

THREE YEAR REPORT
ON
THE SAN FRANCISCO
EQUAL BENEFITS ORDINANCE

SAN FRANCISCO
HUMAN RIGHTS COMMISSION



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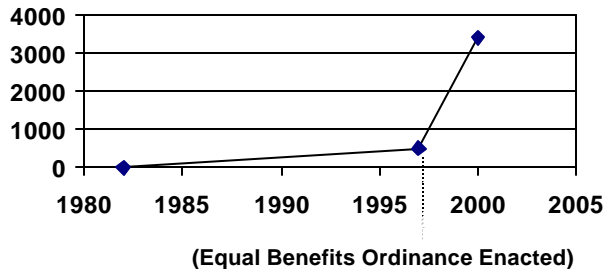
EXECUTIVE SUMMARY

On June 1, 1997, revisions to San Francisco Administrative Code chapters governing nondiscrimination in City contracts took effect, creating the first program of its kind in the United States designed to end discrimination in employee benefits for employees with domestic partners. Referred to as the Equal Benefits Ordinance, the law has played a significant role in the dramatic increase in the number of employers across the country offering domestic partner benefits. It also has helped to firmly plant domestic partner benefits on the employee compensation landscape.

Significant Developments

The number of employers offering domestic partner benefits is rising rapidly. In 1982, The Village Voice newspaper became the first employer in the U.S. to offer domestic partner benefits. Fifteen years later, when the Equal Benefits Ordinance took effect, approximately 500 companies nationwide had implemented such plans. Today, nearly 20% of Fortune 500 companies offer domestic partner health benefits and the Human Rights Commission has helped nearly 2,800 City Contractors to do so as well. A recent report issued by the Human Rights Campaign¹ counted 3,402 companies offering domestic partner benefits across the country. The report attributed 76% of that total to companies complying with the San Francisco Equal Benefit Ordinance.

**U.S. Employers Offering Domestic Partner Benefits
1982-2000**



Other cities are taking our lead. In the past year, the Cities of Los Angeles and Seattle have enacted Equal Benefits measures that are largely similar to San Francisco's law. The Los Angeles law became effective on January 1, 2000 and unlike San Francisco or Seattle, it extends its reach to include subcontractors. The Seattle ordinance has an effective date of September 30, 2000 and applies to a slightly smaller pool of contracts than the other laws in that it excludes contracts estimated to cost less than \$33,000.

The Human Rights Commission has had the opportunity to advise both jurisdictions as they design and begin to implement their programs. The Commission has shared both its

¹ The Human Rights Campaign is a national lesbian and gay political organization based in Washington, D.C.

experience addressing the multitude of decisions and circumstances presented by the legislation, as well as the educational materials, Rules of Procedure and forms developed for San Francisco's use.

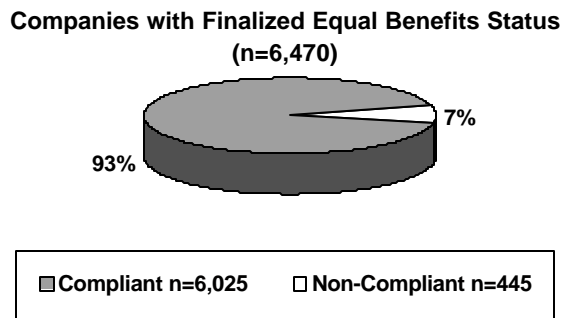
Despite fifteen months of opportunity, only 58 companies have chosen to limit their compliance. In April 1998, a U.S. District Court ruling² changed the scope of the Ordinance by allowing companies to limit their compliance geographically and allowing some companies to limit what benefits they offered in a nondiscriminatory manner. Since this ruling, only 58 companies have elected to comply on a limited basis and continue discriminating in certain locales or with respect to certain benefits. This represents less than 1% of the total number of companies complying with the Ordinance.

Major airlines are now in compliance. Since the July 1999 Court decisions requiring compliance from airlines leasing space at San Francisco International Airport, the Commission has been working to move the first set of plaintiffs, a collection of the nation's largest airlines, into compliance. Because the Airport's new international terminal is slated to open in September 2000, lease and permit agreements with the airlines occupying space in that terminal must be renegotiated. To date, nineteen airlines comply, including 17 of the 22 carriers slated to occupy the new terminal. This includes United Airlines, the largest airline in the world.

Compliance Update

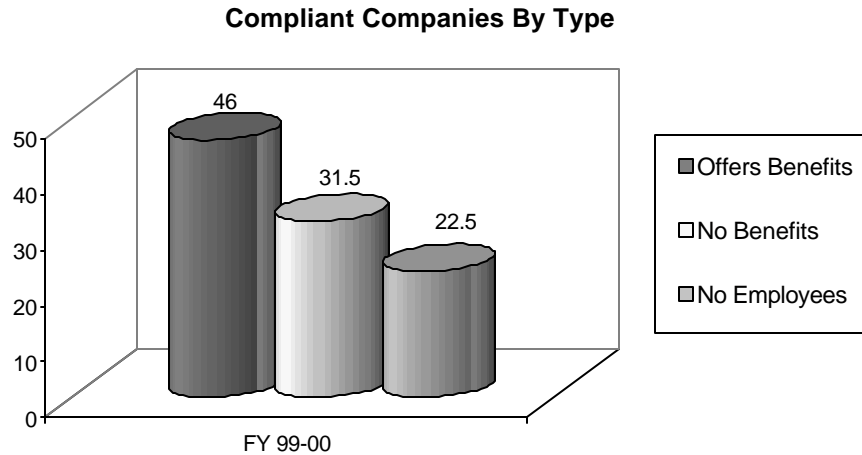
The following is an update of the compliance statistics reported for the past year of implementation (Fiscal Year 1999-2000).

Companies complying. Of the 6,470 compliance declarations that have been fully reviewed, 93% comply with the requirements of the Equal Benefits Ordinance. The percentage of complying companies compared to those fully reviewed has improved slightly (+2%) since the first report on the Ordinance was issued in January 1998, and has remained constant over the past year.



² Air Transport Association, et.al., v. City and County of San Francisco, et.al., 992 F.Supp.1149 (N.D. Cal. 1998).

Compliance by type. City contractors may comply with the Ordinance in one of three ways: (1) offer employee benefits that don't discriminate between spouses and domestic partners; (2) offer no employee benefits that extend to spouses or domestic partners (or to employees because they have a spouse or domestic partner); or (3) by having no



employees. To date, out of all complying companies, 46% comply by offering nondiscriminatory benefits, 31.5% comply by offering no employee benefits, and 22.5% comply because they have no employees.

Employees covered. City contractors offering domestic partner benefits employ a nationwide pool of approximately 1,290,000 people, an increase of almost 300,000 people in the past year. With actuarial statistics showing an enrollment rate in private sector domestic partner medical benefits averaging three percent, that means there are approximately 38,700 people now covered by employer-sponsored medical insurance plans as a result of the Equal Benefits Ordinance, including approximately 8,700 new domestic partners added in the past year.

Geography. Complying companies are found in at least 44 states and in almost 800 cities across the country. Approximately eighty-seven percent are located in California and 41% in San Francisco. Similarly, there has been an increase in the number of governmental domestic partner registries. At least a dozen new registries have been created in the past year, raising the total number to 56 registries in 20 states.

I. Introduction

When looking at the growing national trend toward offering employees domestic partner benefits, it is helpful to consider the reasons why companies might decide to do so. Besides seeking City contracting opportunities, for some companies it is a matter of fairness. A 1992 U.S. Census Bureau study estimated that 37-40% of all employee compensation comes in the form of benefits. Census Bureau information also indicates that the number of unmarried-couple households increased from 1.6 million in 1980 to 4.2 million in 1998.³ Recognizing the changing composition of the workforce, some employers realize that to truly provide equal pay for equal work they must equalize the value of benefits offered to employees. Offering benefits for domestic partners takes a giant step in this direction.

Employers, competing for employees in today's tight job market, recognize that domestic partner benefits can be a useful recruitment tool. A study conducted in 1999 by the Society for Human Resource Management found that offering domestic partner benefits was *the most effective* incentive for recruiting executives and the third most effective recruitment tool when hiring managers and line workers. This study supports what many companies have come to realize: one way to attract and retain talented employees is to offer them a competitive benefits package. They also realize that employee retention lowers turnover and recruitment costs, and helps improve employee job satisfaction and performance. Even employees that may not seek to take advantage of domestic partner benefits often look for the inclusion of such benefits as a sign that an employer is committed to providing the most comprehensive and competitive benefits package.

Companies also understand that the U.S. workforce is increasingly diverse and that employees come from a wide variety of family structures. Many employees place a high value on their employer's commitment to diversity and will look for that commitment when choosing where to work. The inclusion of domestic partner benefits in an employer's benefits package demonstrates a commitment to diversity and sends a message to all employees that their unique qualities and individual circumstances are appreciated.

While corporations sometimes fear that offering domestic partner benefits may negatively impact their bottom line, this fear has not been the proven reality. To the contrary, not only do actuarial data dispel those fears, companies now are recognizing the potential of marketing to the lesbian gay bisexual transgender (LGBT) community. Many LGBT consumers, in turn, will look to corporate policies when deciding where to spend their dollars. Companies demonstrating a commitment to their LGBT employees (by offering domestic partner benefits and including sexual orientation and gender identity in anti-discrimination policies) will likely be favored by LGBT consumers.

³ This figure is incomplete in that it does not include same-sex couples.

II. Compliance Update

A. Compliance Statistics

As of June 30, 2000, 9,065 contractors have submitted compliance paperwork to the Commission. Of those, the status of 6,470 has been finalized⁴ and 6,025 (93.1%) have been placed into compliance (having ended any existing discrimination in the provision of benefits). Only 445 (6.9%) have been found to be out of compliance. Of the complying contractors, 2788 (46.3%) offer nondiscriminatory benefits to their employees, 1889 (31.3%) do not offer any benefits to their employees,⁵ and 1348 (22.4%) do not have any employees.

These statistics reflect companies complying throughout their U.S. operations that have ended discrimination in the full array of benefits offered. Compliance information for companies that have limited their compliance geographically or have limited the benefits offered in a nondiscriminatory manner (as allowed by an April 1998 District Court ruling⁶) is captured separately. In the fifteen months since that ruling changed compliance requirements, only 58 companies have elected to comply on a limited basis and continue discriminating in certain locales or with respect to certain benefits. This represents less than 1% of the total number of companies complying with the Ordinance. Forty of these companies have limited only the geographic reach of their compliance; one has limited just the benefits offered and seventeen have limited both.

B. Covered Employees

Contractors offering nondiscriminatory benefits employ approximately 1,290,000 individuals nationwide, reflecting an increase in one year of nearly 300,000 people. With actuarial statistics indicating an enrollment rate in domestic partner medical benefits offered to both same and opposite sex couples averaging 3% in the private sector, this means that nearly 38,700 domestic partners have taken advantage of this benefit through the programs offered by City contractors. This is an increase of approximately 8,700 insured people in the past year alone.⁷

⁴ Of the 2,595 contractors whose status is still pending (which reflects 28.63% of the Declarations received to date), the vast majority (2,538) are pending *because the contractor has not yet responded to the Commission's request for more information*. With new Declarations received each week, some pending contractors will exist at any given time. This means that the overall percentage of pending contractors has *decreased* over 2.5% in the past year, despite the fact that an additional 1060 declarations have been filed.

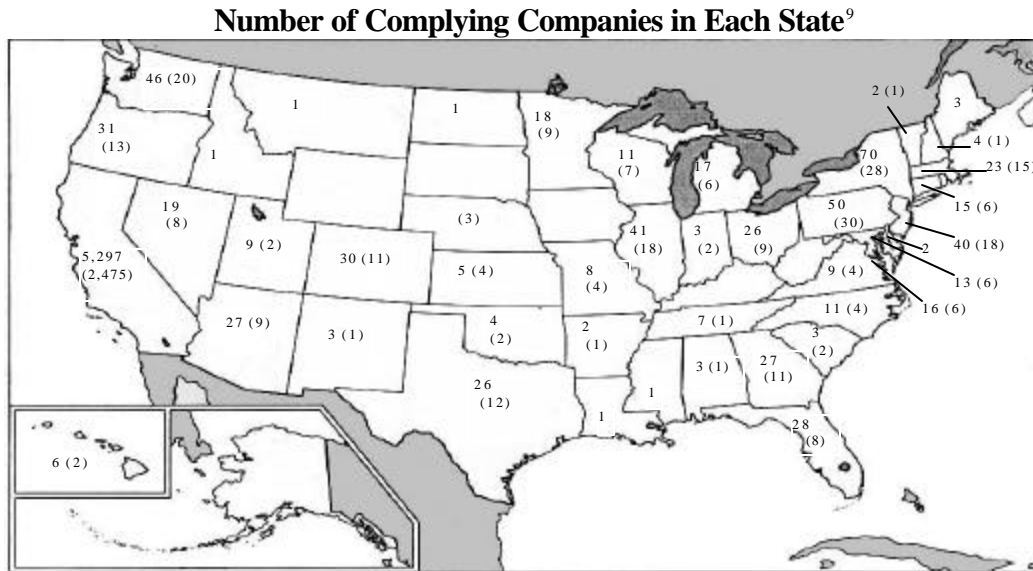
⁵ The majority of these contractors have fewer than twenty employees in their workforce.

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

⁷ Use of non-insurance benefits, such as bereavement leave, family medical leave, company discounts (including flight discounts used by airline employees) and others, is not reflected in this figure.

C. Geography

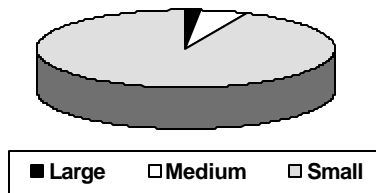
Complying companies may be found in at least 44 states and the District of Columbia, and in almost 800 cities across the country.⁸ Approximately eighty-seven percent are located in California and 41% in San Francisco. Companies offering nondiscriminatory benefits can be found in at least 37 states and the District of Columbia.



D. Company Size

Forty-one large companies (5,000 or more employees), 135 medium sized companies (500 to 4,999 employees) and 2,440 small companies (under 500 employees) comply by offering nondiscriminatory benefits.¹⁰

Compliant Companies By Size



⁸ Many compliant companies have multiple locations not reflected here. The numbers and locations reported reflect the mailing address information given by companies to the City and do not include branch offices where equal benefits also are provided.

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

¹⁰ An employee count currently is not available for all companies. A list of the twenty largest complying companies that offer benefits is attached as Appendix A to this report.

E. Insurance Industry Response

The Ordinance continues to have a positive impact on the availability of domestic partner insurance across the country. In 1997, when the Ordinance first went into effect, the Commission was able to identify only 14 insurance providers willing to offer domestic partner coverage to their customers. Currently, the Commission's count is close to 150 companies offering insurance products inclusive of domestic partners.¹¹ In addition to an increase in the number of providers, the Commission has seen an increase in the number of states in which these providers will issue policies inclusive of domestic partners. These providers also are more willing to write policies for smaller employers. While this growth has dramatically improved the ease with which companies may offer domestic partner insurance benefits, more growth is needed in this area. There remain areas of the country where employers have difficulty finding insurance products inclusive of domestic partners. This is especially true for smaller employers, who don't have the buying power of their larger counterparts.

F. Union Response

Because many employees receive benefits through their collective bargaining agreements or through union trust funds, contractors and the Commission have tried to persuade unions to include domestic partner benefits in their agreements. To date, at least 40 unions have changed their policies to include domestic partner coverage. This includes several national unions affiliated with the automobile manufacturing industry and the airline industry.

G. Waivers and Exceptions

Unfortunately, there are some instances when the City has no choice but to contract with a company that refuses to end its discriminatory behavior. To allow the City to continue to conduct needed business where there are no contractors willing to comply, the Ordinance includes the opportunity for City departments to request that waivers be applied in certain circumstances. Use of the majority of these waivers is contingent upon an effort to get the prospective contractor to comply and on the Human Rights Commission's review and approval.

Waivers are permissible where:

- there is only one source for a needed good or service or only one party with an interest in real property;
- there is an emergency that threatens public health or safety;

¹¹ In addition to medical insurance (covering health, dental and vision care) insurance products available to domestic partners also include dependent life insurance, accidental death and disability insurance products.

- a public entity offers the City needed goods or services of a quality or accessibility that is unavailable from another source;
- there are multiple sources for a needed good, service or interest in real property but none is willing to comply;
- a transaction entered into through a bulk purchasing arrangement established by a governmental or regional entity would actually reduce the City's purchasing costs and would be in the City's best interest;
- it is necessary to avoid conducting business with an entity that was set up or is being used for the purpose of evading the intent of the Ordinance.

Since the Ordinance became effective, the total number of waivers used each year has remained fairly steady. In the third year of implementation, City departments requested a total of 1,389 waivers, 1,371 of which were approved.

Sole Source
 282 approved
 14 denied
 2 withdrawn

Public Entity
 40 approved

Sham/Shell Entity
 0 approved

Blanket Sole Source
 956 approved¹²

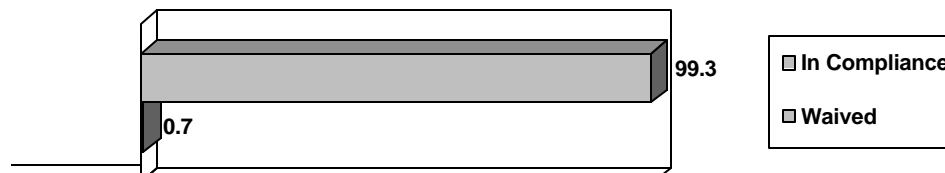
Bulk Purchasing Arrangement
 1 approved

Multiple Non-compliant
 Prospective Contractors
 90 approved
 2 withdrawn

Emergency
 2 approved

While the Commission continues its efforts to reduce the number of waivers granted each year, the number granted is low when compared to the total number of contracts entered into by the City. In the past fiscal year, the City entered into approximately 187,575 transactions¹³ covered by the Ordinance. Only .7% of these transactions were entered into pursuant to a waiver.

**Percentage of Waived Transactions
 FY 99-00**



¹² The Blanket Sole Source was designed to assist the City in processing requests for sole source waivers where the type of contract at issue is always a sole source and is a routine transaction. This past year, such forms were filed by 27 departments.

¹³ This number is incomplete in that it does not include property contracts also covered by the Ordinance.

III. Legislative Update

A. Contracting Legislation

In addition to locally-based agencies that have adopted provisions similar to the Equal Benefits Ordinance,¹⁴ and the somewhat different version in place in Broward County, Florida,¹⁵ in the past year, the Cities of Los Angeles and Seattle have enacted Equal Benefits measures. The Los Angeles law became effective on January 1, 2000. It is largely similar to the San Francisco version, with one significant exception: it includes subcontractors in its provisions. The Seattle law becomes effective on September 30, 2000 and applies to a slightly smaller range of contracts in that it excludes contracts estimated to cost less than \$33,000.¹⁶

Other cities around the country are evaluating and pursuing the enactment of legislation similar to the Equal Benefits Ordinance. The Human Rights Commission is working with community members to prepare written materials that will aid other jurisdictions as they analyze, enact and implement similar measures. In addition, the Commission is meeting with elected officials and community members from other jurisdictions to assist them in this process.

B. Domestic Partnership Registries

Since the Equal Benefits Ordinance was enacted, there has been a marked increase in the number of domestic partner registries around the country. Today, there are at least 56 registries available in 20 states. Some of these registries allow partnerships to be formed even when neither partner lives or works in the jurisdiction (which is similar to many marriage laws). This means that it is possible for couples to register even if there is no registry in their city or state. San Francisco's registry, which is restricted to couples where at least one partner lives or works in San Francisco, has registered 6,570 partnerships since its inception in 1990. Of those, 550 have been officially dissolved leaving 6,020 currently registered partnerships.

¹⁴ On July 1, 1998, the San Francisco Redevelopment Agency implemented contracting rules almost identical to those contained in the Ordinance. On May 17, 1999, the San Francisco County Transportation Authority adopted a similar policy, which went into effect on July 1, 1999. Both of these bodies are quasi-state entities with Commissioners or committee members appointed by the San Francisco Mayor or Board of Supervisors.

¹⁵ Broward County's provision, which was enacted in 1999, gives an advantage in bidding to businesses offering domestic partner benefits.

¹⁶ The Los Angeles law excludes contracts for less than \$5,000 and the San Francisco version exempts companies from complying where the City spends less than \$5,000 with the company per year. A chart comparing the three city ordinances is available from the Human Rights Commission.

C. California Domestic Partnership Legislation

In the past year, the California legislature considered several bills that would have significantly enhanced the rights of domestic partners within the State. Measures considered and acted on during the 1999-2000 session are described in Appendix B.¹⁷ The most significant legislative change that took place was the establishment of a statewide domestic partnership registry for same-sex couples, and opposite-sex couples where both partners are over age 62. Since January 1, 2000, when the State registry opened its doors, 4,497 couples have registered their partnerships.

D. Vermont Civil Unions Legislation

Three same-sex couples who had been denied marriage licenses sued the state of Vermont for violating the Common Benefits Clause of the Vermont Constitution. On December 20, 1999, the Vermont Supreme Court ruled that the state must provide equal protections and rights to same-sex couples. However, the Court did not mandate legalized same-sex marriage; instead it ordered the legislature to either legalize same-sex marriage or develop a system to ensure same-sex couples receive the comprehensive state benefits afforded to opposite-sex couples. The legislature responded by passing a Civil Union law on April 26, 2000. As of July 1, 2000, same-sex couples can apply for a civil union license and thereby receive the same state law protections and responsibilities that spouses receive upon marriage.

IV. **Litigation Update**

Little change has taken place in the past year in the status of the two remaining lawsuits challenging the Ordinance.¹⁸ Both have been briefed and are awaiting oral argument before the U.S. Court of Appeals for the Ninth Circuit. In the meantime, the Commission is working with staff from the Airport to move the first set of plaintiffs, a collection of the nation's largest airlines, into compliance as required by the District Court decisions. As the Airport's new international terminal gets ready to open in September 2000, lease and permit agreements with the airlines occupying space in that terminal must be renegotiated. This allows for the Equal Benefits Ordinance to come into play. Presently, nineteen airlines have come into compliance. While the Court eliminated the requirement that airlines (when leasing space at the Airport) offer nondiscriminatory medical and pension benefits, other

¹⁷ This list is current as of August 8, 2000. Because the legislative session does not end until August 31, 2000, other bills may be passed and signed by the close of the session.

¹⁸ A third suit, filed by P. M. & M. Electric alleging it would be denied City contracts because of its refusal to comply with the Ordinance was dismissed due to lack of standing because the company had not sought a City contract. Both this suit and the one subsequently filed by Ohio-based S.D. Myers, Inc. were sponsored by the American Center for Law and Justice, a legal group founded by anti-gay Christian Coalition leader Pat Robertson.

benefits, including discount travel, bereavement leave and family medical leave, are being extended to domestic

partners. Some airlines, including United Airlines, the largest airline in the world, have voluntarily extended medical and pension benefits to the (same-sex) domestic partners of their employees. Nevertheless, they continue to appeal the Court's ruling.

V. Impact of the Ordinance

The employee benefits landscape has been forever changed as a result of the Equal Benefits Ordinance. Offering domestic partner benefits is becoming commonplace among employers across the nation and studies reflect the high value employees place on receiving them. Labor unions and insurance providers are stepping up their support for domestic partner benefits. In the thirty-seven months since the law went into effect, a new insurance market has been created to which nearly 150 insurers from across the country have responded. Unions, both local and national, are advocating for the inclusion of domestic partner benefits as part of their bargaining packages.

The number of people employed by City contractors offering domestic partner benefits easily tops one million, meaning that approximately 38,700 domestic partners receive medical insurance coverage as a result. Even more employees can go to work each day knowing that they are entitled to the same benefits as their married coworkers if they need time off work to care for or grieve over a domestic partner. Likewise, they know they can enjoy the same company perks as their married coworkers, such as the valuable flight discounts given by many airlines to their employees.

With equal benefits ordinances coming into effect in other cities, the positive impact created by San Francisco's model is rapidly expanding. This expansion is likely to increase pressure on companies still resistant to compliance. Discriminating companies may be willing to forfeit the contracting dollars previously reaped from business with San Francisco, but the costs of discriminating begin to mount when contract dollars from Los Angeles, Seattle and perhaps other cities are subtracted from the bottom line.

APPENDIX A

Twenty Largest Complying Companies

<u>Name of Company</u>	<u>No. of Employees</u>
1. Bank of America	168,000
2. Wells Fargo Bank/Norwest Bank	100,000
3. Merrill Lynch Capital Markets	53,000
4. Chase Manhattan Bank	51,000
5. Pacific Bell	45,000
6. Laidlaw Transit	44,000
7. IKON Office Solutions	40,000
8. Xerox Corporation	40,000
9. Hewlett-Packard	38,000
10. Salomon Smith Barney	35,000
11. US Bankcorp	30,000
12. Agilent Technologies	27,000
13. Digital Equipment Corp	26,000
14. Science Applications International	25,000
15. Pacific Gas & Electric	21,000
16. SmithKline Beecham	20,000
17. KPMG Peat Marwick	19,000
18. Argenbright Securities	15,000
19. Danka Corporation	15,000
20. State Street Corporation	13,000

APPENDIX B

State of California Domestic Partner Legislation

- ♦SB 75 (Murray)
 - Would establish a state-wide domestic partnership registry for same sex couples, provide health facility visitation rights to domestic partners, and provide domestic partners eligibility for health insurance benefits through the Public Employees Retirement System.
 - *Vetoed* by Governor Davis on October 2, 1999.

- ♦SB 118 (Hayden)
 - Would expand the California Family Care and Medical Leave Act by allowing employees time off to care for an “individual who depends on the employee for immediate care and support.”
 - *Vetoed* by Governor Davis on May 23, 2000.

- ♦SB 1410 (Speier)
 - Would allow death and survivor benefits to be paid to the surviving domestic partners of San Mateo County employees.
 - *Pending* Assembly floor vote.

- ♦AB 26 (Migden)
 - Would establish a domestic partner registry for same-sex couples, and opposite-sex couples where both partners are over the age of 62.
 - *Enacted* into law October 10, 1999.

- ♦AB 1990 (Romero)
 - Would authorize domestic partners to make medical treatment decisions on behalf of the other partner.
 - *Inactivated* and merged with AB 2211 into AB 2047.

- ♦AB 2047 (Romero, Kuehl, Migden, Steinberg)
 - Would allow domestic partners to make medical decisions for an incapacitated partner, to inherit without a will, to be appointed administrator of the deceased partner’s estate, to make funeral arrangements, and to request an autopsy. Would also add domestic partners to conservatorship laws and would list domestic partners on the statutory will form.
 - *Stalled* in Assembly Appropriations Committee.

- ♦AB 2211 (Kuehl)
 - Would allow domestic partners to file wrongful death and negligence suits, request an autopsy, and would add domestic partner to existing conservatorship and statutory will laws.
 - *Inactivated* and merged with AB 1990 into AB 2047.

- ♦AB 2421 (Migden)
 - A clean-up bill that would allow an opposite-sex couple to apply for domestic partnership as long as at least one partner is over the age of 62.
 - *Pending* in Senate Appropriations Committee.

APPENDIX C

Resource Materials

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

Corporate Mentors Program – a pool of corporate directors and human resources personnel who have completed the Equal Benefits compliance process and are willing to speak with representatives from other companies where domestic partner benefits and Equal Benefits compliance are being considered.

Equal Benefits Brochure – answers frequently asked questions and provides list of resource materials and website address.

Insurance List – a reference guide to insurance companies from across the United States that are willing to write insurance policies inclusive of domestic partner coverage. The list currently includes companies in all fifty states and the District of Columbia.

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

Quick Reference Guide to Equal Benefits Compliance – answers frequently asked questions and assists reader with completing basic forms and identifying documents required for compliance.

Resource Materials Booklet

- Fact Sheets – provides in-depth information on providing nondiscriminatory health insurance and pension plans to employees with spouses and employees with domestic partners, and the tax implications of doing so.
- Sample Policies – provides model language for employers looking to:
 - Create or modify leave and nondiscrimination policies
 - Establish an affidavit of domestic partnership
 - Explain the tax consequences of some domestic partners benefits

Rules of Procedure – implementation guidelines adopted by the Human Rights Commission that establish compliance criteria and provide useful information on a wide variety of compliance-related topics.

Six Month Report – issued January 6, 1998, this report gives a detailed summary of the Commission's implementation efforts and the compliance experience of the Ordinance's first six months.

Two Year Report – issued August 12, 1999, this report provides a brief history of the Ordinance and describes the compliance experience of the first two years of implementation.

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