



**DO DOMESTIC PARTNER BENEFITS MAKE
GOOD BUSINESS SENSE?**

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Corporate executives are often faced with requests to expand or make changes to their employee benefits packages. Their decisions on such economic matters are normally based upon sound legal, financial, and other business principles rather than non-business factors. While it is understood that employee benefits programs ought to exhibit respect for all employees regardless of their particular circumstances, employee benefits decisions must address broad-based needs, not individual desires. A corporation cannot economically design its benefits plan to meet every specific need of every employee. Rather, these decisions must address broad-based needs in ways that provide maximum benefits to the corporation's employees, and thus to the corporation.

Domestic partner benefits do not meet this standard for most corporations. The primary factors supporting this conclusion are:

- Few employees actually want, need, or—when given opportunity—choose benefits for their live-in partners;
- Few employers appear to have provided domestic partner benefits simply because of employee needs;
- Studies have shown that employers receive a benefit from a corporate culture that values stable marriages, primarily because employees in lasting marriages are generally more dependable and motivated;
- Treating cohabitation as equal to marriage negatively affects corporate culture;
- No state or federal law requires that employers treat cohabitation as equal to marriage.

Please see the following pages for a discussion of these factors.

Small Need Versus Disproportionate Cost

The small number of employees who choose to receive benefits for their unmarried partners demonstrates that the need is not significant. When benefits are offered to the unmarried partners of all employees, the majority of the employees who accept the benefits have opposite-sex partners.¹ Virtually all employees with opposite sex partners have the option of marrying if they wish to accept financial responsibility for the person. Moreover, the number of employees who choose to accept benefits for their same-sex partners is truly miniscule. For example, only about .01 percent of General Motors employees (166 out of 1,330,000) had extended health benefits to their same-sex partners as of 2001.² A survey of employees at another Fortune 500 company in 2001 found that only 5 percent of eligible employees with same-sex partners were interested in accepting health benefits for their partners. Therefore, it seems obvious that cohabitation benefits is not a broad-based need.

However, the cost of providing health-care benefits to domestic partners is likely to be higher than for married couples. Advocates claim otherwise, saying that health-care costs for a domestic partner is about the same as for a married employee's spouse.³ But a study by WellPoint of a pool of small employers in California with approximately 700,000 employees found that the cost for same-sex couples was much higher. "The loss ratio (health care costs as a percent of premiums paid) for same-sex domestic partners was 17.1% HIGHER than for the remaining two-party members [meaning opposite-sex couples]."⁴ In other words, for every \$1 in premiums the company received for same-sex couples, the company spent \$.17 more for health care than for every \$1 in premiums received for married or other opposite-sex couples. This finding is consistent with the general expectation of opponents to domestic partner benefits that health-care costs for domestic partners would be higher than for married couples.

There are a number of reasons why health care costs can be expected to be higher.⁵ Cohabitation benefits policies are readily subject to abuse even without fraud. Many cohabitation benefits policies do not limit the reasons for

cohabiting. Advocates say that the ideal policy would not even require an intimate relationship between the employee and beneficiary, but would simply require that the person be a "member" of the employee's household.⁶ Since cohabitation may be initiated and ended without incurring legal obligations, people are much more likely to cohabit for the sake of conveniences, such as health insurance, than they are to marry for such reasons.

Furthermore, there is a substantial risk that employers providing health-care benefits for cohabiting couples will have an excessive number of high-risk individuals in their insurance pool. Eight percent of insured people account for over 70 percent of health-care insurance expenditures. Therefore, raising the number of high-risk individuals in an insurance pool by 1 percent has an exponential impact on overall cost.⁷ Moreover, married employees may ordinarily add beneficiaries to their group insurance plan without proof of good health only within 30 days of a life-event, such as marriage, birth or adoption. In contrast, many cohabiting employees may add a beneficiary during any open enrollment period, if not more often, with no proof of good health required. In other words, cohabiting couples have the option of waiting to accept domestic partner benefits until major medical needs are known.⁸ The negative impact of adding high-risk individuals to an insurance pool and the relative ease with which high-risk individuals may enter a pool via cohabitation benefits policies suggests that corporations should exercise utmost caution in choosing to provide such benefits.

To date there is very little publicly available data—and no publicly available actuarial studies—on the cost of health-care for live-in partners, for nearly 90 percent of the employers with such benefits adopted them within the past six years. Moreover, most employers and insurers either do not track the cost of domestic partner benefits separately, or do not disclose the information publicly. Accordingly, it is nearly impossible to accurately predict the cost of granting cohabitation benefits. But the very nature of cohabitation benefits policies and the WellPoint data from 2001 suggest that employers should expect the cost to be greatly disproportionate to the number of persons utilizing the benefits.⁹

Social Dimension of Benefits

The majority of employers that offer benefits to employees' unmarried partners have not likely chosen to offer the benefits as the result of an independent business judgment about employee needs. Instead, the decisions generally appear to have been a response to gay, lesbian, bisexual, and transgendered ("GLBT") rights advocacy. GLBT advocates have been holding annual "Out and Equal" conferences since 1992 to train employees how to lobby their employers for benefits for live-in partners. However, the greatest boost to the cause of cohabitation benefits came from a 1996 San Francisco ordinance that requires all companies contracting with San Francisco to treat live-in relationships the same as marriages. Nearly three quarters of employers that offered benefits to their employees' unmarried partners as of the fall of 2001 do business with San Francisco. Therefore, the business judgment for those employers was not necessarily related to the merits of cohabitation benefits, but appears to reflect a desire to continue doing business in the fourth-largest market in the United States. As of the fall of 2001, less than 1,200 employers nation wide had chosen to offer benefits to cohabiting couples without being subject to local laws requiring such benefits.¹⁰

According to the *Domestic Partnership Organizing Manual* ("Manual"), GLBT rights advocates focus a significant part of their efforts for social reform on corporations because corporate leaders "can often wield even more power than state and local officials in creating significant changes that affect their employees' lives. They can enact new policies with the approval of a few board members rather than thousands or even millions of voters."¹¹ Between the *Manual* and the materials provided annually at the "Out and Equal" conference, GLBT advocates have a well-organized plan for seeking benefits for cohabiting couples from corporate America. And ultimately advocates use success within corporate America as leverage against other corporations and against federal, state and local governmental entities to achieve additional cultural change in the way people view sexuality and marriage.¹²

Advantages of Stable Marriages

Recruiting and retaining competent, highly motivated workers is a major challenge in corporate America. Well-supported social science research suggests that a key element in this endeavor is to develop a corporate culture that encourages stable, monogamous marriages. Employees in marriages that last a lifetime are generally happier and healthier than employees who are divorced, cohabiting or un-partnered.¹³

One of the best-established facts in social science research is that married employees earn on average higher wages than their single counterparts.¹⁴ The wage premium is not a big one-time jump in earnings power immediately upon getting married. Instead, it is the cumulative effect of settling down, making work a priority, and avoiding excesses such as too much alcohol and too little sleep. In addition, the absenteeism of married workers is demonstrably lower, and they stay at particular jobs longer.¹⁵ Regardless of the reason for the greater productivity and dependability of married employees, the marriage premium is a clearly established fact in virtually every First World country where wages have been studied.¹⁶

Cohabitation Versus Marriage

If employees in marriages that last a lifetime are on average more productive and more dependable than singles, then corporations have a financial interest in promoting such marriages. However, a recent trend in employee benefits tends to undermine rather than promote permanent marriages. Since 1996 well over 3,000 employers have begun offering employee benefits to the live-in partners of their employees to the same extent as to the spouses of married employees. Supporting cohabitation in this way sends a message that living together is the equivalent of marriage. It makes cohabitation seem socially acceptable, legally neutral and economically responsible. But cohabitation is not like marriage socially, legally, economically or otherwise. Nor does cohabitation provide employers with dependable, productive employees like marriage does, for those benefits come from committed, enduring relationships. In contrast to marriage, where over half of mar-

ried couples will remain together for life,¹⁷ the majority of cohabiting couples in America either break up or marry within two years. And even if a cohabiting couple gets married, the couple is more likely to divorce than couples that do not cohabit prior to marriage.¹⁸ Both divorce and the break-up of cohabiting couples lead to the loss of employee productivity.

Providing health-care benefits to employees' live-in partners also tends to normalize gay and lesbian relationships, which in turn leads to an increase in gay sex.¹⁹ Neither result is good for employees or employers. Even in societies where gay sex is broadly viewed as socially acceptable and is legally protected—i.e., the Netherlands, Canada and Australia—gay sex is associated with deadly diseases such as HIV, AIDS, anal cancer, other sexually transmitted diseases, increased mental illness, and an eight to 20-year shorter life expectancy.²⁰ In view of the medical dangers associated with gay sex, as well as the risk of a shortened life-span, encouraging employees in their same-sex relationships is neither compassionate nor responsible.

Legal Issues

No state or federal law requires an employer to offer benefits to an employee's cohabiting partner.²¹ Nor do any non-discrimination laws require employers to provide benefits to an employee's live-in partner. However, several cities and localities with sexual-orientation non-discrimination laws now require that all city contractors provide employees' live-in partners with the same benefits as married couples. Although such ordinances are being challenged in federal court, it is not yet clear how the courts will ultimately react to the challenges.²²

CONCLUSION

In view of the small number of employees who want or need domestic partner benefits, there is no broad-based need for such benefits in Corporate America. And the administrative burden of creating a domestic partner benefits plan for a few employees, along with the cost of the benefit, makes domestic partner benefits a bad business decision for most employers. Many

other potential programs, such as day-care, retiree benefits or physical fitness plans, are far more broad-based and thus more deserving of corporate attention. There are a number of employers who may be required to provide domestic partner benefits in order to do business with localities like San Francisco. But that circumstance involves a decision based upon where an employer wants to do business rather than a business judgment about employee benefits.

Ultimately, the promotion of domestic partner benefits involves cultural issues rather than business concerns. But the law generally does not require that corporations provide such benefits, and publicly held corporations are not in business to effect social change. Instead, corporate executives are charged with maximizing profits for shareholders. Providing a corporate culture that supports stable marriages is far more likely to enhance corporate profits than is a corporate culture that encourages different lifestyles.

It is not discrimination to treat cohabitation different from marriage because cohabitation and marriage are not equal. Sound legal, financial, and other business principles suggest that corporations should not ordinarily choose to treat cohabitation and marriage as equal by providing domestic partner benefits.

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For well-documented materials providing additional information on issues addressed in this brochure, or for model company policies, please call Paul Weber at (480) 444-0030, or e-mail us at contact@corporateresourcecouncil.org. Resources that currently are or soon will be available include:

- Maggie Gallagher, *Why Supporting Marriage Makes Business Sense*.
- Jordan Lorence, *Answers to an Employer's Legal Questions about Domestic Partner Benefits and Sexual Orientation Non-discrimination Policies*.
- Michael Hamrick, *The Hidden Costs of Domestic Partner Benefits*.
- Glen E. Lavy, *Behind the Rhetoric: The Social Goals of GLBT Advocacy in Corporate America*.
- John Diggs, *The Health Risks of Gay Sex*.

ENDNOTES

- ¹ Human Rights Campaign, *How to Achieve Domestic Partner Benefits in Your Workplace*, pp. 9-10, www.hrc.org/worknet/dp/dptool.pdf.
- ² Maggie Gallagher, *Why Supporting Marriage Makes Business Sense*, p. 9 (Corporate Resource Council, 2002).
- ³ *How to Achieve Domestic Partner Benefits in Your Workplace*, p. 9.
- ⁴ Mark (Denny) Weinberg, "Domestic Partners and the Uninsured Issue," March 1, 2002, e-mail to distribution list. Mark Weinberg is Executive Vice President and Chief Development Officer of WellPoint, Inc.
- ⁵ Michael Hamrick, *The Hidden Costs of Domestic Partner Benefits* (Forthcoming).
- ⁶ *Ibid.*
- ⁷ *Ibid.*
- ⁸ An understandable motive for waiting is that employees are taxed on the cost of domestic partner benefits, so they may not wish to accept the benefit unless they know it is needed.
- ⁹ Hamrick.
- ¹⁰ Glen E. Lavy, *Behind the Rhetoric: The Social Goals of GLBT Advocacy in Corporate America*, p. 5 and endnotes 44-46 (Corporate Resource Council, 2002).
- ¹¹ Sally Kohn, *The Domestic Partnership Organizing Manual for employee benefits*, p.1 (National Gay and Lesbian Task Force, 1999), www.nglftf.org/downloads/dp/dp_99.pdf.
- ¹² Lavy, pp. 8-9.
- ¹³ Gallagher, pp. 2, 7.
- ¹⁴ *Ibid.*; Linda Waite & Maggie Gallagher, *The Case for Marriage: Why Married People Are Happier, Healthier, and Better Off Financially*, p. 99 (Doubleday: New York 2000). The wage premium for men is more substantial than for women for several reasons that are directly related to inherent differences in men and women. Single men engage in far more high-risk activities than single women, so marriage has a greater stabilizing impact on men's behavior. In addition, the marriage premium for women is diminished by the fact that women with children tend to work fewer hours than women without children. Waite and Gallagher, pp. 53-54, 107.
- ¹⁵ Gallagher, p.2; Waite & Gallagher, pp. 99-103. The quit propensity for single men is actually double that of married men. Kathryn Shaw, "The Quit Propensity of Married Men," *Journal of Labor Economics*, 5 (1987): 533-60, p.534. Marriage has the strongest impact on quit rates "during the earlier periods of the male life-cycle." *Ibid.*, p. 559.
- ¹⁶ Waite & Gallagher, p. 100 (citing Robert F. Schoeni, "Marital Status and Earnings in Developed Countries," *Journal of Population Economics*, 8 (1995): 351-59).
- ¹⁷ Using the divorce rates of the late 1990's, nearly 60% of first marriages would last a lifetime. "What Are Your Chances of Divorce?," *The State of Our Unions*, marriage.rutgers.edu/state_of_our_unions%202000%20text%20only.htm.
- ¹⁸ Gallagher, p. 8.
- ¹⁹ John Diggs, *The Medical Consequences of Gay Sex* (Forthcoming); *Iowa Study Suggests Tolerance of Homosexuals Is Growing*, AP (March 23, 2001); David Gelman et al., "Tune In, Come Out," *Newsweek* (Nov. 8 1993).
- ²⁰ Diggs; Theo G.M. Sandfort, et al., "Same-Sex Sexual Behavior and Psychiatric Disorders: Findings from the Netherlands Mental Health Survey and Incidence Study", *Archives of General Psychiatry*, Vol. 58, No. 1 (January 2001), archpsyc.ama-assn.org/issues/v58n1/abs/yoa9456.html; Robert S. Hogg, et al., "Modeling the Impact of HIV Disease on Mortality in Gay and Bisexual Men," *International Journal of Epidemiology*, Vol. 26, No. 3, pp. 657-661 (1997).
- ²¹ One state, Vermont, has created a "civil union" status that has legal consequences similar to marriage. 15 V.S.A. § 1204(a) (1999). Because civil unions create legal obligations for the partners, they are not legally the same as cohabitation, but they are not the legal equivalent of marriage either.
- ²² Jordan Lorence, *Answers to an Employer's Legal Questions about Domestic Partner Benefits and Sexual Orientation Non-discrimination Policies* (Corporate Resource Council, 2002).