



BRAD SEARS  
THE CHARLES R. WILLIAMS PROJECT  
ON SEXUAL ORIENTATION LAW  
PHONE (310) 267-4382  
E-MAIL WILLIAMSPROJECT@LAW.UCLA.EDU

SCHOOL OF LAW  
BOX 951476  
LOS ANGELES, CALIFORNIA 90095-1476

### Memorandum

**To:** Assemblywoman Loretta Weinberg

**From:** M. V. Lee Badgett, Ph.D., and R. Bradley Sears, Esq.

**Date:** December 10, 2003

**Re:** The impact of the Domestic Partnership Act (DPA) on employer health care costs

#### Summary

We offer this memo in response to your concern that the Domestic Partnership Act (DPA) may result in increased costs to New Jersey businesses. New Jersey employers commonly provide certain benefits to employees as part of a compensation package. These include health benefits, death benefits, retirement benefits, survivor benefits, and various leave programs. Some of these benefits cover an employee's spouse and the children of the employee's spouse, as well as the employee. If enacted, the DPA will require that businesses provide similar benefits to employees' registered *same-sex* domestic partners. It will not increase the eligibility for employees' registered *different-sex* domestic partners. In this memo, we focus on health care benefits, since the rising cost of health care premiums has been a concern raised by New Jersey businesses.<sup>1</sup>

**To sum up our analysis, we conclude that the impact of the Domestic Partnership Act on employer health benefit costs will range from zero to a negligible amount.**

Our reading of the Domestic Partnership Act and relevant New Jersey law leads us to conclude that employers will be under no obligation to subsidize the coverage of health benefits for the registered same-sex domestic partners of employees. Because the DPA allows employers

---

<sup>1</sup>There would be little or no increase in costs to employers providing retirement benefits, since those benefits are typically paid for by the employee. When an employee opts for a survivor benefit through a joint-and-survivor annuity, he or she receives a lower payment while alive in return for having a benefit paid to his or her survivor.

to pass on the total cost of providing health benefits for the registered same-sex domestic partners of employees to the employees accessing those benefits, and because the Act specifies that the New Jersey's Law Against Discrimination does not apply to such benefits, employers will be able to shift the entire cost of providing such benefits on to employees without otherwise changing their benefit plans. Thus, employers will incur no additional health benefit costs as a result of the DPA.

However, even if employers choose to pay for health benefits for the registered same-sex domestic partners of their employees to the same extent that they currently do for spouses, the additional costs that they will incur will be minimal. We use two different methods to calculate the cost impact if employers decide to cover same-sex domestic partners as they now cover spouses. In both scenarios, the cost to employers is quite small:

- Most employers will see no additional cost for providing health benefits to the registered same-sex domestic partners of their employees.
- We estimate that the average annual increase in costs for businesses will range from approximately \$950 in our first calculation to \$100 in our second, and more realistic, calculation.
- In our first calculation, the State's larger businesses (more than 500 employees) will see an average annual increase of approximately \$25,000.

**1. The Domestic Partnership Act will not impose any increased cost for providing domestic partner health care benefits because it gives employers the discretion to pass on the entire cost to employees accessing such benefits.**

The Domestic Partnership Act creates a mechanism, through the establishment of domestic partnerships, for New Jersey to confer certain rights and impose certain obligations on same-sex and different-sex unmarried couples in the State. An explicit intention of the bill is to provide same-sex domestic partners with the same rights as spouses with regard to health benefits. Through a series of new provisions, the bill extends to same-sex domestic partners eligibility for dependent coverage under health insurance contracts and policies in the State.<sup>2</sup> It does not extend such coverage to different-sex domestic partners.

However, the Act specifically states that an employer may require a person covered by the employer's health benefits plan to assume "a portion *or the full amount* of the cost of coverage"

(emphasis added) for that person's domestic partner. Thus, the Act allows employers, if they choose, to pass on the entire cost of providing domestic partner health benefits to their employees and to incur no additional costs.

The Domestic Partnership Act also amends New Jersey's Law Against Discrimination (LAD)<sup>3</sup> to prohibit various forms of employment discrimination based on domestic partnership status.<sup>4</sup> The Act, as amended, specifically states that the provision of health benefits to the same-sex domestic partners of employees, and passing on the cost of such benefits to employees, does not violate the LAD.

One concern that has been raised is whether the anti-discrimination provisions of the Domestic Partnership Act will require employers to pass on the cost of providing spousal health benefits to their employees, if they choose to pass on the costs for providing health benefits to domestic partners under Section 57 of the Act.

In short, the Domestic Partnership Act increases the eligibility of domestic partners for health benefits, but it leaves New Jersey businesses with the freedom to pass on the entire cost to the employees accessing those benefits. The bill increases health insurance coverage for New Jersey citizens without mandating a new financial cost for New Jersey businesses.

**2. Covering same-sex domestic partners will not result in higher premiums for employers. In other words, the price for health care coverage will not be affected by extending coverage to same-sex domestic partners.**

Early in the discussions about domestic partner benefits (as far back as the 1980's), some employers worried that employees would sign up a partner who would have higher than average health care costs. Insurance companies call this phenomenon "adverse selection." When it occurs, the new enrollees drive up health care expenses, and eventually, health care premiums paid by employers for their employees will rise. To protect against this possibility, some of the first insurance companies to sell partner coverage to employers insisted on a surcharge; however, the surcharge was soon dropped when adverse selection failed to occur. Since then, employers, insurance companies, and employer benefit consultants report that adverse selection does not

---

<sup>2</sup> Sections 47 through 56 of the Domestic Partnership Act.

<sup>3</sup> N.J.S.A.10:5-1 et seq.

<sup>4</sup> Section 12 of the Domestic Partnership Act.

occur with domestic partner benefits.<sup>5</sup> Given the experiences of other employers that offer domestic partner benefits, we conclude that there will be no increase in overall premiums.

**3. The number of new partners signing up for benefits is likely to be small, and most businesses will see no new partners enrolling in health care coverage.**

*a. Some New Jersey Businesses Already Voluntarily Provide Additional Benefits to Domestic Partners of Their Employees*

A number of New Jersey businesses already provide benefits, such as health, dental, and retirement benefits, to domestic partners of employees on the same basis as spouses even though they are not required to provide these benefits under current law.

As of 2001, 23% of workers in the northeastern United States worked for an employer that covered same-sex domestic partners' health insurance, and 15% of workers worked for firms that provide partner benefits for different-sex partners.<sup>6</sup> (More recent figures would likely be higher.) One list of such businesses includes 52 employers headquartered in New Jersey, presented in Appendix 1.<sup>7</sup> Most of those companies provide benefits to both same-sex and different-sex partners. In addition, many companies headquartered outside of New Jersey provide health care benefits to domestic partners of employees and will also have employees in New Jersey covered by these corporate policies.<sup>8</sup> Thus, for these businesses, employing 23% of the New Jersey labor force, the Domestic Partnership Act will not result in increased costs for providing employee health care benefits.

*b. The Domestic Partnership Act Will Have a Minimal Impact on the Health Care Benefit Costs of New Jersey Businesses*

The concern most frequently raised when businesses consider providing domestic partners benefits is the cost of providing additional health care benefits. Here we use two different methods for calculating the number of new registered same- sex domestic partners a given employer might have to cover under the DPA. Both methods give us the same result: very few

---

<sup>5</sup> For more details, see M. V. Lee Badgett, *Calculating Costs with Credibility: Health Care Benefits for Domestic Partners*, 5 ANGLES1, 1-8 (Institute for Gay and Lesbian Strategic Studies, Amherst, Mass.), 2000.

<sup>6</sup> THE KAISER FAMILY FOUNDATION AND HEALTH RESEARCH AND EDUCATIONAL TRUST, *Survey of Employer-Sponsored Health Benefits: 2001* (Henry J. Kaiser Family Foundation), at 57 Exhibit 4.12. at [http://www.kff.org/content/2001/3138/EHB2001\\_fullrpt.pdf](http://www.kff.org/content/2001/3138/EHB2001_fullrpt.pdf) (last accessed Aug. 25, 2003).

<sup>7</sup> HUMAN RIGHTS CAMPAIGN, *Fortune 500 Companies That Offer Domestic Partner Health Benefits* (2003), at [http://www.hrc.org/Template.cfm?Section=The\\_Issues&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=26&ContentID=13399](http://www.hrc.org/Template.cfm?Section=The_Issues&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=26&ContentID=13399) (accessed Nov. 22, 2003).

<sup>8</sup> *Id.*

businesses would see any increase in costs, and any increases in cost will be small.

(1) *Method One*

In the first method, we use Census Bureau data on firms with employees in New Jersey to estimate the average number of new enrollees (newly covered same-sex domestic partners) that businesses of various sizes in New Jersey could expect after the enactment of the DPA.

Table 1 shows the distribution across business sizes of New Jersey firms. Most employers are small: over half have fewer than four employees. Most employment, however, is in large firms.

To estimate the number of new partners that businesses could anticipate enrolling under the DPA, we multiply the take-up rate for partner benefits (1%) by the total employment in each category (Column 3), and then divide this number of predicted partners by the number of firms in each business size category (Column 2) to get the expected average increase in health care benefits enrollment for an employer in each business size category (Column 4).

We use the 1% take-up rate based on a review of the literature. In a 2001 Urban Institute study, researchers predicted that only two tenths of one percent of a company's employees (0.2% of the workforce) would request benefits for same-sex domestic partners. The study concluded that “the costs associated with adding domestic partner benefits are most likely to be quite small.”<sup>9</sup> Empirical studies of businesses that offer domestic partner benefits have also demonstrated that partner coverage does not significantly increase employers’ compensation costs, even when different-sex partners are also covered. The typical “take-up rate,” or percentage of employees who sign up a partner, is low. A survey of public employers found an average take-up rate of 2.1%, while a survey of private employers found most reporting a 1% rate.<sup>10</sup> To keep the estimates conservative, we use the 1% take-up rate.

As Column 4 shows, most of the 35,484 partners predicted by this method wind up in large firms. Most New Jersey businesses will have no new partners signed up, since they are so small that the predicted number of enrollees is less than one. In other words, very few small businesses will have any employees who want to cover a partner.

---

<sup>9</sup> Gary J. Gates, *Domestic Partner Benefits Won't Break the Bank*, 29 POPULATION TODAY 1 (April 2001) (The Urban Institute, Washington, DC.), available at <http://www.urban.org/url.cfm?ID=900439> (last visited Dec. 10, 2003).

In Column 5, we multiply the average number of new partners by \$4,717; the average annual employer contribution for family health care coverage.<sup>11</sup> For all businesses, the average increase would be \$949. The largest businesses will, of course, see the biggest increase in cost, which would average just over \$25,000 per year. Most small businesses with fewer than 100 employees will see increases from zero to \$1,758 per year.

**Table 1: First Calculation of New Domestic Partner Costs to NJ Employers**

(1) Firm Size	(2) Number of firms in category	(3) Total paid employees of these firms	(4) Predicted DP enrollment per firm	(5) Average firm's increase in cost
Size 1-4	99259	206,162	0.0	\$ 98
Size 5-9	33697	220,151	0.1	\$ 308
Size 10-19	19553	260,159	0.1	\$ 628
Size 20-99	16830	627,126	0.4	\$ 1,758
Size 100-499	3795	489,860	1.3	\$ 6,089
Size 500 plus	3229	1,744,971	5.4	\$ 25,491
<b>All firms</b>	<b>176,363</b>	<b>3,548,429</b>	<b>0.2</b>	<b>\$949</b>
2% of total		34,483		

However, this conservative analysis most likely greatly overstates the number of new partners that businesses would need to cover. First, not all businesses even offer health care benefits to their employees. Second, because domestic partner benefits are taxed, not all employees would want to sign up a partner. Third, the conservative take-up rate that we use here, 1%, is based in part on firms that have included coverage for different sex as well same-sex domestic partners. And finally, the total number of partners predicted by this method, 35,484, is implausibly large, as we show in the next section. Even so, the estimated cost to the typical New Jersey business is quite small.

(2) *Method Two*

<sup>10</sup> M.V. Lee Badgett, *Calculating Costs with Credibility: Health Care Benefits for Domestic Partners*, 5 ANGLES 1, 1-8 (Institute for Gay and Lesbian Strategic Studies, Amherst, Mass.), 2000.

<sup>11</sup> THE KAISER FAMILY FOUNDATION AND HEALTH RESEARCH AND EDUCATIONAL TRUST, 2003 *Employer Health Benefits Survey* (Henry J. Kaiser Family Foundation) [hereinafter KAISER, 2003 *Employer Health Benefits*], September 2003, at Exhibits 1.15 and 6.18, at <http://www.kff.org/content/2003/3369/> (last accessed Nov. 22, 2003)

In our second method, we approach quantifying employers' average increase in health benefit costs as a result of the Domestic Partnership Act from a perspective that takes into account some of the problems that we identified in our first method. However, our second analysis arrives at the same conclusion—the additional cost to most businesses for providing health care benefits to same-sex domestic partners under the Domestic Partnership Act will be zero.

We start with the assumption that of the 16,604 unmarried same-sex couples listed in Census 2000 in New Jersey, 22% (3,653 couples) will register as domestic partners. A portion of the 7,306 thousand individuals that are likely to register as same-sex domestic partners if the Domestic Partnership Act is enacted will be employed and receive health insurance, making their partners potentially eligible for health insurance coverage.

First, we estimate how many of those individuals might have access to family benefits through an employer. In September 2003, Census Bureau figures show that 79% of the New Jersey population between 18 and 64 years old is employed.<sup>12</sup> A recent survey of employers found that 68% of employees are covered by an employer's health benefits plan;<sup>13</sup> therefore, of the 7,306 people in domestic partnerships, only 3,944 are likely to be eligible to get a partner covered through employer coverage.<sup>14</sup>

Second, some of those partners may already be covered by employers, and some will be state employees who are not of concern to private businesses. (See the fiscal analysis report for details on state employees.) We subtract out the 323 state employees who are in same-sex couples. We also take out the 23% of same-sex partners who are already covered by employer domestic partner policies, as noted above. After those subtractions, we are left with 2,714 same-sex partners who would be eligible and potentially interested in enrolling a domestic partner in employer-provided health insurance. Some partnered couples will have two people who get employer coverage, while other couples have none. To make this a conservative analysis that emphasizes the most expensive scenario for employers, we assume that those 2,714 people are

---

<sup>12</sup> U.S. CENSUS BUREAU, STATE AND COUNTY QUICK FACTS: NEW JERSEY (July 2003), at <http://quickfacts.census.gov/qfd/states/34000.html> (accessed Nov. 22, 2003).

<sup>13</sup> KAISER, *2003 Employer Health Benefits*, *supra* note 11, at Exhibit 3.1, at <http://www.kff.org/content/2003/3369/> (last accessed Nov. 22, 2003).

<sup>14</sup> The calculation is simple:  $3,944 = 7,306 \times 0.79 \times 0.68$ .

all in different partnerships, making 2,714 partners potentially eligible for coverage by an employer.

Next, to put the numbers of new partners in perspective, we compare them to the number of businesses in New Jersey. Census Bureau records indicate that there are 176,363 firms in New Jersey that have employees.<sup>15</sup> Subtracting off a portion to account for the fact that only roughly 83% of employers offer health care benefits,<sup>16</sup> and that 85% of those employers do not now cover domestic partners, leaves 124,424 firms that might have employees who enrolls domestic partners as a result of the Family Equality Act. Overall, the 2,714 new partners will be spread out over these firms, so each firm has on average 0.02 new partners to cover.

An employer's average contribution toward family health care benefits coverage for an employee was \$4,717 in 2003.<sup>17</sup> Accordingly, New Jersey employers will see, on average, an increase in costs of \$102.90 as a result of the Domestic Partnership Act. Moreover, many employers will see no employees signing up a domestic partner. The smaller the business, the less likely the firm is to have a partner sign up. Accordingly, we predict that most of the 2,714 new same-sex partners will be employed in larger businesses, and that the Domestic Partnership Act will have a negligible impact on the bottom line of New Jersey's small businesses.

### **Conclusion**

While the Domestic Partnership Act does extend health care benefit coverage to the same-sex domestic partners of employees, it will not result in any increased costs for New Jersey businesses unless they exercise their discretion under the act to pay for such costs. The bill explicitly allows businesses to pass on the entire cost of providing same-sex domestic partner health care benefit coverage to the employees who elect such coverage.

However, if employers elect to pay for the same portion of same-sex domestic partner coverage that they currently pay for other dependents, most New Jersey businesses will experience no increase in health care benefit costs. Using our most realistic method for estimating such costs, we estimate that the average increase in costs for New Jersey businesses will be approximately \$103.00.

---

<sup>15</sup> U.S. CENSUS BUREAU, STATISTICS OF U.S. BUSINESSES 2000: ALL INDUSTRIES, NEW JERSEY, at <http://www.census.gov/epcd/susb/2000/nj/NJ-.HTM> (accessed Nov. 22, 2003).

<sup>16</sup> This is the northeastern average. See KAISER, *2003 Employer Health Benefits*, *supra* note 11, at Exhibit 3.2, at <http://www.kff.org/content/2003/3369/> (last accessed Nov. 22, 2003).

In particular, small businesses in New Jersey are the most likely to have no new enrollees in health benefits as a result of the Domestic Partnership Act and to have only a very small increase in health benefits costs, if any. This is true because small business are less likely to offer health benefits to any of their employees and are unlikely to employ an employee with a registered same-sex domestic partner.

---

<sup>17</sup> *Id.*

**Appendix 1: New Jersey Companies that Provide Health Care Benefits to Domestic Partners**

<b>Employer Name</b>	<b>City</b>
Avaya Inc.	Basking Ridge
Aventis Pharmaceuticals Inc.	Bridgewater
Barba Arkhon International Inc.	Mount Laurel
Berlex Laboratories Inc.	Wayne
Bloomfield College	Bloomfield
Boda Industries Inc	South Hackensack
Campbell Soup Co.	Camden
Carbone Of America	Boonton
Castrol Consumer North America	Wayne
Cendant Mortgage	Mt. Laurel
Chubb Corp.	Warren
Church & Dwight Co. Inc.	Princeton
D&B (The Dun & Bradstreet Corp.)	Murray Hill
David Sarnoff Research Center	Princeton
Episcopal Diocese of Newark	Newark
Fleetwood Financial Corp	Edison
Gallup Organization, The	Princeton
Grignard Co Llc	Newark
Hoffmann-La Roche Inc.	Nutley
Honeywell International Inc.	Morristown
Iniven	
I-Stat Corporation	Princeton
Johnson & Johnson	New Brunswick
KPMG LLP	Montvale
Lee Hecht Harrison	Woodcliff Lake
Lifecell Corp	Branchburg
Lucent Technologies Inc.	Murray Hill
Matting World	Pleasantville
Mediq/prn Life Support Services Inc	Pennsauken
Medi-type Transcription Service Corp	Wayne
Merck & Co. Inc.	Whitehouse Station
Monmouth University	West Long Branch
MWW Group, The	East Rutherford
North Jersey Media Group Inc.	Hackensack
Novartis Pharmaceutical Corp.	East Hanover
Oil and Chemical Atomic Workers	Rahway
PA Consulting Group	Plainsboro
Princeton University	Princeton
Prudential Financial Inc.	Newark
Quest Diagnostics	Teterboro
R C C Consultants Inc	Woodbridge

Rainbow Environmental Products  
RCC Consultants, Inc.  
Regent Book Co  
Saint Barnabas Health Care System  
Schering-Plough Corp.  
Serco Group, Inc.  
Serco Management Services Inc  
Subaru of America Inc.  
Telcordia Technologies Inc.  
Verizon Wireless  
Virtua Health

Fairfield  
Woodbridge  
Saddle Brook  
Toms River  
Madison  
Gibbsboro  
Gibbsboro  
Cherry Hill  
Morristown  
Bedminster  
Marlton