



CITY AND COUNTY OF SAN FRANCISCO HUMAN RIGHTS COMMISSION

QUICK REFERENCE GUIDE TO EQUAL BENEFITS COMPLIANCE

➤ *Step 1: Understand the Law*

What does the law require?

Effective June 1, 1997, Chapter 12B of the San Francisco Administrative Code was amended to prohibit the City and County of San Francisco from entering into contracts or leases with any entity that discriminates in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of employees.

Who is covered by this law?

All entities who hold or seek to enter into contracts with the City and County of San Francisco for public works or improvements, for a franchise, concession or lease of City property, or for goods, services or supplies to be purchased at the expense of the City and County are covered by this law. The law does not cover entities with which the City does less than \$5,000 worth of business per year. Subcontractors are not required to comply with this law. Each party to a joint venture must comply independently.

What benefits are covered?

In most cases, the law applies to all benefits offered by a contractor to its employees who have spouses or domestic partners and all benefits offered directly to such spouses or domestic partners, even when the employee pays the entire cost of the benefit. This includes, but is not limited to, medical insurance, retirement plans, leaves of absence (such as bereavement and family medical leave), use of company facilities, and discounts.

What is a domestic partner?

The law defines a domestic partner as any person whose domestic partnership is currently registered with a governmental body pursuant to state or local law. This includes both same-sex and opposite-sex couples. To comply with the law, verification of domestic partnerships may take place only to the same degree and in the same manner as marriages are verified.

What if a company will comply but needs time to do it?

Once a contractor makes it clear that it will comply with Chapter 12B (by submitting a 12B Declaration indicating compliance), in certain situations ending discrimination in benefits may be delayed. For instance, offering medical insurance may be delayed until the contractor's next open enrollment period; other benefits, such as bereavement leave, may be delayed until the contractor's personnel policies can be revised. Benefits offered through a union agreement may also be delayed under certain circumstances. For more information, see Rules of Procedure section II.E., Substantial Compliance Affidavit (Form HRC-12B-103), or contact the HRC.

What if a contractor is unable to offer benefits equally?

Some contractors are unable to find an insurance company willing to offer domestic partner coverage. Others may find that a federal law prohibits extending a particular benefit to domestic partners

on the same basis as it is extended to spouses. When a contractor takes all reasonable measures to stop discriminating, but can't for reasons outside its control, it can comply with Chapter 12B if it agrees to pay a cash equivalent. The HRC decides whether reasonable measures have been taken. A cash equivalent is the amount of money paid by an employer for the spousal benefit that is unavailable for domestic partners, or vice versa. For more information, see Rules of Procedure section III, Reasonable Measures Application (Form HRC-12B-102) or contact the HRC.

➤ *Step 2: Complete a Chapter 12B Declaration (Form HRC-12B-101)*

Answering the Questions

Section 1 asks for information about your company. Please complete all items; if you don't know your vendor number, you may leave that item blank.

Section 2, Question 1A asks whether your company prohibits discrimination against people based on the categories listed. This policy does not need to be in writing.

- Answer "YES" if your company does have such a policy.
- Answer "NO" if your company does not have such a policy.

Question 1B asks whether your company agrees to include a nondiscrimination clause in all subcontracts entered into for the performance of a substantial portion of any contracts you have with the City. This clause must include all of the categories listed in question 1a. You must answer this question even if your company will not be entering into any subcontracts associated with work performed for the City.

- Answer "YES" if you will agree to include a non-discrimination clause in subcontracts.
- Answer "NO" if you will not agree to include a non-discrimination clause in subcontracts.

Question 2A asks whether your company offers benefits (such as medical insurance) to employees' spouses or to employees because they are married (such as bereavement leave which can be taken because of the death of a spouse, or family medical leave which can be taken because of a spouse having a serious medical condition).

- Answer "YES" if you offer any such benefits.
- Answer "NO" if you do not offer any such benefits.
- If you have no employees, you should answer "NO."

Helpful hint: *You are considered as offering a benefit even if you don't pay for it. If access to the benefit is offered, but the cost must be paid in whole or in part by the employee, you should still answer "YES."*

Question 2B asks whether your company offers benefits (such as medical insurance) to employees' domestic partners or to employees because they are in a domestic partnership (such as bereavement leave which can be taken because of the death of a domestic partner, or family medical leave which can be taken because of a domestic partner having a serious medical condition).

- Answer "YES" if you offer any such benefits.
- Answer "NO" if you do not offer any such benefits.
- If you have no employees, you should answer "NO."

Helpful Hint: To comply, your answers to questions 2A and 2B should be the same. In very limited circumstances, you may comply without offering benefits equally. See Reasonable Measures Application, Form HRC 12B-102.

Question 2C should be filled out **ONLY** if you have answered "YES" to question 2A and/or 2B. It asks you to indicate which benefits you offer to spouses (or employees because they are married), which benefits you offer to domestic partners (or employees because they are in a domestic partnership), and which benefits you do not offer. Please indicate only those benefits offered. If you offer benefits not already listed, write them in where it says "other". Remember, offering access to a benefit is still considered a benefit, even if your company does not pay for it.

Note: If you can't offer all benefit in a nondiscriminatory manner because of reasons outside your control, (e.g., there are no insurance providers willing to offer domestic partner coverage) you may be eligible for Reasonable Measures compliance. To comply on this basis, you must agree to pay a cash equivalent, submit a completed Reasonable Measures Application Form (HRC-12B-102) with all necessary attachments, and have your application approved by the HRC. For more information, see Rules of Procedure section II.B. or contact the HRC.

➤**Step 3: Attach the Necessary Documentation**

Section 3 states that you must submit documentation that verifies all benefits marked in your answer to Question 2C are offered in a nondiscriminatory manner. When possible, it is best if you submit this documentation along with your Declaration form. For policies that are unwritten, submit a letter to the HRC indicating this. Use the list below as a guide for the type of documentation needed.

Medical Insurance - A statement from your medical insurance provider that confirms spouses and domestic partners (as defined under this law) receive equal coverage in your medical plan. This may be in a letter from your insurance provider, or reflected in the eligibility section of your official insurance plan document. Similar documentation is needed for other types of insurance plans.

Retirement Plans (including 401k & pension plans) - The sections of your pension plan detailing how employees receive benefits. This should cover joint annuity options and pre-retirement death benefits. Documentation should indicate that employees with domestic partners and employees with spouses receive the same benefits and payment options.

Bereavement Leave - Your bereavement leave or funeral leave policy indicating the benefit is offered equally. If your policy allows employees time off from work because of the death of a spouse, it should also allow for time off because of the death of a domestic partner. If the policy allows for time off due to the death

of a parent in-law or other relative of a spouse, it must include time off for the death of a domestic partner's equivalent relative.

Family Leave - Your company's Family and Medical Leave Act policy. All companies with 50 or more employees must offer this benefit. Your policy should indicate that employees may take leave because of the serious medical condition of their spouse or domestic partner.

Parental Leave - Your company's policy indicating that employees may take leave for the birth or adoption of a child, to care for a child who is ill, and/or to attend school appointments. If leave is available for step-children (the spouse's child) then leave also should be available for the child of a domestic partner.

Employee Assistance Program - Your company's employee assistance program policy confirming that spouses, domestic partners and their parents and children are equally eligible (or ineligible) for such benefits.

Relocation & Travel - Your company's policy confirming that expenses for travel or relocation will be paid on the same basis for spouses and domestic partners of employees.

Discounts, Facilities & Events - Your company's policy confirming that discounts, facilities (e.g. gym) and events (e.g. holiday party) are equally available to spouses and domestic partners of employees.

Credit Union - Documentation from the credit union indicating that spouses and domestic partners have equal access to credit union services.

Child Care - Documentation that the children of spouses (step-children) and children of domestic partners have equal access to child care services.

Other Benefits - Documentation of any other benefits listed to indicate that they are offered equally.

➤**Step 4: Use the Available Resources**

The Human Rights Commission has developed resources to help with the compliance process:

Rules of Procedure for guidelines on how the Ordinance is being implemented; definitions of the terms used in the Ordinance; and information on jurisdiction and other matters.

Resource Materials for in-depth answers to commonly asked questions on medical benefits, pensions plans, taxation; information on the cost of providing domestic partner benefits; and sample employee policies.

Insurance List of insurance providers around the country willing to write policies inclusive of domestic partners.

You can get copies of these documents by calling the Human Rights Commission at 415-252-2500, or download them from the Commission's website at: www.sfhrc.org.