

Domestic Partner Benefits

By Margaret A. Knight and DeLawnia Comer-HaGans

The demographics of the traditional American family are changing. More couples are electing to become domestic partners and remain unmarried; domestic partners include same-sex as well as opposite-sex relationships. Understanding the environment within which employers offer domestic partner benefits (DPBs) is essential. DPBs are an issue of marital status as benefits proposed to married employees differ slightly from those offered, if at all, to domestic partners. Our purpose is not only to provide a broad landscape of the barriers surrounding the offering of DPBs from a human resource perspective, but also some of the advantages of doing so.

Introduction

The demographic characteristics of the traditional family are evolving. According to U.S. Census data, between 1990 and 2000, the numbers of domestic partnerships increased from 3.2 million couples to 5.5 million couples, including opposite-sex and same-sex couples.¹ However, federal laws have not kept up with the changing demographic realities of the American population. The General Accounting Office (GAO) reported in 1996 that there are "1,049 different federal-based benefits given to people because they are married" in addition to "many other governmental and societal benefits associated with the status of being married, not the least of which are employment-based benefits such as medical insurance coverage and retirement benefits."² While the Human Rights Campaign and other researchers focus on the impact of denial of these benefits to same-sex partners, with the changing demographics of the U.S. population, the issue of benefits equity is a powerful one for opposite-sex partners.

The peer-reviewed literature on DPBs is sparse. A thorough search of the pertinent academic databases yields fewer than ten scholarly articles, which illustrates the need for further research and improved understanding. However, in the professional human resource and other journals an extensive discussion unfolds indicating the salience of DPBs to American employers. Governmental

websites at the federal, state, and local levels provide data and other information that allow a description of the environment within which DPBs exist. Additionally, organizations such as the Human Rights Campaign Foundation (HRCF) provide unique perspectives on the need for domestic partner benefits and the extant literature frequently differentiates between opposite-sex and same-sex couples.

The human resource management issue of the provision of domestic partner benefits (DPBs) gains salience in an environment of increasing numbers of Americans choosing domestic partnership over marriage, increasing numbers of employers opting out of providing expensive health insurance to their employees altogether, increasing awareness of the issue of benefits equity, and legal challenges to traditional marriage laws. A thorough, more comprehensive understanding of the concerns surrounding DPBs is an important contribution to the knowledge needed in human resource management.

The purpose of this paper is to synthesize literature review findings regarding some of the barriers that employers face with providing DPBs and to discuss some advantages of doing so. Further exploration into the issue of domestic partnerships provides interesting insights into the issues of sexual orientation, marital status, legal definitions and requirements, and benefit equity.

The Need for Domestic Partner Benefits

Health Care Benefits

According to U.S. Census data from the year 2000, there were approximately 5.5 million couples living in domestic partnerships of which 4.9 million were opposite-sex partnerships. The Census data further indicate that in opposite-sex partnerships 43% had at least one child of one or both partners living in the household. In same-sex partnerships 40% had at least one child of one or both partners (through dual adoptions) present in the household. The U.S. Census based these figures on a different definition of child that includes one's domestic partner's children as the head of householder's children, reflecting a recognition of the validity of domestic partnerships as family relationships.³ The *U.S. Census Current Population Survey, Annual Social and Economic Supplement* from the years 2003-2005 shows in households comprised of unmarried partners between approximately 26.85% and 31.33% of the survey respondents did not have health coverage.⁴ These figures account for approximately between 1.47 million and 1.72 million of the uninsured in American society for which DPBs could alleviate the uninsured problem. Ash and Badgett implicate a lack

of domestic partner benefits in adding to the uncovered population of the U.S. (2006). They cite the 2002 U.S. Census Bureau conclusion that “the exclusion of domestic partners makes unmarried couples and their children likely to lack insurance at a rate higher than the 14% U.S. average for the nonelderly.”⁵

An article in *Nation's Health* cites U.S. Census figures that state the number of uninsured Americans is currently around 45.7 million. While this number is a slight decrease from the figure the U.S. Census identified in 2007, it still represents a significant number of uninsured Americans. Using the proportions found by the 2000 U.S. Census, 89% of domestic partnerships are among opposite-sex couples and the remaining 11% would be among same-sex couples. According to U.S. Census figures from 2007, approximately 15% of Americans go uninsured at any given time. Extrapolating from these figures, one can estimate the number of uninsured domestic partners at 13.35% of opposite sex domestic partners and 1.65% of same sex domestic partners. However, studies suggest that the actual percentage of LGBT domestic partners that lack health insurance is higher.⁶ (These estimates are based on the proportion of domestic partners at any given time who are uninsured calculated as $89\% \times 15\% = 13.35\%$ of opposite sex domestic partners and $11\% \times 15\% = 1.65\%$ of same sex domestic partners.) The companion document for LGBT to *Healthy People 2010*, a document published by the Health Resources and Services Administration of the U.S. Department of Health and Human Services, states that the uninsured rate is around “9.7% to 10.4% for lesbians” (50) based on a survey by the Women’s Health Initiative. Other studies cited in this document such as the National Lesbian Health Care Survey (NLHCS) and the Michigan Lesbian Health Survey found the uninsured rates between 12% and 27%. The same document cites uninsured rates for gay men at around 16%.⁷

Domestic partner benefits provide a means to address the need for access to health insurance experienced by uninsured Americans. They also address the requirements of some jurisdictions for domestic partner benefits. With the current trend toward domestic partnerships among both opposite and same sex couples, the need for recognition of the needs of domestically partnered Americans for equitable health benefits present a recruitment opportunity for human resource managers.

Legal Environment: Definitions and Types of Domestic Partnership

Domestic Partnerships, Civil Unions, Civil Marriage, and DOMA

The Federal Defense of Marriage Act (DOMA) of 1996 defines the terms marriage and spouse for the intent of federal law. It also offers that states do not have to recognize other state laws when it comes to same-sex marriage. Under the Full Faith and Credit Clause of the U.S. Constitution, each state has the option of determining whether it wants to give legal status to same-sex marriages.⁸

Several states have enacted DOMA laws or passed constitutional amendments against same sex marriage.⁹ The states usually have language similar to at least one of the following four provisions. The first is that the definition of marriage is a legal union between a man and woman. The second provision is non-recognition of same-sex marriages performed in another state. The third provision is that same-sex marriage is a violation of state public policy. The final provision is that the definition of spouse is limited to an individual of the opposite sex who is legally married as either a husband or wife.¹⁰

According to Travinski, domestic partnerships can “be defined by state or local law or employer policy.”¹¹ Since domestic partnerships are not legally defined as spousal, “there are no uniform criteria for identifying domestic partner relationships,”¹² making data collection difficult and providing room for benefit inequity even among employers willing to provide DPBs to their unmarried employees. The U.S. Census broadly defines domestic partners as “people who [are] sharing living quarters and who also had a close personal relationship with each other.”¹³ Of the 5.5 million couples mentioned above, the 2000 Census found that 4.9 million of the couples were opposite-sex couples while 594,000 were same-sex couples.¹⁴ As useful as the Census definition of domestic partner is for purposes of gathering data, there is no universal definition of domestic partnership. If there is no legislated definition of domestic partnership, then employers may define the term as they deem appropriate.¹⁵

Court decisions influence the definitions of domestic partnership, legal marriages and civil unions. There have been various cases regarding the various interpretations of these three terms. Some of these cases have centered on child custody, a legal right to bring forth a lawsuit, violations of rights that are protected by the Constitution, and petitioning of the court system for the right to marry for same-sex couples. For this reason it is important that each state have a constitution or some other means to make this distinction clear.¹⁶ When a law is ambiguous, courts interpret the law via cases brought before the court.

Currently, seven jurisdictions allow same-sex marriage either via legislation or court action. Five states, Delaware, Hawaii, Illinois, New Jersey, and Rhode Island, have civil unions. California, Nevada, Oregon, and Washington provide “spousal rights to same-sex couples”¹⁷ Eight states provide some or all the same spousal advantages to domestic partners (same-sex and opposite-sex) as married couples. New York City recognizes same sex marriages performed in other jurisdictions and the Washington, DC city council has voted in a similar measure.¹⁸

Civil unions achieved legal status in Vermont in April 2000 as a chance for same-sex couples to enter into a relationship in which they have “all the state-level rights, responsibilities, and benefits of marriage except the name itself.”¹⁹ This action on the part of the state legislature of Vermont provided some protections to same-sex couples, but it also inspired a campaign by antigay activists to stop what they perceived as potentially the beginning of a wave of pro-gay legislation.²⁰ Since then, several other states and the District of Columbia have recognized domestic partnerships in different ways. In terms of DPBs, in all jurisdictions with civil unions or same-sex relationship recognition of some kind, employers have to comply with the state’s recognition laws.²¹ “See Table 1”

Table 1: States with Same-Sex Relationship Recognition

State issues marriage licenses to same-sex couples:	States allows civil unions, providing state-level spousal rights to same-sex couples:	State grants nearly all state-level spousal rights to unmarried couples (domestic partnerships):	State provides some state-level spousal rights to unmarried couples (domestic partnerships):
Connecticut	District of Columbia	California	District of Columbia
District of Columbia	Delaware	Nevada	Hawaii
Iowa	Hawaii	Oregon	Maine
Massachusetts	Maine	Washington	Wisconsin
New Hampshire	Wisconsin		
New York			
Vermont			

* Legislation passed in Washington and Maryland in February 2012 will allow same-sex marriages, but those laws have not yet taken effect. In California, a federal appeals court found that the state constitution's restriction on same-sex marriage was invalid, but has postponed enforcement pending appeal.

Source: National Conference of State Legislatures. Defining Marriage: Defense of Marriage Acts and Same-Sex Marriage Laws, June 2012 [cited July 25, 2012. Available from <http://www.ncsl.org/issues-research/human-services/same-sex-marriage-overview.aspx>].

Table 2: Jurisdictions with Equal Benefits Ordinances

Location	Name	Passed Date	Effective Date	Minimum Amount Invoking EBO
Berkeley, CA	Berkeley Municipal Code, §13.29.030	4/24/01	7/1/01	\$25,000
King County, WA	Bill No. 2003-0419	2003	2004	\$25,000
Los Angeles, CA	Los Angeles Municipal Code §10.8.2.1	1999	2000	\$5,000
Miami Beach, FL	Equal Benefits Ordinance – Miami Beach Code, Chapter 2, Art. VI, Div. 3, §2-373	2005		\$100,000
Minneapolis, MN	Minneapolis Code of Ordinances §18.200	2002	2004	\$100,000
Oakland, CA	Oakland Municipal Code, §2.32.010	2001	7/1/02	\$25,000
Olympia, WA	Equal Benefits Ordinance – Olympia Municipal Code Chap. 3.18	2004		\$50,000
Sacramento, CA	Equal Benefits Ordinance – Sacramento Municipal Code Chap. 3.54	2004	4/1/05	\$25,000
San Francisco, CA	San Francisco Administrative Code, Ch. 128, §128.1	11/96	6/1/97	\$5,000
San Mateo County, CA	Equal Benefits Ordinance – San Mateo County Code, §2.93.010	2/13/01	3/13/01	\$5,000
Seattle, WA	Seattle Municipal Code, Ch. 20.45	11/22/99	9/30/00	\$33,000
Turnwater, WA	Turnwater Municipal Code, §3.46	2/6/01	1/2/02	\$50,000
State of California	CAL, PUB. CONT. Ch. 752§10295.3	2003	2007	\$100,000

Source: HRCF Descriptions of individual ordinances (2007)

http://www.hrc.org/issues/workplace/benefits/equal_benefits_ordinances.htm

In one instance, the Supreme Judicial Court (SJC) of the Commonwealth of Massachusetts issued a decision stating that the marriage laws of the Commonwealth contradicted the state's constitutional provisions regarding "individual autonomy and equality under the law" and there was "no rational reason."²² for the discrimination. This decision "redefined the common law definition of 'civil marriage to mean the voluntary union of two persons as spouses, to the exclusion of all others.'"²³ The SJC later reiterated its decision in "an advisory opinion on the constitutionality of" compromise legislation for civil unions that provide the same benefits and responsibilities as marriage.²⁴ The court stated that the difference in language between the terms civil union and civil marriage "is a considered choice of language that reflects a demonstrable assigning of same-sex, largely homosexual couples to second-class status."²⁵

The California Supreme Court decided in May 2008 "that same-sex couples have the same right to marry as different-sex couples under the state constitution" and asserted that the local jurisdictions must begin issuing marriage licenses to same-sex couples by July 17, 2008.²⁶ However, on November 4, 2008, Proposition 8 passed. Proposition 8 changed the California constitution, thus limiting the definition of marriage to be between a man and a woman. As of November 5, 2008, same-sex couples no longer have the legal right to marry. The passage of Proposition 8 has sparked several lawsuits and the California Supreme Court will render a verdict approximately three months after hearing arguments on March 5, 2009.

Potential Barriers to Offering DPBs

The literature lists several criteria found on affidavits companies require of employees claiming domestic partnership for purposes of taking advantage of offered domestic partner benefits, including a requirement of the length of cohabitation, mutual financial responsibility, age, and mental competence.²⁷ Additional requirements may include assurances that the couple would marry if they could under state law and no blood kinship or previous marital status precludes marriage to the current partner. Where registered partnership is an option, employers may require proof of such registry.²⁸ These requirements reflect a hesitation by some companies to offer domestic partner benefits. In order to avoid instances of fraud, some companies want proof of domestic partnership even when they do not require similar proof from married couples.²⁹

At the state level, an employer whose "operations reside entirely within one state typically must ensure compliance with that state's same-sex partner recognition and benefits regulations, to the extent that they exist."³⁰ In the case of Massachusetts, which is the only state with same-sex marriage, insurance regulations require coverage of "same-sex spouses on the same terms" as the

coverage of opposite-sex married couples. Imagine the difficulty of managing DPB rules and regulations for every state in which an employer's company resides.

Costs related to DPBs include both increased enrollment and increased claims costs due to feared adverse selection³¹ based primarily on concerns about increased claims. However, these concerns have not come to fruition for the companies that have extended benefits.³² There have been many studies that showed costs increased between 1% and 3%.³³

Employer Advantages to Offering DPBs

The benefits to an organization from offering domestic partner benefits include good will coupled with a respectable reputation, and the freedom to seek contracts within jurisdictions requiring DPBs of their contractual relationships. The Employee Benefits Research Institute lists a reputation for fairness in employment practices as an advantage to offering DPBs.³⁴ For companies that contract with jurisdictions with Equal Benefits Ordinances or statutes, DPBs are often a prerequisite for acceptance of bids. Even without this requirement, businesses find that "shareholder resolutions, pressure from unions, or other employee groups" offer incentives to provide domestic partner benefits. Public reaction to such policies is generally positive in spite of some pushback by the religious right.³⁵

Increasing numbers of baby boomers are retiring and many organizations face the challenge of replacing baby boomers with skilled and qualified workers. As such, organizations are grappling with the issue of increasing diversity within their organization.³⁶ Since job recruitment is especially tough in the global economy, an attraction such as offering domestic partner benefits and the promotion of diversity through the eradication of discrimination, will provide a more competitive and socially responsible edge in terms of workforce employment.³⁷ From a human resource perspective, the benefits from offering domestic partner benefits include recruitment, retention of a skilled and talented workforce,³⁸ employee satisfaction, and productivity. Several authors mention the advantages found in productivity among more content employees by alleviating concerns about the employee's partner.³⁹

Discussion

This paper provides a general overview of potential barriers that human resource managers may face when offering domestic partner benefits. The possibility of increased healthcare premiums and overall costs due to adverse selection, the administrative nightmare of keeping up with state regulations and

laws for each state an organization resides in, and the hassle of having domestic partners substantiate their relationship commitment by providing documentation are all shortcomings of providing DPBs. Despite these barriers, the offering of DPBs has some positive benefits as well. For example, in jurisdictions with Equal Benefits Ordinances, a domestic partner benefit package is a requirement before contracting with the jurisdiction, thus offering these benefits allows companies to competitively bid for contracts. Moreover, for employers seeking out highly qualified employees, DPBs provide an attractive incentive for their target employee group. Finally, in a time where many Americans are either uninsured or underinsured, domestic partner benefits offer an avenue to improving access to healthcare through insurance coverage.

Notes

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