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## Domestic Partnerships Benefits: Redefining Family in the Work Place

by Steven N. Hargrove

### I. INTRODUCTION

The complexity and diversity of what constitutes a "family" is ever-changing. Today, the traditional notion of mother, father, and children does not exist in the majority of households. Only 22 percent of America's 91.1 million households fit the traditional description of married, heterosexual, two-parent families.<sup>1</sup> Instead, families consist of a wide range of lifestyles and living arrangements, including: working single-parents, foster parents, step-parents, unmarried heterosexual partners, homosexual partners, roommates, extended families, and unmarried couples living together with children. Currently, 4.6 percent of all United States households are comprised of unrelated adults who share the same residence.<sup>2</sup> Some of these households are comprised of lesbians and gay men who are involved in long-term, committed relationships.

In fighting for their civil rights, lesbians and gay men have challenged the traditional notion of "family." Lesbians and gay men live together in on-going relationships, share financial commitments, raise children together, care for each other "in sickness and in health," and consider themselves to be families within the full meaning of the word. With this changing definition of family comes a push for societal recognition and for those benefits conferred upon traditional families and spouses. These range from adoption and foster care to employment and tax benefits.

Since lesbians and gay men are not allowed to marry, the push for domestic partnership benefits in the workplace has become a cutting-edge issue in the gay civil rights movement.<sup>3</sup> Fringe benefits can now account for 27 percent of employment compensa-

tion.<sup>4</sup> Insurance plans alone, including health insurance, constitute six percent of total compensation costs.<sup>5</sup> Gay men and lesbians feel discriminated against by not being able to enroll partners in insurance plans or take time off to care for an ailing partner. Domestic partnership provisions lessen the economic discrimination resulting from the ban on same-

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sex marriage. While domestic partnerships also cover opposite-sex couples, this status is especially important to gay couples since they do not have the option of marriage.<sup>6</sup>

Domestic partnership benefits are available in a variety of forms. Some employers offer only sick and bereavement leave because it tends to cost less, while other employers offer a full range of benefits, comparable to those extended to married employees. Over one hundred companies offer domestic partnership benefits at this time and the number is rapidly expanding as more employers recognize the diversity that exists within their work force.<sup>7</sup>

This article examines what domestic partnership benefits are, why they are offered, and what the legal response has been. The issues are then explored within the context of case studies of companies and organizations currently offering domestic partnership benefits to their employees.

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***Domestic partnership provisions lessen the economic discrimination resulting from the ban on same-sex marriage. While domestic partnerships also cover opposite-sex couples, this status is especially important to gay couples since they do not have the option of marriage.***

### II. DOMESTIC PARTNERSHIP: WHAT IS IT?

Generally, a domestic partnership is defined as "two people who share a primary residence, are financially and emotionally interdependent, and have a commitment to caring for each other's needs."<sup>8</sup> This term can apply to opposite-sex or same-sex partners. Some companies offering domestic partnership benefits may provide benefits to all unmarried employees, regardless of sexual orientation. Others limit domestic partnership benefits to gay men and lesbians because opposite-sex couples have the option of marriage.

Benefits employers confer upon domestic partners include various combinations of bereavement leave, family sick leave, health insurance coverage, subsidized travel and relocation expenses, and employee discounts. Employers decide on a benefit plan based upon such factors as their employees' needs, public pressure, litigation, and the company's financial situation. In some instances, this decision will depend upon the availability of an insurance carrier willing to cover domestic partners.

The philosophy behind domestic partnership coverage is that an employee and his or her partner are, in effect, spouses. Benefits are made available to an employee and his or her partner just as they are available to an employee and his or her spouse. The goals of domestic partnership coverage are those of fairness, non-

discrimination, and equality among all employees, regardless of marital status.

The concept of domestic partnership coverage in the private sector appears to have been an outgrowth of the coverage offered by municipal employers.<sup>9</sup> Berkeley, California, is believed to have been the first city to extend health plan benefits to domestic partners.<sup>10</sup> Domestic partnership was initially raised as an equity issue by Berkeley's Human Rights Commission.<sup>11</sup> A domestic partnership ordinance was enacted as a way to eliminate discrimination based upon marriage as a factor in granting health benefits. The ordinance is intended to remedy inequities in the provision of health care benefits.

In 1985, Berkeley extended health insurance, bereavement leave, and other spousal benefits to the domestic partners of city employees.<sup>12</sup> By 1987, all of Berkeley's insurance carriers offered health coverage for domestic partners.<sup>13</sup> Berkeley's policy requires unmarried couples to file an "Affidavit of Domestic Partnership," attesting that they have lived together for at least six months and "share common necessities of life."<sup>14</sup> The individuals filing must be over eighteen years of age, must affirm that they are each other's sole domestic partner, and must declare that they are "responsible for their common welfare."<sup>15</sup> Should the domestic partnership dissolve, the couple must file a statement of termination. The employee would have to wait six months to register a new part-

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ner.<sup>16</sup> Municipal and private employers usually offer this type of plan.

Other municipal employers offering some sort of domestic partnership plan include: West Hollywood, Santa Cruz, and San Francisco, Calif.; East Lansing and Ann Arbor, Mich.; Boston and Cambridge, Mass.; Seattle, Wash.; Minneapolis, Minn.; New York, N.Y.; Washington, D.C.; and Travis County, Tex. Two cities, Madison, Wisc., and Takoma Park, Md., allow employees to use leave time to care for domestic partners.<sup>17</sup> Some domestic partnership ordinances merely permit a couple to register for purposes of recognition, although most bestow limited benefits upon employees of the municipality. A few even give full benefits to the registered partner of a municipal employee.

No state has extended health care coverage to the domestic partners of its employees, although Ohio does give state employees sick and bereavement leave to care for a "significant other."<sup>18</sup>

### III. JUDICIAL RESPONSE

The courts have become increasingly involved in issues affecting domestic partnerships. Marriage and family are the formal basis upon which a majority of employee benefits are granted. To date, no court has allowed a same-sex couple to engage in a state-sanctioned marriage.<sup>19</sup> Couples who have a committed relationship but choose not to marry, or cannot marry, should not be excluded from the benefits available to married couples.

A few court decisions have extended same-sex couples the advantages previously thought appropriate only for heterosexual spouses. The bulk of the litigation is focused on the current legal definition of "family," as used in ordinances, statutes, and policies. One of the goals of the lesbian and gay community "is to expand the meaning of 'family' so that lesbian and gay families are legally protected in the same way as heterosexual families."<sup>20</sup> Domestic partnership rec-

ognizes that "family" may include a category of not-married, but not-single, people.

One of the first cases to deal with the interpretation of "family" was *Braschi v. Stahl Associates*.<sup>21</sup> In *Braschi*, the New York Supreme Court held that a surviving lover of a long-term same-sex relationship qualified as a member of the decedent's family under the anti-eviction provisions of the New York rent control law.<sup>22</sup> In so holding, the court expanded the definition of "family" to include "two adult lifetime partners whose relationship is long-term and characterized by an emotional and financial commitment and interdependence,"<sup>23</sup> not just persons related by blood or law. According to the court, the fact that the two men lived together for over ten years sufficiently established that they had an emotional commitment to each other. The men considered each other spouses, and friends and family considered them to be married as well. They regularly visited each other's families and attended family functions together as a couple. Additionally, the two men shared all debts and obligations, including a household budget. The *Braschi* case is a landmark decision because it recognizes same-sex couples as *de facto* family members.<sup>24</sup>

Some employees have pursued judicial action to gain benefits for their domestic partners. In *Hinman v. Department of Personnel Admin.*,<sup>25</sup> the plaintiff was a gay state employee who had lived with his partner for over twelve years. The *Hinman* court upheld a decision to prohibit Hinman from enrolling his partner in a dental plan reserved for "family members" of state employees. The State Employees' Dental Care Act at issue contained no definition of "family." But the Department of Personnel Administration, which administers the benefits plans, incorporated the definition of "family" from the pre-existing Health Care Act. That Act defined "family member" as an employee's spouse and unmarried children.<sup>26</sup>

Since Hinman's partner was not a spouse, coverage was denied.

The *Hinman* court declined to acknowledge that lesbian and gay couples can have relationships similar to those of married couples.<sup>27</sup> In-

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stead, the court concluded that all homosexuals, whether involved in long-term relationships or not, were analogous to unmarried individuals. The *Hinman* court relied on California's strong state policy in favor of marriage.<sup>28</sup> However, because California law prohibits marriage between same-sex couples, Hinman's partner could not qualify as a spouse under the benefit plan.<sup>29</sup>

In another case, the partner of an employee who died was not allowed to collect death benefits, even though the company had promised not to discriminate on the basis of sexual orientation. In *Rovira v. AT&T*,<sup>30</sup> Sandra Rovira, the surviving partner of an AT&T sales manager, requested the "sickness-death benefit" that was a part of her deceased partner's AT&T benefit plan. According to the benefit, AT&T would provide one year's salary to the surviving spouse or unmarried children of the AT&T employee who died as a result of an illness. Rovira requested the benefit for herself and her children. Although AT&T's personnel policies promise not to discriminate on the basis of sexual orientation or marital status, AT&T denied the request because the women were not legally married and the children were not the employee's natural or adopted children.

The Southern District Court of New York ruled that AT&T's noncompliance with its policy against discrimi-

nation was permissible.<sup>31</sup> Although AT&T's promise of non-discrimination was explicit, the court found that since the policy at issue did not appear in the benefit plan documents, the governing federal law — the Employee Retirement Income Security Act of 1974 — would not require AT&T to comply with its promise.

But some gains have been made. In a New York case, *Gay Teachers Assoc. v. Board of Education*,<sup>32</sup> several teachers and employees have sued the New York City Board of Education for health and dental benefits for their domestic partners. When the employees applied for benefit coverage for their partners, the Board of Education denied the benefits, claiming that benefits were available only to "legal spouses."<sup>33</sup> The plaintiffs claimed that this denial of domestic partnership benefits unlawfully discriminates on the basis of marital status, thereby constituting sexual orientation discrimination.<sup>34</sup> On October 30, 1993, Mayor David Dinkins signed a court settlement providing health benefits for all unmarried domestic partners of New York city employees, gay or straight.

Another court acknowledged that lesbian partners can constitute a family. In *re Guardianship of Kowalski*<sup>35</sup>

**The Braschi case is a landmark decision because it recognizes same-sex couples as de facto family members.**

involved the efforts of Kowalski's lesbian partner, Karen Thompson, to obtain guardianship over Kowalski after Kowalski sustained serious brain damage in an automobile accident.<sup>36</sup> The Minnesota Court of Appeals recognized same-sex families as "families of affinity," and acknowledged the importance of Thompson's continued presence in Kowalski's life.<sup>37</sup> Finally, after an exhaustive legal battle, the court appointed Karen Thompson guardian.<sup>38</sup>

These decisions indicate that an

overall change in the legal status of nontraditional family arrangements is gradually occurring. While some jurisdictions are ready to make changes in the legal recognition of domestic partners, others are not. Most importantly, the hurdle of having a court declare that a same-sex couple is a family has been passed. The future implication for the interpretation of "family," as used in personnel policies, is still to be seen.

#### IV. IMPLEMENTATION

Designing and implementing a domestic partnership program requires a great deal of thought and effort. Some people are strongly opposed to domestic partners for religious and moral reasons. Others feel that if their company offers these benefits, it would be tantamount to voicing approval of alternative relationships. While these may be considerations, the substantive issue that should surface is one of financial equality among all employ-

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ees regardless of marital status and sexual orientation. In addition, the support of management is imperative in order to create a positive atmosphere for the domestic partnership program.

##### ***A. How to Get an Employer to Offer Domestic Partnership Benefits***

During the past few years, gay and lesbian employees have banded together to form support groups, much like the groups which exist for Afri-

can-American employees or Latino employees. These groups provide networking opportunities, coordinate social events, and provide information on diversity within the workplace and on workers' rights.<sup>39</sup> The list of companies supporting such groups includes Xerox Corp., American Telephone and Telegraph Co., Lockheed Corp., Hewlett Packard Co., and Levi Strauss & Co., among others.<sup>40</sup> Very often these groups are the catalyst for the eventual extension of domestic partnership benefits. Since gays and lesbians are the ones most often affected by the inequality of benefits, they are also the ones most concerned about domestic partnerships. When support groups are formed, individuals are empowered by their numbers and are more willing to lobby for benefits that they might otherwise have been denied. These groups are a strong starting point for the exchange of ideas and support for implementation.

Originally, employees achieved benefits for their families through collective bargaining efforts by unions after World War II.<sup>41</sup> Similarly, collective bargaining may also be the most successful way for alternative families to obtain domestic partnership benefits. When contracts are renegotiated, domestic partnership benefits may be one area that unions will fight for if such a need exists within their membership. The weekly publication *Village Voice* first extended benefits to domestic partners in 1982 as a result of negotiations with District 65 of the Distributive Workers of America.<sup>42</sup> Unions still wield a strong influence in some employment areas, and their power should not be underestimated.

The following ideas may be helpful when lobbying an employer for domestic partnership benefits:<sup>43</sup>

##### **1. Gaining the support of key executives is essential in any employee lobbying effort.**

Education should be used as a way to gain support. Management must first realize that gay and lesbian em-

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ployees exist within the organization and that these employees are a valuable asset that the corporation does not want to lose. The key decision makers who are "friendly" toward the idea of domestic partners should be identified because they may be willing lobbyists. It is important to provide these key people with the information necessary to support their efforts.

##### **2. Domestic partnership benefits must be presented as a fairness issue.**

Explain that married employees reap a financial gain by being able to tap into employer-provided benefits and that domestic partners wish to do the same. It should be noted that in municipalities with domestic partnership registration and non-discrimination ordinances based upon sexual orientation and/or marital status, the door may be open for litigation based upon unequal benefits for married versus non-married employees and their partners.

##### **3. Gay and lesbian employees must be willing to voice their needs within the organization.**

Gay and lesbian employee groups can form coalitions with heterosexual unmarried partners to lobby for domestic partnership benefits. Statistics show that within the organizations offering domestic partnership benefits to heterosexual and homosexual employees, the majority of employees using the benefits are heterosexual.<sup>44</sup>

**4. The cost of adding additional people to a benefits plan should always be discussed.**

Today, employers are especially concerned about the high cost of AIDS. Many employers feel that by offering domestic partnership benefits, a large number of gay partners with AIDS will be added to health insurance policies. But the companies that currently offer domestic partnership benefits have not seen this type of increase. The incidents of AIDS within the gay community are leveling off, whereas the number of cases within the heterosexual population continues to increase. It should also be noted that the average cost to treat kidney failure is approximately \$175,000; breast cancer treatment costs approximately \$52,000; and AIDS treatment costs approximately \$69,000.<sup>45</sup> Thus, the cost of AIDS is less than the cost of other catastrophic illnesses and should not be a deterrent to employers considering domestic partnership benefits. Also, health benefits are only a portion of available benefits that an employer may offer.

**5. Address who will and can use domestic partnership benefits.**

In order to limit costs, many companies extend coverage only to same-sex couples. For example, Lotus Development offers the benefits only to homosexual employees because they are the only employees who are legally unable to marry in the United States.<sup>46</sup> Although plans without gender specificity may be more successful in diffusing moral and religious friction, they also tend to be more costly. Employers offering domestic partnership benefits to homosexual and heterosexual employees find that the majority of the employees who sign up for the benefits are heterosexual couples.

**6. Emphasize that a small percentage of eligible employees are likely to register for benefits.**

Many employees do not want to admit that they are involved in a domestic partnership. Additionally,

some partners already have adequate coverage and other people will feel that the tax burden outweighs the benefit.

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**7. Capitalize on the public relations benefits.**

Companies that offer domestic partnership benefits are considered progressive. Moreover, market research shows that gay and lesbian consumer loyalty rivals that of other groups.

***B. Designing a Domestic Partnership Benefits Package***

No legal definition of a domestic partner exists; therefore, one of the first issues an employer must address is who will constitute a covered domestic partner within the organization. As previously mentioned, the most common definition includes "two people who share a primary residence, are financially and emotionally interdependent, and have a commitment to caring for each other's needs."<sup>47</sup> Criteria employers have used to determine the existence of a domestic partnership include: cohabitation, the existence of a personal relationship, a private and public recognition that two people are a couple, the intent to be life partners, and registration (where available).<sup>48</sup> Most employers find that these minimal requirements

alleviate fears of fraud and abuse of the benefits. However, it should be noted that these requirements are not mandated for married employees.

Some employers have used the term "family" in defining domestic partnership benefits. While most homosexual partners would consider themselves to be a family, or at least a "family of affinity," care should be taken when this term is used due to the great deal of litigation. Employers must utilize a sufficiently narrow definition of domestic partnership in order to exclude other possible partners. Since the concept of a domestic partner is the equivalent of a married spouse, brothers, sisters, mothers, roommates, and other relatives should not qualify as domestic partners. These people may be considered "dependents" for other reasons, but they should not be included in the category of "domestic partner."

Corporations usually require some sort of documentation to prove that a domestic partnership exists between two people. A few cities, such as New York and San Francisco, now offer registration for domestic partners.<sup>49</sup> For a small fee, couples can register with the city clerk as domestic partners and receive a certificate indicating their status. Corporations located in these cities could require proof of registration with the city clerk before granting employees domestic partnership benefits. However, since most communities do not offer such a service, the burden falls upon the employer to request and maintain documentation of employees with domestic partners.

***Education should be used as a way to gain support. Management must first realize that gay and lesbian employees exist within the organization and that these employees are a valuable asset that the corporation does not want to lose.***

A procedure must also be established for the termination of a domestic partnership. Such a procedure could be in the form of requiring the employee to notify the benefits department within a certain time frame of the dissolution of the domestic partnership. Employers should also require a waiting period between the dissolution of one domestic partner-

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ship and the institution of another in order to help prevent fraud and abuse.

Another important aspect of domestic partnership benefits is the choice of benefits to offer. Although there are no explicit legal provisions requiring employers to offer identical benefits package to married and unmarried employees, the typical understanding of coverage for domestic partners is the extension of all benefits currently provided to an employee's spouse. Employers may want to proceed slowly at first, perhaps offering only sick and bereavement leave before implementing full health insurance coverage. By proceeding slowly, the company should arrive at some idea of the approximate number of employees signing up for the benefits before undertaking a sizable financial burden. Some companies have begun by offering subsidized travel, relocation expenses, employee discounts, or employee assistance programs.<sup>50</sup>

Employers must set up administrative procedures for dealing with domestic partners. Human resources, benefits, accounting, and payroll departments will all be involved in the documentation and calculation of benefits. Confidentiality is an important aspect of administration. Many people may not want the employee population at large to know that they are

involved in a domestic partnership. All of these aspects should be considered before extending benefits.

A final and challenging step in introducing domestic partnership benefits is the organization of an effective communications campaign.<sup>51</sup> "Employees need to understand the personal, financial and legal implications of signing up for domestic partner coverage. This is also the employer's opportunity to both promote widespread understanding of the rationale for the program and encourage acceptance of diversity in the work place."<sup>52</sup> Most companies that have extended domestic partnership benefits have preceded or accompanied the policy with a nondiscrimination statement based upon sexual orientation.<sup>53</sup>

An issue of concern to employees is palimony. Employees should be aware that by signing up for domestic partnership benefits and providing affidavits concerning mutual support, they may be creating a legally enforceable contract. As courts change the definition of "family" and spousal equivalents, employees may be held liable for a partners debts, and may be forced to pay support payments, should the partnership dissolve. Employees should know that domestic partnership is not an area that can be entered into lightly.

### **V. INSURANCE COMPANIES' ATTITUDES**

The biggest concern among insurers is the high cost associated with health coverage. Experience shows, however, that costs are lower on average for those employees with domestic partners than for married employees.<sup>54</sup>

AIDS and HIV are a central concern to employers and insurers. Insurers assume that the vast majority of domestic partners will be gay men who are at great risk of acquiring AIDS and that their health care costs will soar as a result. However, the cost of other conditions, such as heart disease, cancer, or the birth of a child,

may be equal to or more expensive than the cost of treating AIDS.<sup>55</sup> Lesbian partners are at very low risk for AIDS and heterosexual domestic partners are at the same risk as married couples.<sup>56</sup> In fact, health costs may actually be higher for populations in which most of the domestic partnerships consist of opposite-sex partners because of the possibility and likelihood that these couples will have children.

A few insurance companies have been willing to provide benefits for domestic partners in exchange for a surcharge to their premiums. Some of these surcharges have been dropped after a few years of experience with domestic partnership coverage when costs were lower than expected.<sup>57</sup> When Berkeley, Calif., first offered domestic partnership coverage, its carrier, Kaiser Permanente, levied a 2 percent loading charge to cover expected additional costs. After a period of three years, the carrier dropped this charge because a justification for the charge never arose. Larger employers can self-insure, thereby

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spreading the risks among their large employee population. However, larger employers that offer domestic partner coverage may have a problem obtaining stop-loss or "excess" coverage.<sup>58</sup> Sometimes larger employers offer a choice of plans to employees and can limit the choices that are available to domestic partners. Ben & Jerry's Homemade Inc. and Lotus both have self-insured plans for their domestic partner employees.<sup>59</sup>

Smaller employers usually have to purchase health coverage from an insurer, thus making it more difficult

for a small employer to offer domestic partnership benefits. However, some employers have allowed domestic partners to buy individual policies with the employer subsidizing the cost.<sup>60</sup>

One reason insurers are uncomfortable about covering domestic partners is the insurer's lack of control over the risk pool. Insurers are concerned that domestic partners would change frequently.<sup>61</sup> Employer policies, which would require a waiting period before and after establishing or dissolving a domestic partnership, could relieve this concern.

While this discussion has focused on health insurance, some employers offer life insurance or pension and profit-sharing plans to domestic partners instead of health coverage. Since these benefit plans do not require payment until termination of employment or death, an employee may name anyone as a beneficiary, regardless of whether that individual is legally related to the employee. Health insurance plans typically have not allowed coverage of non-related individuals.<sup>62</sup>

Insurance companies also fear that an employee might choose his sick friend over a partner for coverage because the friend needs insurance.<sup>63</sup> This type of choice is called "adverse selection." Once again, AIDS is also a concern in adverse selection. These concerns can be eliminated by open enrollment and/or a waiting period before domestic partner coverage begins. Claims experience shows that adverse selection should not be a major concern.

A few insurance companies will underwrite domestic partnership benefits. The Liberty Mutual Insurance Company offers coverage for domestic partners.<sup>64</sup> Through Liberty Mutual, the American Psychological Association offers major medical, hospital indemnity, accident, and life insurance coverage to domestic partners. Liberty Mutual provides this coverage at the same cost as coverage for married spouses. The company considers domestic partner coverage a "successful experiment" and is willing to write similar policies.

***Employers should also require a waiting period between the dissolution of one domestic partnership and the institution of another in order to help prevent fraud and abuse.***

## VI. TAX CONCERNS

With each passing year, the Internal Revenue Code (Code) becomes increasingly more complex. In all instances, the opinion of a competent tax adviser is essential and until the Internal Revenue Service (IRS) specifically spells out the tax ramifications of offering domestic partnership coverage, employers and employees should seek the advice of legal counsel with respect to these benefits.

### ***A. Taxability of Domestic Partnership Coverage***

Section 61 of the Internal Revenue Code includes almost all compensation received by an employee, including fringe benefits, as gross income. The employer cost of domestic partner coverage appears to be "compensation" under Section 162, thereby attributable to the employment of the "employee partner." This compensation becomes gross income for the employee and an expense that should be tax deductible by the employer.<sup>65</sup>

Unmarried couples are not generally recognized by the IRS. Unmarried domestic partners, therefore, cannot take advantage of the biggest tax advantage available to married couples

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— the filing of a joint return. However, a domestic partner may be able to claim the other domestic partner as a dependent and utilize an exemption for the dependent on the taxpayer's tax return. Section 152(a) requires that to be a "dependent," an individual must receive over half of his or her support for the year from the taxpayer (employee), reside in the taxpayer's residence (primary abode), and be a member of the taxpayer's household.<sup>66</sup> Paragraphs (1) through (8) set forth the class of individuals included in "dependent," but domestic partners do not qualify under any of these paragraphs. If the domestic partner is a legal spouse or can be classified as a dependent under Section 152, the fair market value of the employer-provided benefits is excludable under Sections 105 and 106. If the domestic partner is not a legal spouse and cannot be classified as a dependent, the value of the benefits will be taxable.

### ***B. Tax Issues for Employers***

Under Section 106 of the Code, the value of employer-provided health plan coverage is excludable from an employee's income when such coverage is for the employee, the employee's spouse, or the employee's dependents, as defined in the Code. As mentioned earlier, however, the domestic partner must qualify as a dependent, otherwise, taxes must be paid on any benefits.

The IRS has not yet addressed the taxation of domestic partner health benefits in their regulations, revenue rulings, or other publications of general application.<sup>67</sup> However, the IRS has issued at least four private letter rulings: 9034048 and 9111018 (the second supplementing the first); 9109060; and 9231062, which have addressed domestic partnerships. Private letter rulings are binding upon the party or parties to whom they are issued, but are not binding beyond those parties. Yet these private letter rulings are usually followed in similar circumstances and provide insight into how the IRS is likely to rule on a particular question.



In 1990, the City of Seattle, Washington, requested an IRS opinion on the tax implications for its employees who registered for domestic partnership coverage. The IRS issued private letter ruling 9034048, holding that employer-provided health benefits for domestic partners or nonspouse cohabitants of an employee are excludable from taxable income only if the recipients are legal spouses or legal dependents. The determination of marital status (legal spouse) is based on state law.

In 9034048, the IRS ruled that the fair market value of domestic partnership benefits should be determined according to individual policy rates, even though the plan involved was a group plan.<sup>68</sup> This position was reversed in private letter ruling 9111018, and the IRS ruled that the fair market value should be determined by the group rates. The IRS also has held that group rates are the applicable measure in other private letter rulings on domestic partnership coverage. Again, private letter ruling 9231062 stated that the fair market value of what was held to be taxable under Section 61 should be based on group rates.<sup>69</sup>

Private letter ruling 9109060 considers the issue of withholding on the value of employer-provided domestic coverage when the domestic partner is neither a spouse nor a dependent. This coverage was held to be "wages" subject to income tax and FICA withholding.<sup>70</sup>

### **C. Domestic Partner's Children**

An employee may live with a partner and the partner's children who are not related to the employee by blood,

**Insurance companies also fear that an employee might choose his sick friend over a partner for coverage because the friend needs insurance. This type of choice is called "adverse selection."**

adoption, or other traditional means. If this child is covered in the employee's health plan, the tax analysis is similar to the coverage of a domestic partner. If the child is a "dependent" under Section 152, the value of employer-provided coverage is excludable under Section 106. If not, the value is taxable under Section 61.<sup>71</sup>

### **VII. EMPLOYER CONCERNS AND QUESTIONS**

Because domestic partnership benefits are new and controversial, employers tend to have many concerns and questions about extending benefits to partners. Cost is the biggest deterrent for employers in extending domestic partnership benefits. At a time when medical costs are escalating, most companies are searching for ways to curb costs. While many employers offer such "soft-cost" benefits as employee discounts, sick and bereavement leave, and travel and relocation expenses, they may not offer full health coverage because of the high cost.<sup>72</sup>

Employers may also fear that claims will increase dramatically if health coverage is offered to domestic partners. As mentioned previously, employers and insurers are concerned that catastrophic illnesses, such as AIDS, will be taxing on health plans. However, statistics show that AIDS-related disorders are no more catastrophic than heart disease or cancer.

Fraud is another concern. Employers fear that employees will sign up sick friends who do not have coverage. Employees who do claim a sick friend or relative as a domestic partner may find the benefit of limited use. Pre-existing condition clauses may limit plan benefits for illnesses existing on enrollment. However, employers who already extend coverage to domestic partners report no cases of abuse.<sup>73</sup> Furthermore, "the social stigma attached to homosexuality makes homosexual 'marriages of convenience' unlikely."<sup>74</sup> These concerns can be easily addressed by

requiring proof of partnership; be it cohabitation, joint accounts, or signed affidavits, for example. Thus, the fraud and abuse of a domestic partnership situation should be no more than the fraud and abuse that currently ex-

**Unmarried couples are not generally recognized by the IRS. Unmarried domestic partners, therefore, cannot take advantage of the biggest tax advantage available to married couples — the filing of a joint return.**

ists with marriage. Most companies do not ask for any proof of marriage and employees are free to simply sign up their spouses.

Employers are also concerned that a large number of people will apply for the benefits. To date, there is no evidence to support this fear. The percentage of employees signing up for benefits tends to be less than five percent of an employer's work force.<sup>75</sup> In fact, it is not unusual to find that fewer than two percent of employees sign up.<sup>76</sup> The number of gay and lesbian employees who are in a permanent exclusive arrangement with someone who does not already have benefits is relatively low. Many domestic partners of employees have jobs and are covered by their own employer's plans. Employees also may be reluctant to incur extra taxes. And, again, there is the stigma attached to homosexuality and cohabitation arrangements which prevents some employees from signing up for the benefits.

Levi Strauss reports that less than one percent of its employees have signed up for domestic partnership benefits.<sup>77</sup> Many employees who have signed up have not enrolled partners. Instead, the employees have registered in case a partner needs future benefits. Of the number of Levi Strauss employees who have registered, 50 percent are female employ-

ees who have signed up their male partners, and approximately 40 percent have been male/male relationships.<sup>78</sup>

Public opposition is another possible drawback. Employers may fear that shareholders would sell stock or that customers would boycott the employer's products.<sup>79</sup> In fact, some companies have reported the opposite reaction. At Lotus, approximately 80 percent of the comments have been supportive.<sup>80</sup> An employer considering domestic partner coverage should weigh these concerns and consider what kind of education campaign might be in order.

Occasionally, the issue is raised that the employer may be "aiding and abetting" under local laws prohibiting cohabitation among domestic partners.<sup>81</sup> Local laws should be checked, but it does not appear that any employer has been held liable under these statutes to date.

For unmarried partners, domestic partnership benefits is an equity issue. In many companies, fringe benefits can be as high as 40 percent of an employee's total salary.<sup>82</sup> An employer who does not offer domestic partnership benefits is paying less in total compensation to non-married

***The IRS has not yet addressed the taxation of domestic partner health benefits in its regulations, revenue rulings, or other publications of general application.***

employees who have partners. The goal of domestic partnership benefits is not increased compensation, but a fairer distribution of the compensation that is paid. After Levi Strauss discovered that employees in common-law marriage states were taking advantage of benefits, they decided that in the interest of fairness and equity, same-sex partners should also receive benefits.<sup>83</sup>

Employers should be aware of the potential for discrimination lawsuits. If a company operates in a jurisdiction that bans discrimination based upon sexual orientation, circumstances may be ripe to pursue an equal protection claim. Currently, several states and more than 100 cities have passed legislation prohibiting discrimination based upon sexual orientation.<sup>84</sup>

Providing domestic partnership benefits may help public relations as well. In a *Newsweek* poll, 78 percent of those polled believed homosexuals should have equal rights in job opportunities and 67 percent approved of health insurance for gay spouses.<sup>85</sup> Offering domestic partnership benefits sends a clear signal that a company welcomes and values diversity within its work force. Moreover, if companies earn a reputation for being gay-positive, it may help them recruit on college campuses. Students entering the job market after college have turned down higher salaries to go with companies that are not homophobic.<sup>86</sup> If the organization can fulfill its reputation, valued gay employees are more likely to stay.

As of 1992, domestic partnership benefits were being offered by companies in the computer industry faster than in any other industry. Lotus became the first company to offer the benefit. Other companies that followed are Borland, AKS Ingress, Silicon Graphics, Sybase, and others.<sup>87</sup> These companies report that one of their reasons for offering domestic partnership benefits stems from their fear of losing talented gay and lesbian employees to competitors.<sup>88</sup> Domestic partnership benefits provide an incentive for increasing employee loyalty to the company.

Domestic partnerships are still an emerging issue in the work place. Employers have grave concerns about offering these somewhat controversial benefits. As the evidence continues to show, however, employer concerns can be alleviated through education and through a careful study of those companies who have already

made the decision to offer domestic partnership benefits. Whether or not a company decides to offer domestic partnership benefits, company offi-

***Employers are also concerned that a large number of people will apply for the benefits. To date, there is no evidence to support this fear. The percentage of employees signing up for benefits tends to be less than five percent of an employer's work force.***

cial should at least make themselves aware of existing options, educate themselves on the philosophical, cultural, and practical issues, and recognize differences in employees.

## VII. CASE STUDIES

In September, 1991, Lotus extended medical, dental, vision, hearing, parenting, and bereavement leave to the "spousal equivalents" of lesbian and gay employees.<sup>89</sup> Lotus is one of the largest for-profit employers to offer benefits to workers' non-married partners.<sup>90</sup> The move toward domestic partnership benefits was initiated in 1989 when three lesbian employees requested that Lotus substitute the phrase "spousal equivalent" for spouse in the personnel policy manual. They also requested that Lotus extend its benefits coverage to all partners of employees. Their argument was based on equality — that long-term, committed relationships deserved the same benefits as ones of their married colleagues.<sup>91</sup>

Lotus adopted the phrase "spousal equivalent." But in an unusual move, the company limited coverage to same-sex partners. Lotus decided against covering heterosexual partners since heterosexuals have the state-sanctioned option of marriage that gay and lesbian employees do not have.<sup>92</sup> At first, heterosexual employees feared the policy would attract more lesbians

and gays to the company and strongly protested the new benefits offering, but those fears were never borne out.<sup>93</sup>

In order to qualify for the benefit, Lotus requires an affidavit of partnership. Under Lotus' domestic partnership plan, an employee can designate one person to be eligible for benefits under the criteria of spousal equivalent. Spousal equivalents must be the same sex, cannot be blood relatives, must live in the same residence with the intent to reside together permanently, and must be jointly responsible for the common welfare and financial obligations of both individuals.<sup>94</sup> If the employees break up, they must wait one year before registering a new partner.<sup>95</sup>

In the first six months of the program, only twelve of an estimated 310 gay employees (10 percent of the 3100-person work force) applied for the benefit.<sup>96</sup> Lotus is self-insured and has a reinsurer for costs exceeding certain limits. Lotus has noted that "[f]ears that AIDS will drive up costs have proven to be unfounded."<sup>97</sup>

Of the first 300 letters Lotus received about its domestic partnership policy, 80 percent were positive. Some

**Domestic partnership benefits visibly demonstrate an employer's commitment to its changing work force and fair employment practices. As companies become more aware of their employees' non-traditional families, they will be more willing to provide incentives that provide cohesion within these family units.**

writers even promised to buy more software.<sup>98</sup>

Levi Strauss & Co. is the largest organization to offer domestic partnership benefits to its employees thus

far.<sup>99</sup> Levi Strauss employs more than 22,750 persons nationwide.<sup>100</sup> Reese Smith, director of employee benefits, originally made a domestic partner-

**Public opposition is another possible drawback. Employers may fear that shareholders would sell stock or that customers would boycott the employer's products. In fact, some companies have reported the opposite reaction.**

ship benefit proposal to management in 1982. His proposal was dismissed as being too costly. However, in 1985, as a result of union bargaining, Levi Strauss offered their employees bereavement leave for the death of domestic partners.<sup>101</sup> Domestic partnership benefits were discussed again in 1990 when a lesbian employee offered a proposal for extending medical benefits to domestic partners. Management could not agree on how to proceed and the issue was tabled for six months.<sup>102</sup> During that time, Levi Strauss learned that employees in Texas were receiving additional benefits because there was no waiting time for common-law marriage in that state.<sup>103</sup>

As a result of this discovery, Levi Strauss decided to offer benefits to stay in line with their non-discrimination policy on marital status. In February, 1992, Levi Strauss provided medical, dental, and vision benefits for domestic partners of their employees.<sup>104</sup> Their policy covers heterosexual partners as well as homosexual partners.<sup>105</sup> Levi Strauss is self-insured through Aetna, which provides coverage for medical, dental, and vision plans. Kaiser Permanente extends HMO coverage to domestic partners in the San Francisco Bay Area.<sup>106</sup>

For the purposes of domestic partnership coverage, Levi Strauss defines an "unmarried couple" as "any eligible employee and one other per-

son sharing a committed relationship with the following characteristics: living together, financially interdependent, jointly responsible for each other's common welfare, and considering themselves as life partners."<sup>107</sup> An unmarried couple does not include roommates, siblings, parents, or other similar relationships. The couple must consist of two people who are not legally married and who have the ability to enter into the relationship and who have no similar relationship with another person. Couples must be free of previous relationships for at least twelve months.<sup>108</sup> Levi Strauss does not require a separate affidavit of domestic partnership.<sup>109</sup>

In addition to health benefits, Levi Strauss offers employee assistance program services, bereavement leave, and a "Time Off With Pay Program"

**Employers should be aware of the potential for discrimination lawsuits. If a company operates in a jurisdiction that bans discrimination based upon sexual orientation, circumstances may be ripe to pursue an equal protection claim.**

to care for ill family members or other persons of special significance.<sup>110</sup> Levi Strauss welcomes unmarried couples at company-sponsored social events.<sup>111</sup>

Less than one percent of Levi Strauss employees have signed up for domestic partnership benefits.<sup>112</sup> Two-thirds of the enrollments are female employees enrolling their male partners. The second largest group is male-male partners, followed by male employees enrolling female partners, and finally female-female enrollments.<sup>113</sup>

The ice cream company, Ben & Jerry's Homemade, Inc., which is based in Waterbury, Vermont, was one of the first private United States employers to offer medical and dental

insurance to their employees' domestic partners.<sup>114</sup> Their "named partner" coverage is underwritten by Consumers United Insurance Co. of Washington, D.C.<sup>115</sup> Approximately four percent of the company's 360 employees

***Levi Strauss & Co. is the largest organization to offer domestic partnership benefits to its employees thus far. Levi Strauss decided to offer benefits to stay in line with their non-discrimination policy on marital status.***

have enrolled a spouse/domestic partner for benefits.<sup>116</sup> Employees are not required to file an affidavit to qualify for coverage.<sup>117</sup>

The company does not discriminate on the basis of race, age, sex, sexual orientation, or marital status.<sup>118</sup> Ben & Jerry's offers these benefits without regard to whether the couple is married, unmarried, opposite-sex, or same-sex. Additionally, couples' dependents are covered under the policy as well.<sup>119</sup>

To qualify for coverage, employees must prove they have lived with their partners for at least three months. For employees and their partners enrolled in the medical and/or dental plan, Ben & Jerry's pays the full premium for salaried employees and their partners. Hourly employees pay 25 percent of their dependents' premiums.<sup>120</sup> Health insurance coverage is capped at one million dollars per insured lifetime.<sup>121</sup> Ben & Jerry's pays 80 percent and employees pay 20 percent, after employees meet the deductible. Employees may sign up for the single-plus-one plan or opt for family coverage.<sup>122</sup>

Each employee may take up to five bereavement days per year for the death of a spouse or significant other. Partners of employees who leave Ben & Jerry's may continue health coverage for up to 18 months.<sup>123</sup>

The Ben & Jerry's benefits office reports no significant increase in coverage costs.<sup>124</sup> Although there was some concern about AIDS-related costs, Ben & Jerry's officials state that diseases such as heart disease, emphysema, diabetes, and long term diseases like cancer, statistically cost more money.<sup>125</sup>

Last year, Milbank, Tweed, Hadley & McCloy, a New York-based law firm, started providing health care coverage to same-sex domestic partners of the firm's employees.<sup>126</sup> Milbank Tweed employs 1100 people in eight offices.<sup>127</sup> Medical coverage is administered by the Prudential Insurance Company.<sup>128</sup> Milbank Tweed covers "qualified domestic partners" of full-time employees. A "qualified domestic partner" is an unmarried adult of the same sex who has cohabited with an employee for at least 12 months and is not otherwise a qualified dependent.<sup>129</sup> Milbank Tweed requires two forms of proof of cohabitation, which can be a driver's license, signed lease, billing statement, or tax

***For the purposes of domestic partnership coverage, Levi Strauss defines an "unmarried couple" as "any eligible employee and one other person sharing a committed relationship with the following characteristics: living together, financially interdependent, jointly responsible for each other's common welfare, and considering themselves as life partners."***

filings.<sup>130</sup> An "Affidavit of Spousal Equivalency" is also required.<sup>131</sup> Other law firms offering such benefits are Schiff Hardin & Waite of Chicago, and Orrick Herrington & Sutcliffe of San Francisco.

## IX. CONCLUSION

Domestic partnership benefits visibly demonstrate an employer's commitment to its changing work force and fair employment practices. Many states and municipalities forbid discrimination based upon sexual orientation. Many more companies have adopted such a policy on their own. As companies become more aware of their employees' non-traditional families, they will be more willing to provide incentives that provide cohesion within these family units.

Employees with non-traditional families must continue to lobby their employers for domestic partnership benefits in the interest of fairness and equity. Employees will push for recognition and equality as they become aware of compensation differentials based upon marital status. Wherever one turns in society, protections and benefits are afforded to traditional families and denied to alternative families. Once companies realize the minimal cost of providing domestic partnership benefits, they will be more willing to extend benefits to non-traditional families. ♦

## ENDNOTES

- <sup>1</sup> Martha Farnsworth Riche, *The Future of the Family*, AMERICAN DEMOGRAPHICS, Mar. 1991, at 44. Some estimates are as low as 15%. See Laurie Becklund, *The Word "Family" Gains New Meaning*, L.A. TIMES, Dec. 13 1990, at A3.
- <sup>2</sup> Jan Larson & Brad Edmondson, *Should Unmarried Partners Get Married Benefits?*, AMERICAN DEMOGRAPHICS, Mar. 1991, at 47.
- <sup>3</sup> The debate rages in the gay and lesbian community over domestic partnership status or gay marriage. For further information in this area, See Paula L. Eitelbrick & Thomas B. Stoddard, *Gay Marriage: A Must or A Bust?*, OUT/LOOK, Fall 1989.
- <sup>4</sup> BUREAU OF LABOR STATISTICS, U.S. DEPT. OF LABOR, EMPLOYMENT COST INDEXES AND LEVELS 1975-89, at 9 (1989). Some estimates range up to 40% of total compensation.
- <sup>5</sup> *Id.*
- <sup>6</sup> In July 1993, the Ontario Human Rights Commission ruled that any employer providing benefits for heterosexual must

## Lead Articles

- also provide them for same-sex couples. Kimberly Griffin, *Canada Mandates Partner Benefits*, WINDY CITY TIMES, Aug. 12 1993, at 1. In the U.S., Hawaii recently remanded a same-sex marriage case to determine the constitutionality under the Hawaii State Constitution. Baehr v. Lewin, 1993 WL 142682.
- <sup>7</sup> Ed Mickens, *What Good Are Partner Benefits?*, THE ADVOCATE, Feb. 22, 1994, at 31.
- <sup>8</sup> LAMBDA LEGAL DEFENSE AND EDUCATION FUND, RECOGNITION OF DOMESTIC PARTNERSHIP BENEFITS 1, (1991). Other definitions include "relationship resembling a family or household with close cooperation between the parties, each having specified responsibilities; a committed non-platonic, family-type relationship of two unrelated partners; two unrelated individuals who share the necessities of life, live together and have an emotional and financial commitment to one another; two individuals who have an intimate and committed relationship and are jointly responsible for basic living expenses; cohabitation, significant others, spousal equivalents, nontraditional dependents, live-in companions." HEWITT ASSOCIATES, DOMESTIC PARTNERS AND EMPLOYEE BENEFITS (1991).
- <sup>9</sup> Exceptions are THE VILLAGE VOICE newspaper, which extended coverage to domestic partners in 1982, and the ACLU, which extended coverage in 1983. Linda M. Laarman, *Employer Health Coverage for Domestic Partners—Identifying the Issues*, 18 EMPLOYEE RELATIONS L.J. 567, 579 (1993).
- <sup>10</sup> Linda M. Laarman, *The Facts About Domestic-Partner Benefits*, EMPLOYMENT RELATIONS TODAY, Summer 1992, at 247-48.
- <sup>11</sup> LAMBDA LEGAL DEFENSE AND EDUCATION FUND, A NATIONAL OVERVIEW OF DOMESTIC PARTNERSHIP LEGISLATION APRIL 1992 at 3, (1992).
- <sup>12</sup> Robert L. Eblin, Note, *Domestic Partnership Recognition in the Workplace: Equitable Employee Benefits for Gay Couples (and Others)*, 51 OHIO ST. L.J. 1067, 1072 (1990).
- <sup>13</sup> CITY OF BERKELEY, DOMESTIC PARTNERSHIP INFORMATION SHEET.
- <sup>14</sup> *Id.*
- <sup>15</sup> *Id.*
- <sup>16</sup> *Id.* The debate about the six-month waiting periods not required of married employees is beyond the scope of this article.
- <sup>17</sup> Walter Isaacson, *Should Gays Have Marriage Rights?*, TIME, Nov. 20, 1989, at 101.
- <sup>18</sup> Eblin, *supra* note 12, at 1077.
- <sup>19</sup> For cases where couples have claimed that their relationship constituted a marriage, See Adams v. Howerton, 673 F.2d 1036 (9th Cir. 1982) (denying spousal immigration status to male couple who were "married" by a minister), *cert. denied*, 458 U.S. 1111 (1982); DeSanto v. Barnsley, 476 A.2d 952 (Pa. Super. Ct. 1984) (holding common law marriage between two men not valid). However, the Hawaii Supreme Court has remanded a same-sex marriage case to determine the constitutionality under the Hawaii State Constitution. Baehr v. Lewin, 1993 WL 142682.
- <sup>20</sup> Libby Post, *The Question of Family: Lesbians and Gay Men Reflecting On Redefined Society*, 19 FORDHAM URBAN L.J. 747, 748 (1992).
- <sup>21</sup> Braschi v. Stahl Ass'n, 543 N.E.2d 49 (N.Y. 1989).
- <sup>22</sup> *Id.* at 54.
- <sup>23</sup> *Id.* at 54.
- <sup>24</sup> The Braschi definition of family was not extended when the New York Court of Appeals denied visitation rights to a woman whose "live-in relationship" with the child's mother had ended. *In re Alison D. v. Virginia M.*, 572 N.E.2d 27 (N.Y. 1991).
- <sup>25</sup> Hinman v. Department of Personnel Admin., 167 Cal. App. 3d 516 (Ct. Ap. 1985).
- <sup>26</sup> *Id.* at 523.
- <sup>27</sup> *Id.* at 526.
- <sup>28</sup> *Id.* at 527-28.
- <sup>29</sup> *Id.* at 524.
- <sup>30</sup> Rovira v. AT&T, (S.D.N.Y.) 90 Civ. 5486 (RPP).
- <sup>31</sup> *Id.*
- <sup>32</sup> Gay Teachers Assoc. v. Board of Educ., No. 43069/88 (N.Y. Sup. Ct. filed May 2, 1988).
- <sup>33</sup> *Id.*, Brief for Plaintiffs-Respondents at 13.
- <sup>34</sup> Peter Freiberg, *New York City Workers and Retirees Get Equal Health Benefits*, THE LAMBDA UPDATE, Winter 1994, at 7.
- <sup>35</sup> *In re Guardianship of Kowalski*, 478 N.W.2d 790 (Minn. App. Ct. 1991).
- <sup>36</sup> *Id.* at 791.
- <sup>37</sup> *Id.* at 794.
- <sup>38</sup> *Id.* at 797.
- <sup>39</sup> George K. Kronenberger, *Out of the Closet*, PERSONNEL JOURNAL, June 1991, at 42.
- <sup>40</sup> *Id.*
- <sup>41</sup> Barbara J. Cox, *Alternative Families: Obtaining Traditional Family Benefits Through Litigation, Legislation, and Collective Bargaining*, 2 WIS. WOMEN'S L.J. Spring 1986, at 32.
- <sup>42</sup> HEWITT ASSOCIATES, *supra* note 8, at 19.
- <sup>43</sup> Many of these ideas were developed by Daniel Barcus, Chicago, for a Lesbian and Gay Bar Association presentation on domestic partnership benefits, June 23, 1993.
- <sup>44</sup> Levi Strauss reports that 50% of its domestic partnerships are heterosexual. Michelle Neely Martinez, *Recognizing Sexual Orientation is Fair and Not Costly*, HRMAGAZINE, June 1993, at 70.
- <sup>45</sup> Average total cost for treatment of four serious illnesses, according to U.S. Public Health Service as reported in THE ADVOCATE, Sept. 7 1993, at 17.
- <sup>46</sup> Nathaniel E. Slavin, *Out of the Closet and Into the Insurance Policy*, CORP. LEGAL TIMES, June 1993, at 7-8.
- <sup>47</sup> LAMBDA LEGAL DEFENSE AND EDUCATION FUND, *supra* note 8, at 1.
- <sup>48</sup> THE SEGAL COMPANY, 1 & 2 EXECUTIVE LETTER 5 (1993).
- <sup>49</sup> NATIONAL GAY AND LESBIAN TASK FORCE POLICY INSTITUTE, DOMESTIC PARTNERSHIP ORGANIZING MANUAL 17 (1992); Lisa Anderson, *Gay or Straight, New Yorkers tie 'domestic partner' knot*, CHICAGO TRIBUNE, Apr. 16, 1993, at N1.
- <sup>50</sup> Laarman, *supra* note 10, at 248.
- <sup>51</sup> THE SEGAL COMPANY, *supra* note 48, at 6.
- <sup>52</sup> *Id.*
- <sup>53</sup> Laarman, *supra* note 10, at 247.
- <sup>54</sup> Albert R. Karr, *Labor Letter*, WALL ST. J., Dec. 29, 1992, at A1.
- <sup>55</sup> Laarman, *supra* note 9, at 570.
- <sup>56</sup> *Id.*
- <sup>57</sup> NATIONAL GAY AND LESBIAN TASK FORCE POLICY INSTITUTE, *supra* note 49, at 25.
- <sup>58</sup> Laarman, *supra* note 9, at 570.
- <sup>59</sup> Slavin, *supra* note 46, at 7.
- <sup>60</sup> Laarman, *supra* note 9, at 571.
- <sup>61</sup> Martha McDonald, *Domestic Partner Benefits Changes*, BUSINESS & HEALTH, Oct. 1990, at 18.
- <sup>62</sup> Laarman, *supra* note 10, at 248.
- <sup>63</sup> Cox, *supra* note 41, at 29.
- <sup>64</sup> LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INSURANCE COMPANIES AND BENEFITS (1992).
- <sup>65</sup> HEWITT ASSOCIATES, *supra* note 8, at 9.
- <sup>66</sup> WILLIAM M. MERCER, INC., (Feb. 1993).
- <sup>67</sup> Laarman, *supra* note 9, at 571.
- <sup>68</sup> Eblin, *supra* note 12, at 1085.
- <sup>69</sup> Priv. Ltr. Rul. 9231062 (May 7, 1992).
- <sup>70</sup> Priv. Ltr. Rul. 9109060 (Dec. 6, 1990).
- <sup>71</sup> Laarman, *supra* note 9, at 575.
- <sup>72</sup> Laarman, *supra* note 9, at 569.
- <sup>73</sup> *Id.*
- <sup>74</sup> *Id.*
- <sup>75</sup> THE SEGAL COMPANY, *supra* note 48, at 7.
- <sup>76</sup> *Id.*
- <sup>77</sup> Martinez, *supra* note 44, at 70.
- <sup>78</sup> *Id.*
- <sup>79</sup> Laarman, *supra* note 9, at 571.
- <sup>80</sup> WILLIAM M. MERCER, INC., *supra* note 66.
- <sup>81</sup> Laarman, *supra* note 9, at 578.
- <sup>82</sup> LAMBDA LEGAL DEFENSE AND EDUCATION FUND, *supra* note 8.
- <sup>83</sup> Martinez, *supra* note 44, at 70.
- <sup>84</sup> NATIONAL GAY AND LESBIAN TASK FORCE POLICY INSTITUTE, *supra* note 49, at 17-

- 46.
- <sup>85</sup> Bill Turque *et. al.*, *Gays Under Fire*, NEWSWEEK, Sept. 14, 1992, at 36 and 37.
- <sup>86</sup> Thomas A. Stewart, *Gay in Corporate America*, FORTUNE, Dec. 16, 1991, at 54.
- <sup>87</sup> MICHELANGELO SIGNORILE, QUEER IN AMERICA 349 (1993).
- <sup>88</sup> *Id.*
- <sup>89</sup> Keith H. Hammonds, *Lotus Opens a Door for Gay Partners*, BUSINESS WEEK, Nov. 4, 1991, at 80.
- <sup>90</sup> Stewart, *supra* note 86, at 50.
- <sup>91</sup> NATIONAL GAY AND LESBIAN TASK FORCE POLICY INSTITUTE, *supra* note 49, at 49.
- <sup>92</sup> Jennifer J. Laabs, *Unmarried . . . with Benefits*, PERSONNEL JOURNAL, Dec. 1991, at 65.
- <sup>93</sup> Post, *supra* note 20, at 752.
- <sup>94</sup> Laabs, *supra* note 92, at 65.
- <sup>95</sup> Hammonds, *supra* note 89, at 81.
- <sup>96</sup> *Id.* at 80.
- <sup>97</sup> NATIONAL GAY AND LESBIAN TASK FORCE POLICY INSTITUTE, *supra* note 49, at 49.
- <sup>98</sup> Hammonds, *supra* note 89, at 81.
- <sup>99</sup> NATIONAL GAY AND LESBIAN TASK FORCE POLICY INSTITUTE, *supra* note 49, at 48.
- <sup>100</sup> LEVI STRAUSS & CO., FACT SHEET, (1993).
- <sup>101</sup> Wojcik, *Few Offer Benefits to Unwed Couples*, BUSINESS INSUR., Mar. 11, 1991, at 30.
- <sup>102</sup> Martinez, *supra* note 44, at 70.
- <sup>103</sup> *Id.*
- <sup>104</sup> NATIONAL GAY AND LESBIAN TASK FORCE POLICY INSTITUTE, *supra* note 49, at 48.
- <sup>105</sup> Slavin, *supra* note 46, at 8.
- <sup>106</sup> Bev Beaudreault, *Inter-Office Correspondence*, LEVI STRAUSS & CO., April 19, 1993, at 1.
- <sup>107</sup> *Id.* at 2
- <sup>108</sup> *Id.*
- <sup>109</sup> NATIONAL GAY AND LESBIAN TASK FORCE POLICY INSTITUTE, *supra* note 49, at 48.
- <sup>110</sup> LEVI STRAUSS & CO., COMMONLY ASKED QUESTIONS ABOUT LEVI STRAUSS & CO.'S EXTENSION OF HEALTH BENEFITS TO UNMARRIED COUPLES 1 (1992).
- <sup>111</sup> *Id.*
- <sup>112</sup> Martinez, *supra* note 44, at 70.
- <sup>113</sup> Reese Smith, Remarks, *Extending Our Benefits*, Oct. 19, 1992, at 6.
- <sup>114</sup> Laabs, *supra* note 92, at 62.
- <sup>115</sup> Joanne Wojcik, *Newspaper First to Offer Domestic Partner Plan*, BUSINESS INSUR., Mar. 11, 1991, at 30.
- <sup>116</sup> *Id.*
- <sup>117</sup> NATIONAL GAY AND LESBIAN TASK FORCE POLICY INSTITUTE, *supra* note 49, at 47.
- <sup>118</sup> *Id.*
- <sup>119</sup> *Id.*
- <sup>120</sup> HEWITT ASSOCIATES, *supra* note 8, at 19.
- <sup>121</sup> Laabs, *supra* note 92, at 64.
- <sup>122</sup> *Id.*
- <sup>123</sup> *Id.* at 64-65.
- <sup>124</sup> NATIONAL GAY AND LESBIAN TASK FORCE POLICY INSTITUTE, *supra* note 49, at 47.
- <sup>125</sup> Slavin, *supra* note 46, at 8.
- <sup>126</sup> Deborah Shalowitz, *Law Firm Extends Cover*, BUSINESS INSUR., Mar. 1, 1993, at 6.
- <sup>127</sup> *Id.*
- <sup>128</sup> MILBANK, TWEED, HADLEY, & McCLOY, HEALTH CARE BENEFITS FOR SAME SEX DOMESTIC PARTNERS 1 (Dec. 1992).
- <sup>129</sup> *Id.*
- <sup>130</sup> *Id.*
- <sup>131</sup> *Id.* at 3.

## Announcements

### No Punitive Damages in Love Canal Contamination

A federal judge ruled recently that the corporate successor to the company responsible for dumping toxic waste at the Love Canal does not have to pay punitive damages. The contamination forced hundreds of people to abandon their homes in the 1970s and '80s.

New York state sought up to \$250 million from Occidental Chemical Corp., the corporate successor to Hooker Chemicals & Plastics Corp., which dumped 22,000 tons of hazardous waste at Love Canal.

The judge in the case ruled that state prosecutors failed to prove that the company showed "reckless disregard for the safety of others," but he did criticize the company for not warning nearby residents about the danger the chemicals posed. He also noted that the company used acceptable procedures at the time to dump

the waste, which was buried 40 to 50 years ago.

Considered one of the worst U.S. ecological disasters, the Love Canal contamination helped start the environmental movement by raising public awareness about toxic chemicals.

### Possible Settlement Reached in Silicone Breast Implant Cases

Three of the companies that manufactured silicone breast implants have agreed to provide almost \$4 billion to pay for thousands of health claims from women who say they have suffered ill effects from the implants.

U.S. District Judge Sam Pointer is presiding over more than 7,000 lawsuits involving the implants and will decide whether to grant approval of the settlement, which was agreed to by Dow Corning Corp., Bristol Myers-Squibb Co., and Baxter Healthcare Corp. However, the companies deny

the implants are responsible for health problems.

Under the terms of the settlement, women who agree to it within the next few months would be eligible to receive between \$200,000 to \$2 million apiece, depending on their illness. Women interested in joining in the settlement can call a nationwide hotline, 1-800-887-6828, for more information.

### Air Bags Save Lives

A study by the nation's largest automobile insurer shows that air bags have had a dramatic effect on reducing highway deaths and injuries. The study, commissioned by State Farm Insurance, studied 2,818 accident claims involving automobiles in which an air bag had inflated during a collision. When an air bag inflates in a frontal collision, the driver is 35 percent less likely to suffer moderate to serious injuries than a driver only wearing a seat belt, the study showed.