

**MEMORANDUM**

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Action:** Bill 37-09, Contracts and Procurement – Equal Benefits

**Transportation, Infrastructure, Energy and Environment Committee recommendation (2-0, Councilmember Berliner absent): approve the Bill with amendments.**

Bill 37-09, Contracts and Procurement – Equal Benefits, sponsored by Councilmember Navarro, Council Vice President Ervin, Councilmember Trachtenberg, Council President Floreen, Councilmembers Leventhal, Elrich, Berliner, and Andrews, was introduced on November 3. A public hearing was held on December 1, 2009 and a Transportation, Infrastructure, Energy, and Environment Committee worksession was held on January 21.

**Background**

The County has a longstanding policy, in law and practice, against employment discrimination based on sexual orientation. Bill 29-99, effective March 3, 2000, extended equal benefits to a same sex domestic partner<sup>1</sup> of a County employee that is offered to an employee's spouse. Bill 37-09 would extend this law to employees of certain County contractors and subcontractors.

The Bill would require County contractors and subcontractors to provide equal benefits for a same sex domestic partner of an employee working on certain County contracts that the contractor or subcontractor provides for an employee's spouse. Contracts that are subject to the County's Prevailing Wage law or the County's Wage Requirements law would be subject to this new requirement. The Bill would cover benefits such as bereavement leave, family medical leave, sick leave, health benefits, dental benefits, disability insurance, life insurance, and retirement benefits.

The Bill would not extend equal benefits to a domestic partner in a heterosexual relationship who chooses not to get married. The Bill would limit coverage to an employee of a contractor or subcontractor who performs work under a covered contract.

**Public Hearing**

All 5 speakers at the public hearing on December 1 testified in support of Bill 37-09. Department of General Services Director David Dise testified in support of the Bill on behalf of the Executive. See ©8-9. Mr. Dise requested that the Council extend the effective date of the Bill to contracts awarded 18 months after it becomes law in order to give his Department adequate time to work with County contractors and to permit bidders to adjust their benefit packages to comply with the new law. David S.

<sup>1</sup> After enactment of Bill 29-99, the union representing the members of the police bargaining unit and the union representing the members of the fire and rescue bargaining unit each negotiated a collective bargaining agreement extending these benefits to an opposite sex domestic partner.

Fishback, representing the Metro DC Chapter of Parents, Families, and Friends of Lesbians and Gays (©10-11), Joseph Sandler, representing the Jewish Community Relations Council, Nadine Mort (©12-13), and Morgan Meneses-Sheets, representing Equality Maryland, each supported the Bill.

## **Issues**

### **1. What is the fiscal impact of the Bill?**

The OMB fiscal and economic impact statement is at ©14-15. Although it is difficult to estimate the fiscal impact to the County, any fiscal impact would result from additional work for the Office of Procurement to administer the law and increased bid prices from bidders who pass through the cost of providing equal benefits to its employees.

The Office of Procurement would be responsible for educating contractors about the new requirements and enforcing them during contract administration. OMB estimated that the cost to enforce the law, including one audit, would be \$50,000. The Bill would authorize a contractual liquidated damages provision and grant a contractor found to be in violation a right to a hearing before a designee of the Chief Administrative Officer.

Bid prices reflect both the estimated cost to the bidder of providing the service and market prices for the work. Although it is difficult to estimate if there will be an additional cost for contractors to provide equal benefits, it is helpful to review the County's experience with providing equal benefits for its employees since March 2000. Of 9,404 active County employees, only 59 employees currently are receiving benefits for a same sex domestic partner. Of the 5,449 County retirees, only 14 are receiving benefits for a same sex domestic partner. See the OHR statistics at ©23. If these numbers translate to employees of County contractors and subcontractors, the percentage of these employees who are likely to receive equal benefits for a same sex domestic partner will be low. The Department of General Services (DGS) survey of other jurisdictions with similar requirements and local businesses indicates that the Bill would not significantly increase a contractor's labor costs. See ©24-27.

### **2. What is the economic impact of this Bill on County businesses?**

The economic impact, if any, of this Bill on County businesses would result from an additional cost to provide equal benefits to its employees. The Bill limits applicability to those employees providing services on the County contract, but some contractors may feel forced to provide the same equal benefits for all of its employees for internal fairness. The cost of providing equal benefits for employees working on the contract can be added to the bid price because all of the bidders will be required to do so. However, a contractor may not be able to add this cost to bids for non-County contracts if there is no equivalent requirement in that contract. To the extent a County contractor provides equal benefits to all of its employees for internal fairness, there may be an adverse economic impact on the business.

However, all of this analysis assumes that providing equal benefits will significantly increase labor costs for the contractor. The small percentage of County employees who have applied for benefits for a same sex domestic partner since 2000 indicates that there may not be a significant increase in labor costs. See the OHR statistics at ©23. In addition, the DGS survey of other jurisdictions with similar requirements indicates that it would not significantly increase a contractor's labor costs or bid prices. See ©24-27. Finally, the Bill does not require any contractor to provide benefits for spouses of its employees or any benefits for its employees at all.

### **3. Should the Bill be amended to require equal benefits for an opposite sex domestic partner?**

Although Bill 29-99 provided equal benefits for same sex domestic partners of County employees, the County subsequently negotiated collective bargaining agreements with two unions extending these benefits to opposite sex domestic partners. The County's experience with equal benefits shows that only 18 employees in these 2 bargaining units receive benefits for a same sex domestic partner and 71 receive benefits for an opposite sex domestic partner. See the OHR statistics at ©23. If these numbers translate to employees of County contractors, then there may be a significant cost to providing these equal benefits to opposite sex domestic partners. For example, an employer would need to provide health insurance to an employee's domestic partner and the domestic partner's dependent children. An opposite sex domestic partner may be more likely to have dependent children than a same sex domestic partner.

Most importantly, requiring equal benefits for same sex domestic partners furthers the County's legitimate interest in eliminating discrimination on the basis of sexual orientation. Extending equal benefits to opposite sex domestic partners does not. The extension of equal benefits to opposite sex domestic partners is simply an employee benefit that may be appropriate for the County to negotiate with its own employees, but there is no significant public interest in dictating a similar benefit for employees of County contractors and subcontractors. **Committee recommendation (2-0):** do not amend the Bill to require equal benefits for an opposite sex domestic partner.

### **4. Should the Bill be amended to define the type of evidence of domestic partnership that an employer must require?**

The Office of Human Resources (OHR) developed a package of information for County employees who request benefits for a domestic partner. The package includes a form affidavit and a list of the types of documents that the County will accept to prove a domestic partnership. A copy of the OHR information packet is at ©16-22. OHR developed this packet of information to implement Bill 29-99 as the employer. Bill 37-09, as drafted, would leave the development of these details to the County contractors and subcontractors who are the employers. **Committee recommendation (2-0):** do not amend the Bill to define the type of evidence of domestic partnership that an employer must require.

### **5. Should the effective date of the Bill be extended to contracts awarded 18 months after it becomes law?**

David Dise, representing the Executive, requested at the public hearing that the effective date of the Bill be extended to contracts awarded 18 months after it becomes law. Mr. Dise testified that the Office of Procurement would need this time to educate contractors and subcontractors about the new requirements. In addition, contractors and subcontractors would have time to change their benefit packages. Finally, Mr. Dise pointed out that the 18 month delay would be consistent with "the Executive's assistance plan, which included a proposal to delay the effective date of new legislation that could have a substantial economic impact on business."

Employers often negotiate the terms of a health insurance plan with an insurance company annually. A contractor may need a significant lead time to change the coverage of a health insurance plan to provide equal benefits to a domestic partner. In addition, a contract award for a large construction contract is often made 30 to 90 days after the bids are submitted. For example, the Prevailing Wage Law, Bill 21-08, was enacted in September 2008 with a delayed effective date of July 1, 2009 in order to give contractors and subcontractors time to understand and implement the new prevailing wage requirements. Changes to employee benefit plans may require the same amount of time to implement. However, 18

months may be more time than is required to implement the Bill without undue hardship on County contractors and subcontractors. **Committee recommendation (2-0):** amend the Bill to apply to contracts awarded on or after January 1, 2011. In addition the Bill should not apply to the renewal or extension of a contract that was originally awarded before January 1, 2011 since the terms and conditions of the contract would have been established when the contract was originally awarded. See lines 95-97 at ©6.

**6. What is the experience of other jurisdictions that have enacted similar equal benefits laws?**

DGS contacted procurement officials in 6 other jurisdictions that have enacted similar equal benefits laws – San Francisco, Los Angeles, Oakland, San Mateo, King County in Washington, and Dane County in Wisconsin. See ©24-27. None of these jurisdictions experienced a significant reduction in competition for contracts as a result of an equal benefits requirement. Most of these jurisdictions provided a 9-12 month delay in the effective date of the equal benefits law after enactment. The DGS survey of local businesses found that 85% do not presently offer domestic partner benefits, but that 57% of businesses responded that an equal benefits law would not change their interest in doing business with the County.

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Bill No. 37-09  
Concerning: Contracts and Procurement  
- Equal Benefits  
Revised: January 27, 2010 Draft No. 5  
Introduced: November 3, 2009  
Expires: May 3, 2011  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Councilmembers Navarro, Ervin, Trachtenberg, Floreen, Leventhal, Elrich, Council Vice  
President Berliner, and Council President Andrews

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**AN ACT** to:

- (1) require County contractors and subcontractors to provide equal benefits for employees working on certain County contracts; and
- (2) generally regulate the benefits provided to employees of contractors and subcontractors on certain County contracts.

By adding

Montgomery County Code  
Chapter 11B, Contracts and Procurement  
Section 11B-33D, Equal Benefits

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

1           **Sec. 1. Section 11B-33D is added as follows:**

2    **11B-33D. Equal Benefits.**

3           (a)   Definitions.   In this Section, the following words have the meanings  
4                   indicated:

5                   Benefit means a plan, program, or policy provided or offered by a  
6                   contractor or subcontractor to some or all employees as part of the  
7                   employer's total compensation package. This may include:

- 8                   (1)   bereavement leave;  
9                   (2)   family medical leave;  
10                  (3)   sick leave;  
11                  (4)   health benefits;  
12                  (5)   dental benefits;  
13                  (6)   disability insurance;  
14                  (7)   life insurance; and  
15                  (8)   retirement benefits.

16                  Cash equivalent means the actual cost to the employer for insurance  
17                  benefits to the spouse of a married employee, which are not provided to  
18                  a domestic partner, if:

- 19                  (1)   the benefit would be provided to a domestic partner of an  
20                   employee if that person were a spouse of the employee; and

21           (2) the employer is unable to provide the benefit to a domestic  
22                     partner of an employee after making a reasonable effort to do so.

23           Contract means a contract for services subject to Section 11B-33A or a  
24           contract for construction services subject to Section 11B-33C.

25           Domestic partnership means:

26           (1) a relationship between two individuals of the same sex that has  
27                     been licensed as a civil union or marriage in a jurisdiction where  
28                     such a civil union or marriage is permitted; or

29           (2) an unlicensed relationship between two individuals of the same  
30                     sex who:

31                     (A) share a close personal relationship and are responsible for  
32                             each other's welfare;

33                     (B) have shared the same legal residence for at least 12  
34                             months;

35                     (C) are at least 18 years old;

36                     (D) have voluntarily consented to the relationship, without  
37                             fraud or duress;

38                     (E) are not married to, or in a domestic partnership with, any  
39                             other person;

40                   (F)   are not related by blood or affinity in a way that would  
 41                               disqualify them from marriage under State law if the  
 42                               employee and partner were opposite sexes;

43                   (G)   are each legally competent to contract;

44                   (H)   share financial and legal obligations; and

45                   (I)   legally register the domestic partnership if a domestic  
 46                               partnership registration system exists in the jurisdiction  
 47                               where the employee resides.

48                   Employee means a person who performs work on a contract in an  
 49                               employment relationship with the contractor or a subcontractor.

50           (b)   Equal benefits requirement. A contractor or subcontractor must provide  
 51                               the same benefits to an employee with a domestic partner as provided to  
 52                               an employee with a spouse. If a benefit cannot reasonably be provided  
 53                               to a domestic partner, the contractor or subcontractor must pay the  
 54                               employee the cash equivalent.

55           (c)   Contract requirements. Each contract covered by this Section must:

56                   (1)   require the contractor and all subcontractors to comply with this  
 57                               Section; and

58                   (2)   specify that an aggrieved employee, as a third-party beneficiary,  
 59                               may by civil action recover the cash equivalent of any benefit  
 60                               denied in violation of this Section or other compensable damages.

61 (d) Enforcement.

62 (1) The Director or a designee may perform random or regular audits  
63 and investigate any complaint of a violation of this Section. If  
64 the Director determines that this Section has been violated, the  
65 Director must issue a written decision, including appropriate  
66 sanctions, and may withhold from payment due the contractor,  
67 pending a final decision, an amount sufficient to:

68 (i) pay each employee of the contractor or  
69 subcontractor the cash equivalent of the benefits  
70 denied; and

71 (ii) satisfy a liability of a contractor for liquidated  
72 damages as provide in this Section.

73 (2) A contractor or subcontractor must not discharge or otherwise  
74 retaliate against an employee for asserting any right under this  
75 Section or for filing a complaint of a violation.

76 (3) The sanctions of Section 11B-33(b) which apply to  
77 noncompliance with nondiscrimination requirements apply with  
78 equal force and scope to noncompliance with this Section.

79 (4) Each contract subject to this Section may specify the payment of  
80 liquidated damages to the County by the contractor for any  
81 noncompliance with this Section.

82 (5) Each contractor is jointly and severally liable for noncompliance  
83 with this Section by a subcontractor.

84 (6) A contractor may appeal a written decision of the Director that  
85 the contractor violated this Section to the Chief Administrative  
86 Officer within 10 working days after receiving a copy of the  
87 decision. The Chief Administrative Officer must designate a  
88 hearing officer to conduct a hearing under Chapter 2A after  
89 receiving a timely appeal. If the contractor does not appeal a  
90 written decision within 10 working days after receipt, the  
91 decision of the Director becomes final and binding.

92 (e) Report. The Chief Administrative Officer must report annually to the  
93 Council and Executive on the operation of and compliance with this  
94 Section.

95 **Sec. 2. Effective Date.** This Act applies to any contract awarded on or after  
96 January 1, 2011, but does not apply to any renewal or extension of a contract that was  
97 originally awarded before January 1, 2011.

98 *Approved:*

99

\_\_\_\_\_  
Nancy Floreen, President, County Council Date

100 *Approved:*

101

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Isiah Leggett, County Executive Date

## LEGISLATIVE REQUEST REPORT

Bill 37-09, Contracts and Procurement – Equal Benefits

<b>DESCRIPTION:</b>	The Bill would require County contractors and subcontractors to provide equal benefits for a domestic partner of an employee working on certain County contracts that the contractor or subcontractor provides for an employee's spouse. Contracts that are subject to the County's Prevailing Wage law or the County's Wage Requirements law would be subject to this new requirement.
<b>PROBLEM:</b>	The County has a longstanding policy, in law and practice, against employment discrimination based on sexual orientation. Bill 29-99, effective March 3, 2000, provided equal benefits for a same sex domestic partner of a County employee that is offered to an employee's spouse. Bill 37-09 would extend this law to employees of certain County contractors and subcontractors.
<b>GOALS AND OBJECTIVES:</b>	To prevent unequal treatment of employees of County contractors based solely on whether an employee's partner is legally recognized as a spouse.
<b>COORDINATION:</b>	Department of General Services; County Attorney's Office
<b>FISCAL IMPACT:</b>	To be requested.
<b>ECONOMIC IMPACT:</b>	To be requested.
<b>EVALUATION:</b>	To be requested.
<b>EXPERIENCE ELSEWHERE:</b>	To be researched.
<b>SOURCE OF INFORMATION:</b>	Robert H. Drummer, Legislative Attorney
<b>APPLICATION WITHIN MUNICIPALITIES:</b>	Not applicable
<b>PENALTIES:</b>	Contract remedies.

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**Bill 37-09, Contracts and Procurement, Equal Benefits**

Public Hearing

December 1, 2009

Testimony of David Dise, Director, Department of General Services

Good afternoon. I am David Dise, Director of Montgomery County's Department of General Services (DGS) and I am here to present testimony on behalf of County Executive Isiah Leggett in support of Bill 37-09.

Montgomery County has well-established policies and practices that promote diversity and oppose discrimination. In 2000 the County enacted legislation to provide equal benefits for its employees with same sex domestic partners, including bereavement leave, family medical leave, sick leave, health benefits, dental benefits, disability insurance, life insurance, and retirement benefits. Since taking office in 2006, County Executive Leggett has made inclusiveness a hallmark of his administration, believing that County government must model the values it espouses and encourage these values throughout public and private sectors of the county. Mr. Leggett has publicly stated his belief that the equal treatment which is currently experienced by County employees with same sex domestic partners should be extended to employees of companies that do business with Montgomery County.

Bill 37-09 reflects the principle that employees with spouses of the opposite sex and employees in a licensed or unlicensed committed relationship with a member of the same sex should receive the same benefits. Because there are currently significant differences among state laws governing marriage and civil unions for same sex couples, the bill applies to employees with same sex domestic partners as well as employees who have obtained marriage or civil union licenses in other states.

Appropriately, Bill 37-09 does not require county contractors to begin offering benefits they have not previously offered. If a contractor does not offer benefits to the spouses of married heterosexual employees, it is not required to offer benefits to the spouses or domestic partners of gay and lesbian employees.

The provision of equal benefits is not uncommon among large businesses. Following the enactment of similar legislation by several California municipalities over ten years ago many companies doing business with those municipalities adopted equal benefits programs. However, recognizing that this contractual requirement has financial and logistical impacts on businesses, particularly mid-size and small business, some municipalities exempted small businesses and subcontractors.

Bill 37-09 is applicable to service contracts that are subject to the County's Living Wage Law and construction contracts that are subject to the County's Prevailing Wage Law. These laws do not apply to: (1) contractors that have earned less than \$50,000 from the County under service contracts in the previous 12 months and will not earn more than \$50,000 under a new

service contract in the next 12-months; and (2) construction contracts of less than \$500,000. The County Executive will review data gathered by the Department of General Services regarding exemptions in other jurisdictions and is open to considering whether there is a more appropriate contractual threshold for the equal benefits requirement.

Over the past few weeks, DGS has contacted municipalities that have equal benefits laws in place, some for over ten years, to determine what, if any, impact this legislation had on businesses or any increase or diminution of the number of businesses competing for public contracts. As yet, these municipalities have not provided any data despite repeated requests. We will continue to seek this data and hope to have it available for the Committee worksessions on this bill.

We did learn that many entities spent considerable time working with businesses and chambers of commerce before implementing equal benefits laws. Following that best practice, we propose that the Council amend Bill 37-09 to make it applicable to contracts awarded 18 months after enactment of the bill. A delayed effective date would be consistent with the County Executive's economic assistance plan, which included a proposal to delay the effective date of new legislation that could have a substantial economic impact on business.

We note that this bill would have a different type of economic impact on businesses that contract with the County than the Living Wage and Prevailing Wage requirements. For most businesses, a County contract represents a relatively small percentage of total income. Unlike a wage requirement, under which the County is directly paying the contractor to comply with the requirement, an equal benefits requirement goes beyond the rates paid by the County on a specific contract and requires a contractor to cover the cost of benefits for employees performing work not related to a County contract. The impact this will have on Montgomery County contractors and those seeking future business with the County is not fully known at this time.

With a delayed effective date and a few technical edits that will be discussed when the committee takes up its deliberations on the bill, the County Executive supports Bill 37-09 and believes it is a positive step forward for the County

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**TESTIMONY BEFORE THE MONTGOMERY COUNTY  
COUNCIL ON BILL 37-09**

**DAVID S. FISHBACK, ADVOCACY CHAIR, METRO DC  
CHAPTER OF PARENTS, FAMILIES, AND FRIENDS OF  
LESBIANS AND GAYS (PFLAG)**

**December 1, 2009**

Good afternoon. I am speaking on behalf of the Metro DC Chapter of Parents, Families, and Friends of Lesbians and Gays (PFLAG) in favor of Bill 37-09, which would require County contractors to offer their gay employees with domestic partners whatever benefits they offer their straight employees with spouses. As a PFLAG dad and lifelong resident of Montgomery County, I am pleased and proud that the political leadership in this community repeatedly has rejected discrimination against our fellow citizens based on sexual orientation or identity. Our local government, funded by the taxpayers, should never be a party to such discrimination.

A month ago, an editorial in a local newspaper, while generally supportive of equal rights, expressed concern about the fiscal wisdom of Bill 37-09. But that concern was misplaced and misguided. Since only a small percentage of people in our community are gay, the fiscal impact on a given contractor would be negligible; and in this competitive environment, contractors' bids are not going to

be higher because a small percentage of their workforce would be able to avail themselves of benefits already offered to their colleagues.

More to the point, however, is the following: What if members of a particular religious or ethnic group were discriminated against regarding work benefits, and the Council sought to require non-discrimination as a prerequisite to holding a County contract? I doubt that the editorialist would argue that the Council should refrain from acting because of the supposed potential cost or, as the editorial put it, the danger of "government interference in the private sector." And that is really the crux of the matter. The County should not and would not contract with a company that engaged in religious or racial discrimination; nor we should use the public's tax money to contract with a company that discriminates based on sexual orientation.

In Montgomery County, we value all of our people. We should not have second-class citizens in Montgomery County. I want to thank Councilwoman Navarro for taking the lead on this legislation and to thank all of you for being steadfast supporters of equality for the LGBT members of our community.

Nadine Mort

320 Ashton Road

Ashton, Maryland 20861

301 -774-0157

**All Montgomery County citizens will benefit when everyone is viewed equally by government, employers, schools and neighbors.**

**All people deserve the opportunity to enter into a loving relationship with a long-term partner and to create a family and a home. This is the most basic of human rights universally accepted worldwide. Families are the main organizing structure for our society, they create order and predictability.**

**They allow us to nurture one another and share life's great joys and sorrows. Families, which come in many shapes, forms, and sizes, give life meaning and significance. Unfortunately, the legal**

**protections that go along with relationship recognition and family units are not a reality for most LGBT Americans, even though according to a number of polls, 75% of Americans support same-sex relationship recognition.**

**You are moving us forward today!**

**The Montgomery County Council must be commended for their vision and leadership in supporting all our citizens as they support and love their families.**



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett  
County Executive

Joseph F. Beach  
Director

MEMORANDUM

January 19, 2010

TO: Nancy Floreen, President, County Council

FROM: Joseph F. Beach, Director 

SUBJECT: Council Bill 37-09, Contracts and Procurement - Equal

780 JAN 19 AM 9:13  
MONTGOMERY COUNTY  
COUNCIL

The purpose of this memorandum is to transmit a fiscal and economic impact statement to the Council on the subject legislation.

**LEGISLATION SUMMARY**

The proposed bill would require County contractors and subcontractors working on certain County contracts to provide for domestic partner benefits equal to those provided to an employee's spouse. Contracts that are subject to the County's Prevailing Wage law or the County's Wage Requirements law would be subject to this new requirement. The Bill would cover benefits such as bereavement leave, family medical leave, sick leave, health benefits, dental benefits, disability insurance, life insurance, and retirement benefits.

**FISCAL AND ECONOMIC SUMMARY**

The fiscal impact is indeterminate. Data is not available on contractor benefit policies or on the personal status of contractor employees. To the extent that this would require contractors to increase compensation to their employees, it is expected that those costs would be passed on to the County. Further, if, because of this bill, some companies chose not to bid on County contracts, the restricted competition could cause higher costs for the County. In order to enforce this law, the Office of Procurement in the Department of General Services would need to dedicate staff time, and contract for at least one audit, at a cost of \$50,000.

Nancy Floreen, President, County Council  
January 19, 2010  
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This bill could have a negative economic impact on some contractors who either perform or would like to perform work for the County. As mentioned above, the data is not available to calculate the impact of the insurance requirement and the resulting cost impact to the County's contractors. It is possible that this bill could have the further effect of causing some contractors to decide not to bid on County contracts because of the additional regulatory requirement. At a minimum, it may require a company that does not already have an equal benefits policy to devote resources to develop a benefits policy that complies with the bill.

The following contributed to and concurred with this analysis: Bruce Meier, Office of Management and Budget, Michael Coveyou, Department of Finance, and Mary Ellen Davis-Martin, Office of Procurement.

JFB:brm

c: Kathleen Boucher, Assistant Chief Administrative Officer  
Dee Gonzalez, Offices of the County Executive  
Michael Coveyou, Department of Finance  
David Dise, Director, Department of General Services  
Mary Ellen Davis-Martin, Department of General Services  
John Cuff, Office of Management and Budget

## **DOMESTIC PARTNER BENEFITS**

The Employee Benefits Equity Act of 1999 requires that any benefit the County provides for the spouse of a County employee or the spouse's eligible dependents must be provided for the domestic partner of a County employee and the partner's eligible dependents. Benefits provided to an employee's domestic partner or the partner's eligible dependents must be equivalent to those available for an employee's spouse or spouse's eligible dependents under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the federal Family and Medical Leave Act, and other federal laws that apply to County employment benefits.

As a result of this law, which became effective March 3, 2000, dependent eligibility for certain group insurance and retirement benefits are now extended to those who meet the requirements for domestic partnership, as well as their eligible dependents. This applies to both active and retired employees.

### **WHAT ARE THE REQUIREMENTS FOR DOMESTIC PARTNERSHIP?**

To establish a domestic partnership, you and your partner must *either*,

1) satisfy all of the following requirements:

- be the same sex (or opposite sex for members of the FOP, effective July 1, 2001 and for members of the IAFF, effective July 1, 2002);
- share a close personal relationship and be responsible for each other's welfare;
- have shared the same legal residence for at least 12 months;
- be at least 18 years old;
- have voluntarily consented to the relationship, without fraud or duress;
- not be married to, or in a domestic partnership with, any other person;
- not be related by blood or affinity in a way that would disqualify them from marriage under State law if the employee and partner were opposite sexes;
- be legally competent to contract; and
- share sufficient financial and legal obligations (described below in the section on *Required Evidence*).

*or*,

2) legally register the domestic partnership, if:

- a domestic partnership registration system exists in the jurisdiction where the employee resides; and
- the Office of Human Resources determines that the legal requirements for registration are substantially similar to the requirements listed under 1) above.

### **WHAT EVIDENCE IS REQUIRED FOR DOMESTIC PARTNERSHIP?**

You must provide the following:

1) *either,*

- the attached *Affidavit For Domestic Partnership* signed in the presence of a notary public by both the employee and the employee's partner under penalty of perjury declaring that they satisfy the requirements of domestic partnership; or
- an official copy of the domestic partnership registration.

*and;*

2) evidence that you and your partner share items described in at least 2 of the following (*this requirement does not apply to a qualified, registered domestic partnership*):

- a joint housing lease, mortgage, or deed;
- joint ownership of a motor vehicle;
- a joint checking or credit account;
- designation of the partner as a primary beneficiary of the employee's life insurance, retirement benefits, or residuary estate under a will; or
- designation of the partner as holding a durable power of attorney for health care decisions regarding the employee.

### **UNDER WHICH GROUP INSURANCE PLANS MAY I ENROLL MY DOMESTIC PARTNER AND MY PARTNER'S ELIGIBLE DEPENDENTS?**

You may enroll your domestic partner and your partner's eligible dependents in your medical plan, your prescription plan, your dental plan and your vision plan. Due to limitations on the current life insurance policy, dependent life insurance cannot not be extended to a domestic partner or a partner's dependents. **Please note that, under current tax law, reimbursements cannot be made from your Health Care Reimbursement Account of expenses incurred by your domestic partner or your partner's eligible dependents, if they are not your legal tax dependents. The same is true for the Dependent Care Reimbursement Account (in additional to other qualifying requirements that apply).**

### **WHO QUALIFIES AS AN "ELIGIBLE DEPENDENT" OF MY DOMESTIC PARTNER FOR GROUP INSURANCE PURPOSES?**

The following dependents of your domestic partner are eligible dependents for group insurance purposes:

- the unmarried children of your domestic partner, residing with you, under 19 years of age or up to 26 if a full-time student (meaning at least 12 credit hours per semester for college; for graduate school and accredited training programs, full-time status is usually defined by the institution); and
- the unmarried child of your domestic partner, residing with you, beyond age 19 who is incapable of self-support because of a mental or physical disability, and who depends on the domestic partner for support.

*The term "children" includes any natural children and any legally adopted children.*

## **HOW DO I ENROLL MY DOMESTIC PARTNER AND MY PARTNER'S ELIGIBLE DEPENDENTS IN MY GROUP INSURANCE PLANS?**

To enroll your domestic partner and your partner's eligible dependents:

- file a notarized *Affidavit For Domestic Partnership*, with all required supporting evidence with the Office of Human Resources (*affidavit form is attached*);
- within 60 days of filing the affidavit with all required supporting evidence,
  - complete a benefit enrollment form, if you are changing your level of coverage due to the addition of your domestic partner and your partner's eligible dependents;
  - complete a dependent information form to add your domestic partner and your partner's eligible dependents (*please note that proof of eligibility, such as a birth certificate, is required to add your partner's eligible dependents to your group insurance plans*); and
  - complete any forms required by your group insurance plan to add a dependent.

***All forms must be received by the Office of Human Resources within 60 days of filing a domestic partnership affidavit with all required supporting evidence; if not, you will have to wait until the next enrollment period to add your domestic partner and your partner's eligible dependents, to be effective the next plan year.***

## **HOW DOES THE ADDITION OF MY DOMESTIC PARTNER AND MY PARTNER'S ELIGIBLE DEPENDENTS TO MY GROUP INSURANCE PLAN AFFECT MY TAX SITUATION?**

Internal Revenue Service regulations require different tax treatment for group insurance costs associated with domestic partner coverage in cases where the partner does not qualify as a tax dependent under the IRS Code (in determining the tax effect of domestic partner coverage, the County will assume that neither your domestic partner or your partner's eligible dependents qualify as tax dependents, unless you are able to provide documentation to the contrary).

***For active employees who pay their portion of the group insurance costs with pre-tax payroll deductions, the addition of a domestic partner and the partner's eligible dependents to those group insurance plans will have the following effects:***

### **Payroll Deduction**

For each group insurance plan to which you add your domestic partner and your partner's eligible dependents –

- you will pay the difference between your cost for single coverage and your cost for the coverage level that includes the addition of your domestic partner and your partner's eligible dependents, with after-tax deductions; if you are already above the single coverage level because you cover a tax-qualified dependent, then the portion of that difference described above, to be paid with after-tax deductions will be adjusted to reflect proportion that your domestic partner and your partner's eligible dependents bear to the total number of dependents you cover;
- the amount remaining between your total cost (which includes the addition of your domestic partner and your partners eligible dependents) and the what is paid with after-tax deductions (as determined above), will be paid with pre-tax deductions.

### *Examples*

- 1)
  - you currently have single coverage, the cost of which = \$20;
  - after adding your domestic partner and your partner's two children, your coverage level increases to family and your cost = \$50;
  - the difference between your cost for single coverage and your cost for family coverage =  $\$50 - \$20$  or \$30;
  - the after-tax portion of your total deduction of \$50 for family coverage = \$30;
  - the pre-tax portion of your total deduction of \$50 for family coverage =  $\$50 - \$30$  or \$20.
  
- 2)
  - you currently have family coverage, that includes your two children, the cost of which = \$50;
  - your cost, if you had single coverage = \$20;
  - after adding your domestic partner and your partner's two children, your coverage level remains as family and your cost remains = \$50;
  - the difference between your cost for single coverage and your cost for family coverage =  $\$50 - \$20$  or \$30;
  - the proportion of dependents covered via the domestic partnership to the total dependents you cover, including those covered via the domestic partnership =  $\frac{3}{5}$  or 60%;
  - the after-tax portion of your total deduction of \$50 for family coverage =  $60\% \times \$30$  or \$18;
  - the pre-tax portion of your total deduction of \$50 for family coverage =  $\$50 - \$18$  or \$32.

### **Imputed Income**

If you cover dependents who do not qualify as tax dependents under the IRS Code, the value of the County's contribution toward that coverage is considered wages, subject to tax withholding. This is known as *imputed income*. The way that imputed income is determined is very similar to the way that your after-tax deduction is determined, except that the amount the *County* pays is substituted for the amount *you* pay.

### *Examples*

- 1)
  - you currently have single coverage, for which the County pays = \$80;
  - after adding your domestic partner and your partner's two children, your coverage level increases to family and the County now pays = \$200;
  - the difference between the County's cost for single coverage and the County's cost for family coverage =  $\$200 - \$80$  or \$120;
  - you will have reportable imputed income = \$120, subject to tax withholding from your paycheck.

2)

- you currently have family coverage, that includes your two children, for which the County pays = \$200;
- if you had single coverage, the County would pay = \$80;
- after adding your domestic partner and your partner's two children, your coverage level remains as family and the County's cost remains = \$200;
- the difference between the County's cost for single coverage and the County's cost for family coverage = \$200 - \$80 or \$120;
- the proportion of dependents covered via the domestic partnership to the total dependents you will cover, including those covered via the domestic partnership = 3/5 or 60%;
- you will have reportable imputed income = \$120 x 60% or \$72, subject to tax withholding from your paycheck.

***For active and retired employees who pay their portion of the group insurance costs with after-tax deductions from their paycheck or retirement check, or through direct bill, the addition of a domestic partner and the partner's eligible dependents to those group insurance plans will have only the imputed income effect described above.***

#### **WHAT IF MY DOMESTIC PARTNERSHIP ENDS?**

Should your relationship with your domestic partner end, or you no longer meet the domestic partnership requirements, the domestic partner and the partner's eligible dependents are no longer eligible for coverage under Montgomery County's group insurance and retirement plans. You must notify the Office of Human Resources (on an approved Statement of Dissolution of Domestic Partnership form) within 30 days of the termination event. In such case, benefits will terminate or continue for the domestic partner and the partner's eligible dependents as they would for a former spouse under similar circumstances (such as a divorce). For example, the domestic partner and the partner's eligible dependents may be able to continue their health coverage under COBRA.

#### ***PLEASE NOTE:***

***The information presented in this material has been prepared to assist you in understanding the provisions of domestic partner benefits. While this material attempts to summarize the provisions of domestic partner benefits and answer questions you may have, it is by no means exhaustive or exclusive. NO GUARANTEE OR CONTRACT IS CREATED BY THIS MATERIAL. In the event that this material conflicts with Montgomery County Code, federal law or collective bargaining agreements in effect, the language of the Montgomery County Code, the federal law and the collective bargaining agreements will be the final authority.***

**CONFIDENTIAL**

**MONTGOMERY COUNTY  
AFFIDAVIT FOR DOMESTIC PARTNERSHIP**

***(ALL REQUIRED EVIDENCE AND DOCUMENTATION MUST BE ATTACHED TO THIS FORM)***

**Part I**

I, \_\_\_\_\_, Social Security # \_\_\_\_\_  
*Employee - Print Name*

and I, \_\_\_\_\_, Social Security # \_\_\_\_\_  
*Domestic Partner - Print Name*

affirm, under penalty of perjury, that we are domestic partners as defined under the Montgomery County Code, Section 33-22 in that either –

(1) We satisfy **all** the following requirements:

- (A) be the same sex (or opposite sex for members of the Police bargaining unit, effective July 1, 2001 and for members of the IAFF, effective July 1, 2002);
- (B) share a close personal relationship and be responsible for each other's welfare;
- (C) have shared the same legal residence for at least 12 months;
- (D) be at least 18 years old;
- (E) have voluntarily consented to the relationship, without fraud or duress;
- (F) not be married to, or in a domestic partnership with, any other person;
- (G) not be related by blood or affinity in a way that would disqualify them from marriage under State law if the employee and partner were opposite sexes;
- (H) be legally competent to contract; and
- (I) share sufficient financial and legal obligations to satisfy at least two of the following items (**evidence required**):
  - 1. a joint housing lease, mortgage, or deed;
  - 2. joint ownership of a motor vehicle;
  - 3. a joint checking or credit account;
  - 4. designation of the partner as a primary beneficiary of the employee's life insurance, retirement benefits, or residuary estate under a will; or
  - 5. designation of the partner as holding a durable power of attorney for health care decisions regarding the employee.

or,

- (2) The jurisdiction in which we reside has a domestic partner registration system and we have legally registered the domestic partnership in that jurisdiction (**an official copy of the domestic partnership registration is required; also the legal requirements for registration must be substantially similar to the requirements under the Montgomery County Code, Section 33-22 as summarized in (1) above.**)

**Part II**

**Termination of domestic partnership.**

- (1) We understand that we must notify the Office of Human Resources (on an approved Statement of Dissolution of Domestic Partnership) within 60 days after:
  - (A) termination of the domestic partnership by death or dissolution; or
  - (B) any other change in circumstances that disqualifies the relationship as a domestic partnership as defined under the Montgomery County Code, Section 33-22.
- (2) We further understand that when the domestic partnership ends, benefits will terminate or continue in the same manner and to the same extent that the County terminates or continues, respectively, benefits for a former spouse in equivalent circumstances (such as dissolution of a partnership and divorce).

**Part III**

- (1) We understand this information will be held confidential and will be subject to disclosure only upon our express written authorization or if otherwise required by law.
- (2) We understand that declaration of domestic partnership and of responsibility for our common welfare may have legal and tax implications under federal and Maryland law. We understand that if an employee receives health benefits, including medical, dental, vision and prescription, for a domestic partner, and if that domestic partner is not a dependent of the employee under the Internal Revenue Code, that employee will be required to pay taxes on the value of the benefit. We understand that we are encouraged to contact a tax advisor or an attorney regarding tax implications of domestic partner benefits.
- (3) We understand that enrollment in benefits to which I or my dependents (including a domestic partner) are not entitled is considered fraud. I further understand that if I willfully misrepresent the eligibility of myself or my dependents (including a domestic partner), or fail to take the necessary action to remove ineligible dependents (including a domestic partner), or in any way obtain benefits to which I am not entitled, my benefits will be canceled, I may be required to repay any claims which have been paid inappropriately, and I may face charges or dismissal from County service.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

Subscribed and sworn to before me this \_\_\_\_\_ day of, \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
, Notary Public

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Domestic Partner's Signature

\_\_\_\_\_  
Date

Subscribed and sworn to before me this \_\_\_\_\_ day of, \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
, Notary Public

My commission expires \_\_\_\_\_

**Drummer, Bob**

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**From:** Fulco, Belinda  
**Sent:** Wednesday, December 23, 2009 2:29 PM  
**To:** Drummer, Bob  
**Cc:** Adler, Joseph; Girling, Wes; Boucher, Kathleen  
**Subject:** Bill 37-09, Contracts and Procurement - Equal Benefits  
**Importance:** High

Bob,

Here are the answers to your questions for Council.

1. There are 130 employees and 28 retirees with registered domestic partnerships.
2. Both FOP and IAFF members, as a result of bargaining can have either the same sex or opposite sex domestic partnerships. It was effective for FOP on 7/1/2001 and for IAFF on 7/1/2002. MCGEO members and unrepresented employees are permitted same sex domestic partnerships only. The breakdown is as follows:
  - a. FOP – 11 same sex domestic partnerships; 22 opposite sex domestic partnerships
  - b. IAFF – 7 same sex domestic partnerships; 49 opposite sex domestic partnerships
  - c. MCGEO and unrepresented – 41 same sex domestic partnerships
  - d. Retirees – 14 same sex domestic partnerships; 14 opposite sex domestic partnerships

To put this in the context of those that are eligible for group insurance coverage under the County's plans, here are the numbers as of 11/1/2009:

9,404 active employees; broken down by group  
     5,190 Choice MCGEO  
     1,107 Choice IAFF  
     1,118 Choice FOP  
     1,077 Select unrepresented  
     912 Participating agencies, municipalities, temporaries and COBRA participants  
 5,449 retirees and survivors

Attached is the OHR documentation that participants use to register their partnership with the County. This includes information on how coverage for domestic partners and domestic partner children are taxed for the benefits they receive.

Thanks,  
*Belinda*

Belinda Fulco, CEBS  
 Manager, Employment Benefits  
 Montgomery County Government  
 Office of Human Resources  
 240-777-5076  
 fax 240-777-5131

This e-mail may contain confidential or privileged information, and/or protected health information. If you believe that you



DEPARTMENT OF GENERAL SERVICES

Isiah Leggett  
*County Executive*

David E. Dise  
*Director*

MEMORANDUM

December 21, 2009

**TO:** David E. Dise, Director  
Department of General Services

**FROM:** Jack Gibala, Program Manager  
Office of Business Relations and Compliance  
Department of General Services

**SUBJECT:** Domestic Partner Benefits – Survey of Government Jurisdictions and County Vendors

You have asked for information from municipalities that have already enacted domestic partner benefits legislation to ascertain what measures were undertaken to implement these laws and what, if any, effect this had on competition, contract pricing or other implications to the public contracting process and competitiveness. Office of Business Relations and Compliance (OBRC) staff contacted a number of municipalities. This memorandum summarizes e-mail and telephone correspondence with those responding to our inquiries.

Government Jurisdictions

Common experiences and program elements among jurisdictions surveyed are that pushback from vendors was minimal as was additional incurred to comply with the new requirements; enforcement is complaint-based; occurrences of companies having to pay a “cash equivalent” is rare, and; the number of individuals known to have required the law to compel their employer to provide benefits, or instances where a complaint was filed is very low.

The municipalities responding to staff inquiries were:

<u>Municipality</u>	<u>Ordinance Passed</u>	<u>Effective Date</u>
San Francisco, California	November 1996	June 1, 1997
Los Angeles, California	1999	2000

Oakland, California	2001	July 1, 2002
San Mateo, California	February 13, 2001	March 13, 2001
King County, Washington	2003	2004
Dane County, Wisconsin	September 18, 2008	December 1, 2008

San Francisco, California – outreach included a mailing to their 14,000 vendors and meeting with chambers of commerce; experienced some resistance; estimate that 2%-4% of the 3.5 million vendor employees take advantage to the law.

Los Angeles, California – performs a pre-award compliance review wherein the vendors must provide documentation of compliance, including a copy of the health insurance policy or an affidavit from the carrier or broker and written proof of offering mandated benefits; unions have been reluctant to offer insurance coverage.

Oakland, California – outreach was through an e-mail blast to vendors; registers domestic partners; performs a pre-award compliance; estimates that fewer than 1% of employees are impacted by the law; very large office products contract was terminated after vendor was found not to be in compliance

San Mateo County, California – experienced no decrease in competition; implemented with few, if any, problems; Oakland and San Francisco blazed the trail.

King County, Washington – coverage is extended to those who perform “essential activities” on a contract and this approach has been the source of ongoing concern. Most trade unions do not offer same sex coverage; small number of small businesses objected.

Dane County, Wisconsin – performed little outreach; no impact on competition, though, admittedly, this could be the result of the recessionary climate in which the law was passed; vendor determines the amount of “cash equivalent” and the recipient is under no obligation to obtain benefits.

County vendors

OBRC Staff randomly surveyed Montgomery County contractors to obtain informal responses on anticipated impact of the proposed legislation. Following are the results of those interviews.

Bond Water Technologies, Inc. – Co-owner Matt Mallon sees no problem with offering domestic partner health insurance coverage for his small (25 employees) company. His carrier is Blue Cross and they treat it as if it were spousal coverage. He would be fine should the County enact the bill and would gladly extend the same benefits as spouses currently receive. His personal belief is that most people today are not concerned with someone else’s sexual preference.

Sigal Construction – Gerard Heiber, President, informed that they have offered domestic partner coverage for about two years. If the County passed a bill mandating domestic partner coverage, they are well suited to be in compliance.

Laytonsville Landscaping, Inc. – Owner Robin Lechliden indicated that this has not come up with her employees yet, as all of them are married. If the need did arise she would contact her insurance carrier and do as they would instruct. She did not think that it would be an issue.

Anonymous – I spoke with the president of a County-based service company of just over 100 employees who agreed to talk candidly if I did not reveal his identity. For him, domestic partner benefits would be “new territory”. They currently do not offer this type of coverage and have never considered it. Admittedly “old fashioned” this owner “does not want to pay for someone’s choice.” When I inquired as to what their position would be if the domestic partner benefits bill became law, he responded that they would comply with it.

The Lukmire Partnership, Inc. – Gregory Lukmire, President, said that the issue of domestic partner benefits has never come up at his firm. Should it be mandated, complying “would not be a problem.” He has not looked into what his insurance carrier, CareFirst, offers. I told him that the insurance industry is well suited to deal with this issue. He replied that, if so, he would merely add the coverage.

#### Addenda – January 20, 2010

1. I also spoke with Michael Altshoff of Aon Consulting, the County’s benefits consultant. He indicated that offering a domestic partner benefit is no longer much of an issue in the workplace and that the climate is now one of “growing acceptance.”

Citing a national study released in 2005, 64% of those companies surveyed indicated that the cost insuring domestic partners was less than 1% of their insurance premium, 88% indicated less than 2% and 12% claimed that it added 3%-5% to their premium. These increases pale in comparison to the double digit increases that have become common. With respect to the extent of coverage, 47% of all firms surveyed extended domestic partner coverage and 37% of the counties did so. Today, five years later, it would seem safe to assume that a strong majority of firms offer domestic partner coverage.

With respect to carriers offering domestic partner coverage, Mr. Altshoff indicated that all of the major carriers offer the coverage.

2. OBRC also utilized Survey Monkey to contact all current small businesses under contract with the county as well as a random sampling of medium-to-large businesses and construction companies, asking if they offer spousal health insurance, do they also offer domestic partner coverage. The survey was sent 20 contractors and there was a limited time to respond in preparation for Council committee hearing so the responding sample is small. Nevertheless, the results are not unlike the results noted above.

- 71% of the companies offer some form of extended benefits to spouses of employees

- 85% of the companies do not offer extended benefits to domestic partners
- 42.9% indicated they would be less inclined to do business with the County if it required this provision, while 57% indicated it would have no change.
- When asked how much time the businesses would prefer to prepare for this new requirement 29% stated 9-12 months, 28 % asked for up to 6 months, and 43% said no additional time was needed.

I hope this provides sufficient information to address your interest. Please contact me if you require more information.