

File: Domestic Partners

From: Lisa J. Macecevic on 03/02/2000 09:26:27 AM

Record Type: Record

To: Edward W. Correia/WHO/EOP@EOP

cc: See the distribution list at the bottom of this message

bcc:

Subject: Re: REMINDER: LRM LJM97 - - OMB Request for Views on HR3650 Permanent Partners Immigration Act of 2000 

Irene Bueno requested agency/EOP views on the legislation in an attempt to formulate what our view would be. I don't know what the next step was to be.

Here's what Irene sent me:

As you may recall, last year the President indicated support for changing our immigration laws to ensure that individuals are allowed to petition same sex domestic partners. Rep. Nalder has introduced legislation on this issue and I would like you to review this legislation and let me know your views (see attached). Also, below is information that Bo sent to me that summarizes the different ways that other countries have addressed this issue. I will send this through the normal OMB channels but I wanted to give you a heads up. Thanks.



domesticpartnersHR 3650.do

Irene:

Here is a short explanation of how this issue is handled differently in other countries. Let's discuss and we can figure out whether something more detailed would be helpful to you.

Bo

Forward Header

Subject: Same-sex Couple Immigration in Other Countries

Author: Ian G Hinds

Date: 12/02/1999 11:25 AM

From a Backgrounder issued by the Center for Immigration Studies in May 1999:

Australia: has an "interdependent partner" visa classification. Must have an interdependent relationship with an Australian citizen or permanent resident

Available to persons over 18 in an ongoing (12+ months) and mutually committed relationship. Applies both to hetero and homosexual couples.

New Zealand: grants residence to those in a genuine, stable, de facto partnership/relationship with a New Zealand citizen or resident for at least 2 years. Applies to hetero and homosexual couples.

South Africa: treats same sex couples the same as married couples for purposes of immigration law. This is based upon a court decision which ordered legislation to follow.

Canada: Same sex partner may seek consideration of that relationship as a reason to immigrate to Canada on humanitarian and compassionate grounds. Neither person in the relationship has to be a Canadian citizen or resident at the time of the application, i.e. Canada allows the same sex partner of an eligible immigrant to accompany or follow to join that immigrant. This is done as a matter of administrative discretion and does not appear to be codified in law.

Edward W. Correia

Edward W. Correia

03/01/2000 05:30:58 PM

Record Type: Record

To: Lisa J. Macecevic/OMB/EOP@EOP

cc: paul oetken/who/eop@eop, ann o'leary/opd/eop@eop, mary l. smith/opd/eop@eop, Elizabeth J. Potter/WHO/EOP@EOP

Subject: Re: REMINDER: LRM LJM97 - - OMB Request for Views on HR3650 Permanent Partners Immigration Act of 2000 

Do we have to take a position on this?

Message Copied To:

paul oetken/who/eop@eop
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mary l. smith/opd/eop@eop
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HR 3650 IH

106th CONGRESS

2d Session

H. R. 3650

To amend the Immigration and Nationality Act to provide a mechanism for United States citizens and lawful permanent residents to sponsor their permanent partners for residence in the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

February 14, 2000

Mr. NADLER (for himself, Mr. FRANK of Massachusetts, Ms. BALDWIN, Mr. CROWLEY, Mr. DELAHUNT, Mr. LANTOS, Mr. BECERRA, Mr. MCDERMOTT, Mr. HINCHEY, Mr. CAPUANO, Mr. WAXMAN, and Mr. TOWNS) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to provide a mechanism for United States citizens and lawful permanent residents to sponsor their permanent partners for residence in the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.

(a) SHORT TITLE- This Act may be cited as the 'Permanent Partners Immigration Act of 2000'.

(b) AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT- Except as otherwise specifically provided whenever in this Act an amendment or repeal is expressed as the amendment or repeal of a section or other provision, the reference shall be considered to be made to that section or provision in the Immigration and Nationality Act.

SEC. 2. DEFINITION OF 'PERMANENT PARTNER'.

Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following:

‘(50) The term ‘permanent partner’ means an individual over 18 years of age who--

‘(A) is in a committed, intimate relationship with another individual over 18 years of age in which both parties intend a lifelong commitment;

‘(B) is financially interdependent with that other individual;

‘(C) is not married to or in a permanent partnership with anyone other than that other individual;

‘(D) is unable to contract with that other individual a marriage cognizable under this Act; and

‘(E) is not a first, second, or third degree blood relation of that other individual.

‘(51) The term ‘permanent partnership’ means the relationship that exists between two permanent partners.’.

SEC. 3. WORLDWIDE LEVEL OF IMMIGRATION.

Section 201(b)(2)(A)(i) (8 U.S.C. 1151(b)(2)(A)(i)) is amended--

(1) by inserting ‘permanent partners,’ after ‘spouses,’

(2) by inserting ‘or permanent partner’ after ‘spouse’ each place such term appears; and

(3) by inserting ‘or enters a permanent partnership with another person’ before the period at the end.

SEC. 4. NUMERICAL LIMITATIONS ON INDIVIDUAL FOREIGN STATES.

(a) PER COUNTRY LEVELS- Section 202(a)(4) (8 U.S.C. 1152(a)(4)) is amended--

(1) in the paragraph heading for paragraph (4), by inserting ‘, PERMANENT PARTNERS,’ after ‘SPOUSES’;

(2) in the subparagraph heading for subparagraph (A), by inserting ‘, PERMANENT PARTNERS,’ after ‘SPOUSES’; and

(3) in the subparagraph heading for subparagraph (C), by inserting 'WITHOUT PERMANENT PARTNERS' after 'DAUGHTERS'.

(b) RULES FOR CHARGEABILITY- Section 202(b)(2) (8 U.S.C. 1152(b)(2)) is amended--

(1) by inserting 'or permanent partner' after 'spouse' each place it appears; and

(2) by inserting 'or permanent partners' after 'husband and wife'.

SEC. 5. ALLOCATION OF IMMIGRANT VISAS.

(a) PREFERENCE ALLOCATION FOR FAMILY MEMBERS OF PERMANENT RESIDENT ALIENS- Section 203(a)(2) (8 U.S.C. 1153(a)(2)) is amended--

(1) in the paragraph heading--

(A) by striking 'and' after 'SPOUSES' and inserting ', PERMANENT PARTNERS,'; and

(B) by inserting 'WITHOUT PERMANENT PARTNERS' after 'SONS' and after 'DAUGHTERS'; and

(2) in subparagraph (A)--

(A) by inserting ', permanent partners,' after 'spouses'; and

(B) by inserting 'without permanent partners' after 'sons' and after 'daughters'.

(b) PREFERENCE ALLOCATION FOR SONS AND DAUGHTERS OF CITIZENS- Section 203(a)(3) (8 U.S.C. 1153(a)(3)) is amended--

(1) in the paragraph heading, by inserting 'AND DAUGHTERS AND SONS WITH PERMANENT PARTNERS' after 'DAUGHTERS'; and

(2) by inserting 'or daughters or sons with permanent partners' after 'daughters'.

(c) EMPLOYMENT CREATION- Section 203(b)(5)(A)(iii) (8 U.S.C. 1153(b)(5)(A)(iii)) is amended by inserting 'permanent partner,' after 'spouse,'.

(d) TREATMENT OF FAMILY MEMBERS- Section 203(d) (8 U.S.C. 1153(d)) is amended by inserting ', permanent partner,' after 'spouse' each place the term appears.

SEC. 6. PROCEDURE FOR GRANTING IMMIGRANT STATUS.

(a) CLASSIFICATION PETITIONS- Section 204(a)(1) (8 U.S.C. 1154(a)(1)) is amended--

(1) in subparagraph (A)(ii), by inserting 'or permanent partner' after 'spouse';

(2) in subparagraph (A)(iii)--

(A) by inserting 'or permanent partner' after 'spouse' each place the term appears; and

(B) by inserting 'or permanent partnership' after 'marriage' each place the term appears in subclause (I); and

(3) in subparagraph (B)(ii), by inserting 'or permanent partner' after 'spouse' each place the term appears.

(b) IMMIGRATION FRAUD PREVENTION- Section 204(c) (8 U.S.C. 1154(c)) is amended--

(1) by inserting 'or permanent partner' after 'spouse' each place the term appears; and

(2) by inserting 'or permanent partnership' after 'marriage' each place the term appears.

SEC. 7. ANNUAL ADMISSION OF REFUGEES AND ADMISSION OF EMERGENCY SITUATION REFUGEES.

Section 207(c) (8 U.S.C. 1157(c)) is amended--

(1) in paragraph (2)--

(A) by inserting 'or permanent partner' after 'spouse' each place the term appears; and

(B) by inserting 'or permanent partner's' after 'spouse's'; and

(2) in paragraph (4), by inserting 'or permanent partner' after 'spouse'.

SEC. 8. ASYLUM.

Section 208(b)(3) (8 U.S.C. 1158(b)(3)) is amended--

(1) in the heading, by inserting 'OR PERMANENT PARTNER' after 'SPOUSE'; and

(2) by inserting 'or permanent partner' after 'spouse'.

SEC. 9. ADJUSTMENT OF STATUS OF REFUGEES.

Section 209(b)(3) (8 U.S.C. 1159(b)(3)) is amended by inserting 'or permanent partner' after 'spouse'.

SEC. 10. INADMISSIBLE ALIENS.

(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION- Section 212(a) (8 U.S.C. 1182(a)) is amended--

(1) in paragraph (3)(D)(iv), by inserting 'permanent partner,' after 'spouse,';

(2) in paragraph (4)(C)(i)(I), by inserting ', permanent partner,' after 'spouse';

(3) in paragraph (6)(E)(ii), by inserting 'permanent partner,' after 'spouse,'; and

(4) in paragraph (9)(B)(v), by inserting ', permanent partner,' after 'spouse'.

(b) WAIVERS- Section 212(d) (8 U.S.C. 1182(d)) is amended--

(1) in paragraph (11), by inserting 'permanent partner,' after 'spouse,'; and

(2) in paragraph (12)(B), by inserting ', permanent partner,' after 'spouse'.

(c) Section 212(g)(1)(A) (8 U.S.C. 1182(g)(1)(A)) is amended by inserting 'or permanent partner' after 'spouse'.

(d) Section 212(h)(1)(B) (8 U.S.C. 1182(h)(1)(B)) is amended by inserting 'permanent partner,' after 'spouse,'.

(e) Section 212(i)(1) (8 U.S.C. 1182(i)(1)) is amended by inserting 'permanent partner,' after 'spouse,'.

SEC. 11. ADMISSION OF NONIMMIGRANTS.

(a) PERSONS ENTERING UNDER NAFTA- Section 214(e)(2) (8 U.S.C. 1184(e)(2)) is amended by inserting 'or permanent partner' after 'spouse'.

(b) LIMITATION ON CERTAIN NONIMMIGRANTS- Section 214(g)(2) (8 U.S.C. 1184(g)(2)) is amended by inserting ', permanent partners,' after 'spouses'.

SEC. 12. CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN SPOUSES, PERMANENT PARTNERS, AND SONS AND DAUGHTERS.

(a) SECTION HEADING-

(1) **IN GENERAL-** The section heading for section 216 (8 U.S.C. 1186a) is amended by inserting 'AND PERMANENT PARTNERS' after 'SPOUSES'.

(2) **CLERICAL AMENDMENT-** The table of contents is amended by amending the item relating to section 216 to read as follows:

'Sec. 216. Conditional permanent resident status for certain alien spouses and permanent partners and sons and daughters.'

(b) IN GENERAL- Section 216(a) (8 U.S.C. 1186a(a)) is amended--

(1) in paragraph (1), by inserting 'or permanent partner' after 'spouse';

(2) in paragraph (2)(A), by inserting 'or permanent partner' after 'spouse';

(3) in paragraph (2)(B), by inserting 'permanent partner,' after 'spouse,'; and

(4) in paragraph (2)(C), by inserting 'permanent partner,' after 'spouse,'.

(c) TERMINATION OF STATUS IF FINDING THAT QUALIFYING MARRIAGE IMPROPER- Section 216(b) of such Act (8 U.S.C. 1186a(b)) is amended--

(1) in the heading, by inserting 'OR PERMANENT PARTNERSHIP' after 'MARRIAGE';

(2) in paragraph (1)(A), by inserting 'or permanent partnership' after 'marriage'; and

(3) in paragraph (1)(A)(ii)--

(A) by inserting 'or has ceased to satisfy the criteria for being considered a permanent partnership under this Act,' after 'terminated,'; and

(B) by inserting 'or permanent partner' after 'spouse'.

(d) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION- Section 216(c) (8 U.S.C. 1186a(c)) is amended--

(1) in paragraphs (1), (2)(A)(ii), (3)(A)(ii), (3)(C), (4)(B), and (4)(C), by inserting 'or permanent partner' after 'spouse' each place the term appears;

(2) in paragraph (3)(A), in the matter following clause (ii), and in paragraph (3)(D), (4)(B), and (4)(C), by inserting 'or permanent partnership' after 'marriage' each place the term appears.

(e) CONTENTS OF PETITION- Section 216(d)(1) of such Act (8 U.S.C. 1186a(d)(1)) is amended--

(1) in the subparagraph heading for subparagraph (A), by inserting 'OR PERMANENT PARTNERSHIP' after 'MARRIAGE';

(2) in subparagraph (A)(i), by inserting 'or permanent partnership' after 'marriage';

(3) in subparagraph (A)(i)(I), by inserting before the comma at the end ' , or is a permanent partnership recognized under this Act';

(4) in subparagraph (A)(i)(II)--

(A) by inserting 'or has not ceased to satisfy the criteria for being considered a permanent partnership under this Act,' after 'terminated,'; and

(B) by inserting 'or permanent partner' after 'spouse';

(5) in subparagraph (A)(ii), by inserting 'or permanent partner' after 'spouse'; and

(6) in subparagraph (B)(i)--

(A) by inserting 'or permanent partnership' after 'marriage'; and

(B) by inserting 'or permanent partner' after 'spouse'.

(e) DEFINITIONS- Section 216(g) (8 U.S.C. 1186a(g)) is amended--

(1) in paragraph (1)--

(A) by inserting 'or permanent partner' after 'spouse' each place the term appears; and

(B) by inserting 'or permanent partnership' after 'marriage' each place the term appears;

(2) in paragraph (2), by inserting 'or permanent partnership' after 'marriage';

(3) in paragraph (3), by inserting ‘or permanent partnership’ after ‘marriage’; and

(4) in paragraph (4)--

(A) by inserting ‘or permanent partner’ after ‘spouse’ each place the term appears; and

(B) by inserting ‘or permanent partnership’ after ‘marriage’.

SEC. 13. CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, PERMANENT PARTNERS, AND CHILDREN.

(a) SECTION HEADING-

(1) IN GENERAL- The section heading for section 216A (8 U.S.C. 1186b) is amended by inserting ‘OR PERMANENT PARTNERS’ after ‘SPOUSES’.

(2) CLERICAL AMENDMENT- The table of contents is amended by amending the item relating to section 216A to read as follows:

‘Sec. 216. Conditional permanent resident status for certain alien entrepreneurs, spouses or permanent partners, and children.’

(b) IN GENERAL- Section 216A(a) (8 U.S.C. 1186b(a)) is amended, in paragraphs (1), (2)(A), (2)(B), and (2)(C), by inserting ‘or permanent partner’ after ‘spouse’ each place the term appears.

(c) TERMINATION OF STATUS IF FINDING THAT QUALIFYING ENTREPRENEURSHIP IMPROPER- Section 216A(b)(1) (8 U.S.C. 1186b(b)(1)) is amended by inserting ‘or permanent partner’ after ‘spouse’ in the matter following subparagraph (C).

(d) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION- Section 216A(c) (8 U.S.C. 1186b(c)) is amended, in paragraphs (1), (2)(A)(ii), and (3)(C), by inserting ‘or permanent partner’ after ‘spouse’.

(e) DEFINITIONS- Section 216A(f)(2) (8 U.S.C. 1186b(f)(2)) is amended by inserting ‘or permanent partner’ after ‘spouse’ each place the term appears.

SEC. 14. DEPORTABLE ALIENS.

Section 237(a) of the Immigration and Nationality Act (8 U.S.C. 1227(a)) is amended--

(1) in paragraph (1)(D)(i), by inserting ‘or permanent partners’ after ‘spouses’

each place the term appears;

(2) in paragraphs (1)(E)(ii), (1)(E)(iii), and (1)(H)(i), by inserting 'or permanent partner' after 'spouse';

(3) by adding at the end of paragraph (1) the following new subparagraph:

'(I) PERMANENT PARTNERSHIP FRAUD- An alien shall be considered to be deportable as having procured a visa or other documentation by fraud (within the meaning of section 212(a)(6)(C)(i)) and to be in the United States in violation of this Act (within the meaning of subparagraph (B)) if--

'(i) the alien obtains any admission to the United States with an immigrant visa or other documentation procured on the basis of a permanent partnership entered into less than 2 years prior to such admission and which, within 2 years subsequent to such admission, is terminated because the criteria for permanent partnership are no longer fulfilled, unless the alien establishes to the satisfaction of the Attorney General that such permanent partnership was not contracted for the purpose of evading any provisions of the immigration laws; or

'(ii) it appears to the satisfaction of the Attorney General that the alien has failed or refused to fulfill the alien's permanent partnership which in the opinion of the Attorney General was made for the purpose of procuring the alien's admission as an immigrant.'; and

(4) in paragraphs (2)(E)(i) and (3)(C)(ii), by inserting 'or permanent partner' after 'spouse' each place the term appears.

SEC. 15. REMOVAL PROCEEDINGS.

Section 240(e)(1) (8 U.S.C. 1229a(e)(1)) is amended by inserting 'or permanent partner' after 'spouse'.

SEC. 16. CANCELLATION OF REMOVAL; ADJUSTMENT OF STATUS.

Section 240A(b) (8 U.S.C. 1229b(b)) is amended--

(1) in paragraph (1)(D), by inserting 'or permanent partner' after 'spouse';

(2) in the heading for paragraph (2), by inserting ', PERMANENT PARTNER,' after 'SPOUSE'; and

(3) in paragraph (2)(A), by inserting ‘, permanent partner,’ after ‘spouse’.

SEC. 17. ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE.

(a) PROHIBITION ON ADJUSTMENT OF STATUS- Section 245(d) (8 U.S.C. 1255(d)) is amended by inserting ‘or permanent partnership’ after ‘marriage’.

(b) AVOIDING IMMIGRATION FRAUD- Section 245(e) (8 U.S.C. 1255(e)) is amended--

(1) in paragraph (1), by inserting ‘or permanent partnership’ after ‘marriage’; and

(2) by adding at the end the following new paragraph:

‘(4) Paragraph (1) and section 204(g) shall not apply with respect to a permanent partnership if the alien establishes by clear and convincing evidence to the satisfaction of the Attorney General that the permanent partnership was entered into in good faith and in accordance with section 101(a)(50) and the permanent partnership was not entered into for the purpose of procuring the alien’s admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) or 214(d) with respect to the alien permanent partner. In accordance with regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.’

(c) ADJUSTMENT OF STATUS FOR CERTAIN ALIENS PAYING FEE- Section 245(i)(1)(B) (8 U.S.C. 1255(i)(1)(B)) is amended by inserting ‘or permanent partner’ after ‘spouse’ each place the term appears.

(d) INFORMANTS- Section 245(j) of such Act (8 U.S.C. 1255(j)) is amended by inserting ‘permanent partner,’ after ‘spouse,’ each place the term appears.

SEC. 18. MISREPRESENTATION AND CONCEALMENT OF FACTS.

Section 275(c) (8 U.S.C. 1325(c)) is amended by inserting ‘or permanent partnership’ after ‘marriage’.

SEC. 19. REQUIREMENTS AS TO RESIDENCE, GOOD MORAL CHARACTER, ATTACHMENT TO THE PRINCIPLES OF THE CONSTITUTION.

Section 316(b) (8 U.S.C. 1427(b)) is amended by inserting ‘or permanent partner’ after ‘spouse’.

SEC. 20. FORMER CITIZENS OF UNITED STATES REGAINING
UNITED STATES CITIZENSHIP.

Section 324(a) (8 U.S.C. 1435(a)) is amended, in the matter following 'after September 22, 1922,' by inserting 'or permanent partnership' after 'marriage' each place the term appears.

.....
Edward W. Correia
.....

03/20/2000 02:07:03 PM
.....

Record Type: Record

To: Ann O'Leary/OPD/EOP@EOP, Elizabeth J. Potter/WHO/EOP@EOP, Paul Oetken/WHO/EOP@EOP,
Mary L. Smith/OPD/EOP@EOP

cc:

Subject: FW: list of government benefits

Here's something from OPM on domestic partners. Let's get together soon to discuss it.

----- Forwarded by Edward W. Correia/WHO/EOP on 03/20/2000 02:06 PM -----



"Mitchelson, Mary S." <MSMITCHE@opm.gov>

03/20/2000 01:49:44 PM

Record Type: Record

To: Edward W. Correia/WHO/EOP

cc:

Subject: FW: list of government benefits

> -----Original Message-----

> From: Mitchelson, Mary S.

> Sent: Monday, March 20, 2000 12:15 PM

> To: 'EdwardW.Correia@who.eop.gov'; Seiden, Suzanne B.; Abow, Steven

> Subject: list of government benefits

>

> Eddie,

> Suzanne promised you a list of government benefits that may be relevant

> to domestic partners. We have met with a number of individuals here in

> OPM and compiled the attached list. Please call me or Steve Abow at

> 606-1700 if you want to discuss this.

> Thanks, Mary Mitchelson

> cc: Suzanne Seiden

> Steve Abow

>

> <<Domestic Partner Benefits.doc>>

-- E-Mail scanned for viruses. --



- Domestic Partner Benefits.doc

Domestic Partner Benefits

The following list contains OPM-administered programs under which an agency may include domestic partners without statutory change, as well as some subjects that are not administered by OPM that may be conducive to including domestic partners.

I. OPM-administered programs

A. Federal Employees' Group Life Insurance Program

Administering Agency: Office of Personnel Management

No change in statute or regulation is needed to cover domestic partners.

5 U.S.C. § 8705(a)

5 C.F.R. § 870.802

Under this statute and regulation, an insured individual may file a designation of beneficiary. The designation must be in writing, signed by the insured individual, and witnessed and signed by two people. A designee may be a domestic partner or anyone else.

B. Civil Service Retirement System (Survivorship benefits)

Administering Agency: Office of Personnel Management

No change in statute or regulation is needed to cover domestic partners.

5 U.S.C. § 8339(k)(1)

5 U.S.C. § 8341(c)

At the time of retirement, an annuitant may elect a reduced annuity and name in writing an individual with an insurable interest to receive an annuity after the annuitant's death. The survivor named receives 55% of the reduced annuity of the retired employee the day after the employee's death. The individual may be a domestic partner if he or she has an insurable interest.

C. Federal Employees' Retirement System (Survivorship benefits)

Administering Agency: Office of Personnel Management

No change in statute or regulation is needed to cover domestic partners.

5 U.S.C. § 8420

5 U.S.C. § 8444

At the time of retirement, an annuitant may elect to have a reduced annuity in order to provide an annuity for an individual having an insurable interest in the employee.

D. Sick Leave for Family Care and Bereavement Purposes
(Formerly the "Federal Employees Family Friendly Leave Act,"
P.L. 103-388, October 22, 1994)

Administering Agency: Office of Personnel Management

No change in statute or regulation is needed to cover domestic partners.

5 CFR § 630.401(a)(3) and (4)

* || OPM's definition of family member for this purpose includes "any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship." Under this definition, agencies possess discretion to include domestic partners in this program.

Program is administered under OPM's permanent regulatory authority in 5 U.S.C. § 6311. Currently, employees may use a total of up to 13 days each year to care for a family member or for bereavement purposes. On February 7, 2000, OPM issued proposed regulations to permit Federal employees to use a total of up to 12 weeks of sick leave each year to care for a family member with a serious health condition.

E. Funeral Leave (to attend funerals of immediate relatives in the Armed Forces)

Administering Agency: Office of Personnel Management

No change in statute or regulation is needed to cover domestic partners.

5 U.S.C. § 6326

5 C.F.R. § 630.801.

OPM's regulatory definition includes "any individual related by blood or affinity whose close association with the employee is the equivalent of a

*Final
212 was
unpaid
leave?*

Agency discretion

paid leave

12 weeks

150

*Designation
here
for
sick leave
in law*

*Final
rule
April 2000*

family relationship.” Under this definition, agencies possess discretion to include domestic partners in this program, which permits agencies to grant up to 3 days of leave to attend the funeral of an immediate relative who died while serving as a member of the armed services in a combat zone.

F. Voluntary Leave Transfer Program

5 U.S.C. chapter 63, subchapter III
5 CFR part 630, subpart I

Administering Agency: Office of Personnel Management

No change in statute or regulation is needed to cover domestic partners.

The voluntary leave transfer program allows Federal employees to donate annual leave to other Federal employees who have a personal or family medical emergency and who have exhausted their own paid leave. OPM's regulations define “family member” to include an “individual related by blood or affinity whose close relationship is the equivalent of a family relationship.” This definition gives agencies discretion to accord benefits to domestic partners.

G. Voluntary Leave Bank Program

Administering Agency: Office of Personnel Management

5 U.S.C. chapter 63, subchapter IV
5 CFR part 630, subpart J

No change in statute or regulation is needed to cover domestic partners.

The voluntary leave bank program allows Federal employees to contribute a specified amount of annual leave yearly to their agency leave bank. Leave bank members with personal or family medical emergencies can withdraw leave from the bank if they exhaust their own paid leave. OPM's regulations define “family member” to include an “individual related by blood or affinity whose close relationship is the equivalent of a family relationship.” This definition gives agencies discretion to accord benefits to domestic partners.

H. Emergency Leave Transfer Program

5 U.S.C. 6391

5 CFR part 630, subpart K

Administering Agency: Office of Personnel Management

No change in statute or regulation is needed to cover domestic partners.

The emergency leave transfer program allows Federal employees to donate annual leave to other Federal employees who are adversely affected by a major disaster or emergency, as declared by the President. OPM's regulations define "family member" to include an "individual related by blood or affinity whose close relationship is the equivalent of a family relationship." This definition gives agencies discretion to accord benefits to domestic partners.

I. Administratively Excused Absences

Administering Agency: Office of Personnel Management

No change in statute or regulation is needed to cover domestic partners.

There is no explicit statutory authority for granting excused absence to Federal employees. The authority permitting department and agency heads to grant excused absence is inferred from 5 U.S.C. § 301. Each department or agency has discretion to excuse employees from their duties without loss of pay or charge to leave. OPM advises agencies that they should grant excused absence only in those situations in which the employee's absence, in the department's or agency's determination, is not specifically prohibited by law and satisfies one or more of the following criteria: (1) the absence is directly related to the department or agency's mission; (2) the absence is officially sponsored or sanctioned by the head of the department or agency; (3) the absence will clearly enhance the professional development or skills of the employee in his or her current position; or (4) the absence is brief and is determined to be in the interest of the agency.

J. Employee Assistance Programs (drug and alcohol abuse)

Administering Agency: Office of Personnel Management

5 U.S.C. § 7904

No change in statute or regulation is needed to cover domestic partners.

The head of each Executive agency shall establish appropriate prevention, treatment, and rehabilitation programs and services for drug abuse and alcohol abuse for employees, consistent with OPM regulation. Therefore, such programs may deal with problems arising from domestic partnerships.

II. Subjects not administered by OPM

A. Moving Expenses, househunting, shipment of household goods

Administering agency: General Services Administration

B. Visits home while on temporary duty or travel

Administering agency: General Services Administration

C. Downsizing and outsourcing benefits

Administering agency: Any Eligible Agency

D. Visa privileges, evacuation procedures, emergency shelters, moving expenses, transportation allowances, housing allowances.

Administering agency: Department of State

E. Thrift Savings Plan

Administering agency: Federal Retirement Thrift Investment Board

F. Health Service Programs (Non-drug and alcohol-related)

Administering Agency: Department of Health and Human Services

No change in statute or regulation is needed to cover domestic partners.

5 U.S.C. § 7901

The statute provides that the head of each agency may establish, within the limits of appropriations available, a health service program to promote and maintain the physical and mental fitness of employees under his or her jurisdiction. The agency must consult with HHS before establishing a program. Such programs may deal with problems arising from domestic partnerships.

DOMESTIC PARTNER BENEFITS POLICY OPTIONS

Ways - 12 ways

Executive Actions

Executive Orders

Expand FMLA to include broader definition of families for Federal employees

NOTE: Groups would like us to interpret EO on non-discrimination in the Federal workplace to include domestic partner benefits based on disparate impact argument

Implementation issues

OPM – signaling that “equivalent of a family relationship” specifically means domestic partner

Encouraging agencies to exercise their discretion to pro-actively include domestic partners

Class guidance

↓

bring that up

Legislative Options

Endorse Frank bill on DP benefits (health and pension) for Federal Employees

Endorse Maloney bill to expand FMLA to broader definition of families

no dissent

d.p.

LP dissent

defn. dissent

OTHER ISSUES TO SUPPORT GAY/LESBIAN WORKERS

Executive Actions

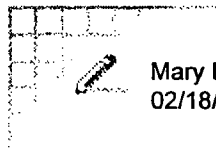
EO on non-discrimination in Federal Contracts

↑

improvement by law

Religion Exception

Re: Domestic Partners

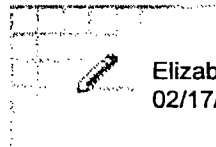


Mary L. Smith
02/18/2000 04:28:21 PM

Record Type: Record

To: Elizabeth J. Potter/WHO/EOP@EOP
cc:
bcc:
Subject: Re: vp on domestic partner benefits

That would be great --let's talk next week
Elizabeth J. Potter



Elizabeth J. Potter
02/17/2000 05:16:24 PM

Record Type: Record

To: Mary L. Smith/OPD/EOP@EOP
cc:
Subject: vp on domestic partner benefits

I know you have done a lot of work on Federal expansion of benefits. How much did it cost out for a year? Also, can we sit down and talk on Tuesday of next week...around 1:00, I have a lot of new information on the anti-discrimination E.O. I would like to discuss with you...that is in your portfolio...right?

NEW YORK DAILY NEWS, February 17, 2000
220 E. 42nd St., New York, NY, 10017
(Fax 212-682-4953) (E-MAIL: voicers@nydailynews.com)
(<http://www.mostnewyork.com>)

Gore Gets Nod From Gay Group, Backs Benefits
By WILLIAM GOLDSCHLAG
N.Y. Daily News Senior National Correspondent

Vice President Gore pledged to back economic and legal benefits for gay couples

- but not same-sex marriage - as he was endorsed yesterday by New York's biggest gay political organization.

"If elected President, I would appoint a working group or commission to make recommendations as to how domestic partners should be recognized," Gore said in a conference call with reporters and gay and lesbian backers. He said gay couples should have "the legal and economic benefits that accrue to married couples."

Bill Bradley - battling for support in the March 17 Democratic primary - tried to one-up Gore in a speech to 200 people last night at the Lesbian and

Gay Community Services Center in Greenwich Village.

Ridiculing Gore's commission plan, Bradley said:

"I don't need a task force. The way I figure, if Microsoft can do it, if Disney can do it, if IBM can do it, if American Express can do it, the federal government ought to be able to do it."

He called for a domestic partnership law giving gay and heterosexual couples the same rights "across the board." Spokesman Jim Farrell said Bradley would use "all the tools a President has at his disposal" and not "study things to death."

The Empire State Pride Agenda endorsed Gore because the Clinton-Gore administration "has helped to bring about unprecedented changes for lesbians and gay men in this country," said Executive Director Mart Foreman.

State Sen. Tom Duane (D-Manhattan), who is HIV-positive, said he was "beyond skeptical" of Bradley's assurances his health care plan would not cost those with the AIDS virus benefits they now get from Medicaid.

Bradley stood his ground. "Al Gore ... said it would hurt people with AIDS. The opposite is true," he said.

Tim Sweeney, a Pride Agenda official, said votes in gay Democratic clubs have been breaking around "60-40" for Gore. "It's been competitive, to say the least," Sweeney said.

The vice president's first TV ads hit the air in New York yesterday and indirectly kept up an attack on Bradley's health plan that the Bradley campaign called a "distortion."

Domestic Partner Benefits

The following list contains OPM-administered programs under which an agency may include domestic partners without statutory change, as well as some subjects that are not administered by OPM that may be conducive to including domestic partners.

I. OPM-administered programs

A. Federal Employees' Group Life Insurance Program

Administering Agency: Office of Personnel Management

No change in statute or regulation is needed to cover domestic partners.

5 U.S.C. § 8705(a)

5 C.F.R. § 870.802

Under this statute and regulation, an insured individual may file a designation of beneficiary. The designation must be in writing, signed by the insured individual, and witnessed and signed by two people. A designee may be a domestic partner or anyone else.

B. Civil Service Retirement System (Survivorship benefits)

Administering Agency: Office of Personnel Management

No change in statute or regulation is needed to cover domestic partners.

5 U.S.C. § 8339(k)(1)

5 U.S.C. § 8341(c)

At the time of retirement, an annuitant may elect a reduced annuity and name in writing an individual with an insurable interest to receive an annuity after the annuitant's death. The survivor named receives 55% of the reduced annuity of the retired employee the day after the employee's death. The individual may be a domestic partner if he or she has an insurable interest.

C. Federal Employees' Retirement System (Survivorship benefits)

Administering Agency: Office of Personnel Management

No change in statute or regulation is needed to cover domestic partners.

5 U.S.C. § 8420

5 U.S.C. § 8444

At the time of retirement, an annuitant may elect to have a reduced annuity in order to provide an annuity for an individual having an insurable interest in the employee.

D. Sick Leave for Family Care and Bereavement Purposes
(Formerly the "Federal Employees Family Friendly Leave Act,"
P.L. 103-388, October 22, 1994)

Administering Agency: Office of Personnel Management

No change in statute or regulation is needed to cover domestic partners.

5 CFR § 630.401(a)(3) and (4)

OPM's definition of family member for this purpose includes "any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship." Under this definition, agencies possess discretion to include domestic partners in this program.

Program is administered under OPM's permanent regulatory authority in 5 U.S.C. § 6311. Currently, employees may use a total of up to 13 days each year to care for a family member or for bereavement purposes. On February 7, 2000, OPM issued proposed regulations to permit Federal employees to use a total of up to 12 weeks of sick leave each year to care for a family member with a serious health condition.

E. Funeral Leave (to attend funerals of immediate relatives in the Armed Forces)

Administering Agency: Office of Personnel Management

No change in statute or regulation is needed to cover domestic partners.

5 U.S.C. § 6326

5 C.F.R. § 630.801.

OPM's regulatory definition includes "any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship." Under this definition, agencies possess discretion to include domestic partners in this program, which permits agencies to grant up to 3 days of leave to attend the funeral of an immediate relative who died while serving as a member of the armed services in a combat zone.

F. Voluntary Leave Transfer Program

5 U.S.C. chapter 63, subchapter III
5 CFR part 630, subpart I

Administering Agency: Office of Personnel Management

No change in statute or regulation is needed to cover domestic partners.

The voluntary leave transfer program allows Federal employees to donate annual leave to other Federal employees who have a personal or family medical emergency and who have exhausted their own paid leave. OPM's regulations define "family member" to include an "individual related by blood or affinity whose close relationship is the equivalent of a family relationship." This definition gives agencies discretion to accord benefits to domestic partners.

G. Voluntary Leave Bank Program

Administering Agency: Office of Personnel Management

5 U.S.C. chapter 63, subchapter IV
5 CFR part 630, subpart J

No change in statute or regulation is needed to cover domestic partners.

The voluntary leave bank program allows Federal employees to contribute a specified amount of annual leave yearly to their agency leave bank. Leave bank members with personal or family medical emergencies can withdraw leave from the bank if they exhaust their own paid leave. OPM's regulations define "family member" to include an "individual related by blood or affinity whose close relationship is the equivalent of a family

relationship.” This definition gives agencies discretion to accord benefits to domestic partners.

H. Emergency Leave Transfer Program

5 U.S.C. 6391

5 CFR part 630, subpart K

Administering Agency: Office of Personnel Management

No change in statute or regulation is needed to cover domestic partners.

The emergency leave transfer program allows Federal employees to donate annual leave to other Federal employees who are adversely affected by a major disaster or emergency, as declared by the President. OPM’s regulations define “family member” to include an “individual related by blood or affinity whose close relationship is the equivalent of a family relationship.” This definition gives agencies discretion to accord benefits to domestic partners.

I. Administratively Excused Absences

Administering Agency: Office of Personnel Management

No change in statute or regulation is needed to cover domestic partners.

There is no explicit statutory authority for granting excused absence to Federal employees. The authority permitting department and agency heads to grant excused absence is inferred from 5 U.S.C. § 301. Each department or agency has discretion to excuse employees from their duties without loss of pay or charge to leave. OPM advises agencies that they should grant excused absence only in those situations in which the employee’s absence, in the department’s or agency’s determination, is not specifically prohibited by law and satisfies one or more of the following criteria: (1) the absence is directly related to the department or agency’s mission; (2) the absence is officially sponsored or sanctioned by the head of the department or agency; (3) the absence will clearly enhance the professional development or skills of the employee in his or her current

position; or (4) the absence is brief and is determined to be in the interest of the agency.

J. Employee Assistance Programs (drug and alcohol abuse)

Administering Agency: Office of Personnel Management

5 U.S.C. § 7904

No change in statute or regulation is needed to cover domestic partners.

The head of each Executive agency shall establish appropriate prevention, treatment, and rehabilitation programs and services for drug abuse and alcohol abuse for employees, consistent with OPM regulation. Therefore, such programs may deal with problems arising from domestic partnerships.

II. Subjects not administered by OPM

A. Moving Expenses, househunting, shipment of household goods

Administering agency: General Services Administration

B. Visits home while on temporary duty or travel

Administering agency: General Services Administration

C. Downsizing and outsourcing benefits

Administering agency: Any Eligible Agency

D. Visa privileges, evacuation procedures, emergency shelters, moving expenses, transportation allowances, housing allowances.

Administering agency: Department of State

E. Thrift Savings Plan

Administering agency: Federal Retirement Thrift Investment Board

F. Health Service Programs (Non-drug and alcohol-related)

Administering Agency: Department of Health and Human Services

No change in statute or regulation is needed to cover domestic partners.

5 U.S.C. § 7901

The statute provides that the head of each agency may establish, within the limits of appropriations available, a health service program to promote and maintain the physical and mental fitness of employees under his or her jurisdiction. The agency must consult with HHS before establishing a program. Such programs may deal with problems arising from domestic partnerships.

EO 12046

FEP

Anti Discrimination

down

same name

Employment Nondiscrimination in Federal Contracts

Employment non-discrimination directly promotes efficient economic performance and productivity. When Federal contractors engage in discrimination on the basis of sexual orientation, the unavoidable consequence is a serious adverse impact upon the Federal Government's economy, efficiency, and cost of operations. In order to operate as effectively as possible, the Federal Government must demand that the entities with which it has contractual relations not discriminate on the basis of sexual orientation.

The adverse effects of employment discrimination on federal procurement are demonstrated by the straightforward application of basic principles of market economics. When Federal contractors discriminate, the supply of labor is artificially reduced. Other factors being equal, this decrease in supply will cause an increase in the cost of labor. It is the policy of the Federal government to secure goods and services, to complete Federal contracts, and to see federally assisted construction contracts completed in the most economical and efficient manner possible. Therefore, it is the policy of the Executive branch not to tolerate employment discrimination by Federal contractors.

Every President since Franklin Delano Roosevelt has recognized and acted on the force of this argument. In June 1941, President Franklin Roosevelt issued Executive Order 8802 forbidding race-based discrimination by Federal contractors. Less than three weeks after entering World War II, President Roosevelt issued Executive Order 9001 forbidding defense contractors to discriminate on the basis of race. Thus, when economical and efficient procurement has been most vital to the national interest, Presidents have insisted on the non-discrimination principle as crucial to maximizing our procurement efforts.

NOW, THEREFORE, to ensure the economical and efficient administration and completion of Federal Government contracts, and by the authority vested in me as President by the Constitution and the laws of the United States of America, including 40 U.S.C. 486(a) and 3 U.S.C. 301, it is hereby ordered as follows:

Section 1. It is the policy of the executive branch to oppose all forms of discrimination, including discrimination on the basis of sexual orientation.

Sec. 2. It is the finding of the executive branch that discrimination on the basis of sexual orientation interferes with the economical and efficient administration and completion of Federal contracts and federally assisted construction contracts.

Sec. 3. All Federal contractors are hereby forbidden to engage in discrimination on the basis of sexual orientation.

Sec. 4. The Office of Management and Budget is directed to issue regulations to enforce this Executive Order. These regulations shall establish:

(a) procedures by which individual allegations that a Federal contractor has engaged in

Congress - separation of powers
object to Exec Order - Federalism -

48 -
Earl Warren
R-candidate
ENDA

homophobia -
ENDA -
Hub/VA -
Kobe

overturned
S.F. in
house -
local,
autonomy

discrimination on the basis of sexual orientation may be received, investigated, and resolved;

(b) protections for individuals who make an allegation under subsection (a) against retaliation by a Federal contractor;

(c) specific measures to respond to a determination that a Federal contractor has engaged in discrimination on the basis of sexual orientation. These measures should include, without limitation, termination of contract(s) for convenience, suspension, and debarment; and

(d) mechanisms to encourage equal employment opportunity practices by Federal contractors. These mechanisms may include posting of notices to employees of the equal employment opportunity policies of this Order and positive incentives to Federal contractors that foster a work environment of non-discrimination on the basis of sexual orientation.

The Director shall issue these regulations within 60 days of the effective date of this order.

Sec. 5. For the purposes of this Order, it shall be considered "discrimination on the basis of sexual orientation" for a Federal contractor, or any organizational unit thereof,

(a) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the compensation, terms, conditions, or privileges of employment of the individual, because of such individual's sexual orientation;

(b) to limit, segregate, or classify the employees or applicants for employment of the employer in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the status of the individual as an employee because of the individual's sexual orientation; or

(c) to discriminate against any individual because of the sexual orientation of the individual in admission to, or employment in, any program established to provide apprenticeship or other training.

Sec. 6. For the purposes of this Order, "sexual orientation" means homosexuality, bisexuality, or heterosexuality, whether the orientation is real or perceived.

Sec. 7. This Order does not, and the implementing regulations shall not, authorize or require:

- (a) adoption or implementation of a quota on the basis of sexual orientation;
- (b) preferential treatment for any individual on the basis of sexual orientation;
- (c) entering into an order or consent decree that includes a quota, or preferential treatment to an individual based on sexual orientation; or
- (d) collection of statistics on sexual orientation.

Sec. 8. The fact that an employment practice has a disparate impact, as that term is used in section 703(k) of the Civil Rights Act of 1964, on the basis of sexual orientation does not establish a prima facie violation of this Order, or the implementing regulations.

Sec. 9. This Order does not:

- (a) repeal or modify any Federal, State, territorial, or local law, creating a special right or preference concerning employment or an employment opportunity for a veteran;
- (b) prohibit the enforcement of rules regarding nonprivate sexual conduct, if the rules of conduct are designed for, and uniformly applied to, all individuals regardless of sexual orientation; or
- (c) require the provision of employee benefits to an individual for the benefit of the domestic partner of such individual.

Sec. 10. This Order shall not apply to a Federal contractor that is a religious organization, except that this Order shall apply to employment or an employment opportunity for an employment position of a Federal contractor that is a religious organization if the duties of the position pertain solely to activities of the organization that generate unrelated business taxable income subject to taxation under section 511(a) of the Internal Revenue Code of 1986.

Sec. 11. Nothing in this Order shall be construed to prohibit a covered entity from enforcing rules regarding nonprivate sexual conduct, if the rules of conduct are designed for, and uniformly applied to, all individuals regardless of sexual orientation.

Sec. 12. Each contracting department and agency shall cooperate with the Office of Management and Budget and provide such information and assistance as it may require in the performance of the its functions under this Order.

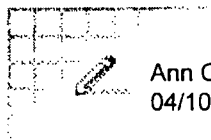
Sec. 13. The Director of the Office of Management and Budget may delegate any function or duty under this order to any officer in the Office of Management and Budget or to any other officer in the executive branch of the Government, with the consent of the head of the department or agency in which that officer serves.

Sec. 14. This Order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order is not intended, however, to preclude judicial review of final agency decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701 et seq.

Sec. 15. This Order shall apply only to contracts in excess of the Simplified Acquisition Threshold.

Sec. 16. This Order is effective immediately.

WILLIAM J. CLINTON



Ann O'Leary
04/10/2000 06:40:31 PM

Record Type: Record

To: Mary L. Smith/OPD/EOP@EOP, Paul Oetken/WHO/EOP@EOP, Elizabeth J. Potter/WHO/EOP@EOP

cc:

Subject: Executive Orders

This weekend, I sent a memo to Bruce Reed outlining all of the EOs that are outstanding on the DPC children and families team. I included information regarding the proposed EO on expanding the definition of family for federal workers who take advantage of FMLA and included the proposed EO on non-discrimination of Federal contractors based on sexual orientation (see blurbs below).

Bruce responded that we should move forward with both and noted that he particularly liked the EO on contractors. At this point, I would like to call a meeting (on behalf of our working group) with Mac Reed of OMB and folks from OPM to determine the best process for moving forward on both of these EOs. Does this make sense to folks? If so, I'll try to schedule later this week.

Excerpt from my memo to Bruce:

Possible Executive Orders (Not yet signed-off on or announced):

Expand FMLA to include broader definition of families for Federal employees

First Considered: As part of SOTU 2000 development under discussion of domestic partner benefits.

Substance: This EO would broaden the definition of "family" for Federal employees who use FMLA. There are two options for broadening the definition: (1) use the definition created by OPM for sick leave policies, which leaves out the words "domestic partner," but provides for individual or agency discretion (2) spell out the exact "family" members included.

Under sick leave policies, OPM has issued a proposed regulation stating that "family member" is defined as an employee's children, parents, spouse and spouse's parents, brothers and sisters and spouses thereof, and "any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship."

Under Congresswoman Maloney's bill, family member is expanded to include domestic partner, grandparent, parent-in-law, adult child, or sibling.

Legislative Action: In June 1999, Maloney introduced her bill to amend FMLA in order to expand the definition of family member.

History of Issue: During promulgation of regulations, OPM was asked to adopt a broad definition of "family" and "spouse," but declined citing Congressional intent and DOMA.

Pros: The expansion of family member recognizes the changing nature of the American family. With a broad definition that does not only focus on the domestic partner issue, it is one that the Administration could claim credit for with grandparent groups, long-term caregivers, as well as gay rights groups.

Cons: By highlighting this issue through EO, Congress could strike out against other OPM policies that have allowed for the broader definition of family. In addition, opening up FMLA through EO could provide Congress with an impetus to provide legislative "fixes" to other perceived FMLA problems, such as restricting the definition of "serious illness."

Recommendation: I would recommend this EO with the OPM definition of family member which leaves out the domestic partner language, but clearly intends to signal the inclusion of domestic partners. This EO signals that the WH understands the changing nature of the family and is providing a model workplace for employees.

Status of EO: Not yet drafted

Non-discrimination on basis of sexual orientation in Federal Contracts

First Considered: As part of a WH working group on issues of sexual orientation and domestic partner benefits. The group includes WH Counsel (Eddie Corriea, Paul Oetken), OPL (Jullian Potter), and DPC (Mary Smith and myself).

Substance: This EO would prohibit discrimination based on sexual orientation by any Federal contractor.

History: In June 1941, President Roosevelt issued EO 8802 forbidding race-based discrimination by Federal contractors and shortly thereafter, he issued EO 9001 forbidding defense contractors to discriminate on the basis of race.

Pros: This EO would signal the Administration's continuing commitment to

1

non-discrimination based on sexual orientation. In May 1998, the President issued EO 13087 prohibiting discrimination based on sexual orientation in Federal civilian employment. In addition, non-discrimination based on sexual orientation has been part of the Administration's Hate Crimes legislation message. This EO would provide further proof that the Administration will not tolerate such discrimination.

- Cons: There is some concern among the working group that this EO could infringe about religious rights of Federal contractors.
- Recommendation: At this point, I would recommend that this EO be more thoroughly vetted through the government to determine what type of impact it would have on Federal procurement.
- Status of EO: Rough draft has been completed, but it has gone through no informal or formal clearance process (see attached).

April 10, 2000

MEMORANDUM FOR BRUCE REED

FROM: ANN O'LEARY

**CC: ERIC LIU
TOM FREEDMAN
HEATHER HOWARD**

SUBJECT: EXECUTIVE ORDERS

This memo is intended to provide you with a list of outstanding and suggested executive orders from the children and families team. Please provide us guidance on which orders you would like to move forward, release, or, alternatively, no longer consider.

Executive Orders Already Announced by the President:

✓ Ending Parental Discrimination in the Federal Workplace

First Announced: State of the Union in 1999

Substance: This EO would prohibit discrimination against parents in the Federal workplace, specifically with regards to hiring and promotion.

Legislative action: Senators Dodd and Kennedy introduced the "Ending Discrimination Against Parents Act of 1999" in November 1999 and the President released a statement of support at the time of introduction.

Possible rollout: This EO could be rolled-out at the White House Conference on Teenagers as part of the message that we need workplaces that support parents in their roles as parents. This EO would send a basic message that individuals should not be discriminated against based on their status and role as parents. The release of the EO would also allow us to highlight the Dodd-Kennedy bill once again.

Status of EO: Draft completed (see attached). Needs to be cleared through OMB.

✓ Nondiscrimination in Federally Conducted Education and Training Programs

- First Announced: June 17, 1997 at a speech commemorating the 25th Anniversary of Title IX of the Education Amendments of 1972
- Substance: This EO would prohibit discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent in educational or training programs offered by the Federal government.
- Current Law: While Title IX prohibits discrimination based on sex – and Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin – in education programs that receive Federal financial assistance, these laws do not apply to comparable educational programs conducted by the Federal government.
- Possible rollout: This EO could be released with a press statement from the President or as part of a departure statement.
- Status of EO: Draft completed (see attached) and cleared through OMB.
- NOTE: The women’s groups have been most vocally and actively calling for the completion of this EO given its original tie to the anniversary of Title IX.

Possible Executive Orders (Not yet signed-off on or announced):

Expand FMLA to include broader definition of families for Federal employees

- First Considered: As part of SOTU 2000 development under discussion of domestic partner benefits.
- Substance: This EO would broaden the definition of “family” for Federal employees who use FMLA. There are two options for broadening the definition: (1) use the definition created by OPM for sick leave policies, which leaves out the words “domestic partner,” but provides for individual or agency discretion (2) spell out the exact “family” members included.
- Under sick leave policies, OPM has issued a proposed regulation stating that “family member” is defined as an employee’s children, parents, spouse and spouse’s parents, brothers and sisters and spouses thereof, and “any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.”

Under Congresswoman Maloney's bill, family member is expanded to include domestic partner, grandparent, parent-in-law, adult child, or sibling.

- Legislative Action: In June 1999, Maloney introduced her bill to amend FMLA in order to expand the definition of family member.
- History of Issue: During promulgation of regulations, OPM was asked to adopt a broad definition of "family" and "spouse," but declined citing Congressional intent and DOMA.
- Pros: The expansion of family member recognizes the changing nature of the American family. With a broad definition that does not only focus on the domestic partner issue, it is one that the Administration could claim credit for with grandparent groups, long-term caregivers, as well as gay rights groups.
- Cons: By highlighting this issue through EO, Congress could strike out against other OPM policies that have allowed for the broader definition of family. In addition, opening up FMLA through EO could provide Congress with an impetus to provide legislative "fixes" to other perceived FMLA problems, such as restricting the definition of "serious illness."
- Recommendation: I would recommend this EO with the OPM definition of family member which leaves out the domestic partner language, but clearly intends to signal the inclusion of domestic partners. This EO signals that the WH understands the changing nature of the family and is providing a model workplace for employees.
- Status of EO: Not yet drafted

Non-discrimination on basis of sexual orientation in Federal Contracts

- First Considered: As part of a WH working group on issues of sexual orientation and domestic partner benefits. The group includes WH Counsel (Eddie Corriea, Paul Oetken), OPL (Jullian Potter), and DPC (Mary Smith and myself).
- Substance: This EO would prohibit discrimination based on sexual orientation by any Federal contractor.
- History: In June 1941, President Roosevelt issued EO 8802 forbidding race-based discrimination by Federal contractors and shortly thereafter, he issued EO 9001 forbidding defense contractors to discriminate on the basis of race.

- Pros: This EO would signal the Administration's continuing commitment to non-discrimination based on sexual orientation. In May 1998, the President issued EO 13087 prohibiting discrimination based on sexual orientation in Federal civilian employment. In addition, non-discrimination based on sexual orientation has been part of the Administration's Hate Crimes legislation message. This EO would provide further proof that the Administration will not tolerate such discrimination.
- Cons: There is some concern among the working group that this EO could infringe about religious rights of Federal contractors.
- Recommendation: At this point, I would recommend that this EO be more thoroughly vetted through the government to determine what type of impact it would have on Federal procurement.
- Status of EO: Rough draft has been completed, but it has gone through no informal or formal clearance process (see attached).

Executive Memorandum Opening Federal Buildings and Spaces for use in Non-School Hours

- First Considered: This suggestion came up as part of our brainstorming around the White House Conference on Teenagers.
- Substance: This executive memorandum would encourage Federal agencies to invite local government-community partnerships to use available Federal space during non-school hours for after-school activities at no charge (or at a reduced rental rate).
- History: The Clinton Administration has encouraged such partnerships between Federal agencies and local community organizations or schools. In addition, the Administration has encouraged agencies to allow Federal employees to volunteer for up to two hours during a regular workweek.
- Pros: Space issues are often a problem for community based after-school programs. This executive memorandum would allow Federal agencies to do their part in providing safe spaces for children after school.
- Cons: The use of Federal space could potentially be of high-cost to the government by keeping buildings open and needing to provide additional security. In addition, the Federal government would need to ensure that liability was assumed by the community-based organization.

Recommendation: If this executive memorandum were of interest, it would need to be studied further to determine costs and potential difficulties in implementation.

Her ESEA - Senate

DEMOCRATS' ESEA COMMITTEE AMENDMENTS: DRAFT 2/24/00
Menu of strategies to insure change and reform in public schools
so that every child achieves to high standards

Accelerating Change and Reform to Ensure Improved Student Achievement

Reduce class size (Murray)
 Accountability for results (Bingaman)
 Public school report cards (Murray)
 Increase Title I authorization -- \$15B (Dodd)
 Create smaller schools (Bingaman)
 Expand access to advanced placement courses (Bingaman)
 Reduce drop out rates (Bingaman)
 Support school libraries (Reed)
 Support high school reform (Kennedy)
 Ensure gender equity in the classroom (Kennedy)
 Protect privacy of children (Dodd)
 Ensure fair testing policies of children (Wellstone)
 Assistance for rural communities tied to accountability & targeting (Harkin)

*select for construction
 art director
 on Sunday*

Ensuring a Qualified Teacher in Every Classroom

Recruitment, retention, professional development, and accountability for teachers (Kennedy)
 Teacher training in technology (Bingaman)
 10% professional development set-aside in Title I (Reed)
 Early Professional Development Training/Violence Prevention Training (Dodd)
 Arts educators support (Wellstone)

Ensuring Safety, Order, and Discipline in Every School

Safe, modern school buildings (Harkin)
 Expand 21st Century after-school programs (Dodd)
 100,000 Counselors (Wellstone)
 Project SERV (Dodd)
 Pro-Child/Anti-Tobacco program (Harkin)
 Prevent domestic violence (Wellstone)
 Disaggregation of data on gun-free schools expulsions (Dodd)

Closing the digital divide so child is left out or left behind

Authorize Community Technology Centers (Kennedy)
 Authorize One Stop Tech Shops (Mikulski)
 Target technology programs to needy communities (Bingaman)

Ensuring parents are involved in the schools and their children's education

Accountability for including parents (Reed)
 Family Information Centers program (Wellstone)
 COZs -- Family Service Centers in Schools program (Reed)

HR 2104 IH

106th CONGRESS

1st Session

H. R. 2104

To amend the Family and Medical Leave Act of 1993 to permit leave to care for a domestic partner, parent-in-law, adult child, sibling, or grandparent if the domestic partner, parent-in-law, adult child, sibling, or grandparent has a serious health condition.

IN THE HOUSE OF REPRESENTATIVES

June 9, 1999

Mrs. MALONEY of New York introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on Government Reform, and House Administration, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Family and Medical Leave Act of 1993 to permit leave to care for a domestic partner, parent-in-law, adult child, sibling, or grandparent if the domestic partner, parent-in-law, adult child, sibling, or grandparent has a serious health condition.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LEAVE TO CARE FOR A DOMESTIC PARTNER, PARENT-IN-LAW, ADULT CHILD, SIBLING, OR GRANDPARENT.

(a) LEAVE REQUIREMENT- Section 102 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612) is amended--

(1) in subsection (a)(1)(C), by striking 'or parent' each place it occurs and inserting 'domestic partner, parent-in-law, adult child, sibling, grandparent, or parent'; and

(2) in subsection (e)(2)(A), by striking 'or parent' and inserting 'domestic partner, parent-in-law, adult child, sibling, grandparent, or parent'.

(b) CERTIFICATION- Section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613(a)) is amended--

(1) in subsection (a), by striking 'or parent' and inserting 'domestic partner, parent-in-law, adult child, sibling, grandparent, or parent';

(2) in subsection (b)(4)(A), is amended by striking 'or parent' and inserting 'domestic partner, parent-in-law, adult child, sibling, grandparent, or parent'; and

(3) in subsection (b)(7), is amended by striking 'parent' and inserting 'domestic partner, parent-in-law, adult child, sibling, grandparent, parent'.

(c) EMPLOYMENT AND BENEFITS PROTECTION- Section 104(c)(3) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2614(c)(3) is amended--

(1) in subparagraph (A)(i), by striking 'or parent' and inserting 'domestic partner, parent-in-law, adult child, sibling, grandparent, or parent'; and

(2) in subparagraph (C)(ii), by striking 'or parent' and inserting 'domestic partner, parent-in-law, adult child, sibling, grandparent, or parent'.

SEC. 2. FEDERAL EMPLOYEES.

(a) LEAVE REQUIREMENT- Section 6382 of title 5, United States Code, is amended--

(1) in subsection (a)(1)(C), by striking 'or parent' each place it occurs and inserting 'domestic partner, parent-in-law, adult child, sibling, grandparent, or parent'; and

(2) in subsection (e)(2)(A), by striking 'or parent' and inserting 'domestic partner, parent-in-law, adult child, sibling, grandparent, or parent'.

(b) CERTIFICATION- Section 6383 of title 5, United States Code, is amended--

(1) in subsection (a), by striking 'or parent' and inserting 'domestic partner, parent-in-law, adult child, sibling, grandparent, or parent'; and

(2) in subsection (b)(4)(A), is amended by striking 'or parent' and inserting 'domestic partner, parent-in-law, adult child, sibling, grandparent, or parent'.

END

Bill Summary & Status for the 106th Congress

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H.R.2104

SPONSOR: [Rep Maloney, Carolyn B.](#) (introduced 06/09/99)

A bill to amend the Family and Medical Leave Act of 1993 to permit leave to care for a domestic partner, parent-in-law, adult child, sibling, or grandparent if the domestic partner, parent-in-law, adult child, sibling, or grandparent has a serious health condition.

[All Bill Summary & Status Info \(except Bill Text\)](#)

[Titles](#)

Status:

- [Detailed Legislative Status](#)
- [Floor/Executive Actions](#)
- [Congressional Record Page References](#)

Committees:

- [Referral, Reporting, Origin, Subcommittees](#)
- [Other Committee Information](#)

Amendments

[Subjects](#)

[Cosponsors](#) (None)

[Summary](#)

[Text of Legislation](#)

Discrimination Based on Sexual Orientation

A	B	C ₁	C ₂	D ₁	D ₂	E
Using sexual orientation as an <i>adverse factor</i> in: -hiring -firing -promotion -assignment type -geographic location	Tolerating <i>harassment</i> based on sexual orientation	Denying privileges of employment based on the same-sex relationship of the employee -These are privileges that the employee cannot obtain through avenues other than the employer. <i>e.g. benefit under</i> -These privileges are not statutorily defined, i.e. the employer has the flexibility to decide whether to grant such privileges to an employee in a same-sex relationship.	Denying privileges of employment based on the same-sex relationship of the employee -As in C₁, these are privileges that the employee cannot obtain through avenues other than the employer. -Unlike C₁, the granting of these privileges is tied to a statutory definition.	Denying privileges of employment based on the same-sex relationship of the employee -These are privileges that the employee can obtain through other means on the open market. <i>e.g. Health insurance</i> -Like C₁, these privileges are not statutorily defined, i.e. the employer has the flexibility to decide whether to grant such privileges to an employee in a same-sex relationship.	Denying privileges of employment based on the same-sex relationship of the employee -As in D₁, these are privileges that the employee can obtain through other means on the open market. -As in C₂, the granting of these privileges is tied to a statutory definition.	Not recognizing an employee's partner as a "spouse" <i>Precluded by DOMA</i>

▷

**Christine A. TANNER; Barbara J. Limandri;
Regenia M. Phillips; Lisa J.
Chickadonz; Terrie A. Lyons; and Kathleen A.
Grogan, Respondents,**

v.

**OREGON HEALTH SCIENCES UNIVERSITY,
a Division of the State of Oregon; State
Board of Higher Education; a division of the
State of Oregon; Executive
Department of the State of Oregon; The State of
Oregon, and Oregon Health
Sciences University, a public corporation,
Appellants,
and
Public Employees' Benefits Board, Appellant.**

9201-00369; CA A94458.

Court of Appeals of Oregon.

Argued and Submitted March 3, 1998.

Decided Dec. 9, 1998.

Lesbian university employees appealed university's denial of insurance benefits to their domestic partners. The State Employees' Benefits Board (SEBB) upheld the denial, and the employees petitioned for judicial review. The Circuit Court, Multnomah County, Stephen L. Gallagher, Jr., J., entered order enjoining the state from denying group insurance benefits to unmarried domestic partners of its homosexual employees, and state defendants appealed. The Court of Appeals, Landau, P.J., addressing issues of first impression, held that: (1) action was not moot as to university; (2) university's denial of insurance benefits to employees' domestic partners did not amount to sex discrimination in violation of statute defining unlawful employment practices; but (3) denial of benefits violated privileges and immunities clause of Oregon Constitution.

Affirmed in part and reversed in part.

[1] ACTION ⚡6

13k6

University's decision to grant domestic partner benefits to homosexual employees did not render

moot action challenging its former policy denying benefits to such employees, where university continued to maintain that it was under no legal obligation to provide such benefits.

[2] DECLARATORY JUDGMENT ⚡65

118Ak65

Voluntary cessation of a practice that is challenged in an action for declaratory and injunctive relief does not, in itself, render an action moot.

[3] ACTION ⚡6

13k6

Statute transforming university from a state agency into a public corporation rendered moot action against state agency defendants challenging university's denial of domestic partner benefits to homosexual employees. Laws 1995, c. 162, §§ 2, 74.

[4] APPEAL AND ERROR ⚡843(1)

30k843(1)

Assuming that judgment for attorney fees requires examination of the merits of a case that otherwise has become moot since entry of the judgment, trial court's award of attorney fees against state agency defendants in action challenging university's denial of domestic partner benefits to homosexual employees did not require consideration of merits of claims against those defendants on appeal, where action had become moot with regard to those defendants at time judgment for attorney fees was entered.

[5] CIVIL RIGHTS ⚡164

78k164

University's denial of insurance benefits to domestic partners of its homosexual employees did not amount to sex discrimination in violation of statute defining unlawful employment practices; although university's practice had a disparate impact on a protected class, there was no evidence that it engaged in a subterfuge to discriminate against that protected class. ORS 659.028, 659.030(1)(b).

[6] CIVIL RIGHTS ⚡164

78k164

Statute prohibiting employment discrimination on the basis of the sex of any other person with whom

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an individual associates encompasses discrimination because of sexual orientation. ORS 659.030(1)(b).

[7] CIVIL RIGHTS ⇨164

78k164

University's denial of insurance benefits to domestic partners of its homosexual employees amounted to discrimination "because of" their sexual orientation, within meaning of employment discrimination statute; although university's policy denied benefits to both unmarried heterosexual couples and unmarried homosexual couples, it effectively screened out all homosexual couples because state law prevented them from marrying. ORS 659.030(1)(b).

[8] CIVIL RIGHTS ⇨153

78k153

To make out an employment discrimination claim based on disparate impact, a plaintiff must show: (1) membership in a class protected by the employment statutes, and (2) that the employer's facially neutral employment rule has the effect of screening out members of a protected class at a significantly higher rate than others.

[9] CIVIL RIGHTS ⇨152

78k152

"Subterfuge," within meaning of statute permitting employer to observe terms of a bona fide employee benefit plan, which is not a subterfuge to evade employment discrimination statutes, refers to a deception by artifice or stratagem to conceal, escape, avoid or evade, and entails intentional conduct. ORS 659.028.

See publication Words and Phrases for other judicial constructions and definitions.

[10] STATUTES ⇨188

361k188

In examining the text of a statute, Court of Appeals gives words of common usage their plain, natural and ordinary meaning unless there is textual or contextual evidence that the legislature intended some other meaning to apply.

[11] APPEAL AND ERROR ⇨893(1)

30k893(1)

Appellate review of evidence on issue of whether employer's observance of terms of employee benefit plan was subterfuge to evade employment

discrimination statutes is de novo. ORS 659.028.

[12] COLLEGES AND UNIVERSITIES ⇨8(3)

81k8(3)

University's denial of insurance benefits to domestic partners of its homosexual employees violated privileges and immunities clause of Oregon Constitution. Const. Art. 1, § 20.

[12] CONSTITUTIONAL LAW ⇨205(1)

92k205(1)

University's denial of insurance benefits to domestic partners of its homosexual employees violated privileges and immunities clause of Oregon Constitution. Const. Art. 1, § 20.

[13] COLLEGES AND UNIVERSITIES ⇨1

81k1

University that was transformed by statute into a nonstate agency public corporation remained a governmental entity subject to the prohibitions of privileges and immunities clause of Oregon Constitution. Const. Art. 1, § 20; Laws 1995, c. 162, §§ 2, 74.

[13] CONSTITUTIONAL LAW ⇨205(1)

92k205(1)

University that was transformed by statute into a nonstate agency public corporation remained a governmental entity subject to the prohibitions of privileges and immunities clause of Oregon Constitution. Const. Art. 1, § 20; Laws 1995, c. 162, §§ 2, 74.

[14] CONSTITUTIONAL LAW ⇨205(1)

92k205(1)

Only laws that disparately treat a "true class" may violate privileges and immunities clause of Oregon Constitution. Const. Art. 1, § 20.

[15] CONSTITUTIONAL LAW ⇨205(1)

92k205(1)

Class of unmarried homosexual couples was a "true class" for purposes of privileges and immunities clause of Oregon Constitution. Const. Art. 1, § 20.

[16] CONSTITUTIONAL LAW ⇨205(1)

92k205(1)

Class of unmarried homosexual couples was a suspect class for purposes of privileges and immunities clause of Oregon Constitution. Const.

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Art. I, § 20.

****437 *502** Robert B. Rocklin, Assistant Attorney General, argued the cause for appellants. With him on the briefs were Hardy Myers, Attorney General, and Michael D. Reynolds, Solicitor General.

Carl G. Kiss, argued the cause and filed the brief for respondents.

Lynn-Marie Crider filed a brief amicus curiae for Oregon Public Employees Union, SEIU Local 503, AFL-CIO, CLC.

Lynn R. Nakamoto and Jennifer C. Pizer filed a brief amicus curiae for American Civil Liberties Union Foundation of ***503** Oregon, Inc., and Lambda Legal Defense and Education Fund, Inc.

Before LANDAU, Presiding Judge, and DEITS, Chief Judge, and WOLLHEIM, Judge. [FN*]

FN* Wollheim, J., vice Riggs, J., resigned.

***505** LANDAU, P.J.

At issue in this case is the lawfulness of Oregon Health Science University's (OHSU) denial of health and life insurance benefits to the unmarried domestic partners of its homosexual employees. Plaintiffs, who are three lesbian employees of OHSU and their domestic partners, initiated this action for judicial review of State Employees' Benefits Board (SEBB) orders affirming the lawfulness of the denial and for declaratory and injunctive relief. Plaintiffs contend that OHSU's actions violate ORS 659.030(1)(b), which prohibits discrimination in employment on the basis of the sex of an employee or the sex of any other person with whom the employee associates, as well as Article I, section 20, of the Oregon Constitution, which prohibits granting privileges or immunities not equally belonging to all citizens. Plaintiffs named as defendants OHSU, the State of Oregon, the State Board of Higher Education, the Executive Department, and SEBB.

The matter was tried to the court. Following the trial, the 1995 Legislative Assembly enacted legislation transforming OHSU from a state university to a nonstate agency public corporation. The trial court ultimately concluded that OHSU's denial of benefits violated both ORS 659.030(1)(b)

and Article I, section 20, of the Oregon Constitution and entered an order enjoining the state from denying group insurance benefits to unmarried domestic partners of its homosexual employees.

Defendants appeal, arguing that the trial court erred in concluding that OHSU violated either the statute or the constitution. Plaintiffs contend that the trial court's judgment was correct in all respects. On our own motion, we requested briefing from the parties on the question whether the conversion of OHSU from a state university to a nonstate agency public corporation renders the action moot as to any defendants.

We conclude that the action is moot as to all state agency defendants and that the case must be remanded with instructions to dismiss all claims against those defendants. We conclude that the case is not moot as to OHSU. As to the ***506** merits of the controversy, we conclude that the trial court erred in declaring that OHSU violated ORS 659.030(1)(b). The evidence in this record does not support a claim for violation of that statute. We also conclude, however, that the trial court was correct in declaring that OHSU's denial of insurance benefits to domestic partners of homosexual employees violates Article I, section 20, of the Oregon Constitution.

FACTUAL BACKGROUND

The relevant facts are not in dispute. Before this controversy arose, OHSU provided group health insurance benefits to its employees. It provided each employee a certain amount of money and authorized each employee to select insurance benefits within the limits of the money provided. In accordance with SEBB eligibility criteria, OHSU permitted employees to purchase insurance coverage for "family members." Under the SEBB criteria, unmarried domestic partners of employees were not "family members" who were entitled to insurance coverage.

****438** Plaintiffs are three lesbian nursing professionals employed by OHSU and their unmarried domestic partners. Each of the couples has enjoyed a long-term and committed relationship, which each wishes to continue for life. Each of the couples would be married if Oregon law permitted

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homosexual couples to marry.

All three OHSU employees applied for medical and dental insurance benefits for their domestic partners. The OHSU benefits manager refused to process the applications on the ground that the domestic partners of the employees did not meet the SEBB eligibility criteria. Plaintiffs appealed to SEBB itself, and, in a series of 1991 letters, SEBB's Case Management Committee upheld OHSU's denial of benefits.

Plaintiffs filed their complaint initiating this action. They petitioned for judicial review of a final order in other than a contested case, alleging that the 1991 SEBB letters constituted final orders and that the orders should be reversed on the ground that the denial of benefits violated ORS 659.030(1)(b) and Article I, section 20. In the same complaint, plaintiffs requested a declaratory judgment on the *507 same grounds as to the lawfulness of the denial and an injunction prohibiting OHSU from denying insurance benefits to domestic partners of homosexual employees that are made available to spouses of married OHSU employees.

The case was tried to the court in February 1995. At trial, the parties stipulated that OHSU paid the same amount of money for a fringe benefit package to all employees in a given category, without regard to marital status or sexual orientation. The parties further stipulated that, in administering its employee benefits program, OHSU treated heterosexual unmarried couples and homosexual unmarried couples the same. Plaintiffs declined to stipulate that OHSU did not intend its administration of the benefits to discriminate against gay and lesbian employees. In response, OHSU elicited testimony from the State Administrator of the Human Resource Management Division of the Department of Administrative Services that the sex or sexual orientation of employees was not taken into account in any way in the administration of state benefits programs. Plaintiffs offered no contrary testimony.

The court took the matter under advisement. Meanwhile, the 1995 Legislative Assembly enacted legislation declaring that OHSU no longer is part of the State Board of Higher Education, but is instead an independent public corporation. Or. Laws 1995, ch. 162, §§ 2, 74. The new legislation further declares that the terms and conditions of

employment at OHSU are to be determined and administered by the Board of Directors of OHSU:

"ORS 243.105 to 243.585 [pertaining to fringe benefits and deferred compensation plans for employees of state agencies] shall apply to the Oregon Health Sciences University until the Oregon Health Sciences University Board of Directors, in accordance with the provisions of any collective bargaining agreement, adopts a new personnel system or alternative employee benefit plan. Until such time as an alternative personnel system is adopted, the university shall exercise exclusive administrative authority and control over the system."

Or. Laws 1995, ch. 162, § 10. The new legislation became effective July 1, 1995. Or. Laws 1995, ch. 162, § 95. The transfer of *508 employees from the State Board of Higher Education was to be completed by January 1, 1996. Or. Laws 1995, ch. 162, § 43. On the basis of the new legislation, defendants [FN1] filed a supplemental memorandum of authority and requested that the case be dismissed as moot. Plaintiffs opposed the motion.

FN1. For ease of reference, we refer to all of the responding parties as "defendants." We understand that SEBB actually is not a defendant, but is instead a "respondent" to a petition for judicial review.

On June 14, 1996, the trial court issued a letter opinion concluding that the denial of benefits to plaintiffs and their domestic partners violated ORS 659.030(1)(b) and Article I, section 20. The court did not address defendants' request that the case be dismissed as moot. Shortly after that, plaintiffs prepared a proposed form of judgment. Defendants objected to the form of judgment, contending **439 that, among other things, it applied to state agency defendants that no longer had any interest in the controversy.

On August 12, 1996, the court entered its judgment, containing findings of fact and conclusions of law. The judgment enjoined the State of Oregon, OHSU, SEBB, and the State Board of Higher Education from continuing the practice of denying group life, health, and dental insurance coverage to domestic partners of homosexual employees when those benefits are offered to spouses of heterosexual employees. The judgment defines "domestic partners" as homosexual persons not related by blood closer than first cousins who

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are not legally married, who have continuously lived together in an exclusive and loving relationship that they intend to maintain for the rest of their lives, who have joint financial accounts and joint financial responsibilities, who would be married to each other if Oregon law permitted it, who have no other domestic partners, and who are 18 years of age or older. The judgment awarded plaintiffs their costs and attorney fees.

Defendants appealed. While the appeal was pending, the legislature enacted legislation abolishing SEBB and transferring all of SEBB's duties to a newly created Public Employees' Benefits Board (PEBB). Or. Laws 1997, ch. 22. The parties submitted a stipulated motion for substitution of PEBB for SEBB and for an order directing the trial court to *509 enter an amended judgment reflecting that change. The motion was allowed, and the trial court amended the judgment accordingly. That legislation otherwise has no effect on this litigation.

Also while the appeal was pending, OHSU adopted an employee benefit plan that now provides fringe benefits for the domestic partners of its employees, whether or not they are married. It continues to take the position, however, that it is not legally obligated to provide such benefits.

PRELIMINARY ISSUES: JUSTICIABILITY

Before we address the merits of the parties' positions as to the judgment in this case, we must address the extent to which there is a justiciable controversy. Defendants raised the issue to the trial court--twice, in fact. The trial court did not address defendants' contentions. Oddly, defendants made no mention of justiciability in their briefs on appeal. On our own motion, however, we asked the parties to address the justiciability of the issues raised. [FN2] We did so because neither the acquiescence of the trial court nor the failure of parties to address the issue on appeal can confer authority on the courts to issue an opinion in the absence of a justiciable controversy. *Barcik v. Kubiacyk*, 321 Or. 174, 186, 895 P.2d 765 (1995). The exercise of judicial power requires a concrete controversy that results in a decree that binds parties having adverse legal interests. *Brown v. Oregon State Bar*, 293 Or. 446, 449, 648 P.2d 1289 (1982). Regardless of the

perceived importance of the legal issues presented, Oregon courts do not have the constitutional authority to render advisory opinions. *Id.*

FN2. Specifically, we asked the parties:

"1. Do all of the plaintiffs currently receive from the Oregon Health Sciences University the domestic partner fringe benefits they sought in this action?

"2. If the answer to the first question is affirmative, are the domestic partner fringe benefits provided to plaintiffs by the Oregon Health Sciences University governed in any way by SEBB (or PEBB)?

"3. If the answer to the first question is affirmative, does a justiciable controversy exist between any plaintiff and any defendant in this action?"

In response to our queries as to the possible mootness of some or all of the claims presented against some or all of the defendants, defendants take the position that the case *510 is moot as to all defendants except OHSU. According to defendants, given the transformation of OHSU to a public corporation, the state no longer has an interest in the outcome of the case and cannot be bound by any judgment that results. Plaintiffs take the position that there remains a live controversy as to all defendants. They assert two justifications for their position. First, they argue that they are, in effect, acting in a representative capacity for all similarly situated homosexual couples, whether employed **440 by the state or not, and that, as a result, the state remains adverse to their claims. They find support for that position in *School Dist. No. 1 v. Nilsen*, 271 Or. 461, 534 P.2d 1135 (1975). Second, they argue that, because the trial court awarded them attorney fees, their entitlement to those fees requires that we determine the correctness of the trial court's disposition of the merits of the case, even if otherwise moot. We agree with defendants that plaintiffs' claims are moot as to all defendants except OHSU.

[1][2] We begin with OHSU. As we have noted, OHSU currently provides precisely the domestic partner benefits that plaintiffs seek in this action. OHSU continues to maintain that it is under no legal obligation to do so, however. The voluntary cessation of a practice that is challenged in an action for declaratory and injunctive relief does not, in itself, render an action moot; if the law were otherwise, wrongdoers could cease their wrongdoing as soon as complaints are filed and resume the

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wrongdoing as soon as the complaints are dismissed for being moot. *Gates v. McClure*, 284 Or. 685, 689, 588 P.2d 32 (1978); *Safeway v. OPEU*, 152 Or.App. 349, 357, 954 P.2d 196 (1998).

[3] We turn to the state agency defendants. In their complaint, plaintiff employees alleged that they were employed by the state and State Board of Higher Education. Before the entry of judgment in the case, however, that was no longer so. The legislature, by that time, had declared that OHSU is no longer a state agency, Or. Laws 1995, ch. 162, § 2, 74, and all OHSU employees had been transferred from their previous employment with the State Board of Higher Education, Or. Laws 1995, ch. 162, § 43. By the time the trial court entered its judgment, therefore, the state and the State Board of Higher Education no longer had an interest in the *511 outcome of the case and could no longer be bound by any remedy that resulted.

We reach the same conclusion as to SEBB and the Executive Department of which it is a part. Plaintiffs' claim against SEBB pertained solely to the 1991 letters denying their applications for benefits. Before the judgment was entered, however, the legislature declared that OHSU no longer is a state agency and no longer is subject to the administration of its employee benefits by SEBB. The legislature declared that OHSU may elect to adopt its own personnel system. It further declared that, "[u]ntil such time as an alternative personnel system is adopted, the university shall exercise exclusive administrative authority and control over the system." Or. Laws 1995, ch. 162, § 10 (emphasis added). Thus, after July 1, 1995, the effective date of the new OHSU legislation, SEBB had no authority independent of OHSU to offer benefits to plaintiffs, and its previous orders denying benefits to plaintiffs became moot.

Plaintiffs requested only prospective relief from the state defendants. They did not ask for money damages or for retroactive provision of insurance benefits. By the time the trial court entered its judgment, it could order no relief against any of the state defendants in this case. Its decision to declare that the state defendants violated the law, and its entry of an injunction against them therefore was erroneous.

Plaintiffs' arguments to the contrary are unavailing. First, their argument that the case against the state defendants remains alive and well because plaintiffs sued in a representative capacity is belied by their own complaint, which contains no such allegations. Plaintiffs could have framed their complaint as a class action. ORCP 32. They did not do so, and they cannot attempt to convert it into one for the first time on appeal.

The Supreme Court's decision in *Nilsen*, on which plaintiffs heavily rely, is entirely consistent with ours in this case. In *Nilsen*, the plaintiff probationary teacher complained to the Commissioner of the Bureau of Labor who, through the Attorney General, initiated an action against a school district for employment discrimination, based on the district's policy of requiring pregnant probationary teachers to resign. While *512 the appeal was pending, the district rehired--and ultimately granted tenure to--the plaintiff. The court noted the special nature of the proceeding initiated by the commissioner, who, although **441 taking action on the filing of a private complaint, nevertheless acted in a representative capacity:

"[I]t is apparent from the statutes that it was the intention of the legislature that other persons situated similarly to the private complainant could be encompassed within the remedial authority of the Commissioner so that, in this respect, the proceeding is in the nature of a class action although only a specific individual is named as being the subject of discrimination."

Nilsen, 271 Or. at 472, 534 P.2d 1135. In that context, the court held that, although the complaining private party had been rehired, because of the special representative nature of the parties in an action brought by the commissioner, the case had not been rendered moot. *Id.* at 476, 534 P.2d 1135.

This case was not initiated by the Commissioner of the Bureau of Labor and Industries. Plaintiffs themselves initiated it. Thus, the broad remedial authority of the commissioner is not brought into play, as was so critically the case in *Nilsen*. Compare ORS 659.049 to 659.095 (actions by commissioner) with ORS 659.121 (actions by individuals). Plaintiffs represent no one but themselves in this matter. Because they no longer are employed by a state agency, therefore, the state defendants no longer have an interest in the outcome

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of this case.

[4] Second, plaintiffs' argument that the propriety of their judgment for attorney fees requires us to address the merits of the underlying claims is similarly unpersuasive. We assume, for the sake of argument, that plaintiffs are correct that a judgment for attorney fees requires examination of the merits of a case that otherwise has become moot since the entry of the judgment. Cf. *Barcik*, 321 Or. at 189 n. 10, 895 P.2d 765 (declining to address whether a prayer for attorney fees prevents claims from becoming moot on appeal). The fact remains that, in this case, the claims against the state defendants became moot before the trial court entered its judgment for attorney fees. Thus, because at the time of the entry of judgment the trial court had no authority to enter any judgment *513 against the state defendants, the entire case against those defendants--merits and award of attorney fees--is moot.

ANALYSIS OF THE PARTIES' CLAIMS ON THE MERITS

We turn, then, to the portion of the case that remains a live controversy, that is, the lawfulness of OHSU's denial of insurance benefits to domestic partners of its homosexual employees. Following the traditional "first things first" decisional methodology of Oregon judicial opinions, we begin with the question whether OHSU's denial violated applicable employment statutes and, if not, turn to whether the denial violates the state constitution. See *Planned Parenthood Assn. v. Dept. of Human Resources*, 297 Or. 562, 564, 687 P.2d 785 (1984); *Young v. Alongi*, 123 Or.App. 74, 77-78, 858 P.2d 1339 (1993).

A. Violation of ORS 659.030(1)(b)

[5] Plaintiffs allege, and the trial court held, that OHSU's denial of benefits to domestic partners of OHSU's employees violated ORS 659.030(1)(b). That statute provides, in part:

"(1) * * * [I]t is an unlawful employment practice:
" * * * * *

"(b) For an employer, because of an individual's race, religion, color, sex, national origin, marital status or age if the individual is 18 years of age or older, or because of the race, religion, color, sex,

national origin, marital status or age of any other person with whom the individual associates * * * to discriminate against such individual in compensation or in terms, conditions or privileges of employment."

ORS 659.030(1)(b). On appeal, OHSU argues that the trial court erred, because its denial of benefits was in no way predicated on the sex of any employee or of any individual with whom an employee associates. OHSU argues that its denial of benefits instead was based on marital status alone, without reference to the sexual orientation of the employees or *514 their domestic partners. OHSU emphasizes that any unmarried domestic partners--heterosexual and homosexual alike--were denied insurance benefits.

**442 Plaintiffs acknowledge that, at least on the surface, OHSU denied benefits to unmarried domestic partners of its employees without regard to their sexual orientation. They argue that OHSU's denial of benefits to domestic partners nevertheless violates ORS 659.030(1)(b) because, although OHSU's denials did not facially discriminate against homosexual couples, the denials had the effect of discriminating against homosexual couples. That is so, plaintiffs argue, because homosexual couples cannot marry. Heterosexual couples can marry and thus at least have the option of doing so to avail themselves of the employee benefits; homosexual couples cannot marry and have no such option. Because of the disparate impact on homosexual couples of denying benefits on the otherwise facially neutral basis of marital status, plaintiffs argue, OHSU has discriminated on the basis of the sex of persons with whom employees associate, in violation of ORS 659.030(1)(b).

OHSU rejoins that, even if its denial of benefits constitutes discrimination on the basis of sex, there is no unlawful employment practice, because a separate statute, ORS 659.028, provides that, when discrimination is a product of the terms of a bona fide benefits plan, the discrimination is actionable only if it is part of a subterfuge to evade the purposes of the fair employment statutes. There is no evidence in this case, OHSU argues, that the denials of benefits occurred as part of a subterfuge to evade the purposes of the fair employment statutes.

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(Cite as: 157 Or.App. 502, *514, 971 P.2d 435, **442)

Plaintiffs respond that ORS 659.028 operates as an affirmative defense and that, to avail itself of the "safe harbor" that the statute affords, OHSU must demonstrate that its denials were not part of a prohibited subterfuge. According to plaintiffs, OHSU, having failed in its burden of proof under ORS 659.028, is left with its violation of ORS 659.030(1)(b).

Whether OHSU's denial of insurance benefits to domestic partners of its homosexual employees amounts to unlawful discrimination "because of the *** sex *** of any *515 other person with whom the [employee] associates," ORS 659.030(1)(b), involves two subsidiary issues. First, we must determine whether discrimination on the basis of sexual orientation constitutes prohibited discrimination because of the "sex *** of any other person with whom the [employee] associates"; if it does not, then the dispute is at an end. Second, we must determine whether OHSU's denials of insurance benefits in this case constituted discrimination "because of" plaintiffs' sexual orientation.

[6] Whether ORS 659.030(1)(b) encompasses discrimination because of sexual orientation is a matter of first impression. The Supreme Court has suggested that it is at least possible to construe the statute to apply to discrimination on the basis of sexual orientation. *ACLU v. Roberts*, 305 Or. 522, 752 P.2d 1215 (1988) ("It is possible to construe some Oregon statutes as prohibiting discrimination based on sexual orientation. See, e.g., ORS 659.030(1)(b)"). The court did not purport actually to construe ORS 659.030(1)(b) or any other statute to say that, however. It remains for us, therefore, to determine the intended meaning of the statute, looking to its text in context and, if necessary, its history and other interpretive aids. *PGE v. Bureau of Labor and Industries*, 317 Or. 606, 610-12, 859 P.2d 1143 (1993).

In our view, the Supreme Court's suggestion in *Roberts* is the only plausible construction of the statutory language. The statute prohibits discrimination on the basis of the "sex *** of any other person with whom an individual associates." ORS 659.030(1)(b). Plaintiffs allege that OHSU discriminated against them by denying them the option of providing their domestic partners insurance

benefits because their domestic partners are of the same sex. Discrimination of that sort hinges on the sex of the individual with whom plaintiffs associate. It plainly falls within the wording of the statute. }

[7] Whether OHSU's denial of insurance benefits to domestic partners of its homosexual employees amounted to discrimination "because of" their sexual orientation may not be so readily answered. OHSU's denial of benefits to plaintiffs ostensibly was based on the fact that plaintiffs were unmarried. As OHSU contends--and as plaintiffs concede--its *516 practice of denying benefits to domestic **443 partners was based on a definition of eligible family members that applied both to unmarried heterosexual couples and unmarried homosexual couples. Ostensibly, therefore, OHSU did not discriminate "because of" sexual orientation; it discriminated "because of" marital status, without regard to sexual orientation. }

[8] Merely because discrimination is not obvious, however, does not mean that it is not actionable. We have held that ORS 659.030 prohibits not only employment practices that facially discriminate against a protected class of employees, but also practices that are facially neutral concerning the protected class but have a disparate impact on that class. *Spurgeon v. Stayton Canning Company*, 92 Or.App. 566, 570-71, 759 P.2d 1104 (1988); *Sch. Dist. No. 1 v. Mission Ins. Co.*, 58 Or.App. 692, 700, 650 P.2d 929 (1982), rev. den. 294 Or. 682, 662 P.2d 725 (1983). To make out an employment discrimination claim based on disparate impact, a plaintiff must show: (1) membership in a class protected by the employment statutes, and (2) that the employer's facially neutral employment rule "has the effect of screening out members of a protected class at a significantly higher rate than others." *Spurgeon*, 92 Or.App. at 570-71, 759 P.2d 1104.

In this case, as we have held, plaintiffs are members of a protected class under ORS 659.030(1)(b). Moreover, there can be no question but that the effect of OHSU's practice of denying insurance benefits to unmarried domestic partners, while facially neutral as to homosexual couples, effectively screens out 100 percent of them from obtaining full coverage for both partners. That is because, under Oregon law, homosexual couples

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may not marry. [FN3]

FN3. The relevant statutes define marriage in terms of a civil contract entered into by males and females who are thereby joined together as husband and wife. ORS 106.010; ORS 106.041. No party raises, and we do not address, the constitutionality of prohibiting homosexual couples from marrying.

There remains the question whether plaintiffs' claims are subject to the more limited liability described in ORS 659.028, which provides, in part:

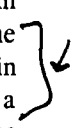
*517 "It is not an unlawful employment practice for an employer, employment agency or labor organization to observe the terms of a * * * bona fide employee benefit plan, such as a retirement, pension or insurance plan, which is not a subterfuge to evade the purposes of this chapter."

The parties do not dispute that the insurance benefits at issue in this case and OHSU's policy of denying benefits to the domestic partners of unmarried employees are part of a "bona fide employee benefit plan." The only question is whether OHSU's denial of benefits was part of a "subterfuge to evade the purposes" of the employment statutes. Answering that question, however, entails addressing three more: First, precisely what does "subterfuge" mean; more specifically, does it require proof of intent? Second, who has the burden of proving the presence or absence of a subterfuge? Third, has the burden of proof been satisfied in this case?

[9][10] We begin with the meaning of the statutory term "subterfuge." Once again, we are presented with an interpretive question of first impression, which we resolve on the basis of the text in context and, if necessary, legislative history and other aids to construction. PGE, 317 Or. at 606-10, 859 P.2d 1143. In examining the text of a statute, we give words of common usage their "plain, natural and ordinary meaning" unless there is textual or contextual evidence that the legislature intended some other meaning to apply. Id. at 611, 859 P.2d 1143. A "subterfuge" ordinarily refers to "a deception by artifice or stratagem to conceal, escape, avoid or evade." Webster's Third New Int'l Dictionary 2281 (unabridged ed 1993). The term obviously entails intentional conduct; one does not accidentally or negligently deceive by artifice or stratagem. Nothing in the text or context of the statute suggests a contrary definition.

We note in that regard that our reading of the statute comports with the construction given the nearly identical language of the federal legislation on which ORS 659.028 was based. The federal Age Discrimination in Employment Act of 1967 (ADEA) forbids **444 arbitrary discrimination by public and private employers against their employees because of age. 29 USC § 623(a)(1). Section 623(f)(2) of the ADEA provides that decisions made pursuant to the terms of "any bona fide employee benefit plan such as a retirement, pension, or *518 insurance plan, which is not a subterfuge to evade the purposes of" the ADEA are exempted from the general prohibition against age discrimination. In *Public Employees v. Betts*, 492 U.S. 158, 109 S.Ct. 2854, 106 L.Ed.2d 134 (1989), the United States Supreme Court construed section 623(f)(2) and specifically addressed the meaning of the reference to "subterfuge" in that section. The Court began by noting that the ordinary meaning of the term is "a scheme, plan, stratagem, or artifice or evasion." Id. at 167, 109 S.Ct. 2854 (internal quotation marks omitted). It then concluded that nothing in the text of the ADEA or its legislative history required a different definition. Id. at 167-68, 109 S.Ct. 2854. Applying the ordinary meaning of the term, the Court held that proof of actual intent to discriminate is required.

There remain the questions as to who has the burden of proof and whether it has been satisfied. Plaintiffs contend that ORS 659.028 states an affirmative defense, thus placing the burden upon defendants to establish their lack of intent to discriminate to avoid liability under ORS 659.030. OHSU contends that ORS 659.028 merely describes the type of conduct that is prohibited in a context that is more specific than the more generally worded ORS 659.030. Thus, according to OHSU, when discrimination occurs as part of the terms of a bona fide employee benefit plan, it is the plaintiff who must prove that the defendant did so intentionally to prevail on his or her claim.

[11] We need not attempt to resolve that issue in this case, however. Regardless of who bears the burden of proof, the fact is that, on the record in this case, it is clear that OHSU did not engage in a subterfuge. Appellate review of the evidence on the issue is de novo. *Wincer v. Ind. Paper Stock Co.*, 

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(Cite as: 157 Or.App. 502, *518, 971 P.2d 435, **444)

48 Or.App. 859, 862-63, 618 P.2d 15 (1980). Our review of that evidence reveals that there is un rebutted testimony that sexual orientation was not taken into account in the administration of OHSU's employee benefits program and that OHSU did not intend, directly or indirectly, to discriminate on the basis of sexual orientation. Accordingly, although OHSU's practice of denying insurance benefits to unmarried domestic partners of its homosexual employees had an otherwise unlawful disparate impact on a protected class, because there is no evidence that OHSU engaged in a *519 subterfuge to discriminate against that protected class--and because there is affirmative evidence that it did not--it did not engage in an unlawful employment practice. The trial court erred in reaching a contrary conclusion.

B. Violation of Article I, section 20

[12] Finally, we address whether OHSU's denial of insurance benefits to the unmarried domestic partners of its homosexual employees violated Article I, section 20, of the Oregon Constitution, which provides:

"No law shall be passed granting to any citizen or class of citizens privileges or immunities, which, upon the same terms, shall not equally belong to all citizens."

Plaintiffs allege, and the trial court held, that OHSU's denial of benefits to domestic partners of its employees violated Article I, section 20. On appeal, OHSU argues that the trial court erred because OHSU's denials did not discriminate on the basis of sexual orientation but instead on the basis of marital status, discrimination that is justified by the entirely rational purpose of promoting the institution of marriage. Plaintiffs reply that OHSU's practices have the effect of denying a privilege--insurance benefits--to a class of citizens--homosexuals--without any justification and that the practice runs afoul of the constitution. OHSU acknowledges that its denials have the effect of discriminating against homosexual couples. It contends that such a discriminatory effect is not actionable in the absence of an intentionally discriminatory classification.

[13] We begin with a matter that, although not raised by the parties, is necessary to the disposition of their constitutional contentions, namely, the implications of the legislation that transformed

OHSU from a state **445 agency to a public corporation. Article I, section 20, by its terms, does not constrain the conduct of wholly private entities. It prohibits the passage of laws granting citizens or classes of citizens privileges or immunities on unequal terms. The courts have construed the reference to "laws" to include both legislative enactments and the administration of laws under delegated authority. *State v. Freeland*, 295 Or. 367, 370, 667 P.2d 509 (1983) (district attorney charging practices subject to Article I, section *520 20). But in all cases, those constrained by that section of the constitution are government entities of one sort or another.

The legislature has declared that OHSU no longer is a "state agency." Or. Laws 1995, ch. 162, § 2. Nevertheless, the legislature also declared that OHSU remains "a governmental entity performing governmental functions and exercising governmental powers." *Id.* We conclude therefore that, although the legislature has declared OHSU to be a nonstate agency public corporation, it remains a governmental entity subject to the prohibitions of Article I, section 20.

The parties' constitutional arguments on the merits present still further matters of first impression. In addressing those arguments, we do not pretend that the cases construing Article I, section 20, describe a completed, coherent jurisprudence. It is perhaps best to view the cases at this juncture as something of a work in progress. Nevertheless, we draw from the cases the following rules, which we conclude are sufficiently clear to enable us to dispose of the arguments presented.

Article I, section 20, prohibits granting privileges or immunities to one citizen or class of citizens that are not equally available to all citizens. That generally is understood to express two separate prohibitions. As the Supreme Court explained in its seminal opinion, *State v. Clark*, 291 Or. 231, 237, 630 P.2d 810 (1981), the clause "forbids inequality of privileges or immunities not available upon the same terms, first, to any citizen, and second, to any class of citizens." In this case, plaintiffs contend that they are members of a class of citizens--homosexual couples--to whom certain privileges--insurance benefits--are not made available.

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(Cite as: 157 Or.App. 502, *520, 971 P.2d 435, **445)

[14] As used in the Article I, section 20, case law, the term "class" takes on special meaning; only laws that disparately treat a "true class" may violate that section of the constitution. *State ex rel Huddleston v. Sawyer*, 324 Or. 597, 610, 932 P.2d 1145, cert. den. --- U.S. ---, 118 S.Ct. 557, 139 L.Ed.2d 399 (1997). In attempting to describe precisely what is meant by a "true class," the cases draw a distinction between classes that are created by the challenged law or government *521 action itself and classes that are defined in terms of characteristics that are shared apart from the challenged law or action.

The standard example of a nontrue class, drawn from the Supreme Court's decision in *Clark*, is the classification created by a statute that imposes a filing deadline for filing a petition for review. Such legislation creates two classes of persons: (1) those who timely file petitions for review, and (2) those who do not. Both are "classes" of persons, at least in the colloquial sense of groups having something in common. But in the absence of the statute, they have no identity at all. Legislation that disparately affects such "classes" does not violate Article I, section 20, because of the essentially circular nature of the argument: The legislation cannot disparately affect a class that the legislation itself creates. *Clark*, 291 Or. at 240, 630 P.2d 810. See also *Sealey v. Hicks*, 309 Or. 387, 397, 788 P.2d 435 (1990); *Hale v. Port of Portland*, 308 Or. 508, 525, 783 P.2d 506 (1989).

In contrast, Article I, section 20, does protect against disparate treatment of true classes, those that have identity apart from the challenged law itself. Various formulations have been used to describe in some affirmative way what a true class is, as opposed to merely what it is not in reference to classes created by the challenged legislation. The cases refer to classification by "ad hominem characteristic," *Van Wormer v. City of Salem*, 309 Or. 404, 408, 788 P.2d 443 (1990), by "personal characteristic," *Zockert v. Fanning*, 310 Or. 514, 523, 800 P.2d 773 (1990), and by "antecedent personal or social characteristics **446 or societal status," *Hale*, 308 Or. at 525, 783 P.2d 506. Examples of true classes include gender, ethnic background, legitimacy, past or present residency, and military service. *Clark*, 291 Or. at 240, 630 P.2d 810.

To say that disparately treated true classes are protected by Article I, section 20, does not end the matter. Depending on what type of true class is involved, the legislation or governmental action may or may not be upheld in spite of the disparity. In that regard, the cases draw a distinction between "suspect" classes and other true classes. The *522 former classes are subject to a more demanding level of scrutiny, and legislation or government action disparately treating such classes is much more likely to run afoul of Article I, section 20, than is legislation or government action that disparately treats a nonsuspect class.

The leading opinion on suspect classes is *Hewitt v. SAIF*, 294 Or. 33, 653 P.2d 970 (1982). In that case, the plaintiff, a man, challenged the constitutionality of a statute that permitted an unmarried woman to collect death benefits upon the death of an unmarried man with whom she cohabited for over one year. He contended that the statute, which made no provision for death benefits to an unmarried man who had cohabited with an unmarried woman for the required period, violated Article I, section 20, of the Oregon Constitution. *Id.* at 35, 653 P.2d 970. The court held that, under Article I, section 20, disparate treatment of classes that may be regarded as "suspect" is subject to particularly exacting scrutiny. *Id.* at 45, 653 P.2d 970. The court did not define precisely what it meant by "suspect" class. It did say that a class is suspect when it is defined in terms of "immutable" characteristics and "can be suspected of reflecting 'invidious' social or political premises, that is to say prejudice or stereotyped prejudgments." *Id.* The court held that gender constitutes such a class. *Id.* It then held that the denial of benefits to the plaintiff, a member of the suspect class defined by his male gender, was "inherently suspect." *Id.* at 46, 653 P.2d 970. That suspicion, the court held, could be overcome only by evidence that the denial of benefits to him is justified on the basis of "biological differences" between those who are entitled to the benefits under the statute and those who are not. *Id.* Finding no such justification in the record, the court declared that the statute violated Article I, section 20. *Id.* at 50, 653 P.2d 970.

Although the court in *Hewitt* referred to "immutable" characteristics as being sufficient for

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(Cite as: 157 Or.App. 502, *522, 971 P.2d 435, **446)

defining a suspect class under Article I, section 20, subsequent cases make clear that immutability--in the sense of inability to alter or change--is not necessary. The court has since explained that, in addition to gender, such classes as alienage, *Greist v. Phillips*, 322 Or. 281, 300, 906 P.2d 789 (1995) (race, sex and alienage are "inherently suspect" classes), and religious affiliation, *State v. Buchholz*, 309 Or. 442, 446, 788 P.2d 998 (1990) *523 race and religion are "impermissible criteria" of classification); *Salem College & Academy, Inc. v. Emp. Div.*, 298 Or. 471, 695 P.2d 25 (1985) (religious affiliation an impermissible classification), also are suspect classes. [FN4] Both alienage and religious affiliation may be changed almost at will. For that matter, given modern medical technology, so also may gender. We therefore understand from the cases that the focus of suspect class definition is not necessarily the immutability of the common, class-defining characteristics, but instead the fact that such characteristics are historically regarded as defining distinct, socially-recognized groups that have been the subject of adverse social or political stereotyping or prejudice. If a law or government action fails to offer privileges and immunities to members of such a class on equal terms, the law or action is inherently suspect and, as the court made clear in *Hewitt*, may be upheld only if the failure to make the privileges or immunities available to that class can be justified by genuine differences between the disparately treated class and those to whom the privileges and immunities are granted.

→ { FN4. The court also has suggested in dictum that nationality and facial hair likewise "doubtless" would be stricken as impermissible classifications. *Sealey*, 309 Or. at 398 n. 12, 788 P.2d 435.

Some classes are not suspect, but nevertheless remain true classes for Article I, **447 section 20, purposes. Geographical residence is the common example of a nonsuspect true class. *Clark*, 291 Or. at 240, 630 P.2d 810. Disparate treatment of such classes may be justified on a "rational basis" examination, *Seto v. Tri-County Metro. Transportation Dist.*, 311 Or. 456, 814 P.2d 1060 (1991), although the case law on that point is not entirely consistent. Compare *Hale*, 308 Or. at 524, 783 P.2d 506 (rational basis examination common to Equal Protection Clause cases "has been superseded by our more recent [Article I, section 20] decisions") with *State v. Tucker*, 315 Or. 321, 338,

845 P.2d 904 (1993) (Article I, section 20, challenge to death penalty statute rejected because the statute "established clear, rational and definitive criteria").

[15][16] Turning to the facts of this case, there is no question but that plaintiffs are members of a true class. That class--unmarried *524 homosexual couples--is not defined by any statute nor by the practices that are the subject of plaintiffs' challenges. Moreover, the class clearly is defined in terms of ad hominem, personal and social characteristics. The question then is whether plaintiffs are members of a suspect class. Here, too, we have no difficulty concluding that plaintiffs are members of a suspect class. Sexual orientation, like gender, race, alienage, and religious affiliation is widely regarded as defining a distinct, socially recognized group of citizens, and certainly it is beyond dispute that homosexuals in our society have been and continue to be the subject of adverse social and political stereotyping and prejudice. ↙

Because plaintiffs are members of a suspect class to which certain privileges and immunities are not made available, we must determine whether the fact that the privileges and immunities are not available to that class may be justified by genuine differences between the class and those to whom the privileges and immunities are made available. Stated perhaps more plainly, we must determine whether the fact that the domestic partners of homosexual OHSU employees cannot obtain insurance benefits can be justified by their homosexuality. The parties have suggested no such justification, and we can envision none. ! ✓

OHSU's defense is that it determined eligibility for insurance benefits on the basis of marital status, not sexual orientation. According to OHSU, the fact that such a facially neutral classification has the unintended side effect of discriminating against homosexual couples who cannot marry is not actionable under Article I, section 20. We are not persuaded by the asserted defense. Article I, section 20, does not prohibit only intentional discrimination. On point in that regard is the Supreme Court's decision in *Zockert*. In that case, the plaintiff parent challenged the constitutionality of a statutory scheme that provided indigent parents court-appointed counsel in parental termination proceedings but did

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(Cite as: 157 Or.App. 502, *524, 971 P.2d 435, **447)

not provide for court-appointed counsel in adoption proceedings that have the effect of terminating parental rights. After concluding that the plaintiff was a member of a true class--the court did not explain precisely which type of true class-- it observed that the legislature apparently was unaware of the disparity between the parental termination and *525 adoption proceeding statutes and did not make a conscious policy to treat indigent parents in the two similar proceedings unequally. Zockert, 310 Or. at 522, 800 P.2d 773. The court nevertheless concluded that the unintended side effect of providing counsel in termination proceedings was to treat a true class of citizens disparately in violation of Article I, section 20. Id. at 523-24, 800 P.2d 773. Intentional conduct, the court held, is not required for discrimination to be actionable under that section of the constitution. Id. at 523 n. 12, 800 P.2d 773.

So also in this case, OHSU has taken action with no apparent intention to treat disparately members of any true class of citizens. Nevertheless, its actions have the undeniable effect of doing just that. As in Zockert, OHSU's intentions in this case are not relevant. What is relevant is the extent to which privileges or immunities are not made available to

all citizens on equal terms.

OHSU insists that in this case privileges and immunities are available to all on equal terms: All married employees--heterosexual and homosexual alike--are permitted to acquire **448 insurance benefits for their spouses. That reasoning misses the point, however. Homosexual couples may not marry. Accordingly, the benefits are not made available on equal terms. They are made available on terms that, for gay and lesbian couples, are a legal impossibility.

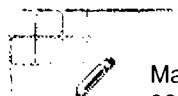
We conclude that OHSU's denial of insurance benefits to the unmarried domestic partners of its homosexual employees violated Article I, section 20, of the Oregon Constitution and that the trial court correctly entered judgment in favor of plaintiffs on that ground.

Reversed as to declaration that Oregon Health Sciences University's benefit program violates ORS 659.030(1)(b); remanded with instructions to enter judgment dismissing the State of Oregon, the State Board of Higher Education, the Executive Department and PEBB; otherwise affirmed.

END OF DOCUMENT

THE WHITE HOUSE,

DATE



Mary L. Smith
02/23/2000 12:40:04 PM

Record Type: Record

To: Ann O'Leary/OPD/EOP@EOP
cc: Elizabeth J. Potter/WHO/EOP@EOP
Subject: GLBT: Non-discrimination and domestic partner benefits

----- Forwarded by Mary L. Smith/OPD/EOP on 02/23/2000 12:39 PM -----



Elizabeth J. Potter
02/23/2000 12:30:15 PM

Record Type: Record

To: Edward W. Correia/WHO/EOP@EOP, Paul Oetken/WHO/EOP@EOP, Mary L. Smith/OPD/EOP@EOP
cc:
Subject: GLBT: Non-discrimination and domestic partner benefits

**CAN WE MEET TO DISCUSS THE FOLLOWING:
Thursday, February 24th 1:00 pm room 117**

1.) **Non-Discrimination Executive Order:** A few months ago we met with advocacy groups about the implementation of the EO. They basically raised two concerns, one that the EO was not uniformly administered throughout the Federal government and that Federal agency response varied, and second, that the "terms and conditions of employment" referred to in the EO should be interpreted to include benefits. The latter issue led to discussions on the definition of DOMA, family members, and category of benefits and the Family and Medical Leave Act.

The first issue is being addressed by OPM and will respond to the list of concerns raised by Federal GLOBE.

The second issue is much more thorny...and is what I think we should discuss.

2.) **State Department:** The issue of benefits for "non married partners" raised by the union at the state department is still active. Senator Helms has had correspondence with Secretary Albright, and he might be considering a legislative pre-emptive strike. I would like to review the status. HRC and NGLTF are briefing Hill staff this Friday.

3.) **Non-Discrimination Executive Order for Contractors:** The next step in extending the Federal government's jurisdiction over non-discrimination in the workforce could be in the area of Federal contractors. I would like to discuss if this is an option we should be considering.

4.) **Domestic Partnership Benefits:** The Vice President, as candidate, has said that he will put

OPM needs

Admin State
attache

The Gay Role
more Administrative

EO protection

① EO in EO on
non-discrimination
benefits

② Contracts

③ Free will

④ making FMSA

events → The Gay Role

1/10/00
From
JOD
to

Whitney on Talbot

Comptroller

together a commission to evaluate all of the Federal benefits afforded married couples, to see how they could be applied to a domestic partnership provision. What work has DPC done in this area and how would this be approached.

→ Comm Review
OMB

From: Lisa J. Macecevic on 03/02/2000 09:26:27 AM

Record Type: Record

To: Edward W. Correia/WHO/EOP@EOP

cc: See the distribution list at the bottom of this message

bcc:

Subject: Re: REMINDER: LRM LJM97 - - OMB Request for Views on HR3650 Permanent Partners Immigration Act of 2000 

Irene Bueno requested agency/EOP views on the legislation in an attempt to formulate what our view would be. I don't know what the next step was to be.

Here's what Irene sent me:

As you may recall, last year the President indicated support for changing our immigration laws to ensure that individuals are allowed to petition same sex domestic partners. Rep. Nalder has introduced legislation on this issue and I would like you to review this legislation and let me know your views (see attached). Also, below is information that Bo sent to me that summarizes the different ways that other countries have addressed this issue. I will send this through the normal OMB channels but I wanted to give you a heads up. Thanks.



domesticpartnersHR 3650

7 not really going anywhere?

Irene:

Here is a short explanation of how this issue is handled differently in other countries. Let's discuss and we can figure out whether something more detailed would be helpful to you.

Bo

Forward Header

Subject: Same-sex Couple Immigration in Other Countries

Author: Ian G Hinds

Date: 12/02/1999 11:25 AM

From a Backgrounder issued by the Center for Immigration Studies in May 1999:

Australia: has an "interdependent partner" visa classification. Must have an interdependent relationship with an Australian citizen or permanent resident

Available to persons over 18 in an ongoing (12+ months) and mutually committed relationship. Applies both to hetero and homosexual couples.

New Zealand: grants residence to those in a genuine, stable, de facto partnership/relationship with a New Zealand citizen or resident for at least

2 years. Applies to hetero and homosexual couples.

South Africa: treats same sex couples the same as married couples for purposes of immigration law. This is based upon a court decision which ordered legislation to follow.

Canada: Same sex partner may seek consideration of that relationship as a reason to immigrate to Canada on humanitarian and compassionate grounds. Neither person in the relationship has to be a Canadian citizen or resident at the time of the application, i.e. Canada allows the same sex partner of an eligible immigrant to accompany or follow to join that immigrant. This is done as a matter of administrative discretion and does not appear to be codified in law.

Edward W. Correia

EEdward W. Correia

03/01/2000 05:30:58 PM

Record Type: Record

To: Lisa J. Macecevic/OMB/EOP@EOP
cc: paul oetken/who/eop@eop, ann o'leary/opd/eop@eop, mary l. smith/opd/eop@eop, Elizabeth J. Potter/WHO/EOP@EOP
Subject: Re: REMINDER: LRM LJM97 - - OMB Request for Views on HR3650 Permanent Partners Immigration Act of 2000 

Do we have to take a position on this?

Message Copied To:

paul oetken/who/eop@eop
ann o'leary/opd/eop@eop
mary l. smith/opd/eop@eop
elizabeth j. potter/who/eop@eop
Irene Bueno/OPD/EOP@EOP

HR 3650 IH

106th CONGRESS

2d Session

H. R. 3650

To amend the Immigration and Nationality Act to provide a mechanism for United States citizens and lawful permanent residents to sponsor their permanent partners for residence in the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

February 14, 2000

Mr. NADLER (for himself, Mr. FRANK of Massachusetts, Ms. BALDWIN, Mr. CROWLEY, Mr. DELAHUNT, Mr. LANTOS, Mr. BECERRA, Mr. MCDERMOTT, Mr. HINCHEY, Mr. CAPUANO, Mr. WAXMAN, and Mr. TOWNS) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to provide a mechanism for United States citizens and lawful permanent residents to sponsor their permanent partners for residence in the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.

(a) SHORT TITLE- This Act may be cited as the 'Permanent Partners Immigration Act of 2000'.

(b) AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT- Except as otherwise specifically provided whenever in this Act an amendment or repeal is expressed as the amendment or repeal of a section or other provision, the reference shall be considered to be made to that section or provision in the Immigration and Nationality Act.

SEC. 2. DEFINITION OF 'PERMANENT PARTNER'.

Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following:

`(50) The term `permanent partner' means an individual over 18 years of age who--

`(A) is in a committed, intimate relationship with another individual over 18 years of age in which both parties intend a lifelong commitment;

`(B) is financially interdependent with that other individual;

`(C) is not married to or in a permanent partnership with anyone other than that other individual;

`(D) is unable to contract with that other individual a marriage cognizable under this Act; and

`(E) is not a first, second, or third degree blood relation of that other individual.

`(51) The term `permanent partnership' means the relationship that exists between two permanent partners.'.

SEC. 3. WORLDWIDE LEVEL OF IMMIGRATION.

Section 201(b)(2)(A)(i) (8 U.S.C. 1151(b)(2)(A)(i)) is amended--

(1) by inserting `permanent partners,' after `spouses,';

(2) by inserting `or permanent partner' after `spouse' each place such term appears; and

(3) by inserting `or enters a permanent partnership with another person' before the period at the end.

SEC. 4. NUMERICAL LIMITATIONS ON INDIVIDUAL FOREIGN STATES.

(a) PER COUNTRY LEVELS- Section 202(a)(4) (8 U.S.C. 1152(a)(4)) is amended--

(1) in the paragraph heading for paragraph (4), by inserting `, PERMANENT PARTNERS,' after `SPOUSES';

(2) in the subparagraph heading for subparagraph (A), by inserting `, PERMANENT PARTNERS,' after `SPOUSES'; and

(3) in the subparagraph heading for subparagraph (C), by inserting 'WITHOUT PERMANENT PARTNERS' after 'DAUGHTERS'.

(b) RULES FOR CHARGEABILITY- Section 202(b)(2) (8 U.S.C. 1152(b)(2)) is amended--

(1) by inserting 'or permanent partner' after 'spouse' each place it appears; and

(2) by inserting 'or permanent partners' after 'husband and wife'.

SEC. 5. ALLOCATION OF IMMIGRANT VISAS.

(a) PREFERENCE ALLOCATION FOR FAMILY MEMBERS OF PERMANENT RESIDENT ALIENS- Section 203(a)(2) (8 U.S.C. 1153(a)(2)) is amended--

(1) in the paragraph heading--

(A) by striking 'and' after 'SPOUSES' and inserting ', PERMANENT PARTNERS,'; and

(B) by inserting 'WITHOUT PERMANENT PARTNERS' after 'SONS' and after 'DAUGHTERS'; and

(2) in subparagraph (A)--

(A) by inserting ', permanent partners,' after 'spouses'; and

(B) by inserting 'without permanent partners' after 'sons' and after 'daughters'.

(b) PREFERENCE ALLOCATION FOR SONS AND DAUGHTERS OF CITIZENS- Section 203(a)(3) (8 U.S.C. 1153(a)(3)) is amended--

(1) in the paragraph heading, by inserting 'AND DAUGHTERS AND SONS WITH PERMANENT PARTNERS' after 'DAUGHTERS'; and

(2) by inserting 'or daughters or sons with permanent partners' after 'daughters'.

(c) EMPLOYMENT CREATION- Section 203(b)(5)(A)(iii) (8 U.S.C. 1153(b)(5)(A)(iii)) is amended by inserting 'permanent partner,' after 'spouse,'.

(d) TREATMENT OF FAMILY MEMBERS- Section 203(d) (8 U.S.C. 1153(d)) is amended by inserting ', permanent partner,' after 'spouse' each place the term appears.

SEC. 6. PROCEDURE FOR GRANTING IMMIGRANT STATUS.

(a) CLASSIFICATION PETITIONS- Section 204(a)(1) (8 U.S.C. 1154(a)(1)) is amended--

(1) in subparagraph (A)(ii), by inserting 'or permanent partner' after 'spouse';

(2) in subparagraph (A)(iii)--

(A) by inserting 'or permanent partner' after 'spouse' each place the term appears; and

(B) by inserting 'or permanent partnership' after 'marriage' each place the term appears in subclause (I); and

(3) in subparagraph (B)(ii), by inserting 'or permanent partner' after 'spouse' each place the term appears.

(b) IMMIGRATION FRAUD PREVENTION- Section 204(c) (8 U.S.C. 1154(c)) is amended--

(1) by inserting 'or permanent partner' after 'spouse' each place the term appears; and

(2) by inserting 'or permanent partnership' after 'marriage' each place the term appears.

SEC. 7. ANNUAL ADMISSION OF REFUGEES AND ADMISSION OF EMERGENCY SITUATION REFUGEES.

Section 207(c) (8 U.S.C. 1157(c)) is amended--

(1) in paragraph (2)--

(A) by inserting 'or permanent partner' after 'spouse' each place the term appears; and

(B) by inserting 'or permanent partner's' after 'spouse's'; and

(2) in paragraph (4), by inserting 'or permanent partner' after 'spouse'.

SEC. 8. ASYLUM.

Section 208(b)(3) (8 U.S.C. 1158(b)(3)) is amended--

(1) in the heading, by inserting `OR PERMANENT PARTNER' after `SPOUSE';
and

(2) by inserting `or permanent partner' after `spouse'.

SEC. 9. ADJUSTMENT OF STATUS OF REFUGEES.

Section 209(b)(3) (8 U.S.C. 1159(b)(3)) is amended by inserting `or permanent partner' after `spouse'.

SEC. 10. INADMISSIBLE ALIENS.

(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION- Section 212(a) (8 U.S.C. 1182(a)) is amended--

(1) in paragraph (3)(D)(iv), by inserting `permanent partner,' after `spouse,';

(2) in paragraph (4)(C)(i)(I), by inserting `, permanent partner,' after `spouse';

(3) in paragraph (6)(E)(ii), by inserting `permanent partner,' after `spouse,'; and

(4) in paragraph (9)(B)(v), by inserting `, permanent partner,' after `spouse'.

(b) WAIVERS- Section 212(d) (8 U.S.C. 1182(d)) is amended--

(1) in paragraph (11), by inserting `permanent partner,' after `spouse,'; and

(2) in paragraph (12)(B), by inserting `, permanent partner,' after `spouse'.

(c) Section 212(g)(1)(A) (8 U.S.C. 1182(g)(1)(A)) is amended by inserting `or permanent partner' after `spouse'.

(d) Section 212(h)(1)(B) (8 U.S.C. 1182(h)(1)(B)) is amended by inserting `permanent partner,' after `spouse,'.

(e) Section 212(i)(1) (8 U.S.C. 1182(i)(1)) is amended by inserting `permanent partner,' after `spouse,'.

SEC. 11. ADMISSION OF NONIMMIGRANTS.

(a) PERSONS ENTERING UNDER NAFTA- Section 214(e)(2) (8 U.S.C. 1184(e)(2)) is amended by inserting `or permanent partner' after `spouse'.

(b) LIMITATION ON CERTAIN NONIMMIGRANTS- Section 214(g)(2) (8 U.S.C. 1184(g)(2)) is amended by inserting `, permanent partners,' after `spouses'.

SEC. 12. CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN SPOUSES, PERMANENT PARTNERS, AND SONS AND DAUGHTERS.

(a) SECTION HEADING-

(1) IN GENERAL- The section heading for section 216 (8 U.S.C. 1186a) is amended by inserting 'AND PERMANENT PARTNERS' after 'SPOUSES'.

(2) CLERICAL AMENDMENT- The table of contents is amended by amending the item relating to section 216 to read as follows:

'Sec. 216. Conditional permanent resident status for certain alien spouses and permanent partners and sons and daughters.'

(b) IN GENERAL- Section 216(a) (8 U.S.C. 1186a(a)) is amended--

(1) in paragraph (1), by inserting 'or permanent partner' after 'spouse';

(2) in paragraph (2)(A), by inserting 'or permanent partner' after 'spouse';

(3) in paragraph (2)(B), by inserting 'permanent partner,' after 'spouse,'; and

(4) in paragraph (2)(C), by inserting 'permanent partner,' after 'spouse,'.

(c) TERMINATION OF STATUS IF FINDING THAT QUALIFYING MARRIAGE IMPROPER- Section 216(b) of such Act (8 U.S.C. 1186a(b)) is amended--

(1) in the heading, by inserting 'OR PERMANENT PARTNERSHIP' after 'MARRIAGE';

(2) in paragraph (1)(A), by inserting 'or permanent partnership' after 'marriage'; and

(3) in paragraph (1)(A)(ii)--

(A) by inserting 'or has ceased to satisfy the criteria for being considered a permanent partnership under this Act,' after 'terminated,'; and

(B) by inserting 'or permanent partner' after 'spouse'.

(d) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION- Section 216(c) (8 U.S.C. 1186a(c)) is amended--

(1) in paragraphs (1), (2)(A)(ii), (3)(A)(ii), (3)(C), (4)(B), and (4)(C), by inserting 'or permanent partner' after 'spouse' each place the term appears;

(2) in paragraph (3)(A), in the matter following clause (ii), and in paragraph (3)(D), (4)(B), and (4)(C), by inserting 'or permanent partnership' after 'marriage' each place the term appears.

(e) CONTENTS OF PETITION- Section 216(d)(1) of such Act (8 U.S.C. 1186a(d)(1)) is amended--

(1) in the subparagraph heading for subparagraph (A), by inserting 'OR PERMANENT PARTNERSHIP' after 'MARRIAGE';

(2) in subparagraph (A)(i), by inserting 'or permanent partnership' after 'marriage';

(3) in subparagraph (A)(i)(I), by inserting before the comma at the end ', or is a permanent partnership recognized under this Act';

(4) in subparagraph (A)(i)(II)--

(A) by inserting 'or has not ceased to satisfy the criteria for being considered a permanent partnership under this Act,' after 'terminated,'; and

(B) by inserting 'or permanent partner' after 'spouse';

(5) in subparagraph (A)(ii), by inserting 'or permanent partner' after 'spouse'; and

(6) in subparagraph (B)(i)--

(A) by inserting 'or permanent partnership' after 'marriage'; and

(B) by inserting 'or permanent partner' after 'spouse'.

(e) DEFINITIONS- Section 216(g) (8 U.S.C. 1186a(g)) is amended--

(1) in paragraph (1)--

(A) by inserting 'or permanent partner' after 'spouse' each place the term appears; and

(B) by inserting 'or permanent partnership' after 'marriage' each place the term appears;

(2) in paragraph (2), by inserting 'or permanent partnership' after 'marriage';

(3) in paragraph (3), by inserting 'or permanent partnership' after 'marriage'; and

(4) in paragraph (4)--

(A) by inserting 'or permanent partner' after 'spouse' each place the term appears; and

(B) by inserting 'or permanent partnership' after 'marriage'.

SEC. 13. CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, PERMANENT PARTNERS, AND CHILDREN.

(a) SECTION HEADING-

(1) IN GENERAL- The section heading for section 216A (8 U.S.C. 1186b) is amended by inserting 'OR PERMANENT PARTNERS' after 'SPOUSES'.

(2) CLERICAL AMENDMENT- The table of contents is amended by amending the item relating to section 216A to read as follows:

'Sec. 216. Conditional permanent resident status for certain alien entrepreneurs, spouses or permanent partners, and children.'

(b) IN GENERAL- Section 216A(a) (8 U.S.C. 1186b(a)) is amended, in paragraphs (1), (2)(A), (2)(B), and (2)(C), by inserting 'or permanent partner' after 'spouse' each place the term appears.

(c) TERMINATION OF STATUS IF FINDING THAT QUALIFYING ENTREPRENEURSHIP IMPROPER- Section 216A(b)(1) (8 U.S.C. 1186b(b)(1)) is amended by inserting 'or permanent partner' after 'spouse' in the matter following subparagraph (C).

(d) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION- Section 216A(c) (8 U.S.C. 1186b(c)) is amended, in paragraphs (1), (2)(A)(ii), and (3)(C), by inserting 'or permanent partner' after 'spouse'.

(e) DEFINITIONS- Section 216A(f)(2) (8 U.S.C. 1186b(f)(2)) is amended by inserting 'or permanent partner' after 'spouse' each place the term appears.

SEC. 14. DEPORTABLE ALIENS.

Section 237(a) of the Immigration and Nationality Act (8 U.S.C. 1227(a)) is amended--

(1) in paragraph (1)(D)(i), by inserting 'or permanent partners' after 'spouses'

each place the term appears;

(2) in paragraphs (1)(E)(ii), (1)(E)(iii), and (1)(H)(i), by inserting 'or permanent partner' after 'spouse';

(3) by adding at the end of paragraph (1) the following new subparagraph:

'(I) PERMANENT PARTNERSHIP FRAUD- An alien shall be considered to be deportable as having procured a visa or other documentation by fraud (within the meaning of section 212(a)(6)(C)(i)) and to be in the United States in violation of this Act (within the meaning of subparagraph (B)) if--

'(i) the alien obtains any admission to the United States with an immigrant visa or other documentation procured on the basis of a permanent partnership entered into less than 2 years prior to such admission and which, within 2 years subsequent to such admission, is terminated because the criteria for permanent partnership are no longer fulfilled, unless the alien establishes to the satisfaction of the Attorney General that such permanent partnership was not contracted for the purpose of evading any provisions of the immigration laws; or

'(ii) it appears to the satisfaction of the Attorney General that the alien has failed or refused to fulfill the alien's permanent partnership which in the opinion of the Attorney General was made for the purpose of procuring the alien's admission as an immigrant.'; and

(4) in paragraphs (2)(E)(i) and (3)(C)(ii), by inserting 'or permanent partner' after 'spouse' each place the term appears.

SEC. 15. REMOVAL PROCEEDINGS.

Section 240(e)(1) (8 U.S.C. 1229a(e)(1)) is amended by inserting 'or permanent partner' after 'spouse'.

SEC. 16. CANCELLATION OF REMOVAL; ADJUSTMENT OF STATUS.

Section 240A(b) (8 U.S.C. 1229b(b)) is amended--

(1) in paragraph (1)(D), by inserting 'or permanent partner' after 'spouse';

(2) in the heading for paragraph (2), by inserting ', PERMANENT PARTNER,' after 'SPOUSE'; and

(3) in paragraph (2)(A), by inserting `, permanent partner,' after `spouse'.

SEC. 17. ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE.

(a) PROHIBITION ON ADJUSTMENT OF STATUS- Section 245(d) (8 U.S.C. 1255(d)) is amended by inserting `or permanent partnership' after `marriage'.

(b) AVOIDING IMMIGRATION FRAUD- Section 245(e) (8 U.S.C. 1255(e)) is amended--

(1) in paragraph (1), by inserting `or permanent partnership' after `marriage'; and

(2) by adding at the end the following new paragraph:

`(4) Paragraph (1) and section 204(g) shall not apply with respect to a permanent partnership if the alien establishes by clear and convincing evidence to the satisfaction of the Attorney General that the permanent partnership was entered into in good faith and in accordance with section 101(a)(50) and the permanent partnership was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) or 214(d) with respect to the alien permanent partner. In accordance with regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.'.

(c) ADJUSTMENT OF STATUS FOR CERTAIN ALIENS PAYING FEE- Section 245(i)(1)(B) (8 U.S.C. 1255(i)(1)(B)) is amended by inserting `or permanent partner' after `spouse' each place the term appears.

(d) INFORMANTS- Section 245(j) of such Act (8 U.S.C. 1255(j)) is amended by inserting `permanent partner,' after `spouse,' each place the term appears.

SEC. 18. MISREPRESENTATION AND CONCEALMENT OF FACTS.

Section 275(c) (8 U.S.C. 1325(c)) is amended by inserting `or permanent partnership' after `marriage'.

SEC. 19. REQUIREMENTS AS TO RESIDENCE, GOOD MORAL CHARACTER, ATTACHMENT TO THE PRINCIPLES OF THE CONSTITUTION.

Section 316(b) (8 U.S.C. 1427(b)) is amended by inserting `or permanent partner' after `spouse'.

SEC. 20. FORMER CITIZENS OF UNITED STATES REGAINING
UNITED STATES CITIZENSHIP.

Section 324(a) (8 U.S.C. 1435(a)) is amended, in the matter following `after September 22, 1922,', by inserting `or permanent partnership' after `marriage' each place the term appears.

Edward W. Correia

03/22/2000 09:10:23 AM

Record Type: Record

To: Ann O'Leary/OPD/EOP@EOP

cc:

Subject: Draft E.O. on Federa

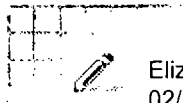
I though I would send this around to DOJ and OFPP for comment. What do you think?

We are considering the issuance of an executive order that bans discrimination on the basis of race, gender, disability, etc., in federally-conducted education programs. The actual policy, which would be stated in the order, provides:

"1-102. No individual, on the basis of race, sex, color, national origin, religion, sexual orientation, age, disability, or status as a parent, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in, a Federally conducted education or training program or activity."

The order now covers federal agencies themselves when they provide the program, e.g., DOD's schools abroad, etc. The question is whether we should also try to reach entities that contract with agencies to perform this same function. Although the President does not have the authority -- at least we are not asserting it in this order -- to order contractors directly to comply, he presumably does have the authority to require agencies to include non-discrimination provisions in their contracts. What do you think of including this sentence in our draft E.O. on federally-conducted education programs?

"It shall be the policy of the Executive Branch to require entities that contract with an executive department or agency to provide education or training programs to comply with the policy stated in section 1-102 of this order in providing such programs."



Elizabeth J. Potter
02/29/2000 02:26:15 PM

Record Type: Record

To: Edward W. Correia/WHO/EOP@EOP, Ann O'Leary/OPD/EOP@EOP, Mary L. Smith/OPD/EOP@EOP, Paul Oetken/WHO/EOP@EOP

cc: ~~Jesse M. Hartness/WHO/EOP@EOP~~

Subject: EO for non-discrimination

President Johnson issued a similar executive order in 1965 prohibiting Federal Contractors from discriminating on the basis of race. The ACLU draft EO uses the same approach ...which ties this issue too closely with issues associated with affirmative action.

 I am circulating a new version which ties the need for an EO with the Federal Procurement Statute- to promote economy and efficiency-- supported by supply and demand and labor costs.

The new version of the EO is succinct and it leaves the regulatory changes to OPM.



Elizabeth J. Potter
02/29/2000 02:29:25 PM

Record Type: Record

To: Elizabeth J. Potter/WHO/EOP@EOP

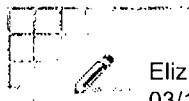
cc: See the distribution list at the bottom of this message

Subject: Re: EO for non-discrimination 

I was sleeping. I meant to say that President Roosevelt issued EO 8088 forbidding race-based discrimination by the Federal contractors...at any rate it is coming your way.

Message Copied To:

edward w. correia/who/eop@eop
ann o'leary/opd/eop@eop
mary l. smith/opd/eop@eop
paul oetken/who/eop@eop
jesse m. hartness/who/eop@eop



Elizabeth J. Potter
03/10/2000 11:21:22 AM

Record Type: Record

To: Mary L. Smith/OPD/EOP@EOP, Ann O'Leary/OPD/EOP@EOP

cc:

Subject: [NGLTF Press] NGLTF Census Advisory

who is the census person in DPC???

----- Forwarded by Elizabeth J. Potter/WHO/EOP on 03/10/2000 11:21 AM -----



listmgr@ngltf.org
03/10/2000 10:42:24 AM

Record Type: Record

To: Elizabeth J. Potter/WHO/EOP

cc:

Subject: [NGLTF Press] NGLTF Census Advisory

INSTITUTE FOR GAY AND LESBIAN STRATEGIC STUDIES AND
NATIONAL GAY AND LESBIAN TASK FORCE
PRESS RELEASE

Contact:

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Ann Northrop, Institute for Gay and Lesbian Strategic Studies
212-727-8674
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NOTE TO EDITORS, REPORTERS, PRODUCERS:

A March 8 press release issued by the National Gay and Lesbian Task Force
Announcing the n the Make Your Family Count Census campaign misspelled the name and email
address of Ann Northrop of the Institute for Gay and Lesbian Strategic Studies. Ann s correct contact
information is listed above. For the latest information about the campaign, and to download print ads and

website banners, please visit www.WeCount.org

'MAKE YOUR FAMILY COUNT!'

NGLTF POLICY INSTITUTE, INSTITUTE FOR GAY AND LESBIAN STRATEGIC STUDIES LAUNCH CENSUS CAMPAIGN

March 10, 2000 - The Institute for Gay and Lesbian Strategic Studies (IGLSS) and the Policy Institute of the National Gay and Lesbian Task Force (NGLTF) this week announced "Make Your Family Count," a national public education campaign aimed at encouraging same-sex couples within the gay, lesbian, bisexual and transgendered (GLBT) communities to be counted in the U.S. Census. IGLSS and the NGLTF Policy Institute are the nation's two largest GLBT think-tanks.

"This campaign has one simple message: Our families exist and we must be counted," said Paula Ettelbrick, Family Policy Director of the National Gay and Lesbian Task Force Policy Institute. "The U.S. Census tracks changes in American family structures. Over the last ten years our community has had a major impact in changing family policies, from domestic partnership to second parent adoption. It's time that we include our families in the official count."

The "Make Your Family Count" campaign is seeking donated ad space and air time from media outlets with large GLBT audiences. The campaign urges same-sex couples living in the same household to mark the 'Unmarried Partners' option when asked to describe their relationships. The forms will be mailed to every household in the United States in March and April. The campaign has also launched a website, <http://www.WeCount.org>, with information about the Census and guidance to GLBT couples on answering the Census forms.

"The Census will provide us with a gold mine of information. We will have a statistical picture of same-sex households by racial composition, where they live, and how many children they have," said Dr. Lee Badgett, Director of the Institute for Gay and Lesbian Strategic Studies. "The Census tracks changes in families in the U.S. Our families deserve to be counted so that the full diversity of the American family can be reflected and presented to policy makers."

"All public policy flows from the U.S. Census," Ettelbrick explained. "If we are not counted, we lose out on federal funding for research, funding for community services and passage and implementation of laws that benefit our community. We also sacrifice important opportunities for more equitable political representation of our community."

Ettelbrick added that information collected by the Census will lay the statistical foundation critical in demonstrating the need for domestic partnership benefits, funding for community services, and passage of policies that reflect the needs of GLBT families and their children.

"While legislation in states like Vermont, New Hampshire and Massachusetts has moved in our favor, we are seeing a definite backlash to our efforts through passage of laws blocking marriage and adoption in other states like Utah, California and Arkansas," said Ettelbrick.

"The Census count will allow us to break through the rhetoric and show dispassionately that hundreds of thousands of same-sex couples already

share committed relationships and are raising children. These families need the same resources and recognition as any other family."

In 1990, the category of "unmarried partner" first appeared on the census form. Approximately 150,000 households self-reported as same-sex unmarried partners - a severe undercount.

According to the 1990 Census, 75 percent of American families no longer reflect traditional definitions of families, consisting of a married heterosexual couple with children under 18. Unmarried couples comprised approximately 4.5 million families, a 400 percent increase since 1970. This figure reflects the rapidly changing family unit.

To date the Census Bureau has not included a question about sexual orientation. Gay, lesbian, bisexual and transgendered people not living with someone of the same sex whom they consider to be an unmarried partner will not be visibly counted. However, a large enough count of same-sex households, with or without children, could help substantially in future efforts to be included in the Census count.

For each same-sex couple that describes their relationship as being "unmarried partners" on the Census short form, researchers will be able to determine the racial, housing, age and demographic mix of same-sex households, as well as the number of children in the household. For the one-sixth of households that will receive the Census long form, researchers also will be able to determine education, citizenship and income, among other things.

ATTENTION EDITORS, REPORTERS AND PRODUCERS: To obtain a copy of the print advertisement produced by the campaign go to the website, www.WeCount.org, or to schedule interviews, please call the NGLTF communications department at 202-332-6483, ext. 3303 or call Ann Northrop of IGLSS at 212-727-8674.

The Institute for Gay and Lesbian Strategic Studies (IGLSS) is a national independent public policy think tank. Its mission is to inform public policy debates through research, analysis and education in order to create an equal and integrated society for people of all sexual orientations and gender identifications.

Founded in 1973, the National Gay and Lesbian Task Force has worked to eliminate prejudice, violence and injustice against gay, lesbian, bisexual and transgendered people at the local, state and national level. As part of a broader social justice movement for freedom, justice and equality, NGLTF is creating a world that respects and celebrates the diversity of human expression and identity where all people may fully participate in society.

This message was issued by the National Gay and Lesbian Task Force Communications Department. If you have a question regarding this post, please direct it to the contact at the top of this message.

To reach the NGLTF Communications Department at NGLTF, please call David Elliot, Communications Director, at 202-332-6483 x3303 or pager 800-757-6476 or email deliot@ngltf.org.

If you wish to UNSUBSCRIBE from this list, please send an email message with your request to listmgr@nsltf.org.

Questions for the Record Submitted to
Secretary of State Madeleine Albright
By Chairman Helms
Committee on Foreign Relations

State Department Personnel Policies

On September 23, 1999, the president of Gays and Lesbians in Foreign Affairs Agencies (GLIFAA) wrote to Director General Gnehm to urge the Department of State to "expand the definition of Eligible Family Member (EFM) to include the partners of gay and lesbian employees." GLIFAA also listed 13 actions that it encouraged the Department to "institute immediately and upon its own authority." On November 3, 1999, the American Foreign Service Association's (AFSA's) governing board endorsed each of the 13 actions, and on December 1, 1999, AFSA wrote Under Secretary for Management, Bonnie Cohen, officially recommending the measures with respect to an "unmarried domestic partner" of an employee whether the two persons were of the same sex or of the opposite sex.

1. Within your Department, what is the status of AFSA's request?
2. Do you believe you have legal authority to grant each of AFSA's 13 separate proposals? If not, which proposals are beyond your authority?
3. Do you intend to act on AFSA's request unilaterally? If so, what do you intend to do?
4. Within your Department, what is the status of the organization of Gays and Lesbians in Foreign Affairs Agencies (GLIFAA)? Does the organization receive any public funds from your Department or from other governmental organizations? Besides the meeting of January 22, 1999 with Director General Gnehm, have you or any other official of the Department met with GLIFAA to discuss its agenda? In the meetings with GLIFAA, what has the Department agreed to do? Have any of GLIFAA's proposals been rejected?
5. Within your Department, what is the status of GLIFAA's request?
6. Do you believe you have legal authority to grant each of GLIFAA's separate proposals?

If not, which proposals are beyond your authority?

7. Do you intend to act on GLIFAA's request unilaterally? If so, what do you intend to do?

8. In June 1999, Moscow requested the Department's guidance with respect to an employee and the employee's partner (Moscow 014507). In its response (State 177246 11), the Department said:

"Currently, no published Department of State guidance exists regarding support for unmarried partners of the same or opposite sex. While we understand the difficulties the current situation presents to unmarried partners residing at our overseas missions, the Department has not authorized official action on behalf of partners who do not have a legally recognized relationship with a U.S. Foreign Service employee. . . ."

Does this statement still represent the policy of the Department of State? If so, does the Department plan to make any change in that policy? If the quote stated is not Department policy, please provide the Committee with a copy of the Department's current policy and tell us when the new policy took effect and under what circumstances.

9. AFSA stated that, "The Board was concerned with what appeared to be [as stated in State 177246] a change in the previous practice of allowing chiefs of mission flexibility in dealing with this issue and of advancing 'family friendly' policies in general" (State 211732-2). Do you agree with AFSA that the policy stated in State 177246 was new? If so, please explain the change; if not, please summarize the history of the policy.

10. If you believe the policy stated in State 177246 was, indeed, new (see above), do you believe that the change was mandated by the Defense of Marriage Act, 1 U.S.C. §7(Supp. 111 1997)? The pertinent part of the Defense of Marriage Act was quoted in paragraph 2 of State 177246:

"In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person

of the opposite sex who is a husband or a wife.")

11. In summarizing the effect of the Defense of Marriage Act, State 177246 paragraph 2 said, "The Defense of Marriage Act of 1996 generally constrains the Department from interpreting the word 'marriage' or 'spouse' to include same-sex partners." What does the Department mean by the term "generally constrains"? Under what circumstances might the Department be freed from the express and unambiguous terms of the Defense of Marriage Act? Is it the position of the Department of State that the Defense of Marriage Act "generally constrains" a redefinition of "marriage" and "spouse" or that the Act flatly excludes such redefinitions?

12. In its memorandum of September 23, 1999, GLIFAA "propose[d] that the Department, in coordination with the civilian agencies with employees covered by the Foreign Affairs Manual, expand the definition of Eligible Family Member (EFM) to include the partners of gay and lesbian employees" (page 1). By what authority do you believe you have the ability to redefine the term "family" or "Eligible Family Member." Section 311 of the Foreign Service Act, 22 U.S.C. §3951 (1994), provides a hiring preference for family members of government employees assigned abroad." Do you believe you have lawful authority to define "family members" for purposes of section 311 to include persons who are related by neither blood, nor marriage, nor adoption? Do you have authority to extend the hiring preference for "family members" to persons who are dear friends or sexual partners of the government employee?

13. Article 37.1 of the Vienna Convention on Diplomatic Relations (entered into force with respect to the United States on Dec. 13, 1972) says, "The members of the family of a diplomatic agent forming part of his household shall ... enjoy the privileges and immunities specified in Articles 29 to 36." In turn, the provisions of Article 37 have found their way into the United States Code, e.g., 22 U.S.C. §254a(2) & §4304a(c)(2) (1994). What are the international diplomatic implications of redefining "family"?

14. GLIFAA's memorandum of September 23, 1999 says the following:

"President Clinton's Executive Order 13087 of May 1998 mandates non-discrimination on the basis of sexual orientation in Federal agencies. This provision has been incorporated into the Foreign Affairs Manual as 3 FAM 1511. Statements by Secretary Christopher

Does the Department believe that marriage (together with its accompanying benefits) constitutes invidious discrimination? Does the Department believe that Executive Order 13087 requires the Federal Government to eliminate all preferences for, or benefits to, married persons? Does the Department believe that E.O. 13087 requires a redefinition of "family"? As noted above, 22 U.S.C. §3951 (1994) provides a hiring preference for "family members of government employees assigned abroad." Is this preference "discrimination on the basis of sexual orientation!" which is unlawful under E.O. 13087?

15. AFSA says that its proposals can be implemented "at little or no budgetary cost" (State 211732-19). What is the Department's estimate of the cost of implementing AFSA's proposals?

16. It has been said that AFSA's proposals will make a difference only at overseas posts. This cannot be true inasmuch as the proposals themselves speak of "appropriate training opportunities at the National Foreign Affairs Training Center" in Virginia. If adopted, what effect would AFSA's proposals have within the United States?

17. What is the Department's estimate of the cost of implementing all of GLIFAA's proposals?

18. Under GLIFAA's proposal, benefits would be available to same-sex partners when the employee and his/her partner executed an affidavit "testifying they are of legal age, are not blood relatives, are not married to anyone else, are mentally competent, share a domicile and agree to notify the Department if they terminate their relationship" (Memorandum of Sept. 23, 1999, pp. 4-5, "Eligibility"). Under AFSA's proposal), benefits would be available "only in cases where the employee has certified that he/she and his & her domestic partner have been each other's sole domestic partner for at least six month and intend to remain so indefinitely, are at least 18 yew of age, unmarried, and mentally competent to consent to contract, and are jointly responsible for each other's common welfare and financial obligations" (State 211732-15). GLIFAA's definition says nothing about

"sexual orientation." Would the Department accept GLIFAA's definition or AFSA's definition or is there another definition that the Department prefers? Does the Department of State have any expertise in defining a relationship which is not a marriage but which involves two persons sharing living quarters who want to be treated in some aspects as if they were married?

THE WHITE HOUSE

WASHINGTON

DOMESTIC POLICY COUNCIL

FACSIMILE FOR: Ann O'Leary

DATE: _____

TELEPHONE: _____

FAX: _____

FACSIMILE FROM: MARY SMITH

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NUMBER OF PAGES (INCLUDING COVER): 5COMMENTS: PM cost estimate



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Remarks

Attached are OPM's cost estimates to implement the Barney Frank bill.

Estimated Cost to Implement H.R. 2859

Data:

We derived data from Census tables that report marital status of family householders and households with two unrelated adults. We determined the percent of households by age that contained unrelated adults. We smoothed data to reach ultimate percentages at older ages.

Assumptions:

Age	<u><35</u>	<u>35-44</u>	<u>45-64</u>	<u>65+</u>
Percent of Eligibles Making Elections	8%	6%	4%	2%
Percent Electing FEHBP *	2%	1.5%	1%	0.1%

FEHBP

We estimated the cost by four age groups for each additional member and subtracted the additional enrollee contribution resulting from a switch from self to family coverage. This produced a cost of about \$350 million per year assuming all eligibles elect, with about \$70 million over age 64. The FEHBP election rates among married family households is quite high; however, because of other health coverage and the less formal nature of the relationships, we assumed that the election rate for the remaining group under age 65 would be 25%. For age 65 and over the election rate used was less. This produced the cost estimate of \$70.0 million.

Five-Year Outlays (\$ in millions)

<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
\$70 million	\$75	\$80	\$86	\$92

More
activity
than

That
reduces
low

[400 million more in 5 years]

100 for FEHBP is one year

[70 million] very much

Cost are

CSRS/FERS

The derived percentages are used for all deaths in service and future retirees. It is assumed that no current retirees would elect because of the cost of paying back the annuity reduction.

	Five-Year Outlays (\$ in millions)				
	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Die While Employed	\$1	\$1	\$4	\$6	\$8
Die While Retired	<u>-\$5</u>	<u>-\$10</u>	<u>-\$17</u>	<u>-\$24</u>	<u>-\$32</u>
Total Outlays	-\$4	-\$9	-\$13	-\$18	-\$24

Sumner shows
in reduction in many amounts
not doing 5-DL

\$6 mil in sum
over 5 yrs

2 pen

375 mil over
5 yrs
cost

Pension Liabilities

SOURCE: OPM / RIS / Office of Actuaries

October 1999

	<u>Unfunded Liability</u>	<u>30 Year Amortation</u>
<u>Total Dynamic Costs</u>		
Extend benefit to employees only	\$360 Million	\$29 Million
Extend benefit to future Annuitants	\$440 Million	\$35 Million
<u>CSRS Dynamic Costs</u>		
Extend benefit to employees only	\$175 Million	\$14 Million *
Extend benefit to future Annuitants	\$350 Million	\$28 Million
<u>FERS Dynamic Costs</u>		
Extend benefit to employees only	\$185 Million	\$15 Million
Extend benefit to future Annuitants	\$90 Million	\$7 Million
<u>CSRS Static Costs</u>		
Extend benefit to employees only	\$110 Million	\$7 Million
Extend benefit to future Annuitants	\$45 Million	\$3 Million

FERS Normal Cost = .02

Since normal cost is rounded to nearest tenth of a percent, it is likely that this will have no impact on normal costs.

* - CSRS is funded on static basis. Therefore, these dynamic numbers do not apply.



**HUMAN
RIGHTS
CAMPAIGN**

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WorkNet

How to Achieve Domestic Partner Benefits in Your Workplace

I. Introduction

Fringe benefits such as health and life insurance, a pension or profit-sharing have long been a way for employers to compensate their workers, and for one company to obtain a competitive edge over another. While most employers that offer benefits such as health insurance and dental care also make those benefits available to their employees' spouses and legal dependents, the idea of extending such benefits to the domestic partners of unmarried employees, including lesbian and gay employees, is a newer concept. In 1982, the Village Voice, a New York City weekly, became the first employer to offer domestic partner benefits to its lesbian and gay employees. By 1990, there were fewer than two dozen U.S. employers that offered "spousal equivalent" benefits to their gay employees' partners. In 1992, Lotus Development Corp. became the first publicly traded company to offer such benefits.

Today, the number of colleges, governments and private corporations that offer domestic partner, or DP, benefits that the Human Rights Campaign has documented stands at more than 2,500. A 1997 survey by KPMG Peat Marwick found that 13 percent of U.S. employers extended health care benefits to domestic partners. In growing numbers, both public and private employers across the country have recognized DP benefits as an inexpensive way to address the changing needs of employees and promote fairness and equality in the workplace.

The keys to securing domestic partner benefits in your workplace are to present a business case for why these benefits are a good thing, anticipate potential questions and have patience. Some companies will jump at the opportunity to satisfy the needs of employees with domestic partners, while others may take longer to consider implementation. Several complex insurance, tax and legal issues may need to be worked out. Positioning yourself and your allies as a resource to the company while it considers the benefits will improve your chances for success and avoid the possibility of creating an adversarial situation with management.

Domestic partner benefits can include medical and dental insurance, disability and life insurance, pension benefits, family and bereavement leave, education and tuition assistance, credit union membership, relocation and travel expenses and inclusion of partners in company events. For the purpose of this tool, we will look specifically at steps you can take to convince your company to offer domestic partner health insurance coverage. Also, while this tool is written for advocates in private corporations, many of the arguments are directly transferable to secure DP benefits in the public sector and in colleges and universities.

II. Steps to Consider

- First, does your employer have a non-discrimination statement that includes sexual orientation? This is an important first step that should come before any effort to organize a domestic partner benefits proposal. The non-discrimination policy will be valuable in lobbying your employer for DP benefits. DP benefits are a logical extension of an employer's commitment to provide a workplace free of sexual orientation discrimination. Also, a guarantee of fair treatment is essential if employees are expected to reveal their relationships in order to secure health coverage for their domestic partner.

- Understand your company's decision-making process and structure. How is diversity integrated into the company? Are there corporate mission, vision and/or value statements that contain specific language that might support your cause? Does your company have a GLBT employee group? GLBT employee groups provide an excellent source of information and contacts with other employees who may be in a similar situation. If your company does not have a GLBT employee group, you may consider starting one to raise the profile of your cause and seek out allies. To take a look at our "how to" tool on starting an employee group, visit our website at www.hrc.org/worknet. And if your company is unionized, explore the role of unions in negotiating equal benefits.

- Identify your allies and adversaries. Which employees want or need these benefits? Who else supports your request? Who in management will be supportive? Who will not? Who will need to sign off of the new policy? Who can you leverage to influence the decision-making process? It is important to build relationships with the key decision makers in the highest positions of your company to gain support for your request.

- Identify your company's competitors that already offer DP benefits. Competitors may be in the same industry or in the same geographic area as your employer. Also, your employer no doubt has outside suppliers and contractors. Identify which of them already offer these benefits. To view HRC's list of employers with DP benefits visit our website at www.hrc.org/worknet.

- Talk to your supervisor about what you are trying to accomplish. Make sure he or she understands what you are doing and why it is so important to you.

- Research the topic thoroughly and write a proposal. It should include:

- A definition or list of the benefits you are seeking. Find out from your human resources department what kinds of benefits your employer already extends to the legal spouses of employees and seek to match those.

- A justification for implementation in your company. Include personal stories from employees who will be affected by the new policy.

- A proposed definition of a domestic partner.

- An analysis of the projected cost to employees and your employer.

- A plan to implement and administer the benefits. Cover issues of confidentiality, tax and insurance implications and fraud.

- Information on what your company's competitors and suppliers have done in this area. To view HRC's list of employers with DP benefits visit our website at

www.hrc.org/worknet.

- A detailed plan for explaining the policy to employees.
- A detailed plan for revealing the policy to outside individuals, if desired.
- A plan to deal with publicity, both positive and negative.
- Sample policies already in place at your employer's competitors.

For copies of sample proposals and policies contact Daryl Herrschaft at daryl.herrschaft@hrc.org or (202) 216-1552.

- Follow up. Make sure your proposal has been reviewed by the appropriate decision makers, i.e., people with the authority to change or implement company policy. Offer to answer additional questions and position yourself as a resource in the process.
- If and when you succeed, report your results to the Human Rights Campaign. Contact Daryl Herrschaft at daryl.herrschaft@hrc.org or (202) 216-1552.

III. Background Information to Use in Crafting a Solid, Business Case for DP Benefits

A DP BENEFITS PLAN IS FAIRNESS IN ACTION

Under federal law, most companies prohibit employment discrimination based on non-job-related factors such as race, sex, religion and marital status. No federal law offers similar protections to employees based on their sexual orientation or gender identity – either real or perceived.

So before you attempt to secure domestic partner benefits, it is helpful to ensure that your company's non-discrimination policy also prohibits discrimination on the basis of sexual orientation. Without a pledge from your company that it will not discriminate based on sexual orientation, some employees may reasonably fear taking advantage of domestic partner benefits. Further, an inclusive non-discrimination statement is a key facet of the rationale for extending domestic partner benefits. Establishing a benefits policy that includes your company's gay and lesbian employees is a logical outgrowth of your company's own non-discrimination policy. By not making employee benefits available on equal terms, regardless of marital status or sexual orientation, a company that otherwise purports to be fair is violating its own non-discrimination policy. To take a look at our "how to" tool for securing an inclusive non-discrimination policy, visit our website at www.hrc.org/worknet.

EQUAL PAY FOR EQUAL WORK

- ✦ Domestic partner benefits are a giant step toward equal pay for equal work. Benefits comprise nearly 40 percent of overall compensation. Many longstanding benefits are based on the institution of marriage, and thus exclude gay and lesbian workers since no state recognizes same-sex marriages. This means that without domestic partner benefits, a significant portion of overall compensation is unattainable for gay and lesbian workers. The same is true for unmarried heterosexual couples who choose not to marry.

Danny
Herrschmidt

THE CHANGING FAMILY

Old benefits models that rely on marriage to determine who is eligible for coverage ignore dramatic changes in the American family in recent years. In 1970, the percentage of households fitting the "traditional" definition of the family – a husband and wife living with their children -- was 40 percent, according to the U.S. Census Bureau. By 1998, only 25 percent of the nation's 102 million households fit that definition. Meanwhile, the number of Americans living in unmarried partner households is large and growing more rapidly than the number living in married households. From 1994 to 1998, the number of married couple households in the United States increased by just 2 percent, while the number of unmarried partner households increased 11 percent. In 1998, there were 5.9 million people in the United States living with a domestic partner. Of these, approximately 28 percent, or 1.7 million people, were in same-sex relationships.

U.S.
Census
Bureau
Estimate
Unmarried
Partner
Households
1994-
1998

Domestic partner benefits offer an easy method for employers to adapt to the changing needs of their employees by simply expanding the eligibility for existing benefits programs. If one purpose of a benefits program is to provide a safety net for employees and their families, thereby enabling employees to focus better on work, a plan that does not include domestic partner benefits ignores a growing portion of the workforce.

DP BENEFITS ARE GOOD FOR BUSINESS

A domestic partner benefits program will also improve employees' productivity by alleviating personal stress that may keep them from focusing fully on work. At least one workplace advocate has employed a simple formula to measure the dollar amount of increased productivity created by a fair and inclusive work environment for GLBT workers. The formula conservatively assumes the number of GLBT employees in any workplace to be 5 percent and the amount of productivity associated with a safe and equitable workplace to be 10 percent. Using these figures, you can illustrate how much money a company might lose by not providing a safe and equitable workplace. (For example: A company with a workforce of 1,000 employees would have 50 GLBT employees $[1,000 \times 0.05 = 50]$. If the average salary is \$40,000, the average loss in productivity per GLBT worker per year is \$4,000 $[\$40,000 \times 0.10 = \$4,000]$. Thus, the total annual loss to the company in productivity would be \$200,000 $[50 \times \$4,000 = \$200,000]$.)

Also, domestic partner benefits can have a positive impact on hiring and retention. With national unemployment running near 4 percent through the 1990s -- its lowest level in decades -- competitive benefits packages have become key in attracting the best employees. Not only do DP benefits provide an inexpensive enhancement to the overall compensation package, they are one of the hallmarks of a progressive company that values diversity. Plus, domestic partner benefits can improve a company's employee retention rate. Any CEO can tell you, turnover is bad for business. Some studies have put the cost of recruiting a new employee as high as \$75,000. Costs include advertising, interviewing, training, testing, relocation expenses, lost productivity and recruitment incentives.

IV. Framework of Domestic Partner Benefits

AFFIDAVIT

Although they do not do this for married employees, many employers that provide domestic partner benefits require the employee and his or her domestic partner to sign an "affidavit of domestic partnership" to obtain coverage. Companies are free to structure the affidavit as they choose but many require that domestic partners must be able to demonstrate they:

- ☒ Have lived together for a specified period (generally, at least six months) ☒
- ☒ Are responsible for each other's financial welfare ✓
- ☒ Are not blood relatives
- ☒ Are at least 18 years of age
- ☒ Are mentally competent
- ☒ Are ☒ life partners and would get legally married should the option become available
- ☒ Are registered as domestic partners if there is a local domestic partner registry [For a list of jurisdictions with domestic partner registries, visit our website at www.hrc.org/worknet.]
- ☒ Are not legally married to anyone
- ☒ Agree to inform the company in the event that the domestic partnership terminates.

In addition to the affidavit, a company may require proof of financial interdependence or common residence. For example, an employer might stipulate that the employee present proof of a joint checking account, mortgage or rent agreements, utility bills or drivers' licenses. Some employers require that the domestic partner sign a "termination of domestic partnership" form if the partnership ends.

The Human Rights Campaign strongly recommends that employers keep such documentation of domestic partnerships to a minimum and that ideally, they apply the same requirements to domestic partners that they apply to legally married spouses. Seldom if ever do employers ask to see a marriage certificate. Also, employers should ensure that the process for registering for DP benefits is kept strictly confidential to respect employees who may not wish to publicly disclose their relationships.

Employees who sign the affidavit should be aware that doing so might have legal consequences. In the event that the employee violates any portion of the affidavit, he or she may be required repay the company for the cost of benefits received. However, to date there is no evidence of fraud on the part of employees.

Material presented here should be viewed as a general overview of legal issues and not be construed as legal advice. As always, it is important to consult with professional advisers to ensure that your domestic partner policy suits your specific needs.

TAX IMPLICATIONS

The Internal Revenue Service has ruled that ☒ domestic partners can not be considered spouses for tax purposes ☒ Thus, employers are obligated to report and withhold taxes on the fair market value of the domestic partner coverage. This is not true for health insurance coverage for legal spouses, which is not taxable income to the employee. The fair market value of the domestic partner coverage is usually the amount the employer contributes to a health plan to cover the domestic

partner, over and above the amount contributed for single and/or dependent coverage. Domestic partner benefits may be considered non-taxable only if the domestic partner meets the IRS definition of a "dependent." Internal Revenue Code (IRC) Section 152 defines a dependent as someone who resides in the employee's household and who receives at least half of their support from the employee.

In recent years, some employers have begun to allow their employees to make pre-tax contributions to so-called "flexible spending accounts." The money contributed to these accounts -- known officially as IRC Section 125 cafeteria plans -- can go to medical expenses not covered by health insurance, such as prescription eyeglasses, medicines, psychological counseling and the like. In addition, employees covered by such cafeteria plans are allowed to use pre-tax dollars to pay their health insurance premiums. But unless the domestic partner qualifies as a dependent under the IRS definition, premiums for domestic partner coverage cannot be offered on a pre-tax basis. And unless a domestic partner qualifies as a dependent, his or her out-of-pocket medical expenses cannot be paid out of a flexible spending account. Reimbursements received under the health plan for medical care to the domestic partner are not taxable.

A small number of employers have chosen to offset this unfair taxation by paying the difference. (This process is called "grossing up," in employee benefits jargon.) As always, it is important to consult with tax professionals when crafting a benefits package.

COBRA

The Consolidated Omnibus Budget Reconciliation Act of 1995 (COBRA) requires most employers to offer employees the opportunity to pay for continued health coverage on their own in the event that their coverage ends due to events such as divorce or termination. COBRA does not, however, require an employer to extend those rights to domestic partners. Nevertheless, employers may decide to extend COBRA rights to domestic partners with the approval of their insurance carrier or HMO.

INSURANCE

When domestic partner benefits were first offered, the few insurance carriers that wrote such policies usually added a charge to cover any unexpected cost increase. Today, many insurance companies will cover domestic partners and most of those have stopped adding a surcharge. In cases where this still happens, the surcharge is often reduced or eliminated after the cost of the additional coverage is shown to be minimal.

For companies that are self-insured, adding domestic partner benefits is a relatively simple process since it does not require state regulatory approval. Companies that offer insurance through an outside insurance carrier usually need to negotiate the specifics of the additional coverage with their insurer and get their plan approved by state insurance regulators. Some employers have had difficulty negotiating the coverage with their insurer. Further, if an agreement is reached with an insurer, some state insurance commissioners have refused to approve plans that include domestic partner coverage. Health maintenance organizations, or HMOs, are not under the auspices of insurance regulating agencies and may choose on their own whether or not to write policies to cover these benefits.

Companies that have experienced difficulty in finding an insurance carrier that will cover domestic partners in a given state may be able to secure coverage through a carrier in another state. Or, if an insurance provider cannot be located, employers may ask the domestic partner or employee to purchase the additional insurance and accept reimbursement for a portion of the premium cost.

For a list of insurance carriers that will write policies for domestic partners sorted by state, visit our website at www.hrc.org/worknet.

OTHER LEGAL CONSIDERATIONS

An employer should consider several other legal issues surrounding domestic partner benefits. First, if your company does business with the city or county of San Francisco, it may be obligated to offer domestic partner benefits to all unmarried employees. That city's Equal Benefits Ordinance requires that companies with city contracts extend domestic partner benefits to their employees who reside in San Francisco or who work on contracts for the city. For more information on the San Francisco Equal Benefits Ordinance, contact the San Francisco Human Rights Commission at (415) 252-2500.

In some cases, choosing not to extend domestic partner benefits may expose employers to potential lawsuits. State laws that ban discrimination on the basis of sexual orientation and marital status have been used to argue that employers are required to offer domestic partner benefits. These claims have been largely unsuccessful due to the rationale that unmarried heterosexual couples are also typically excluded. A 1998 Oregon Appeals Court ruling in *Tanner vs. Oregon Health Sciences University* that applies only to government employees, however, held that municipalities were in violation of the state constitution by not offering the benefits. The full ramifications of that decision for municipalities in Oregon have yet to be determined.

Lastly, some have taken issue with domestic partner benefits plans that cover only same-sex couples. Most complaints of this type have been in the public sector and have not reached the courtroom. For instance, the California State Labor Commission found that the city of Oakland's same-sex only policy violated the state's prohibition of sexual orientation discrimination. Similar disputes arose in Santa Barbara, Calif., and Milwaukee, where state law prohibits discrimination on the basis of sexual orientation. As of June 1999, only one private company has faced a lawsuit over its same-sex-only policy. In this case, a federal judge upheld Bell Atlantic's policy, ruling that companies may exclude the opposite-sex unmarried partners of their employees from company benefit plans, without violating federal law banning sex discrimination.

V. Common Arguments Against Domestic Partner Benefits

COST

One common argument employers have raised against extending domestic partner benefits has been cost. In fact, nearly two decades of employer experience in offering domestic partner health benefits have proven that the overall cost is quite low. Numerous empirical studies, as well as the testimonials of human resource professionals who have implemented domestic partner benefits

programs, have shown this to be the case. In February 1999, Sally Fox, Seattle's benefits and safety director, told The Associated Press, "After nine years of doing this, I'm here to tell you it's one of the best things we did. Our health costs increased in proportion to the people we were covering, but their costs were the same as everyone else's." Because enrollment in domestic partnership programs is generally low, Seattle's overall health insurance costs increased between 2 percent and 3 percent. This experience is repeated time and again at major corporations and governments across the United States.

To estimate the overall health insurance cost increase for extending benefits to domestic partners, two questions must be answered. How many employees will enroll a domestic partner for coverage? And, what will be the cost of treating a domestic partner?

Several studies have shown that enrollment rates tend to be in the 1 percent to 2 percent range. Employers that offer benefits to opposite-sex couples as well will experience enrollment rates at the higher end of this range. A 1995 survey of employers by the International Society of Certified Employee Benefits Specialists found that 75 percent of companies with domestic partner policies reported an enrollment rate of 2 percent or less. Similarly, several other studies have shown low enrollment rates:

- * A 1993 Segal Co. report found that typically less than 2 percent of eligible employees enrolled.

- * A 1996 Towers Perrin report found that less than 1 percent of eligible employees have enrolled their partners, and medical claims rose by less than 1 percent after domestic partner coverage was introduced.

- * A 1997 Hewitt Associates study stated: "The impact on these companies' costs has been minimal, with the addition of domestic partners, regardless of whether coverage is extended to same-sex or opposite-sex domestic partners."

Table 1 shows the enrollment experience of several companies that offer domestic partner benefits.

Table 1. Domestic Partner Coverage Enrollment Rates		
Employer	Eligibility	Pct. of Workforce Enrolled
ABC Inc.	Same-sex partners	less than 1
Adolph Coors	All employees	less than 1
Apple Computer	Same-sex partners	0.7
Levi Strauss	All employees	0.8
Lotus Development	Same-sex partners	0.5
Silicon Graphics	Same-sex partners	0.4

Source: Domestic Partner Benefits: "A Trend Toward Fairness," National Lesbian and Gay Journalists Association, Washington, D.C., 1997.

Several factors keep enrollment rates low. First, same-sex domestic partners probably tend to be employed themselves and thus may already have coverage through their jobs. Second, the significant tax disincentives discussed above make domestic partner benefits less attractive. Last, privacy concerns and the lack of comprehensive laws protecting gays and lesbians from employment discrimination may prevent some couples from disclosing their status.

Low enrollment rates should not be considered a justification for failing to offer the benefits. Employers should look at overall use of a large menu of narrowly targeted services to ensure adequate coverage of employee needs.

The second component of overall cost is expenses incurred for coverage of the domestic partner. Numerous studies have shown that the cost of covering a domestic partner is equivalent to that of covering a spouse. In fact, the September 1997 issue of *Risk Management* reported that many companies found that covering a domestic partner is typically less expensive than covering a spouse. Andrew Sherman of the Segal Co., a benefits consulting company, told *Corporate Cashflow* in August 1994 that gay couples may cost less because they tend to be younger and usually don't have children. The U.S. Census Bureau's Current Population Survey found that 65 percent of same-sex unmarried partners were under age 35, as were 60 percent of opposite-sex unmarried partners.

Also, early anxiety that a disproportionate number of HIV- and AIDS-related claims would inflate domestic partner costs have proved unfounded. "A lot of people with HIV stick with their insurer," says Cynthia Goldstein, contract compliance officer for the San Francisco Human Rights Commission, who works closely with companies considering implementing DP benefits. "And the actual claims experience of someone with HIV is not any higher than other major health problems." The cost of treating an individual with HIV was calculated in 1993 to be \$119,000. While the cost of improved drug therapies has risen two- or threefold since 1996, the cost of hospitalization declined by an amount that offset much of the increase in drug costs. These average lifetime costs are in line with costs for a organ transplants and cancer. Further, same-sex couples may be less likely to incur one of the largest medical expenses, namely, childbirth. The cost of caring for a premature infant can run as high as \$1 million.

In no way is the low cost of covering domestic partners more evident than by the simple fact that insurance carriers by and large have dropped surcharges for covering domestic partners. When Stanford University began covering domestic partners in 1993, its insurance carrier's initial response was to charge an additional amount, or "rate load," based on assumed added risk of covering domestic partners. Stanford challenged the carrier and all loading was dropped. Most insurance companies now charge the same rate for domestic partners as they do for legal spouses.

Most organizations that cover domestic partners are confident that the risk of incurring additional catastrophic cost is minimal. The number of employees who actually enroll in the benefits plan remains low and the overall increase in health insurance costs as a result of extending domestic partner benefits is usually very low. According to a 1997 study by the National Lesbian and Gay

Journalists Association, covering same-sex couples raised overall health insurance costs by less than 0.5 percent, while covering both same-sex and opposite-sex couples increased costs by 1 percent to 3 percent. A 1997 survey by the Society for Human Resource Management found that 85 percent of respondents reported no increase in their health care costs as a result of offering domestic partner benefits.

Finally, the savings from domestic partner benefits have not been fully quantified. To date, no studies measured the added dollar value of DP benefits in attracting and keeping good employees, adding to staff diversity and satisfaction and increasing productivity by providing a safety net to employees with an uninsured partner at home.

FRAUD

Another reason sometimes cited for not offering DP benefits is the fear that employees will misrepresent their relationship to obtain benefits for individuals who are not their domestic partners. However, there is a significant disincentive to such lies. Many employers require the employee to sign a legally binding statement attesting to the existence of the partnership. That affidavit can be used to exact repayment from any employee who fraudulently receives domestic partner benefits.

Also, there is no reason to assume that domestic partners are any more likely to falsify a partnership than married couples. Married couples are not usually required to provide any proof of marriage, unlike domestic partner who may be required to show shared bills, a rental agreement or a joint checking account.

Further, individuals in same-sex partnerships may be reluctant to identify themselves to their employers as gay. In the absence of a comprehensive federal law protecting employees from discrimination on the basis of sexual orientation, such a disclosure may bring discrimination. This means that it is unlikely that an employee would claim a relationship falsely. Lastly, in the almost two decades since domestic partner benefits were first offered, there have been no cases of domestic partner fraud reported.

BACKLASH

Some companies have refused to implement DP benefits for fear of adverse publicity that could lead to a loss of customers. Such employers are primarily concerned about religious conservatives who may believe that homosexuality is a sin and view domestic partner benefits as an endorsement of gay relationships or as a "special right." In fact, the vast majority of companies that implement DP benefits do so entirely outside of public view. For those that do garner outside attention, experience has shown that it is far more likely that media coverage will be positive. Companies such as IBM, Wells Fargo, Eastman Kodak, BankAmerica, Xerox and Coors Brewing Co. have all received positive publicity from their domestic partner benefits plan.

Some fear of public backlash no doubt derives from the well-publicized boycott of the Walt Disney Co. by the Southern Baptist Convention. In 1996, the Southern Baptist Convention, with 15.7 million members, voted to boycott Disney because of its gay-friendly policies. The results? Disney posted record earnings that year. Heterosexual consumers very rarely make purchasing

decisions based on a company's gay employment policies, and if they do, such reaction will probably be short-lived. Also, there is probably just as much potential for gaining consumers who agree with a decision to implement DP benefits.

Companies can manage public backlash by anticipating an attack and being prepared with responses. First and foremost, the employment policies of a corporation are not designed to change personal values, they are designed to foster an atmosphere of fairness and professional respect at work. As stated above, domestic partner benefits are equal pay for equal work, a tool for attracting and keeping the best employees and a means of improving employee productivity.

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ENDNOTES

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