

UNIVERSITY OF ILLINOIS
URBANA-CHAMPAIGN SENATE

Senate Council and Committee on Equal Opportunity

(Final;Action)

SC.01.14/EQ.01.01 Resolution on Benefits for Domestic Partners of UI Employees

On September 30, 1996, the Senate approved a proposal submitted by the Committee on Equal Opportunity recommending the extension of benefits to unmarried same-sex and unmarried opposite-sex domestic partners. The Chicago and Springfield campus senates and the University Senates Conference have endorsed the proposal, which was transmitted to the President with the request that he recommend action by the Board of Trustees.

In his April 16, 1998, letter to USC Chair Richard Johnson, President Stukel indicated that he received advice from the Office of University Counsel "that it would be contrary to Illinois law and public policy for the University unilaterally to provide health insurance coverage to domestic partners of University employees."

Last November, Senate Council referred this matter back to the Equal Opportunity Committee for an update on colleges and universities that provide health benefits to domestic partners, as well as corporations that offer such benefits. As documented in the attached report, the Committee on Equal Opportunity found that "there is no legal impediment for the University to extend benefits to the domestic partners of its employees as called for in EQ.96.03."

Therefore, the Senate Council and Senate Committee on Equal Opportunity recommend that the Senate reconfirm the spirit of the resolutions approved by the Senate on September 30, 1996:

1. Resolved, that the same benefits currently provided to married partners of the employees of the University of Illinois be extended to same-sex domestic partners of its employees to the maximum extent permitted by state law.
2. Resolved, that the same benefits currently provided to married partners of the employees of the University of Illinois be extended to unmarried opposite-sex domestic partners of its employees to the maximum extent permitted by state law.

Submitted by:

URBANA-CHAMPAIGN SENATE COUNCIL
Robert F. Rich, Chair

COMMITTEE ON EQUAL OPPORTUNITY
Priscilla Yu, Chair

**UNIVERSITY OF ILLINOIS
URBANA-CHAMPAIGN SENATE**

Committee on Equal Opportunity
(Final; Action)

EQ.96.03 Extension of Benefits to University of Illinois Employees in Domestic Partnerships

BACKGROUND

The Senate Committee on Equal Opportunity believes that workplace benefits constitute an integral part of employee compensation. Decisions about what benefits are offered and to whom they will be offered, furthermore, are critical in hiring and retention decisions for employers and employees alike. Equal Opportunity also believes that when one group within the university workplace is arbitrarily disadvantaged, all are disadvantaged. The following paragraphs summarize the main issues regarding employee benefits, the status of benefits in other higher education institutions, the position of the Chicago and Springfield campuses, and the financial implications of providing domestic partner benefits.

Since the 1940's, the definition of the family as composed of a working husband, a non-working wife, and children has been significantly enlarged to include dual-career couples, with or without children, single parent families, same-sex and opposite-sex couples and couples with children from previous marriages (Stacey, 1992, Cherlin, 1988). With these changes, the once seemingly clear line between the financial need of a 'family' and benefits has become increasingly blurred. Equal Opportunity believes that domestic partnerships along with more traditional family units should be recognized as family structures. In law, a domestic partner can be defined in any way a given organization chooses, and a partner may be party to any benefits the organization chooses to extend to its employees. As of April 1995, all the Ivy League institutions as well as four Big Ten universities (Iowa, Michigan, Minnesota and Northwestern) have offered medical/health benefits to domestic partners of its employees. In addition, Harvard, Stanford, Yale, Michigan, New York University, the University of Pennsylvania, Dartmouth and the University of Chicago extend these same benefits to domestic partners of students. Both the Chicago and Springfield campuses of the University of Illinois have approved extension of benefits to same-sex domestic partners on April 25, 1995, and February 16, 1996, respectively. Members of each senate have told our committee that their senates also support the extension of benefits to unmarried opposite-sex partnerships.

Two of the most commonly asked questions regarding domestic partner status and benefits have to do with the defining characteristics of a domestic partnership and its cost. Definitions of domestic

partnerships vary by institution. At the University of Illinois at Urbana-Champaign, the policy on sick leave for campus employees includes care-giving to domestic partners. Spousal as well as partner ID cards can already be obtained for access to the facilities and programs offered by the Library and by the Division of Campus Recreation. Eligibility is determined by one of the following: assignment of beneficiary rights, joint ownership of a residence or motor vehicle, mutual designation on a will or irrevocable living trust, certificate of partnership or proof of a committed partnership such as a commitment ceremony. Other frequently used requirements for substantiating a partnership are length of cohabitation (usually 6 months), joint responsibility for each other's welfare and financial obligations, as demonstrated by a partnership agreement, a joint mortgage or lease, the designation of beneficiary of life insurance and/or retirement benefits, designation as primary beneficiary of a will, assignment of durable property or health care power of attorney to the partner, and joint ownership of a car, bank account, or credit account.

The costs of extending benefits to unmarried opposite-sex partnerships and same-sex partnerships at colleges and universities have been relatively low. The average increase in benefit costs has been 0.3% to 1.3% (p. 29, Franke, 1995). Harvard University estimated that it added between \$78,000 and \$390,000 to its total employee health insurance costs of \$45 million, that is, between 0.2% and 0.9%. The University of Iowa had an increase of 0.2%, well below their estimates of 3.8% to 7.2%. Stanford University's rate was also 0.2%. One reason for the lower than expected increases is that participation rates are low. Participation rates may be low in part because employees bear the tax burden on the benefits. For example, in metropolitan New York, it typically costs about \$2,000 annually to add an adult to a group insurance policy. If workers pay \$400, the employer's share of \$1,600 is reported as income. The combined federal, state and municipal income taxes on this sum would typically total 40% or \$640 of the \$1,600 paid by the employer. Thus the out-of-pocket cost to an employee for a partner's insurance would total \$1,040, or half the cost of the insurance (*Champaign-Urbana News Gazette*, February 6, 1996).

Expected increases in premium costs as a result of HIV-related claims have not materialized. Not one provider has reported a significant increase in either HIV or AIDS-related claims from the enrollment of same-sex or opposite-sex domestic partners of employees. Additionally, same-sex partnerships tend to involve fewer children, and pregnancy and childbirth remain one of the most costly of all insurance expenses (NBER, 1996). Lastly, but not least, it may be that enrollments are low because many employees hesitate to reveal their sexual orientation. Even though benefits election is a confidential process, filing an affidavit with the institution's human resources department creates a risk of disclosure which may be frightening for people who work in what they perceive to be a homophobic environment.

RECOMMENDATION

The Senate Equal Opportunity Committee strongly recommends that the same benefits which are now extended to married employees be extended to employees in unmarried opposite-sex and unmarried same-sex domestic partnerships. We believe that not to extend such benefits violates the non-discrimination policy of the University of Illinois printed on page i. of the *Statutes* (1994). The first paragraph of the policy provides for “equality of opportunity” for all students and employees at the university just as it prohibits “invidious discrimination in all its forms.” Sections of the second paragraph prohibit “discrimination or harassment against any person because of race, color, religion, sex, national origin, ancestry, age, MARITAL STATUS, disability, SEXUAL ORIENTATION, unfavorable discharge from the military, or status as a disabled veteran or a veteran of the Vietnam era.” University policy stipulates that “this non-discrimination policy applies to admissions, EMPLOYMENT, access to and treatment in the University’s program and activities” (our caps). Because benefits are universally recognized to be a condition of employment, providing benefits to one group while denying benefits to another group on the basis of sexual orientation and/or marital status is, we believe, a clear instance of the “invidious discrimination” explicitly prohibited by the University of Illinois. We strongly urge the University of Illinois, therefore, to comply with its own non-discrimination policy and work to ensure that benefits now provided to married employees be extended to employees in unmarried same-sex and unmarried opposite-sex domestic partnerships.

The Resolutions:

Resolved, that the same benefits currently extended to married partners of the employees of the University of Illinois be extended to same-sex domestic partners of its employees.

2. Resolved, that the same benefits currently extended to married partners of the employees of the University of Illinois be extended to unmarried opposite-sex domestic partners of its employees.

REFERENCES

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Stacey, J., ‘Backward toward the Postmodern Family’, in *Rethinking the Family*, ed. B. Thorne and M. Yalom, Northeastern University Press, 1992.

Winfeld, Liz and S. Spielman, ‘Straight Talk about Gays in the Workplace’, *AMACOM American Management Association*, 1995.

¹ Some reference materials available in the Senate Office.

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January 17, 2001

Professor Robert F. Rich, Chair
Urbana-Champaign Senate Council
228 English Building
608 South Wright Street
Urbana, IL 61801-3613

Dear Professor Rich:

Please find enclosed a letter addressed to you on 15 December 2000 from the Senate Equal Opportunity Committee, together with the following attachments:

1. Colleges and Universities Offering Health Benefits to Domestic Partners.
2. Fortune 500 Companies Offering Health Benefits to Domestic Partners
3. States and Local Governments Offering Health Benefits to Domestic Partners
4. Letter by President Stukel to Richard M. Johnson
5. Letter from Professors Carlos Ball and Cynthia Williams

Sincerely,



Priscilla C. Yu
Professor of Library Administration
Chair, Senate Equal Opportunity Committee

**Colleges and Universities Offering Health Benefits
to Domestic Partners**

American University	Maryland College of Art and Design
Amherst College	Massachusetts Institute of Technology
Antioch College System	Michigan State University
Augsburg College	Middlebury College
Baldwin-Wallace College	Mills College
Bates College	Mission College
Beaver College	Muhlenberg College
Beloit College	New York Law School
Bentley College	New York University
Bloomfield College	Northeastern University
Bowdoin College	Northwestern University
Brandeis University	Oberlin College
Brooklyn Law School	Occidental College
Brown University	Oregon State University
Bucknell University	Portland Community College
California Academy of Sciences	Princeton University
California Institute of Technology	Rice University
California State University System	Rochester Institute of Technology
Carleton College	Rockefeller University
Carnegie Mellon University	Rush University
Case Western Reserve University	San Francisco Community College District
Claremont Colleges	Simmons College
Clark University	Smith College
Coe College	Southern Oregon University
Colby College	Springfield College
College of Wooster	Stanford University
Colorado College	SUNY – State University of New York System
Columbia University (all colleges)	Susquehanna University
Community College of Philadelphia	Swarthmore College
Connecticut State University	Syracuse University
Cornell University	Thomas Jefferson University & Hospital
Culinary Institute of America	Trinity College
CUNY – City University of New York System	Tufts University
Dartmouth College	Tulane University
DeAnza Community College	Union Theological Seminary
Denison University	University of Alaska
DePauw University	University of California System
Dickinson College	University of Chicago
Duke University	University of Colorado at Boulder
Eastern Michigan University	University of Denver
Emerson College	University of Iowa
Emory University	University of Maine System
Foothill College	University of Miami
Franklin & Marshall College	University of Michigan
Golden Gate University	University of Minnesota
Grinnell College	University of New Mexico
Guilford College	University of Pennsylvania
Hamilton College	University of Rochester
Harvard University	University of Southern California
Hofstra University	University of Vermont
Illinois Wesleyan University	University of Washington
Iowa State University	University System of New Hampshire
Ithaca College	Vanderbilt University
Johns Hopkins University	Wake Forest University
Juilliard School of Music	Washington University
Kalamazoo College	Washington State University
Kenyon College	Wayne State University
Knox College	Wellesley College
Lawrence University	Wesleyan University
Lesley College	Wheaton College
Macalaster College	Williams College
Maricopa County Community College District	Yale University

**Fortune 500 Companies Offering Health Benefits
to Domestic Partners**

AMR/American Airlines	Knight-Ridder Newspapers Inc.
AT & T	Lincoln National
Aetna Life & Casualty Insurance	Lucent Technologies
Allstate Insurance Group	Marriott International
American Express Co.	Marsh & McLennan Companies
America Online	Mattel Inc.
Anthem Insurance	McGraw-Hill
Apple Computer	Medtronic Inc.
Applied Materials	Mellon Financial Corp.
Avon Products	Merrill Lynch
Avnet Inc.	Microsoft Corp.
Banc One Corp.	Monsanto Co.
Bank of America Corp.	Morgan Stanley Dean Witter & Co.
Barnes & Noble	Motorola Inc.
Boeing	NCR Corp.
Bristol-Myers Squibb Co.	Nationwide Insurance Enterprise
Capital One Financial Corp.	New York Times Co.
Charles Schwab & Co.	Nextel Communications
Chase Manhattan Bank Corp.	Nike Inc.
Chevron Corp.	Nordstrom
Cisco Systems	Northwest Airlines
Citigroup Inc.	Omnicom (Diversified Agency Services)
Clorox Co.	Oracle Corp.
Coca-Cola	PG & E Corp.
Columbia Broadcast System (CBS)	Pacificare Health Systems
Compaq Computer Corp.	Paine Webber Group Inc.
Computer Associates International	Pharmacia & Upjohn Inc.
Continental Airlines	Pitney Bowes
Costco Wholesale	Principal Financial Group
Cummins Engine Co. Inc.	Prudential
Darden Restaurants	QUALCOMM
Dell Computer Corp.	Qwest Communications International Inc.
Delta Airlines Inc.	SBC Communications Inc.
EMC Corp.	Safeco
Eastman Kodak Co.	St. Paul Companies
Edison International	Science Applications International Corp. (SAIC)
Electronic Data Systems Corp.	Seagate Technology Inc.
Enron	Sempra Energy
Estee Lauder Companies	Southwest Airlines
Fannie Mae	Starwood Hotels & Resorts Worldwide
Federated Department Stores	Sun Microsystems
First Union Corp.	Tech Data Corp.
Fleet Boston Financial	Texas Instruments Inc.
Freddie Mac	The Chubb Corp.
Ford Motor Company	The Gillette Co.
Foundation Health Systems	The Limited Inc.
Gap Inc.	Time Warner Inc.
General Mills	Times Mirror Co.
General Motors	UAL/United Airlines Inc.
Goldman Sachs Investment Banking	US Airways
Hartford Financial Services Co.	US Bancorp
Hewlett-Packard	Unisys
Honeywell	Verizon Communications
IBM	Viacom Inc.
IKON Office Solutions	Walt Disney
Intel Inc.	Wells Fargo & Co.
J.P. Morgan & Co.	Xerox Corp.
John Hancock Financial Services	

**State & Local Governments Offering Health Benefits
to Domestic Partners**

Ann Arbor School District – Ann Arbor, MI
Chicago Transit Authority – Chicago, IL
City of Alameda – Alameda, CA
City of Albany – Albany, NY
City of Albuquerque – Albuquerque, NM
City of Ann Arbor – Ann Arbor, MI
City of Ann Arbor School District – Ann Arbor, MI
City of Atlanta – Atlanta, GA
City of Baltimore – Baltimore, MD
City of Bar Harbor – Bar Harbor, ME
City of Berkeley – Berkeley, CA
City of Bloomington – Bloomington, IN
City of Brattleboro – Brattleboro, VT
City of Burlington – Burlington, VT
City of Cambridge – Cambridge, MA
City of Camden – Camden, ME
City of Carrboro – Carrboro, NC
City of Chapel Hill – Chapel Hill, NC
City of Chicago – Chicago, IL
City of Corvallis – Corvallis, OR
City of Denver – Denver, CO
City of Eastchester – Eastchester, NY
City of Eugene – Eugene, OR
City of Gainesville – Gainesville, FL
City of Gresham – Gresham, OR
City of Iowa City – Iowa City, IA
City of Ithaca – Ithaca, NY
City of Kalamazoo – Kalamazoo, MI
City of Key West – Key West, FL
City of Laguna Beach – Laguna Beach, CA
City of Los Angeles – Los Angeles, CA
City of Los Angeles Unified School Dist. – Los Angeles, CA
City of Madison – Madison, WI
City of Mansfield – Mansfield, CT
City of New Orleans – New Orleans, LA
City of New York – New York, NY
City of Northampton – Northampton, MA
City of Oakland – Oakland, CA
City of Olympia – Olympia, WA
City of Petaluma – Petaluma, CA
City of Philadelphia – Philadelphia, PA
City of Phoenix – Phoenix, AZ
City of Pittsburgh – Pittsburgh, PA
City of Portland – Portland, OR
City of Providence – Providence, RI
City of Provincetown – Provincetown, MA
City of Rochester – Rochester, NY
City of Sacramento – Sacramento, CA
City of San Diego – San Diego, CA
City of San Francisco – San Francisco, CA
City of Santa Barbara – Santa Barbara, CA
City of Santa Cruz – Santa Cruz, CA
City of Seattle – Seattle, WA
City of Springfield – Springfield, MA
City of Takoma Park – Takoma Park, MD
City of Tempe – Tempe, AZ
City of Tucson – Tucson, AZ
City of Tumwater – Tumwater, WA
City of Vancouver – Vancouver, WA
City of West Hollywood – West Hollywood, CA
City of West Palm Beach – West Palm Beach, FL
County of Alameda – CA
County of Broward – FL
County of Broward School District – Ft. Lauderdale, FL
County of Cook – IL
County of Dane – WI
County of King – WA
County of Los Angeles – CA
County of Marin – CA
County of Monroe – FL
County of Montgomery – MD
County of Multnomah – OR
County of Pima – AZ
County of San Mateo – CA
County of Santa Barbara – CA
County of Santa Cruz – CA
County of Sonoma – CA
County of Ventura – CA
County of Westchester – NY
Eugene Water & Electric Board – Eugene, OR
Lake Washington School District – Redmond, WA
Madison Metropolitan School District – Madison, WI
Maine Municipal Employees Health Trust – ME
Metropolitan Water Dist. of Southern Calif. – CA
Minneapolis Public Library – Minneapolis, MN
Santa Cruz Metro Transit System – Santa Cruz, CA
Seattle Public Library – Seattle, WA
State of California
State of Connecticut
State of New York
State of Oregon
State of Vermont
State of Washington
Town of Middlebury – Middlebury, VT
Town of West Hartford – West Hartford, CT
Village of Oak Park – Oak Park, IL

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December 15, 2000

Professor Robert F. Rich, Chair
Urbana-Champaign Senate Council
228 English Building
608 South Wright Street
Urbana, IL 61801-3613

Dear Professor Rich:

Thank you for your letter of 7 November 2000 requesting the UTUC Senate Committee on Equal Opportunity provide new information to support the Senate's proposal offering benefits to unmarried same-sex and unmarried opposite-sex domestic partners (EQ.96.03).

Since the 1980s in response to a changing workforce and changing family structures, thousands of private corporations, non-profit organizations, universities, colleges, states, cities and counties have extended benefits to unmarried partners. According to the Human Rights Campaign, a national organization working for equality of gay men and lesbians, over 3,624 employers offered domestic partnership health benefits in 2000 (<http://www.hrc.org/worknet/dp/index.asp>, Dec. 12, 2000). Another indication of society's rapidly changing family unit is shown from the U.S. Census Bureau data that unmarried couples comprised approximately 4.2 million in 1998 as compared to 1.6 million in 1980 ("Benefits Built for 2," *HR Magazine*, August 1999). All families deserve access to health care and other benefits, regardless of their individual circumstance.

The Committee on Equal Opportunity has gathered additional data since the last recommended proposal, EQ.96.03, approved by the Senate on September 30, 1996. The Committee is pleased to furnish two lists suggested by Senate Council: (1) an update on U.S. colleges and universities that provide health benefits and (2) a list of Fortune 500 companies that offer domestic partner health benefits. Another significant growing area which should not be overlooked is the additional enclosed list of eighty-six state and local governments that offer domestic partner health benefits; six state governments, including California, Connecticut, New York, Oregon, Vermont, and Washington offer these benefits to same-sex and opposite-sex domestic partners.

The current list for colleges and universities shows a significant increase in numbers--125 U.S. colleges and universities offer health benefits to domestic partners. The 1996 list, which was included in the EQ.96.03 resolution, included only eighty-two universities, ten of which were Canadian universities (seventy-two U.S. universities). Comparing

the 1996 list with the current list, sixty-eight U.S. colleges and universities were added to the current list; the percentage increase of the number of colleges and universities in 2000 offering health benefits to domestic partners was 74%. As for the Big Ten, since 1996 Michigan State has been added, giving a total of 5 Big Ten universities (Iowa, Michigan, Michigan State, Minnesota and Northwestern) which now offer medical/health benefits to domestic partners of its employees. It has been found that health benefits are highly enticing in the hiring process. The issue affects the rising population of highly qualified women and young people in the workplace who hold more progressive attitudes and value a work environment that embodies diversity.

Even large corporations such as those found in the Fortune 500 companies list found they could no longer afford to exclude talented people from their companies. Domestic partnership benefits were ranked as the Number 1 most effective recruiting incentive for executives, according to the "1999 Society for Human Resource Managing/Commerce Clearing House Recruiting Practices Survey" (*Human Resources Management: Ideas & Trends*, Chicago, No. 460, June 16, 1999).

We would also like to note that recent data support the position taken by the Equal Opportunity Committee in 1996, namely, that the costs of extending domestic partnership benefits are relatively low. For example, when the University of California extended benefits to the domestic partners of its employees in 1997, "its \$442 million health insurance expenses rose less than half of 1 percent, or about \$1.8 million a year" (Janet Gemignani, "Prime Time for Domestic Partner Benefits," *Business and Health*, April 1, 1999).

In order to further update Senate Council on what has taken place since 1996, we are also enclosing two letters from 1998. One was written by President Stukel to Richard M. Johnson, the then Chairman of the University Senates Conference, explaining the reasons why the University felt it would violate Illinois law and public policy to provide benefits to the domestic partners of its employees. The second letter we have enclosed, also from 1998, was from Professors Carlos Ball and Cynthia Williams, of the University of Illinois College of Law, who disputed the legal conclusions set forth in President Stukel's letter.

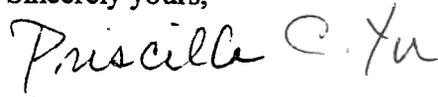
Illinois case law since 1998 supports the position taken by Professors Ball and Williams in their letter. One of the arguments that President Stukel (on the advice of University Counsel) made in his 1998 letter was that the provision of domestic partnership benefits would be contrary to Illinois public policy given that Illinois has a statute prohibiting same-sex marriage. In 1999, the Illinois Appellate Court rejected that argument noting (as Professors Ball and Williams did in their letter) that the provision of domestic partnership benefits is distinctly different from the recognition of marriage. See Crawford v. City of Chicago, 710 N.E.2d 91,98 (Ill.App.Ct 1999). The court added that "No state statute prohibits private or public employers from providing [domestic] benefits." *Id. at 99*. It appears, therefore, that there is no legal impediment for the University to extend benefits to the domestic partners of its employees as called for by EQ.96.03.

The Senate Committee on Equal Opportunity voted unanimously to stand firm and to continue the support on the extension of benefits to unmarried same-sex and unmarried opposite-sex domestic partnerships (EQ.96.03).

We, therefore, strongly urge the Senate Council to present the additional data and reconfirmation of this proposal, EQ.96.03, to the three senates and University Senates Conference. We thus ask President Stukel to forward the proposal and recommend action to the Board of Trustees.

If further information is needed, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in black ink that reads "Priscilla C. Yu". The signature is written in a cursive style with a large, stylized "P" and "Y".

Priscilla C. Yu
Professor of Library Administration
Chair, Senate Equal Opportunity Committee

Committee members:

Professor Carlos Ball, Law
Professor Jennifer Greene, Educational Psychology
Professor Roger Shanks, Animal Sciences
Professor Emily Watts, English
Ronald L. Woolfolk, PAC Liaison, LAS
Administration
Maria Luca, Student
Brian Shoemaker, Student

UNIVERSITY OF ILLINOIS

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April 16, 1998

Mr. Richard M. Johnson
Chairman
University Senates Conference
136 BSB (M/C 276)

Dear Dick:

In my correspondence to you of March 18, 1998, I informed you that I recently received advice from the Office of University Counsel that it would be contrary to Illinois law and public policy for the University unilaterally to provide health insurance coverage to domestic partners of University employees. In response, you have indicated that the University Senates Conference "does not fully comprehend the reasoning behind this opinion" and thus seeks "further clarification" of it. The following discussion, prepared at my request by University Counsel, addresses those concerns and elaborates upon the principles behind the opinion.

The University Senates Conference resolution on domestic partner benefits raises two questions: 1) May Central Management Services ("CMS") provide life and health insurance benefits for domestic partners of University employees? 2) May the University unilaterally provide such benefits, either in the form of insurance coverage or the cash equivalent thereof?

CMS cannot provide insurance benefits to domestic partners of University employees.

Group insurance benefits are provided to University employees under the State Employees Group Insurance Act ("SEGIA"). 5 ILCS 375. SEGIA is designed to provide life and health benefits to state employees and certain of their "dependents." Id. at sec. 2. CMS is charged with contracting or otherwise making available "group life insurance, health benefits and other employee benefits to eligible members, and, where elected, their eligible dependents." Id. at sec. 5. Section 3(h) defines a "dependent" to include an employee's "spouse." The term "spouse" is defined by Illinois law as a legal wife or husband. *Sypien v. State Farm Mut. Auto. Ins. Co.*, 111 Ill. App.3d 19 (1982).

The Senate Conference resolution seeks to extend spousal benefits to unmarried couples. Illinois, however, does not recognize common law marriages, meaning that couples that cohabit are not legally married and thus do not enjoy the benefits or bear the burdens of marital status. 750 ILCS 5/214. For example, in *Ayala v. Fax*, 206 Ill. App.3d 538 (1990), the Second District Appellate Court held that public policy precluded awarding any equitable interest of a residence to an unmarried cohabitant that she shared with her boyfriend. In so holding, the court stated:

In the present case, plaintiff is seeking recovery based on rights closely resembling those arising from a conventional marriage, namely, an equitable interest in the "marital" residence. . . . If we were to agree with plaintiff, we would, in effect, be granting to an unmarried cohabitant substantially the same marital rights as those which married persons enjoy. Such a holding would contravene the public policy of this State.

Moreover, same-sex marriages are prohibited by State law as contrary to public policy. 750 ILCS 5/212(a)(5), 213.1. As a result, CMS consistently has interpreted the term "spouse" to mean a partner by legally recognized marriage, not an unmarried partner of the same or opposite sex, and therefore has denied insurance benefits to domestic partners.

That the Illinois legislature and Illinois courts have defined what constitutes a "marriage" (and who is a "spouse") is not surprising. The marriage "contract" is and always has been regarded as subject to the plenary control of the legislature, and subject to controls based upon principles of public policy. *Siegall v. Solomon*, 19 Ill. 2d 145 (1960). The rights, duties, and obligations of the parties to a marriage do not rest upon the agreement of the parties alone, but upon the general law of the State – both statutory law (enacted by the legislature) and common law (interpreted by the courts). *Id.*

On March 5, 1998 an arbitrator upheld CMS' and the University's denial of insurance benefits to a domestic partner of a UIS faculty member. In 1995, the UPI union at UIS grieved the denial of health insurance benefits to the domestic partner of Prof. Pat Langley. The union alleged that the denial, based on Langley's marital status, violated the nondiscrimination provision of the expired collective bargaining agreement, which for these purposes is identical to the University's nondiscrimination statement. The University responded that the agreement was never intended to provide such coverage, and in any event providing coverage would run afoul of Illinois law. The arbitrator agreed with the University on both counts. First, the arbitrator specifically found that there was no "meeting of the minds" concerning the meaning of the contract provisions in question and thus no contractual support for health insurance coverage for domestic partners. (Op. at 26). Second, the arbitrator went on to discuss Illinois law:

Notwithstanding the above findings and conclusions, one of the remaining issues in this dispute is the fact that under Illinois law individuals or partners of the same sex may not be legally married. Setting aside the question of the wisdom or fairness of such public policy or, for that matter, the values of the Undersigned Arbitrator, he must respect the current state of the law and public policy and the affect which the external law has on defining what constitutes a "marriage" under the collective bargaining agreement and in this particular dispute. (Op. at 27).

The arbitrator then cited SEGIA's definition of "dependents" and the Illinois Marriage Act. In his concluding paragraph, the arbitrator stated:

[T]he Undersigned Arbitrator must conclude that the University did not violate the non-discrimination provision. . . . In the instant case, neither federal nor Illinois state law recognize same -sex marriage or

"commitment ceremonies" as being legally recognized marriages. Consequently, this Arbitrator cannot ignore this legal fact or consider the Grievant and her life domestic partner as married for the purposes of this contractual dispute as thereby entitled to dependent health insurance benefits coverage. (Op. at 28).

The arbitrator reached this conclusion despite what he termed as a growing awareness and acceptance of same-sex domestic partners.

The arbitrator's decision was apparently discussed in an April 7, 1998 email from Professor Langley, the Grievant involved in the arbitration. Professor Langley questions University Counsel's interpretation of the decision. Upon request, the Office of University Counsel would be happy to provide you with a copy of the arbitrator's 30-page decision. Review of this decision will confirm that the arbitrator reached the conclusions described above. Moreover, contrary to Professor Langley's assertions, and as shown above, the arbitrator considered not only the collective bargaining agreement but the SEGIA and the Illinois Marriage Act as well, and concluded that the denial of benefits did not violate the non-discrimination provision.

Courts in several states have upheld group insurance programs that exclude domestic partners from coverage (like CMS' programs). For example, a Wisconsin court held that the state group plan's denial of benefits to the same-sex domestic partner of a state employee did not violate a state law prohibiting discrimination on the basis of gender, sexual orientation or marital status. *Phillips v. Wisconsin Personnel Commission*, 482 N.W.2d 121 (1992). Similarly, a California court held that the state's denial of group dental insurance benefits to the domestic partner of a state employee did not violate California's equal protection clause since the state had a legitimate interest in promoting marriage. *Hinman v. Dept. of Personnel Admin.*, 167 Cal.App.3d 516 (1985). See also *Ross v. Denver Dep't of Health & Hospitals*, 883 P.2d 516 (1994)(city's denial of sick leave benefits for employee to care for sick partner because outside definition of "immediate family" not a violation of policy prohibiting discrimination based on sexual orientation).

2. The University cannot voluntarily provide insurance benefits or the cash equivalent to domestic partners of University employees.

The University would face exposure to a lawsuit if it unilaterally offered life and health insurance coverage or its cash equivalent to individuals such as domestic partners. Such a suit would assert, for example, that the University lacked the legal authority to provide insurance coverage that differs from or goes beyond the comprehensive programs provided by CMS under SEGIA. The Supreme Court of Georgia reached exactly that conclusion when the City of Atlanta passed an ordinance extending employee benefits to domestic partners under its home rule powers. The court struck the ordinance and held that the City had exceeded its authority since domestic partners were not "dependents" under state law. *City of Atlanta v. McKinney*, 265 Ga. 161, 454 S.E.2d 517 (1995). A Minnesota appellate court reached the same conclusion. *Lilly v. City of Minneapolis*, 527 N.W.2d 107 (1995).

Similarly, if the University were unilaterally to provide health insurance benefits to domestic partners, a suit could be brought based upon the principle that such an action contravenes "public policy." 750 ILCS 5/213.1, 214 (prohibiting same-sex marriages and opposite sex "common law" marriages based on cohabitation). The Illinois Supreme Court recognized this principle in voiding a contractual provision agreed to by a municipal school board and union. *Bd. of Education of Rockford School Dist. v. IELRB*, 208 Ill. Dec. 313 (1995). The court found that the provision, which granted employees additional protection against school disciplinary action, conflicted with the clear and unambiguous language of a state statute -- there, the Illinois School Code. The school district and the union argued that no statute specifically prohibited the contractual provision, and that the provision merely *supplemented* the rights afforded under the School Code. *Id.* at 317. The court disagreed. The court explained that to be invalid the contractual provision need only be "in violation of, or inconsistent with, or in conflict with *any* Illinois statute...." *Id.* at 316 (emphasis in original).

Surely the same could be said of any effort by the University to "supplement" the existing insurance scheme by providing benefits to domestic partners. To provide the cash equivalent of such benefits would be tantamount to providing the benefits themselves and equally problematic.

3 Conclusion

As a state institution, the University is required to observe Illinois law and public policy and act in accordance with the state-initiated and administered insurance program. Setting aside the question of its wisdom or fairness, Illinois law as it stands today is clear and unambiguous: domestic partners of state employees are not entitled to insurance coverage because they are not "spouses" under Illinois law. Couples that cohabit -- whether same-sex or opposite sex -- do not possess that or other benefits (or burdens) that flow from marital status. Common law marriages are not recognized by Illinois law and same-sex marriages are expressly prohibited. For the University to provide domestic partner benefits, therefore, would contradict Illinois law and public policy, exposing the University's actions to legal challenge. Moreover, for the University to defy the articulated policies of the General Assembly would unfairly circumvent the very forum designated for such a debate -- the legislature.

Regards.



James J. Stukel
President

UNIVERSITY OF ILLINOIS
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College of Law
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April 27, 1998

Prof. Joan Larsen Klein
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Dear Joan:

As you are aware, Prof. Heidi Von Gunden, Chair of the Equal Opportunity Committee of the UIUC Faculty/Student Senate, asked me, as a member of that Committee and a lawyer, to review the question of the legality under Illinois law of extending insurance benefits to domestic partners and to provide an opinion to you on it. I have asked Assistant Professor Carlos Ball to assist me in that review, given his expertise on issues of sexuality and the law. Given the time constraints under which we have been operating, I hope you will understand that our opinion is necessarily preliminary.

As part of this analysis, we have reviewed the April 16, 1998, letter from University President James J. Stukel to Richard M. Johnson, the Chairman of the University Senates Conference. The letter summarizes the position held by the Office of University Counsel that it would violate Illinois law for the University to provide domestic partner benefits to its employees. For the reasons set forth below, we disagree with the legal arguments and conclusions of the University Counsel, although we recognize that there are some unsettled questions of law inherent in this issue. Since the April 16, 1998 letter offers the clearest statement of the reasons for the University Counsel's conclusion that providing these benefits would be illegal, we will respond *seriatim* to each of the arguments in that letter.

1. CMS cannot provide insurance benefits to domestic partners of University employees.

A. The State Employees Group Insurance Act prohibits providing these benefits.

The University Counsel's main argument is that providing domestic partner benefits would violate the State Employees Group Insurance Act ("SEGIA"). 5 ILL. COMP. STAT. § 375.

The purpose of SEGIA is “to provide a program of group life insurance, a program of health benefits and other employee benefits” for employees and “certain of their dependents.” *Id.*, § 2. Under SEGIA, Central Management Services (“CMS”) is charged with developing and administering the employee benefit plans for employees and their “eligible dependents.” *Id.*, § 5. University Counsel argues that since SEGIA defines a dependent to include an employee’s “spouse” (which, under Illinois law, is a married husband and wife), “the Senates Conference resolution seeks to extend spousal benefits to unmarried couples” in violation of SEGIA (emphasis in original).

The language of SEGIA, however, does not prohibit the University from providing benefits to individuals beyond those mentioned in the statute. SEGIA, properly interpreted, sets forth the minimum life insurance, health and other benefits that the state must provide to its employees and their dependents; the definition of “dependent” in the statute is meant to set forth the class of individuals who must be provided with those benefits. The fact that spouses and children must be provided with benefits does not mean that the University is prohibited by law from providing benefits to a larger class of beneficiaries than that defined in the law, including the domestic partners of its employees.¹ Moreover, if the domestic partner benefits were to be paid with non-state funds,² SEGIA would seem to be inapplicable.

In thinking about this issue, it is important to recognize that statutes such as SEGIA, which set forth the framework for providing insurance benefits to state employees, exist in every state in the nation. Several public universities, in states with statutes such as SEGIA, ~~do provide domestic partner benefits to their employees even though the statutes in question define “dependent” in essentially the same way as SEGIA.~~ For example, the California State Employees’ Health Benefits statute defines “family member” as “an employee’s or annuitant’s spouse and any unmarried child.” CAL. GOV. CODE § 22754(f) (West 1995). That provision, however, has not prevented public universities in California from offering domestic partner benefits. In fact, last November, the University of California Board of Regents voted to extend

¹ The Illinois Educational Labor Relations Act, 115 ILL. ANN. STAT. Ch.5, para. 10 (b) (1997) specifically provides that a collective bargaining agreement may supplement (but may not negate or limit) any provision in any state statute pertaining to wages, hours or other conditions of employment. SEGIA permits CMS to extend any benefits that have been provided to employees under a collective bargaining agreement to employees who are not under a collective bargaining agreement. State Employees Group Insurance Act of 1971 (“SEGIA”), 5 ILL. ANN. STAT. Ch. 375, para. 7.1 (1997). Construing these statutory sections in tandem supports the interpretation that CMS may provide benefits beyond those set out in SEGIA.

² The cost to public universities of providing domestic partner benefits is not large. The University of Michigan, for example, spends \$160,000 out of a total employee and spouse benefits budget of \$295,000,000 to cover the eighty domestic partners of its employees who have signed up for benefits. *See* Detroit Free Press, April 12, 1997, at 3A (attached as Exhibit A).

health and housing benefits to the same-sex partners of university employees. See Los Angeles Times, Nov. 22, 1997, at A1 (attached as Exhibit B). In addition to California, the public universities in several other states with statutes that define “dependents” in the same manner as SEGIA currently provide domestic partner benefits to their employees. See e.g., COL. REV. STAT. § 24-50-603(5) (West 1997) (“‘Dependent’ means an employee’s legal spouse [and] each unmarried children”); New York Civil Service Law § 164 (McKinney 1996) (“spouse and dependent children” entitled to coverage). While the interpretations of statutes from other jurisdictions are not binding on courts in Illinois, the fact that those statutes have not been impediments to providing domestic partnership benefits to the employees of public universities in those jurisdiction supports the view that SEGIA, properly interpreted, is a “floor” defining the beneficiaries who must be provided with benefits, and not a “ceiling” that bars the University of Illinois from providing benefits to additional classes of beneficiaries.

B. Providing these benefits would contravene Illinois public policy

University Counsel also argues that it would be a violation of law and public policy to extend “spousal benefits” to unmarried heterosexual couples, since Illinois does not recognize common-law marriages, and to homosexual couples, since Illinois prohibits same-sex marriages. This argument depends on the premises that the benefits to be extended are intrinsically *marital* benefits: that is, benefits that can only properly be understood as a concomitant of marriage, as that is legally defined, and that conferring these benefits is the equivalent of conferring marital status on the individuals involved. These premises are debatable. Providing domestic benefits does not confer marital status, of course; at the most it recognizes certain analogies between the relationships of people in long-term domestic partnerships and marriage. And while there is an overlap with a small subsection of the benefits that usually inhere in marriage (i.e., being provided with life and health benefits under SEGIA), marriage as a legal status involves far more than being the recipient of statutorily-defined insurance. Moreover, it would seem to be the clear sense of the University Senates Conference that these benefits should be provided to employees for their domestic partners where, by definition, they are *not* married, simply as a concomitant of the employment relationship and of fairness to the employees involved. While some heterosexual couples choose not to get married (perhaps because they recognize, as does the University Counsel, that marriage is not simply a relationship between individuals but is a relationship between individuals and the State), homosexual couples clearly do not have that choice under current law. So, rather than acting as a prohibited “establishment” of common-law marriage or of same-sex marriage, the University Senates Conference resolution can be more properly understood as an extension of equal employment benefits to the University’s employees who are not in marital relationships.

C. The arbitrator of Prof. Pat Langley’s claim interpreted SEGIA and the Illinois Marriage Act.

University Counsel suggests that the arbitrator’s opinion in *In the Matter of Arbitration Between University Professionals of Illinois AFT-IFT Local 4100 (UPI) and University of*

Illinois at Springfield, AAA No. 51-390-00082-92 (Grievant: Patricia Langley) bears on the proper interpretation of SEGIA and the Illinois Marriage Act, and on whether providing domestic partner benefits would violate Illinois law. Yet an arbitrator only has power pursuant to the consent of the parties, and with respect to the issues submitted. The issue submitted in that arbitration concerned the proper interpretation of the non-discrimination clause of a collective bargaining agreement,³ and whether the failure to provide health insurance benefits to the domestic partner of a covered employee was discrimination on the basis of sexual orientation or marital status. *Id.* at 2. On that issue, the arbitrator ruled against the grievant because the evidence showed the University and the Union specifically did not agree, when adopting the non-discrimination clause, as to its implications concerning extending health insurance benefits to domestic life partners. *Id.* at 26. Since the intent of the parties was unclear, the arbitrator ruled, as a matter of contract interpretation, against the grievant on the only issue submitted for arbitration.

As University Counsel correctly points out, the arbitrator also recognized that he is bound by Illinois law in “defining what constitutes a ‘marriage’ under the collective bargaining agreement and in this particular dispute,” and so the arbitrator could not “consider” Prof. Langley and her domestic life partner to be married in construing the collective bargaining agreement. *Id.* at 29-30. This application of Illinois law in construing the terms of the collective bargaining agreement is relevant to the particular arbitration, and has no bearing beyond that arbitration. Certainly it is the province of the courts to interpret the law, not an arbitrator appointed pursuant to a collective bargaining agreement.

D. Courts have upheld insurance programs that exclude domestic partners

It is quite true, as University Counsel points out, that courts in other states have upheld group insurance programs that exclude domestic partners from coverage. Two of the cases Counsel cites are from states (California and Colorado) in which the public universities have now extended domestic partner benefits, so these cases clearly do not stand for the proposition that a state university may not provide domestic partner benefits. *See Boyce Hinman v. Department of Personnel Admin.*, 167 Cal. App.3d 516 (3d Dist. 1985); *Ross v. Denver Dept. of Health and Hospitals*, 883 P.2d 516 (Colo. Ct. App. 1994). As set out immediately below, it is equally true that other courts have agreed that failing to extend domestic partner benefits is discriminatory, based on state constitutional guarantees to equal protection and statutes similar

³ “The Parties submitted the following issue(s) to the Arbitrator: 1. Whether the University violated Article 4, the non-discrimination provision of the [July 1, 1993 through June 30, 1997 Collective Bargaining Agreement] by denying the Grievant, Professor Patricia Langley’s, life partner health insurance benefits coverage due to Professor Langley’s marital status and/or sexual orientation? 2. If so, what shall the remedy be.” *In the Matter of Arbitration Between University Professionals of Illinois AFT-IFT Local 4100 (UPI) and University of Illinois at Springfield*, AAA No. 51-390-00082-92, 2 (Grievant: Patricia Langley).

to the Illinois Human Rights Act. *See University of Alaska v. Tameo*, 933 P.2d 1147 (Alaska Sup. Ct. 1997); *Tanner v. Oregon Health Sciences University*, 1996 WL 585547 (Oregon Cir. Ct. 1996).

2. The University cannot voluntarily provide insurance benefits or the cash equivalent to domestic partners of University employees.

A. The University may be sued

University Counsel argues that “[t]he University would face exposure to a lawsuit if it unilaterally offered life and health insurance coverage or its cash equivalent to individuals such as domestic partners.” To our knowledge, no public university in the country has been sued for offering domestic partner benefits to its employees. On the other hand, several universities have been successfully sued for failing to provide domestic partner benefits. *See e.g., University of Alaska v. Tameo, supra; Tanner v. Oregon Health Sciences University, supra.*

The litigation involving the University of Alaska should be of particular concern to the University of Illinois. In that case, the Alaska Supreme Court held that the University of Alaska violated the Alaska Human Rights Act when it refused to provide domestic partner benefits to its employees; that refusal, the court held, violated the Human Rights Act’s prohibition against discrimination on the basis of marital status. *See University of Alaska v. Tameo*, 933 P.2d at 1152-56. The Illinois Human Rights Act provides identical protection against discrimination on the basis of marital status as did the Alaska statute construed in *Tameo*. *See 775 ILL. COMP. STAT. § 5/2-102.*

The cases cited by the Office of University Counsel to support its argument that the University would be exposing itself to legal liability if it provides domestic partner benefits are inapposite. Both cases (*City of Atlanta v. McKinney*, 265 Ga. 161, 454 S.E.2d 517 (1995); *Lilly v. City of Minneapolis*, 527 N.W.2d 107 (Minn. Ct. App. 1995)) involved interpretations of state home rule laws that grant cities certain legislative powers. Home rule laws are specific statutes meant to regulate the division of power between state and local governments and are inapplicable to an autonomous educational institution such as the University of Illinois.

Furthermore, several other cases, not mentioned by the Office of University Counsel, considerably weaken that argument that the reasoning of *McKinney* and *Lilly* means that the University of Illinois would expose itself to legal liability if it offers domestic partner benefits to its employees. First, the Georgia Supreme Court, two years after *McKinney*, held that a new domestic partner benefit ordinance enacted by Atlanta, which defined “‘dependent’ as ‘one who relies on another for financial support’” was not inconsistent with several state statutes that define “dependents” as spouses and children. *City of Atlanta v. Morgan*, 268 Ga. 586, 588-89, 492 S.E.2d 193, 195-96 (1997) (quoting Code of Ordinances of the City of Atlanta, § 2-858). Secondly, and more importantly, two months ago, a judge here in Illinois held that Chicago did not violate the Illinois home rule law when that city enacted an ordinance providing domestic

partner benefits to its employees. See Chicago Tribune, Feb. 11, 1998, at 3 (attached hereto as Exhibit C). See also 35 GOV. EMPL. REL. REP. 1018 (BNA) (1997) (discussing case of *Schaefer v. Denver*, Colo. Dist. Ct., 96-CV-6630, where judge held that Denver was acting within its home rule authority when it extended health insurance benefits to domestic partners of city employees).

B. Domestic partner benefits contravenes public policy.

This issue has already been addressed. See page 3.

Conclusion

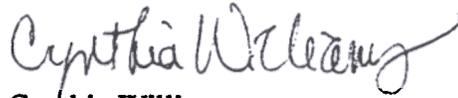
As we have sought to demonstrate in this letter, there are no legal impediments clearly preventing the University of Illinois from following the recommendation of the University Senates Conference that the employees of the University be provided with domestic partner benefits. Indeed, the University probably faces potential litigation no matter what it does with respect to this issue, although the more serious risk of litigation is if the University fails to extend these benefits. If it confers these benefits, it may be subject to litigation for the reasons the University Counsel has identified: someone may claim that these benefits are inherently *marital* benefits that can only be granted in the context of marriage. If it fails to confer these benefits, it may be subject to potential litigation for discrimination in violation of the Illinois Human Right Act. If it is true that the University faces litigation whichever decision it makes, then whether to try to implement the University Senates Conference resolution may, in fact, be a decision about which position in litigation the University would feel more comfortable defending.

The leading public universities in this country (including most in the Big Ten) already provide domestic partner benefits to their employees. It would be fitting for the University of Illinois to join its peer institutions in providing equality in employment benefits to all of its employees.

Sincerely yours,



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