person is related by blood closer than permissible by state law for marriage, (3) the couple shares a residence with the intent to remain together indefinitely and (4) the couple is emotionally and financially interdependent. Beyond these criteria, employers may stipulate other conditions that fit their intent in providing domestic partner benefits.

Because there is no standard legal definition of a domestic partnership, the generic definition may be broader than the definition set forth by an employer. The question "What is a domestic partnership?" is different from the question "How does the employer want to define a domestic partnership?" even though the answers to these two questions may be the same. Additionally, the term *domestic partner* is distinct from the concept of *roommate*, which is limited to two (or more) nonrelated adults who merely share living space.

Fourth Quarter Highlights:

- ***Definition of* domestic partner**
- ***Costs of domestic partner coverage***
- ***Taxability of domestic partner health benefits***

The Changing American Family

Domestic partnerships are a reality of American life, along with a myriad of other nontraditional families. Single parent families, families of divorce or separation, adoptive families and extended families, as well as domestic partnerships, are among the family types that

Providing Domestic Partner Benefits

—A Checklist of Employer Considerations—

Steps in making the initial decision

- ❑ Revisit employer philosophy on providing employee benefits
- ❑ Review internal nondiscrimination policy for consistency with employer actions
- ❑ Examine benefits-as-compensation equity issues
- ❑ Communicate and consider employee feedback
- ❑ Gather and analyze cost data
- ❑ Obtain legal input
- ❑ Evaluate administrative details

Subsequent decisions

- ❑ Will coverage include all domestic partners or only same-sex partners?
- ❑ What criteria will define a domestic partnership?
  - ❑ What documentation, if any, will be required?
  - ❑ What waiting periods, if any, will be imposed?
- ❑ What will be the scope of benefits coverage?
  - ❑ Nonhealth benefits only
  - ❑ Health and nonhealth benefits
    - ❑ What amount, if any, will the employee pay for the cost of health coverage?
    - ❑ Will continuation coverage be extended to domestic partners?

no longer fit the traditional married couple with or without children model. According to U.S. Bureau of Census statistics for 1991, unmarried couples represented 4.5 million households; one-third of these households consisted of same-sex couples. Since 1970 the number of reported domestic partnerships has increased 400%.[1]

The word *family* has many different connotations. As defined by federal regulation and laws in every state, a family consists of a legally married man and woman and their dependent children. From another perspective, a *family* could be defined as "a unit of interdependent and interacting persons, related together over time by strong social and emotional bonds and/or ties of marriage, birth and adoption, whose central purpose is to create, maintain and promote the social, mental, physical and emotional well-being of each of its members."[2] Yet another definition of *family* is represented by one judge's ruling in a case involving a woman's legal adoption of her female partner's biological child. The opinion accompanying the court decision reads as follows:

> Today a child who receives proper nutrition, adequate schooling and supportive sustaining shelter is among the fortunate; whatever the source. A child who also receives the love and nurture of even a single parent can be counted among the blessed. Here the court finds a child who has all of the above benefits and two adults dedicated to his welfare, secure in their loving partnership, and determined to raise him to the very best of their considerable abilities. There is no reason in law, logic or social philosophy to obstruct such a favorable situation.[3]

Employer recognition of domestic partnerships is, in part, a reflection of the diversity of the workforce and, more directly, an attempt to meet the benefit needs of all employees, regardless of the type of "family" they choose to form or the lifestyle it represents.

While *domestic partner* is currently the most common term used to describe either person in an unmarried couple, other terms sometimes used are *life partner* or *spousal equivalent*. In addition to *domestic partnership*, the term *functional equivalent of marriage* is sometimes used to describe the relationship. Terms frequently encountered to describe the "family" formed through a domestic partnership include *relationship akin to that of a family, alternative nuclear family* or *family type unit*. The term *companion benefits* is sometimes used in place of the more common *domestic partner benefits*.

Snapshot

Employer provision of domestic partner benefits is a relatively new phenomenon. *The Village Voice*, a local New York City newspaper whose program has been in effect since 1982, was one of the first employers offering coverage to domestic partners. The 12 years since then have witnessed a slow emergence of other public and private employers providing varying types and levels of benefits to persons qualifying as domestic partners. The cities of Berkeley and West Hollywood followed precedent in 1985, making domestic coverage first available in the public sector. The year 1989 marked a similar move for Ben and Jerry's Homemade, Inc., the well-known Vermont-based ice cream manufacturer. Since 1990 numerous employers, particularly in high technology, telecommunication and the entertainment industries, have announced the implementation of domestic partner benefits. These include, for example, Lotus Development Corporation, Apple Computer Inc., Montefiore Medical Center, Levis Strauss & Co., Warner Bros. and Viacom International. Harvard University and the Massachusetts Institute of Technology are among the 1993 additions to the list of universities offering domestic partner benefits. Most recently, Vermont became the first state to extend domestic partner benefits to state workers. Coverage includes health and dental benefits for both same-sex and opposite-sex domestic partners.

To date, over 200 entities are known to offer domestic partner benefits in some form. A current list of private employers, colleges and universities, public sector employers, as well as unions that have negotiated for domestic partner benefits, is contained in the Appendix. The number of private employers who offer domestic partner benefits but have not announced that decision is not known.

It may be too strong a statement to say the provision of domestic partner benefits has become a trend; nonetheless, the number of employers providing domestic partner benefits is steadily growing. Perhaps even more significant is this growth is increasingly without fanfare. While the larger issue remains on the political forefront, employers are independently approaching domestic partnerships from an employee benefits perspective.

Weighing the Decision

Whether an employer decides to extend coverage to domestic partners is a separate issue from the process of weighing the decision. The following discussion examines the various reasons why employers offer domestic partner benefits as well as the reasons why they are hesitant to do so. As a benefits issue, the decision to provide domestic partner coverage requires the same kind of thorough evaluation required of any other addition or change to benefits coverage. Company policy, cost, administration and legal implications are among the points to be carefully considered. It is important to note, however, while an employer may use current law to support the decision not to provide domestic partner benefits, the decision itself is not a legal one.

Why Employers Offer Domestic Partner Coverage

Employers who provide domestic partner benefits do so for a number of reasons. While these reasons are presented separately for this discussion, in reality their impact overlaps.

Providing benefits to employees in a manner that does not discriminate on the basis of sexual orientation and/or marital status is increasingly becoming a priority for employers. Benefits comprise a significant portion of compensation, usually about 40%. From this standpoint, it can be argued an employer who provides benefits to married employees that are not available to unmarried employees living in domestic partnerships pays employees different total compensation based on the composition of their families.[4] Again, employers need to be clear and comfortable with their definition of *family*.

Financial equity is also an issue as far as the tax advantages to the employee of certain employer-sponsored benefits such as health care. These tax advantages are unequivocally available to traditional families, while the employee in a domestic partnership is eligible only if his or her partner is a *dependent* by definition of the Internal Revenue Code (IRC).

Attracting and retaining employees is another key reason why employers offer domestic partner benefits. The magnetism of a comprehensive benefits package is a given and, all else being equal, it can be the deciding factor in whether a quality worker accepts a new position or continues employment with the organization. For employers, particularly in geographical areas or industries with large percentages of workers to whom this benefit would be important, it makes good business sense to offer domestic partner coverage. In addition to having a competitive advantage in recruitment and retention, these employers may also experience improved morale and productivity in their workforces. These effects, however, are difficult to measure.

Finally, employers may choose to offer domestic partner benefits to be recognized as a leader in benefits innovation, either nationally or within their communities. A number of well-known employers, perhaps most notably Levis Strauss & Co., have consistently taken a leadership role in this regard.

The questions raised in the process of deciding whether to provide domestic partner coverage have forced employers to examine their internal employment policies. Where there is a discrepancy between a stated policy of nondiscrimination and the employer's actual practice in providing employee benefits, a decision is often made to offer domestic partner coverage. Not only does this establish consistency within the organization, but it lends credibility to policy as well.

Valuing diversity in the workforce, recognizing employee needs and providing relevant benefits are central to an employee benefits program that includes domestic partner benefits. The process that leads to that decision inevitably includes an even more basic question—the question of why employers provide employee benefits in the first place. In

the case of health care, group coverage alleviates, if not eliminates, the financial concern that accompanies the illness of a loved one. The question that follows is whether the illness of a loved one in a nontraditional family is any less stressful or costly than that occurring in a traditional family. This type of reasoning has led some employers to conclude that members of nontraditional households in which there is the functional equivalent of a marriage should be afforded health coverage as well. A similar argument holds true for other benefits relevant in times of crisis, such as family leave or bereavement leave. An example of a convenience benefit falling in this category might include subsidized relocation expenses.

Some of the questions employers can ask themselves to sort through the rationale of their benefit programs include:

- Does the purpose of family benefits justify not treating domestic partnerships as families?[5]
- Is there a compelling justification for distinguishing between domestic partnerships and traditional families on the basis of perceived need?[6]
- What are the justifications for not treating a domestic partnership as the moral equivalent of marriage?[7]
- Do costs justify differentiating domestic partners from spouses?[8]

Why Employers Do Not Offer Domestic Partner Coverage

Employer reluctance to offer domestic partner benefits revolves around financial uncertainty, implementation hurdles, possible legal implications, perceived or real negative reactions and ambivalence toward the issue itself. These concerns are often exacerbated by the fear of entering uncharted waters, accompanied by a lack of sufficient data to confidently move ahead.

Costs

Cost considerations are usually on the top of the list of reasons why employers hesitate to provide domestic partner benefits, especially health care coverage. After years of effort in health care cost management, employers are understandably adverse to adding additional dependents with an unknown risk. What experience has borne out, however, does not support these fears. Almost across the board, employers offering domestic partner benefits report, at most, minimal additional costs. In general, there is no evidence to indicate that the average health care costs of a domestic partner (same sex and/or opposite sex) will be significantly higher than that of a spouse.[9] While the number of employers offering data and the number of years over which the data has been gathered are not sufficient to be infallible, these initial low-dollar reports are consistent.

Several types of costs are associated with domestic partner health care: direct or out-of-pocket costs, costs attributable to adverse selection (AIDS costs) and administrative costs. Of these, direct costs and AIDS-related costs have garnered the most attention.

Meaningful data on the direct costs of adding health care coverage for domestic partners is limited. Some employers lack sufficient experience to report data; others have declined to share their cost data. Where such information is available, however, cost increases are small and sometimes negligible. The City of Seattle and HBO, Inc., according to one report, have found covering a domestic partner is less expensive than covering a spouse. Both Lotus Development Corp. and Levis Strauss & Co. have found domestic partner coverage is the same as or less than spousal or other dependent coverage.[10] Another report finds plans offering domestic partner health coverage only to same-sex couples experience about a 1% total increase in health care costs; plans offering health coverage to all domestic partners experience approximately a 3% increase in health care costs.[11]

Some employers have attributed the very low cost increase associated with adding a domestic partner health care benefit to an overall rebalancing of costs in a participant group that includes same-sex partners. Female couples, for example, are at a lower risk for AIDS than heterosexual couples. (Unmarried heterosexual domestic partners have the same risk for AIDS as married couples.)[12] Also, female couples enrolling in domestic partner benefit programs tend to outnumber male couples by a ratio of four to one.[13] Male couples do not incur the costs of pregnancy and childbirth, particularly the very high costs of premature births. Further, medical costs for cancer, organ transplants, cardiac care and other serious conditions affecting the population at large are significantly higher than the cost of treating AIDS.[14] The current average AIDS-related claim is $119,000; a premature birth can cost as much as $1 million.[15]

Another factor explaining the low costs associated with adding domestic partner health coverage is the low rate of participation. Even in geographical areas and industries in which the benefit would be expected to be more highly valued, the percentage of employees signing up for domestic partner coverage is small. Generally, participation rates are less than 5% of the workforce and frequently are less than 2%.[16] Low participation is partly explained by the fact that domestic partners, particularly same-sex domestic partners, are usually employed and have obtained health care benefits through their own employers. Second, many same-sex partners prefer to keep the nature of their relationship confidential. Third, some couples may choose to forgo coverage when they learn of the tax consequences for a non-dependent partner. (See Tax Consequences of Health Coverage.) Fourth, one or both partners may not want to incur unintended liabilities, such as palimony, loss of community property, or responsibility for a partner's debt that could legally result from signing an employer affidavit attesting to the nature of the relationship.[17] Finally, if employees are required to pay for all or most of the domestic partner coverage, some couples may find the cost of coverage prohibitive.

A related cost concern frequently expressed by employers is that an employee will falsely portray a domestic partnership to obtain health insurance coverage for a sick friend. This type of abuse, however, has not been reported among

employers providing the benefit. Where coverage includes same-sex domestic partners, the possible social stigma attached to the relationship is a sufficient deterrent to false representation.[18] Further, employers generally require a signed statement confirming the domestic partnership, sometimes accompanied by one or more forms of documentation, that clearly indicates the consequences of falsifying the information.

From a financial perspective, funding domestic partner benefits remains somewhat elusive for employers who are not self-funded. At this point, only a handful of insurers will underwrite domestic partner health coverage.[19] Insurers, and to a lesser extent HMOs, are moving slowly in this regard. The trend among HMOs has been to add a retroactively negotiable surcharge on a total premium basis to cover the estimated increase attributable to domestic partner coverage. An initial HMO surcharge can range from 0.5% to 5.0% of the total premium; typically, however, the surcharge is either reduced or eliminated based on actual experience.[20] Some HMOs add the surcharge to the per participant premium and, in some cases, only to two-party or family enrollees.

Although administrative costs are a minor financial consequence of adding a domestic partner benefit, some employers may initially view them as a deterrent. There are likely to be one-time costs associated with collecting and circulating eligibility, tax and other information to employees, and setting up the payroll system to withhold taxes for those employees who are subject to tax on the employer-paid cost of coverage. The ongoing costs of adding enrollees is expected to be a negligible expense.[21]

Legal Considerations

Employers may be deterred from offering domestic partner coverage because of various legal issues, including cohabitation, the "dependent" status of a domestic partner and the contractual implications of a signed certification of domestic partnership. At a minimum, employers considering adding domestic partner coverage are encouraged to check state and local laws. (See Tax Consequences of Health Coverage.)

Congress has given the states authority to define the legality of different kinds of interpersonal relationships and has made it clear that "in the application of federal tax laws, taxpayers will be treated in their intimate and personal relationships as the state in which they reside treats them."[22] The IRS reiterated in a recent private letter ruling that employer-sponsored health benefits are excludable from taxable income for the employee, his or her legal spouse, and legal dependents.[23] First, a common-law spouse in a state that validates common-law marriage is a legal spouse; therefore, state law will determine whether an adult cohabitant is a legal spouse or a nondependent domestic partner. Second, the Internal Revenue Code (IRC) includes in its definition of *dependent* that the individual be "a member of the taxpayer's household"; it also states that an "individual is not a member of a taxpayer's household if at any time during the taxable year of the taxpayer the relationship between such individual and the taxpayer is in violation of local law."[24] Therefore, to avoid possible liability for penalties for failure to properly withhold and report taxes, employers need to be advised on state and local laws pertaining to cohabitation. Some employers have avoided the latter issue by treating the employer-paid cost of health coverage of all domestic partners as taxable income.[25] Ultimately, some employers have decided to limit their benefit programs to legal spouses and dependents of employees as defined by the IRC, in which case the only application of a state law is with respect to a common-law marriage.

A larger matter at stake for employers offering domestic partner coverage is the domestic partnership itself may be in violation of a state law. Some employers are concerned the provision of domestic partner coverage may be interpreted as "aiding and abetting" a prohibited relationship under local laws. Generally, however, cohabitation statutes are rarely enforced, and no known employers providing domestic partner benefits have been held liable under them.[26]

Employers could possibly be sued by an employee or the employee's domestic partner should the affidavit signed by the domestic partners as a condition of eligibility for coverage result in unintended legal consequences, such as assertion of rights to community property or support payments, upon the termination of the relationship.[27] Employers can protect themselves by including in the affidavit a statement that the domestic partners understand the financial obligations that might arise in a court of law.

A final factor that can deter an employer from adding a domestic partner benefit is a negative reaction from both inside and outside the organization. Yet, experience has shown strong senior management support and a well-designed program can make the addition of domestic partner benefits a smooth transition for employees and the employer's community.

Considerations in Plan Design

Defining Domestic Partnerships

The elements of plan design are often closely linked, if not inseparable, from the employer's decision to provide domestic partner benefits. From a practical standpoint, these parameters need to be clearly delineated. Defining the term *domestic partnership* and what benefits will be included in domestic partnership coverage are two important tasks.

The primary decision in defining the term *domestic partnership* is whether eligibility will be limited to same-sex couples or if it will include both same-sex couples and heterosexual couples. Employers choosing to define a domestic partnership only in terms of same-sex couples usually do so on the basis that same-sex partners do not have the option to marry: Same-sex marriages are prohibited by law in every state. This approach to defining a domestic partnership uses the legal definition of *marriage*, the employer-sponsored benefits provided couples based on marriage, and the unattainability of marriage for same-sex couples as the basis of its logic.

On the other hand, employers choosing to include both same-sex couples and heterosexual couples in their definition of a domestic partnership shift the fulcrum of their reasoning from legal marriage, per se, to the nature of a relationship. This approach accepts an individual's selection of a life partner—as well as the form of the partnership—without forgoing employer-sponsored benefits that would have been available given other personal choices. Many heterosexual couples choose not to marry for a variety of reasons, yet form enduring relationships and stable families. Including same-sex couples and heterosexual couples in domestic partner coverage addresses equal access to benefits regardless of sexual orientation or marital status. It also addresses issues of reverse discrimination on the basis of sexual orientation that can arise when domestic partner coverage is offered only to same-sex couples.

Certification of Domestic Partnership—The Affidavit

Once an employer decides whether to cover all domestic partners or only same-sex domestic partners, the next step is identifying what other characteristics define the relationship. These may be broadly defined, such as sharing a long-term, committed relationship of indefinite duration, or specified in detail. Generally, these criteria and other relevant information are stated in an affidavit, which may or may not require the seal of a notary public, signed by the employee and the domestic partner. The following list includes the many criteria employers have used to define *domestic partners*. Rarely does an employer require all of them.

1. Individuals are in an intimate, committed relationship.
2. Individuals intend to remain in the relationship indefinitely.
3. Individuals are financially interdependent.
4. Individuals are responsible for each other's common welfare.
5. Individuals share the same residence.
6. Individuals are jointly responsible for debts to third parties.
7. Both individuals are of legal age.
8. Neither individual is related by blood closer than would bar marriage in the state of their residence.
9. Individuals have lived together for a specified length of time prior to seeking domestic partner benefits.
10. Both individuals were mentally competent at the time of consent to the relationship.
11. Neither partner is married to anyone else.
12. Neither partner has another domestic partner.

Some employers require additional evidence of the bona fide nature of the relationship such as documentation of joint ownership of significant assets (e.g., car, mortgage or bank accounts), a copy of a jointly signed lease or, where applicable, registration in a city registry of domestic partners. The degree of proof of the nature of the relationship is a matter for careful consideration by the employer. One source points out that financially interdependent domestic partners may not own property together or share bank accounts and credit cards because under federal tax law there may be disincentives to do so.[28] Further, the extent to which the employee and the domestic partner are asked to certify the details or provide evidence of their relationship may be viewed as an invasion of privacy, particularly if this level of inquiry is not asked of married employees. Some employers have developed affidavits applicable to all employees seeking two-party or family coverage. These generic forms ask information applicable to both legal spouses and domestic partners. Similar forms affirm termination of the relationship by divorce, mutual agreement or death of the spouse or domestic partner. Employers may impose a waiting period between dissolution of a domestic partnership and eligibility for domestic partnership benefits in a new relationship.

It is important employees and their partners understand the personal, financial and legal implications of signing the affidavit. Most affidavits include a statement forewarning the employee of possible tax consequences of adding a domestic partner to health insurance coverage: The cost of coverage paid for by the employer on behalf of a domestic partner could be considered taxable income to the employee. (See Tax Consequences of Health Coverage.) Domestic partners should also be informed the signed affidavit may be interpreted by some courts as a legally binding document with community property, support payment and other spousal equivalency implications.[29] Finally, the affidavit should clearly state the consequences, if any, of willful falsification of information. For example, falsification may result in disciplinary action, including discharge from employment or civil action brought against the individuals for losses, including reasonable attorney fees, incurred as a result of the falsification. Domestic partners can expect the employer will treat the affidavit in a confidential manner and disclose information only with written authorization or if otherwise required by law.[30]

Scope of Coverage

The employer tasks of defining a domestic partner and determining the scope of coverage are inevitably intertwined. Deciding what benefits to provide domestic partners raises difficult questions from policy to cost. Employers generally fall into two groups: those offering the full benefits package to domestic partners and those offering nonhealth benefits. To date, the majority of employers providing domestic partner benefits offer a range of lower cost benefits such as family/bereavement/sick leave, adoption assistance, relocation benefits, child resource and referral services, access to employer's fitness center, invitation to employer social functions or use of employee assistance programs (EAPs). A significant and growing number of employers have extended these benefits to include medical, mental health, dental, prescription drug and vision care benefits, as well as dependent life insurance, group legal services, tuition assistance, long-term care and flexible spending accounts. Montefiore Medical Center in Bronx, New York is among those employers offering the widest range of benefits.

Administration of Domestic Partner Benefits

Administering domestic partner benefits involves employee communications, registration, deregistration, applicable waiting periods, enrollment, employee premiums, calculation of imputed income to the employee for tax purposes and health continuation coverage. Issues relating to the taxability of domestic partner coverage, some of which have already been discussed, are of particular concern to employers.

Tax Consequences of Health Coverage

Although somewhat complicated, the tax consequences of extending employer-sponsored health coverage to domestic partners of employees and their dependent children are clear-cut. Simply stated, employees with a domestic partner who is not a common-law spouse and who does not qualify as a dependent under the IRC are taxed on health care coverage paid for by the employer.

Generally, under the IRC, employees are not taxed on employer-sponsored health coverage provided them or their spouses and dependents, as defined in the Code.[31] Since the Internal Revenue Service looks to state law to define *spouse*, and no states have passed statutes that treat domestic partners as spouses,[32] a domestic partner who is not a spouse by common-law marriage must qualify as a *dependent* to exclude the cost of employer-paid health coverage from the employee's gross income. The IRC defines a *dependent* as one who receives at least half of his or her support during the calendar year from the employee (taxpayer) and is a "member of the taxpayer's household."[33] Further, a relationship between the domestic partner and the employee that is illegal under state law precludes the domestic partner from qualifying as a "member of the taxpayer's household"[34] and, therefore, from qualifying as a *dependent*.

Employees whose domestic partner's coverage is subject to taxation must include in their gross income the amount by which the fair market value of the health coverage exceeds the amount, if any, paid by the employee with after tax dollars for the cost of coverage. If employee contributions are made on a pretax basis through a cafeteria plan, the amount is generally treated as taxable income to the employee since "the use of pretax money to pay for any coverage has the practical effect of turning employee-pay contributions into employer contributions for the purpose of determining imputed income."[35] "Reimbursement of medical expenses with respect to a nondependent [domestic partner] will result in additional taxable income to the employee, unless the employer's contributions attributable to the reimbursements are either paid by the employee or included in the employee's compensation, or a combination thereof."[36] Taxation of medical reimbursements is rarely an issue since, when applicable, the employer-paid coverage is already treated as taxable income.

The IRS has provided very little guidance for employers on how to determine the fair market value of the health coverage and has indicated it will not do so.[37] Employers are nonetheless responsible for developing a reasonable method. Treasury regulations say fair market value is determined on the basis of all the facts and circumstances.[38] Additionally, an IRS private letter ruling reversed an earlier IRS position now stating the fair market value should be determined according to group, rather than individual, rates.[39] One attorney suggests it may be simplistic for an employer to arrive at a fair market value by calculating the difference between what the employee would pay for health coverage with and without the addition of the domestic partner; a more accurate method might be to develop a composite rate based on claims experience.[40]

The fair market value of the health care coverage is subject to federal income tax and must be reported as imputed income on the employee's Form W-2. Employers must pay FICA and FUTA taxes on these amounts and ensure adequate withholding.

Taxability of Domestic Partner Health Benefits

The fair market value of employer-paid health care coverage for the domestic partner is considered **taxable income** to the employee UNLESS all three of the following conditions are met:

- The domestic partner receives at least 50% of his or her support during the calendar year from the employee.
- The domestic partner shares the employee's residence as his or her principal home and is a member of the employee's household.
- The relationship between the domestic partner and the employee is not in violation of state and local laws.

COBRA

Employers extending health benefits to domestic partners are faced with the decision whether and/or to what extent to offer continuation coverage to these individuals as well. Under the Consolidated Omnibus Budget Reconciliation Act of 1985, only spouses and dependent children are considered *qualified beneficiaries*. It appears, therefore, employers do not have to continue health coverage under COBRA for domestic partners. Benefit specialists differ on this issue, however.[41] Employers may voluntarily continue health coverage to demonstrate consistency in the treatment of domestic partners as spousal equivalents. Although some employers do not continue coverage for domestic part-

ners upon COBRA qualifying events. Others follow the same coverage, notice and premium rules as for married couples—if, for no other reason, than ease of administration.

Conclusion

In the next five to ten years, according to one employer's predictions, the provision of domestic partner benefits will become mainstream.[42] Today, however, employers face very transitional times. The controversial nature of the issues, the small and short-lived pool of couples on which cost experience is based, the administrative irregularities and legal complications can discourage employers from offering domestic partner benefits. Nonetheless, some employers are finding new ways to develop their benefits packages despite financial, political and societal uncertainty and the impediments of an existing body of law "that never contemplated 'non-traditional relationships.'"[43]

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24. IRC Sec. 152(a)(9).
25. Helitzer, 252.
26. Laarman, 578.
27. "Domestic Partner Benefits: Issue to Ponder," *Employee Benefit News* 8, no. 1 (1 January 1994): 37.
28. David Glaser and Tamsin Wolf, "Facing Domestic Partner Issues," *Business & Health* 12, no. 2 (February 1994): 54.
29. Stephens and Mathews, 69.
30. Fried, 69, referencing Affidavit of Marriage/Domestic Partnership for City of Seattle, Section III.
31. Laarman, citing IRC Sec. 106 and Treas. Reg. Sec. 1.106-1.
32. "IRS Position on Domestic Partners Depends on State Law," *Tax Management Compensation Planning Journal* 22, no. 10 (7 October 1994): 255.
33. IRC Sec. 152(a).
34. Laarman, citing IRC Secs. 152(a)(9), 152(b)(5).
35. Helitzer, 252.
36. Carlson and Goodwin, 3, citing IRC Secs. 104(a)(3), 105(a).
37. Ibid., 3, citing Priv. Ltr. Rul. 91-09-060 (Dec. 6, 1990).
38. Treas. Reg. Sec. 1.61-21(b)(2).
39. Laarman, 573, citing Priv. Ltr. Rul. 91-11-018 (Dec. 14, 1990) reversing Priv. Ltr. Rul. 90-34-048 (May 1990).
40. Ibid., 574.
41. Two benefit specialists construe an employee can elect to cover a domestic partner and children, but the partner has no right to an independent election of COBRA. See Carlson and Goodwin, 9.
42. Fried, 12.
43. Judith E. Turkel, "Domestic Partnership Registration and Agreements," *Practising Law Institute, Tax Law and Estate Planning Course Handbook Series—Estate Planning and Administration*, April-May 1994.

Author's note: Model documents for extending group health coverage to domestic partners of employees and related materials are available upon request from Hollywood Supports, 8455 Beverly Blvd., Suite 305, Los Angeles, CA 90048, (213) 962-3118.

Those entities marked with an asterisk (*) offer bereavement and/or family illness leave only. Unless otherwise noted, other listed employers offer benefits that include some form of health insurance coverage for domestic partners of employees.

Private Employers

Most of the plans noted below define *domestic partners* to include same-sex couples as well as unmarried heterosexual partners. Benefits vary widely.

- Adobe Systems, Mountain View, Calif.
- American Civil Liberties Union, San Francisco and national offices
- American Cyanamid*
- American Friends Service Committee, Philadelphia, Pa.
- American Psychological Association, Washington, D.C.
- Apple Computer, Cupertino, Calif.
- Bank America, San Francisco, Calif.*
- Ben & Jerry's Homemade, Waterbury, Vt.
- Blue Cross and Blue Shield of Massachusetts
- Borland International Inc., Scotts Valley, Calif.
- Boston Globe, Boston, Mass.
- Bureau of National Affairs (BNA), Washington, D.C.
- Canadian Press (wire service), Canada
- Capital Cities/ABC
- Colgate-Palmolive
- Consumers United Insurance Company, Washington, D.C.
- Cray Research*
- Dayton Hudson
- Dow Chemical*
- Eastman Kodak, Rochester, N.Y.*
- Episcopal Diocese of Newark, New Jersey*
- Fannie Mae (Federal National Mortgage Association), Washington, D.C.
- Federal National Mortgage Association
- Field Museum of Natural History, Chicago, Ill.
- First Bank System*
- First Chicago Corporation*
- Fred Hutchinson Cancer Research, Seattle, Wash.
- Gardener's Supply, Burlington, Vt.
- Genentech, San Francisco, Calif.
- Greenpeace International, Washington, D.C.
- Group Health Cooperative of Puget Sound (HMO), Seattle, Wash. (implemented later in 1994)
- Harley-Davidson (use of onsite facilities)
- Home Box Office (HBO) (Time Warner, Inc.), New York, N.Y.
- Howard, Rice, Nemerovski, Canady, Robertson & Falk, San Francisco, Calif.
- Human Rights Campaign Fund, Washington, D.C.
- IBM (nonhealth coverage benefits)
- InterMedia Partners, cable operators
- Irell & Manella
- Krum & Forster Commercial Insurance (for unmarried heterosexual couples in common-law states)
- KQED, San Francisco, Calif.
- Lamoda Legal Defense & Education Fund, New York, N.Y.
- Levi Strauss & Co., San Francisco, Calif.
- Lilienthal & Fowler, San Francisco, Calif.
- Los Angeles Philharmonic, Calif.
- Lotus Development Corp., Cambridge, Mass.
- Mattel*
- MCA/Universal, Universal City, Calif.
- Microsoft Corporation, Redmond, Wash.
- Milbank, Tweed, Hadley & McCloy, New York, N.Y.
- Millennium Global Inc., Clearwater, Fla.
- Minnesota Communications Group (Minnesota public radio), Minneapolis, Minn.
- Montefiore Medical Center, Bronx, N.Y.
- Morrison & Foerster (nationwide, all offices)
- National Center for Lesbian Rights, San Francisco, Calif.
- National Gay & Lesbian Task Force Policy Institute, Washington, D.C.
- National Organization for Women, Washington, D.C.
- National Public Radio, Washington, D.C.
- New York Life & Annuity*
- New York Times, New York, N.Y.
- NEXT Computer, Redwood City, Calif. (type unknown)
- Northern Telecom, N.C.
- Northwest Airlines (nonhealth coverage benefits)
- Ontario, Canada (all private companies must provide dental, prescription and health care plans)
- Oracle Systems Corp.
- Orrick, Herrington & Sutcliffe, San Francisco, Calif.
- Pacific Gas & Electric, San Francisco, Calif.*
- Pacific Mutual Life*
- Pacific Telesis Group*
- Para Transit, Inc., Sacramento, Calif.
- Polaroid, Cambridge, Mass.*
- Principle Mutual Life
- Research Triangle Park, N.C.
- Riggs National Corporation*
- RJR Nabisco Holdings (nonhealth coverage benefits)
- Schiff, Harden & Waite, Chicago, Ill.
- Seattle Mental Health Institute, Seattle, Wash.
- Seattle Times, Seattle, Wash.
- Silicon Graphics, Mountain View, Calif. (nonhealth coverage benefits)
- Sony Music Co.*
- Sony Pictures Entertainment
- Sprint, Dallas, Texas (relocation aid only)
- Starbucks Coffee Company, Seattle, Wash.
- Sun Microsystems
- Teachers Insurance & Annuity*
- Time Magazine Co., New York, N.Y.*
- Time Warner* (corporate staff)
- Trans America*
- Trans America Occidental Life*
- United Church Board for Homeland Ministries (United Church of Christ)
- University Students Cooperative Association, Berkeley, Calif.
- US BanCorp*
- US West*
- Vermont Girl Scouts Council, Vt.
- Viacom International (MTV, Showtime), New York, N.Y.
- Walker Art Center, Minneapolis, Minn.*
- Warner Brothers (Time Warner, Inc.), Burbank, Calif.
- Wells Fargo & Company*
- WGBH, Boston, Mass.
- Woodward and Lothrop, Inc., Washington, D.C. (merchandise discounts only)
- Wyatt Company

Colleges

Numerous colleges provide health and other benefits for domestic partners of faculty and staff. In some cases, partners of students also receive consideration, including eligibility for married student housing and the use of college facilities. Conditions and benefits vary widely among the campuses listed below.

- Bowdoin College, Brunswick, Maine
- Brown University, Providence, R.I.
- Carnegie Mellon, Pittsburgh, Pa.*
- Clark University, Worcester, Mass.
- Columbia University, New York, N.Y.
- Dartmouth College, Hanover, N.H. (same-sex partners only)
- Florida International University, Miami, Fla.
- General Theological Seminary Episcopal—housing for same-sex committed couples who are students)
- Georgia State University, Atlanta, Ga.
- Grinnell College, Grinnell, Iowa
- Harvard University, Cambridge, Mass. (must register domestic partner in Cambridge or other city)
- Hiram College, Hiram, Ohio (unofficial)
- Ithaca College, Ithaca, N.Y. (Human Rights Commission found housing restrictions unfair to unmarieds)
- Massachusetts Institute of Technology, Cambridge, Mass.
- Middlebury College, Middlebury, Vt.
- Mission College, Santa Clara, Calif.
- Moorehead State University, Moorhead, Minn. (unofficial)
- New York University Law School, New York, N.Y.
- New York University, New York, N.Y. (same-sex partners only)
- North Dakota University, Grand Forks, N.D.
- Northeastern University, Boston, Mass.
- Occidental College, Los Angeles, Calif.
- Pitzer College, Claremont, Calif.
- Princeton University, Princeton, N.J.
- Rutgers University, New Brunswick, N.J. (benefits stalled by administration, now in litigation)
- Smith College, Northampton, Mass. (same-sex partners only)
- Stanford University, Palo Alto, Calif.
- SUNY Stony Brook, Stony Brook, N.Y.
- Swathmore College, Swathmore, Pa.
- Teachers College, Columbia University, New York, N.Y.
- Tufts University, Boston, Mass. (same-sex faculty, staff, students only. If legal marriage becomes available, partners must marry to retain benefits.)
- Union Theological Seminary, New York, N.Y.
- University of British Columbia, Vancouver, B.C., Canada
- University of California, Los Angeles, Calif.
- University of Chicago, Chicago, Ill. (same-sex partners only)
- University of Colorado, Boulder, Colo.
- University of Iowa, Iowa City, Iowa
- University of Michigan, Ann Arbor, Mich.
- University of Minnesota, Minneapolis, Minn.
- University of New Mexico, Albuquerque, N.M.
- University of Oregon, Eugene, Oreg. (student housing)
- University of Pennsylvania, Philadelphia, Pa. (same-sex partners only)
- University of Pittsburgh, Pittsburgh, Pa. (tuition remission, facility access only for same-sex partners; no insurance)
- University of Tampa, Tampa, Fla.
- University of Vermont, Burlington, Vt
- University of Washington, Seattle, Wash. (bereavement; other benefits are pending)
- University of Wisconsin, Madison, Wis.
- Washington State University, Pullman, Wash.
- Yale University, New Haven, Conn. (health coverage for same-sex students, faculty, admin. and staff)

Governments

As with private employers, most of these governmental plans define *domestic partners* to include same-sex couples as well as unmarried heterosexual partners. Partners qualify for benefits under conditions that vary widely.

- Alameda County, Calif.*
- Ann Arbor, Mich.
- ~~Atlanta, Ga.~~ (court declared unconstitutional, under appeal)
- ~~Austin, Texas~~ (citizens voted city charter benefits law restricted to heterosexuals only)
- Baltimore, Md. (same-sex partners only, health plan coverage starts Jan. 1995)
- Berkeley, Calif.
- Berkeley Unified School District, Calif.
- Boston, Mass. (unpaid health insurance coverage)
- Burlington, Vt.
- Camondge, Mass.
- Canada (federal employees)
- Chicago, Ill. (paid bereavement leave only)
- Dane County, Wis.*
- Dane Regional Planning Commission*
- Delaware, N.J.*
- Denmark (similar benefits as marriage for same-sex citizens who are "registered partners")
- East Lansing, Mich. (nonunion employees only)
- France (medical benefits for nonworking partner if citizens are French, three-year residents who have lived together at least one year)
- Greenland (similar benefits as marriage for same-sex citizens who are "registered partners")
- Hartford, Conn.
- Hennepin County, Minn.*
- Ithaca, N.Y.*
- King County, Wash.
- Laguna Beach, Calif.
- Los Angeles, Calif.
- Madison, Wis.*
- Massachusetts* (management level only)
- Metro Toronto Council, Canada
- ~~Minneapolis, Minn.~~ (court declared invalid, to be appealed) (was to give cash payments until insurance could be arranged; excludes unmarried heterosexuals)
- Minneapolis Public Library, Minn.
- Minneapolis School District, Minn.
- Multnomah County, Oreg. (medical coverage for nonunion)

- Municipality of Metropolitan Seattle (Metro, Seattle, Wash.
- New South Wales, Australia (all citizens: same-sex couples spousal rights to each other's property)
- New York
- New York, N.Y.
- Norway (similar benefits as marriage for same-sex citizens who are "registered partners")
- Oakland, Calif.
- Oak Park, Ill.
- Ontario, Canada
- Ottawa, Ont., Canada
- Portland, Oreg.
- Rochester, N.Y.
- Sacramento, Calif.
- San Diego, Calif.
- San Francisco, Calif.
- San Jose School District, Calif. (certain unionized employees)*
- San Mateo County, Calif.
- Santa Cruz, Calif.
- Santa Cruz County, Calif.
- Santa Cruz Metropolitan Transit System, Calif.
- Seattle, Wash.
- Sherwood Hills Village, Wis.*
- Sweden (similar benefits as marriage for same-sex citizens who are "registered partners")
- Takoma Park, Md.
- Toronto, Ont., Canada
- Travis County, Texas*
- United States Civil Service*
- United States Department of Housing (HUD)*
- Vancouver, B.C., Canada
- Vermont (all state workers)
- Wayne County, Mich.
- West Hollywood, Calif.
- West Palm Beach, Fla.*
- Yukon Territory, Canada

Unions

The unions listed have negotiated benefits for same-sex partners, although some may provide benefits only in selected localities.

- AFSCME, Local 146, Sacramento, Calif.*
- Amalgamated Workers Union, Local 88 (RWDSU)*
- American Federation of Government Employees, Local 476/HUD*
- Canadian Union of Public Employees Local 932, Ontario, Canada
- Columbia University clerical workers, New York, N.Y.*
- Committee of Interns and Residents Staff Union, New York, N.Y.
- Council 82 (prison guards—N.Y. State benefits)
- DC Nurses' Association*
- International Brotherhood of Electrical Workers, Local 18, Los Angeles, Calif.
- Legal Aid Society, New York, N.Y.
- Legal Services Corporation, Des Moines, Iowa*
- Mt. Sinai Hospital, New York, N.Y.* (nurses)
- Museum of Modern Art, New York, N.Y.*
- National Treasury Employees Union*
- New York/New Jersey (NYNEX), telephone company workers, New York, N.Y.
- Oil Chemical and Atomic Workers (several locals in N.Y. and elsewhere)
- Pacific Gas & Electric, San Francisco, Calif.*
- Public Employees Federation (N.Y. State, SEIU/AFT)
- Retail Store Employees Union Local 410R-8FCS, San Francisco, Calif.*
- Seattle Public Library, Wash.*
- United University Professors (professors, doctors and some nurses in teaching hospitals—N.Y. State)
- Village Voice newspaper, New York, N.Y.

This list of employers and other organizations offering domestic partner benefits, current as of October 1994, was compiled by the Partners Task Force for Gay and Lesbian Couples, Box 9685, Seattle, WA 98109-0685; (206) 935-1206.

The new beneficiaries

Despite complications, some companies find that extending benefits to domestic partners is an inexpensive way to accomodate valued employees.

Duncan Osborne

When Boston-based International Data Group decided to admit its employees' unmarried partners—or "spousal equivalents"—to its health benefits plan last April, the move was especially well-timed for one of its key employees. Deb Goldstein, president of list services at IDG, a publishing and research company which covers the computer industry, and Julie, her domestic partner of 14 years, were confronting a serious problem.

Julie, a jewelry designer, was moving from full time to part time work and faced the loss of her health benefits at work. But after IDG's decision on benefits, Julie moved onto Goldstein's plan instead.

"I could offer Julie better coverage for comparable dollars," Goldstein says. Indeed, Julie now pays less for her health coverage. The IDG plans also includes dental care, a feature that was not part of Julie's prior coverage. But for Goldstein, this was more than just a good deal for her partner—it was a demonstration of IDG's "respectful" attitude towards its employees.

"A company's asset is its humans," Goldstein says. "If you treat them correctly, they work hard and they stay with you. That's how companies make money."

Companies like IDG and employees like Goldstein are still very much the exception, but change is in the air. Non-married couples, or domestic partners, both straight and gay, have become a growing presence in the US. According to the 1990 census, 4.2 million US households, or 5% of a total 94 million, consist of two unrelated adults. Opposite sex couples constitute 2.6 million of these, and 1.6 million are same-sex—although not all of these are in long-term relationships with each other. Increasingly, employees are asking for benefits for their non-marital partners—and, in many cases, getting them.

Employers and insurers set their own definitions of "domestic partner," and rarely ask for proof that a couple meets any of the specifications. But most use language that mirrors local marriage law—two

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unmarried adults, unrelated by blood, and in a close and committed relationship. Similar language was used by New York City last year when it became the first city in the US to set up a domestic partners registry to give local employers who wanted to offer benefits a quick way to check employees' status.

The first employer in the US to extend domestic partnership benefits to the unmarried partners of its employees—gay as well as straight—was the *Village Voice*, a New York alternative newspaper, in 1982. Several years passed with little or no growth in the list until the late 1980s, but since then the number of companies has swelled to roughly 150, according to the National Gay and Lesbian Task Force, a Washington, DC-based lobbying group.

The list has been dominated by high tech companies and public employers, although some large media companies—notably the New York Times Company, CBS, and many of Time Warner's 36 divisions—

IDG's Mathews: The employees raised the issue

have recently recognized domestic partners as well. By numbers alone, the movement cannot be said to have made a dent in the marketplace. According to the 1990 US Census, there are slightly more than 5.1 million enterprises or companies in the US and Puerto Rico, excluding railroads, agricultural production, and government entities. Companies offering domestic partnership benefits thus account for a tiny two thousandths of 1% of US companies.

But many of the companies that have been most progressive in extending benefits are in vigorous, fast-growing sectors of the economy—cutting-edge high tech and media companies, for example—which may constitute a much larger segment of the US economy in coming years. These are also companies that rely on contingents of employees with special skills, and therefore are strongly motivated to accommodate their special needs if it can be done inexpensively.

"A lot of it [the current low level of coverage] is we haven't asked or employers haven't thought of it," says Evan Wolfson, a senior staff attorney at the Lambda Legal Defense and Education Fund, a non-profit, gay-rights law firm based in New York. In a 1991 survey of 50 San Francisco Bay Area employers, Foster Higgins found that half had been approached by employees asking for domestic partnership coverage. In 1991, only one had added the benefit, but at least nine are reported to have added it since then. And employee demand is the first reason employers who offer it cite for adding the coverage.

Defining a "beneficiary"

At least at this early stage the movement to extend domestic partnership benefits has been quietly successful, and employees and advocates remain impressed by the rate at which the list of employers offering them has grown. But larger issues remain.

The effort to win these benefits has been driven more by the need for health insurance than for post-retirement benefits. Indeed, an early obstacle to winning domestic partnership benefits was the opposition of insurers who cited increased costs—mainly those incurred by people with AIDS—and a lack of rating data.

But as the number of employers offering the benefit has grown, those fears have been allayed. Today, insurers such as Aetna, Prudential, Group Health Insurance of New York, and Kaiser Permanente either offer the product in some cities or have indicated a willingness to do so. The work of winning post-retirement benefits, however, goes on with more than a sidelong glance at the courts and at ERISA.

ERISA defines a "beneficiary" as a person designated by the participant or by the terms of the plan. And both corporate and public defined benefit plans generally stipulate that the beneficiary must be a spouse—meaning married under state law—or dependent. That definition excludes domestic partners, who are neither.