

**MODIFIED FOR
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November 10, 2006

Bruce Ansell, President
International Association of Firefighters, Local 1604
766 Bellevue Way S.E.
Bellevue, Washington 98004

Re: *Letter Supporting the Request of the International Association of Firefighters, Local 1604 for Inclusion of Domestic Partner Benefits in the City of Bellevue's Firefighter's 2007-2008 Contract*

Dear Mr. Ansell:

Lambda Legal Defense and Education Fund, Inc. ("Lambda Legal") understands that the International Association of Firefighters ("IAFF"), Local 1604 is currently engaged in contract negotiations with the City of Bellevue (the "City"), and has requested that domestic partner benefits be made available to qualifying employees in the firefighters' 2007-2008 contract. We are writing to inform you that Lambda Legal has been retained by firefighter/paramedic Larry deGroen to provide Mr. deGroen with legal advice related to the City of Bellevue's current position declining to offer domestic partner benefits to its employees in committed same-sex relationships.

Lambda Legal is the oldest and largest nonprofit legal organization advocating nationally for full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV through impact litigation, education and public policy work. Since 1973, Lambda Legal has appeared as counsel or *amicus curiae* in hundreds of cases in state and federal courts on behalf of lesbians and gay men who have suffered discrimination because of their sexual orientation, including many cases seeking and defending domestic partnership protections for same-sex couples. Lambda Legal's "relationship recognition" litigation in the Washington Supreme Court has included *Heinsma v. City of Vancouver*, 144 Wn.2d 556 (2001) (helping to defend the city of Vancouver's authority to provide domestic partner benefits); and *Vasquez v. Hawthorne*, 145 Wn.2d 103 (2001) (helping to establish that surviving same-sex partners are to be treated the same as surviving different-sex unmarried partners regarding fair division of property after a breakup or the death of a partner in whose name the couple's property was titled).¹ Lambda Legal has also worked cooperatively with public and private sector employers

¹ Outside Washington, Lambda Legal's work to secure significant legal advances for non-marital partners in other forums has included participating in *Knight v. Superior Court*, 128 Cal. App. 4th 14 (2005) (upholding California's comprehensive domestic partnership law), pet. for review denied 2005 Cal. LEXIS 7127 (2005); *Snetsinger v. Mont. Univ. Sys.*, 325 Mont. 148 (2004) (establishing that university cannot offer domestic partner benefits to unmarried employees in



to assist with implementation of domestic partner benefits programs, including drafting the ordinances that established the Los Angeles County domestic partner registry and the City of Los Angeles' "equal benefits" ordinance (requiring city contractors to offer domestic partner benefits to their employees); drafting numerous California domestic partner laws; advising Seattle elected officials concerning Seattle's "equal benefits" ordinance; and consulting with staff of the Washington State Human Rights Commission on implementation of Washington's new anti-discrimination law.

Lambda Legal applauds the IAFF's efforts to secure equal benefits for its gay and lesbian employees, and we offer this letter to demonstrate our strong support for the IAFF's work in this regard. As Mr. deGroen's long-standing loyalty to the City demonstrates, the gay and lesbian employees who serve the City deserve to be treated with the same fairness, dignity and respect for their committed relationships as all other City employees.

For 11 years, Mr. deGroen has been a loyal and productive employee of the City, serving the City and larger community as a firefighter and certified paramedic. Mr. deGroen has been in a loving, committed relationship with his partner, Thomas Dixon, for 16 years. In December 2005, Mr. Dixon's father passed away. Mr. deGroen requested one day of paid bereavement leave to attend the funeral of Mr. Dixon's father, as would be afforded to a spouse. The City denied Mr. deGroen's request, and insisted that he take an unpaid leave to attend the service. Despite the repeated urgings of Mr. deGroen, and the opportunity to remedy the current disparity by granting the IAFF's request for domestic partner benefits, we understand the City remains firm so far in its refusal to provide such benefits. The City's intransigence not only runs afoul of Washington's constitutional guarantees of equal protection, but also fails to provide its gay and lesbian employees the equal compensation they have earned and fully deserve as a basic matter of workplace fairness.

I. Denying Domestic Partner Benefits Violates The Equal Protection Guarantees of Washington's Constitution.

The City's discriminatory compensation of its gay and lesbian employees violates Washington's equal protection guarantees under the state constitution's privileges and immunities clause. Other states and municipalities that have taken the same position as Bellevue does here have failed to justify their discriminatory treatment once their position was tested in court. *See Alaska Civ. Liberties Union v. State of Alaska*, 122 P.3d 781 (2005) (holding that the denial of domestic partner benefits to employees with same-sex partners could not withstand

different-sex relationships without offering benefits to employees with same-sex domestic partners); *S.D. Myers, Inc. v. City & County of San Francisco*, 336 F.3d 1174 (9th Cir. 2004) (upholding San Francisco's equal benefits ordinance); *Air Transp. Ass'n of Am. v. City & County of San Francisco*, 266 F.3d 1064 (9th Cir. 2001) (same); *Tanner v. Oregon Health Sciences Univ.*, 157 Ore. App. 502 (1998) (finding public university must provide domestic partner benefits to employees in committed same-sex relationships).



scrutiny under the equal protection clause of the Alaska constitution); *Snetsinger v. Mont. Univ. Sys.*, 325 Mont. 148 (2004) (finding constitutional violation where university permitted unmarried employees with different-sex partners to obtain domestic partner benefits, but prohibited employees in same-sex relationships from obtaining such benefits); *Tanner v. Oregon Health Sciences Univ.*, 157 Ore. App. 502 (1998) (holding that denying benefits to gay and lesbian employees because they are not married to their life partners violates Oregon's privileges and immunities clause). Providing domestic partner benefits is well within Bellevue's authority as a "code city,"² and is constitutionally mandated. And even without resort to constitutional analysis, basic considerations of employment equity dictate the same "equal pay for equal work" conclusion.

II. Providing Equal Compensation In The Form of Domestic Partner Benefits Is A Simple Matter of Fairness.

A failure to provide gay and lesbian employees with domestic partner benefits is a denial of equal compensation for equal work. Employee benefits typically comprise 30% to 40% of employee compensation, and the family benefits provided to employees who have spouses constitute a financially and emotionally valuable portion of this compensation.³ By withholding these family benefits, the City insists that its gay and lesbian employees in committed relationships should not receive the same rate of pay for their job performance, yet Mr. deGroen is not excused from performing any part of his job responsibilities, nor is his position less dangerous than those of his married colleagues. This discriminatory compensation scheme is no less invidious than if the City insisted gay and lesbian employees accept a lower base pay than that of their married colleagues. There is no legally cognizable justification for providing married employees with significantly greater compensation than employees with a committed same-sex partner. *See e.g., Alaska Civ. Liberties Union*, 122 P.3d at 794 ("Programs allowing the governments to give married workers substantially greater compensation than they give, for

² Bellevue's status as a "code city" gives it "all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law." *Hous. Auth. v. City of Pasco*, 120 Wn. App. 839, 844 (2004), citing *City of Bellevue v. Painter*, 58 Wn. App. 839, 841 (1990) (internal citation omitted). "A code city may thus act without restriction unless its action is prevented by the constitution, general law, or ordinance." *Hous. Auth.*, 120 Wn. App. at 844. Extending benefits to domestic partners is consistent with the Legislature's grant of authority to cities in R.C.W. § 41.04.180. *See Heinsma*, 144 Wn.2d at 561 - 562.

³ Stanford University Committee on Faculty and Staff Benefits, Report of the Subcommittee on Domestic Partners' Benefits ii (June 1992). *See also* Seattle Ordinance No. 119748 ("WHEREAS, employee benefits routinely comprise between 30 and 40 percent of total employee compensation; and WHEREAS, discrimination in the provision of employee benefits between employees with domestic partners and employees with spouses results in unequal pay for equal work..."), available at <<http://www.seattle.gov/contract/equalbenefits/eb-ordinance.htm>> (last viewed on Nov. 6, 2006).



identical work, to workers with same-sex partners cut against these constitutional principles yet further no legitimate goal of the governments as public employers.”)

III. The Savings To Be Accrued From Recruiting and Maintaining a Talented Workforce Far Outweigh The Negligible Cost of Providing Domestic Partner Benefits – A Lesson In Cost-Effectiveness That Already Has Been Embraced by Corporate America And Many Government Bodies.

In an era of limited budgets and increasing health care costs, employers are sensibly concerned about monitoring their employee health care costs. The common myth, however, that providing domestic partner benefits significantly increases an employer’s expenses is borne out neither by the growing body of empirical, non-partisan research, nor by the preponderance of private and public employers who have adopted domestic partner benefits as a sound business practice over the past twenty years.

The costs of domestic partner benefits are substantially limited because of a typically low rate of utilization by eligible employees.⁴ The pool of gay and lesbian employees is a limited one, and of those in same-sex relationships, not all will enroll for domestic partner benefits. Offering domestic partner benefits, therefore, generally results in a very small increase in the total number of employees accessing such benefits.⁵ The State of Washington has a typically low rate of domestic partner benefits utilization, with fewer than one half of one percent of state employees utilizing benefits as of 2001.⁶ The ultimate cost of providing such benefits – separate and apart from the fiscal gains that accrue from recruiting and retaining valuable talent – is

⁴ See Michael A. Ash and M.V. Lee Badgett, *Separate and Unequal: The Effect of Unequal Access To Employment-Based Health Insurance On Same-Sex And Unmarried Different-Sex Couples*, 24 Contemporary Economic Policy, 582, 597 (July 31, 2006) (reporting that business providing domestic partner benefits to same-sex couples would see on average less than a 0.1%-0.3% rise in enrollment), available at <<http://www.law.ucla.edu/williamsinstitute/publications/HealthInsuranceInequality.pdf>> (last viewed Nov. 6, 2006); M.V. Lee Badgett, *The Cost to Ocean County of Providing Pension Benefits to Employees’ Domestic Partners*, 1 (Jan. 2006) (finding that only 0.3% of New Jersey state employees enrolled a partner in the State’s health benefits plan between July 2004 and January 2006), available at <<http://www.law.ucla.edu/williamsinstitute/publications/Ocean%20County%20Study.pdf>> (last viewed Nov. 6, 2006). See also The NGLTF Domestic Partnership Organizing Manual, 11 (1999), available at <<http://www.nglftf.org/>> (last viewed on Nov. 6, 2006).

⁵ See e.g., Stephenie Steitzer, *Gay Couple Benefits Gaining*, The Kentucky Post (July 24, 2006) (a spokesperson for Toyota reports that “less than 1 percent of the company’s 38,000 U.S. manufacturing workers participate” in the company’s domestic partner benefits program).

⁶ “Gays and Lesbians Claim Partner Benefits Less Than Expected,” Seattle Times (January 10, 2001).



therefore generally considered an inconsequential percentage of an employer's larger health care budget.⁷

While the costs associated with providing domestic partner benefits are generally negligible, a lack of such benefits makes a dramatic difference to the families who must do without them. Domestic partners are forced to incur far greater expense to provide their partners with needed healthcare, while married couples can take those benefits, and the peace of mind they bring, for granted. As the Washington Supreme Court recently recognized, "many day-to-day decisions that are routine for married couples are more complex, more agonizing, and more costly for same-sex couples" because "same-sex couples do not have the same rights with regard to their life partners that facilitate practical day-to-day living, involving such things as medical conditions and emergencies." *Andersen v. King County*, 138 P.3d 963, 985 (2006). Providing partner benefits frees gay and lesbian employees of the emotional distress and sometimes overwhelming financial burdens that accompany the illness of an uninsured partner, paving the way for greater productivity.⁸

The positive benefits of domestic partner benefits, both for workers and employers, should not be underestimated. Employees who receive domestic partner benefits are "healthier, more satisfied, and less likely to leave their jobs."⁹ A supportive and inclusive environment in which gay and lesbian employees are valued and equally compensated results in employees that

⁷ See American Civil Liberties Union, *Helgeland v. Wisconsin - The True Cost of Providing DP Health Benefits* (July 13, 2005) (reporting that the State of Illinois began offering domestic partner benefits in 2006, based on the Illinois Department of Central Management Services' estimate that such benefits would cost an estimated one tenth of one percent of Illinois' health care budget for employees), available at <<http://www.aclu.org/lgbt/relationships/20306res20050713.html>> (last viewed on Nov. 6, 2006); Carole Biliczky, *Ohio Colleges Give Gay Pairs Work Benefits – Critics Say The Practice Violates State Ban On Same-Sex Marriages, Defenders Say It's A Work Contract*, Akron Beacon Journal (Feb. 10, 2006) at A1 (Miami University, where only 30 employees have enrolled for domestic partner benefits, estimated its costs of providing such benefits at approximately two tenths of one percent); Adam Behsudi, *City May Consider Same-Sex Benefits*, Asheville Citizen-Times (Feb. 10, 2006) at 1A (with less than 20 employees enrolling for domestic partner benefits, the city of Durham, North Carolina has experienced no additional costs).

⁸ Sarah Coppola, *Another bout for partner benefits*, Austin American-Statesman (April 3, 2006) at A1 (when Beverly Bottorff-Patton's uninsured partner of 15 years was diagnosed with a tumor, the couple had to deplete their savings and take out a \$25,000 home equity loan to cover the costs of tests and surgery).

⁹ M.V. Lee Badgett and Gary J. Gates, *The Effect of Marriage Equality and Domestic Partnership on Business and the Economy*, 1 (Oct. 2006) (hereinafter, "The Effect of Domestic Partnership"), available at <<http://www.law.ucla.edu/williamsinstitute/publications/MarriageEqualityontheEconomy.pdf>> (last viewed on Nov. 6, 2006).



report greater job satisfaction and less turnover.¹⁰ In fact, 48% of gay and lesbian workers report that domestic partner benefits would be the most significant factor in weighing another job opportunity.¹¹

Offering domestic partner benefits provides employers with the significant additional benefit of increasing “the competitiveness of employers in recruiting and retaining talented and committed employees.”¹² Employers failing to absorb this lesson have learned it the hard way by losing valuable and talented employees.¹³ Mr. deGroen provides a stark illustration of the “penny wise and pound foolish” approach the City has pursued until this point. The City has invested an estimated \$100,000 in training Mr. deGroen to become a highly skilled firefighter and certified paramedic, and has benefited from his exemplary service and loyalty to the City during his 11 year tenure with the Fire Department. When the City treats its gay and lesbian employees unequally, and fails to provide the basic day-to-day incentive to remain, it risks losing the talent, experience, and significant training investments made in those employees. And when those employees leave, most likely to be replaced by newer, less experienced, married employees, the City will find itself offering the very same benefits to the new, less skilled workers. The City also will bear the costs that accompany low employee morale in the face of their employer’s message of discrimination and devaluation of their hard work.

Thousands of private employers have taken notice and have recognized that affording equal benefits to domestic partners is a wise fiscal decision. Today, 79 of the Fortune 100 companies offer domestic partner benefits to employees with a same-sex partner, and a majority of the Fortune 500 companies offer domestic partner benefits.¹⁴ The Washington Supreme Court

¹⁰ *The Effect of Domestic Partnership*, at 2; see also Bill Novak, *County Extends Partner Benefits*, The Capital Times (June 2, 2006) (County Supervisor John Hendrick explains, “By providing similar benefits to all employees, we will have better loyalty and satisfaction by our employees if we care about the people they care about.”).

¹¹ *The Effect of Domestic Partnership*, at 3.

¹² *The Effect of Domestic Partnership*, at 1. See also Amy Joyce, *For Gays, Some Doors Open Wider*, The Washington Post (Sept. 24, 2006) at F1 (“Companies are finding it is a business imperative to take diversity, including sexuality and gender issues, into account. For one, employees need to feel their company supports them. But even more, companies need to show that they are inclusive to attract and retain the right employees in a tight, competitive market.”).

¹³ Ryan J. Foley, *Research ‘Superstar’ Resigning Nanotechnology Expert Carpick Cites Lack of Benefits for Partner*, St. Paul Pioneer Press (Aug. 24, 2006) (“A promising University of Wisconsin-Madison researcher who has won millions of dollars in grants says he is leaving the school, citing its lack of health insurance benefits for his domestic partner.”).

¹⁴ *The Effect of Domestic Partnership*, at 2; Human Rights Campaign, *State of the Workplace for Gay, Lesbian, Bisexual and Transgender Americans 2005-2006*, 3, available at <<http://www.hrc.org/>

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has more than once recognized the reasoned business logic behind such policies, as have other state courts. “Bottom-line, business decision-making explains it: Respected employees perform better and stay longer.” *Andersen*, 138 P.3d at 985, n. 17 (2006), quoting *The Federal Marriage Amendment is Bad for Business*, Wall St. J., Oct. 5, 2004, at B2; *Heinsma*, 144 Wn.2d at 562 (“We recognize that the city [of Vancouver, Washington] has a strong interest in retaining qualified employees...”).¹⁵ In addition to the State of Washington, many Washington municipalities also have applied these lessons to their significant benefit.¹⁶

Offering benefits to compensate gay and lesbian employees equally, and fostering an environment of inclusion, should be understood as simply in line with the Bellevue City Council’s commitment to meeting “the needs of a growing community” through “proactive leadership and governance.”¹⁷ These laudable goals will serve the City well as it celebrates its increasing diversity¹⁸ and seeks to attract highly skilled and dedicated workers to serve the City’s growing needs. We join you in urging the City to continue the commendable tradition of leadership that has led Bellevue to become a destination for many of the most innovative employers, a significant number of which offer domestic partner benefits themselves,¹⁹ by

¹⁵ See also *Schaefer v. City & County of Denver*, 973 P.2d 717, 719 (Colo. Ct. App. 1998) (explaining that “the authority to define the scope of employee compensation, including benefits, is of particular importance to a local government because of its impact on a city’s ability ‘to both hire and retain qualified individuals’”) quoting *Colo. Springs Fire Fighters Ass’n v. City of Colo. Springs*, 784 P.2d 766, 773 (Colo. 1989)); *Crawford v. City of Chicago*, 304 Ill. App. 3d 818, 827 (1999) (finding that cities must be able to offer good employment benefits in order to be able to hire and retain qualified individuals).

¹⁶ A non-exhaustive list of the Washington municipalities offering domestic partner benefits includes Anacortes, Bainbridge Island, Bothell, Burien, Covington, King County, Kirkland, Lacey, Lake Forest Park, Olympia, Pullman, Sammamish, Seattle, Snohomish County, Spokane, Tumwater, and Vancouver.

¹⁷ See <http://www.cityofbellevue.org/council_overview.htm> (last viewed on Nov. 6, 2006).

¹⁸ See <<http://www.cityofbellevue.org/demographics.htm>> (last viewed Nov. 6, 2006).

¹⁹ Major Bellevue employers offering domestic partner benefits in one or more of their offices include Aetna Information Technology Inc., Allen Brackett Shedd, Alta Consulting Services Inc., Barclay Dean Construction Services, Biwell Construction, Inc., Boeing Shared Services Group, Bruce C. Allen & Associates Inc., Burke Electric LLC, Captaris, Inc., CDM Engineers and Constructors Inc., CH2M Hill, Chromalox (Weigand Ind. Div.), Ciber Inc., Compucom Systems, Cre8 Inc., Earth Tech, Inc., Eaton Electrical Inc., EES Consulting Inc., Expedia, Inc., Geoline Positioning Systems Inc., Gordon Graham & Co. Inc., HNTB Corp., Ilium Associates Inc., Image Ink Studio Inc., Inca Engineers Inc., K2 & Associates Inc., L & T Information Technology, Level II Inc., Kirsten Betty & Associates Inc., Machines & Methods Inc., Macrosearch Inc., Nordstrom Inc., Onyx Software, Pacific Technologies, Inc., Overlake Hospital Medical Center, Puget Sound Energy, Rafn Company, Red Samm Construction, Inc., Safeway Inc., Siemens Building Technologies, Symetra Financial, T-Mobile USA, Verizon Wireless and



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joining those employers, Washington State and the myriad Washington municipalities that now provide such benefits. We also strongly support your position that the City should make such benefits available to its employees with a committed, non-marital domestic partner – as most other Washington municipalities have – without discriminating on the basis of sexual orientation or gender. Lambda Legal believes the City need look no further than its commitment to proactive governance to resolve this issue efficaciously, and would be pleased to support the IAFF’s efforts by consulting with appropriate union representatives to develop a domestic partnership policy for the City to adopt.

This letter is not intended to set forth a complete statement of all of the legal rights or remedies of Mr. deGroen, nor of all of the facts nor the legal or equitable bases on which those rights and remedies rest, nor to waive or compromise them in any way.

Sincerely yours,

/s/
Jennifer C. Pizer
Senior Counsel

/s/
Tara L. Borelli
Staff Attorney

Wachovia Securities. See Human Rights Campaign Foundation’s “Workplace Project” database, available at <http://www.hrc.org/Template.cfm?Section=Search_the_Database&Template=/CustomSource/WorkNet/srch_list.cfm> (last viewed on Nov. 6, 2006).