

CITY OF SACRAMENTO

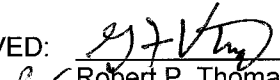
ADMINISTRATIVE POLICY INSTRUCTIONS

Topic: Non-Discrimination in Employee Benefits By City Contractors
From: Finance Department
To: Department Directors/Division Managers

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POLICY FOR NON-DISCRIMINATION IN EMPLOYEE BENEFITS BY CITY CONTRACTORS

1. SCOPE AND PURPOSE

This Administrative Policy Instruction (API) sets forth City requirements and procedures for administering the 'Non-Discrimination in Employee Benefits by City Contractors Ordinance' (Equal Benefits Ordinance). It provides information about how to implement, conduct and enforce the provisions of the ordinance within the legal and policy requirements. It supplements City Code Chapter 3.54. The ordinance is effective April 1, 2005 and prohibits contractors who do business with the City of Sacramento from discriminating between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees, when providing employee benefits. Departments are responsible for the implementation and enforcement of the ordinance. Documentation shall be maintained by departments demonstrating compliance with these provisions and in accordance with the City's records retention schedule. The Procurement Services Division shall be the point of contact for all questions concerning this policy.

2. CONTRACTS AND AGREEMENTS

City contracts and agreements for goods, services, public projects, improvements and grants with cumulative values exceeding \$25,000 and performed within the City limits are subject to these provisions. City contracts and agreements performed in City owned facilities outside the City limits are also subject to these provisions. **Exceptions** - Contracts for excavation, street construction, or agreements for the use of City right-of-way where a contracting utility has the power of eminent domain are excluded from these provisions. Subcontracts and Subcontractors of City contracts are excluded from these provisions.

Departments that administer contracts and agreements shall be responsible for compliance with applicable provisions and shall include the City's standard Equal Benefits Ordinance (EBO) Requirements forms and affidavit in all Invitation or Request for Bids, and all Request for Proposals, Qualifications or Quotes. All contracts and agreements eligible for EBO consideration shall contain a signed EBO Declaration of Compliance by the contractor. City Council Staff reports that request contract or agreement approval shall include a discussion on whether the EBO provisions are applicable in the Policy Considerations section of the report. Departments shall not execute or extend any contract or agreement with a contractor that discriminates in the provision of employee benefits between employees with domestic partners and employees with spouses, or between the domestic partners and spouses of such employees. Purchase orders are required for all contracts and agreements subject to the EBO.

3. DOMESTIC PARTNER

Domestic Partner shall mean any person who has a current registered domestic partnership registration on file with the state or local law that authorizes such registration. Domestic Partners shall be entitled to employee benefits including bereavement leave, disability and life insurance, other types of insurances, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, vacation, travel benefits and other benefits given to employees to the extent that such benefits are not preempted or prohibited by federal or state law. In the event that the actual cost of providing a benefit to a Domestic Partner exceeds the cost of providing the same benefit to a spouse of an employee, a contractor shall not be required to provide the benefit, nor shall it be deemed discriminatory if the contractor requires the employee to pay the monetary difference in order to provide the benefit to the Domestic Partner. Departments shall coordinate all requests for exception to these benefit provisions to the Procurement Services Division. Copies of a contractor's request for exception to these provisions and the supporting determination documentation are to be maintained by the department.

4. EMPLOYEE

Employee shall mean any person who is employed by a contractor and performs work directly related to a City of Sacramento contract (see **Exceptions** - Section 2), whether full or part time, and includes contract or contingent employees, and employees made available to the contractor by a temporary agency or similar entity. Individuals participating in job training and education programs who are acquiring basic job skills and education or earning a high school equivalency diploma as a condition for permanent employment are not considered to be employees. Additionally, student interns and individuals participating in specialized training programs are not considered to be employees.

5. CONTRACTOR ENFORCEMENT

Contracts and agreements subject to the Equal Benefits Ordinance (EBO) provisions shall contain language requiring compliance and the contractor's obligation to provide the City with documentation and information verifying its compliance with the requirements of the ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, as a minimum, each City contract employee's name, address and social security number. The City may request other information or records showing how pay and benefits are paid to employees to investigate and resolve employee or domestic partner complaints. Each request for payroll records shall be accompanied by an affidavit, to be returned by the contractor attesting that the information contained in the payroll record is true and correct, and that the contractor has complied with the EBO requirements. A violation of the EBO or noncompliance with the EBO requirements may be determined to be a breach of contract. The Procurement Services Division shall periodically monitor and/or audit contractors subject to EBO requirements and assist departments with contracts that require investigations resulting from complaints from employees or domestic partners.

6. WAIVERS AND EXEMPTIONS

Departments may request waivers or exemptions to the Equal Benefits Ordinance (EBO) when any of the following conditions are met:

- Only one contractor is available and willing to enter into contract or agreement to occupy and use City property on terms and conditions established by the City
- Sole source conditions for goods, services, public project or improvements and related construction services, provided the contractor is not disqualified from doing business with the City or from any other governmental agency based on any contract compliance requirements
- There are no responsive bidders to the Equal Benefits Ordinance (EBO) requirement and the contract is for essential goods or services
- Emergency conditions with public health and safety implications
- Specialized legal service contracts, if in the best interest of the City

Request for waivers or exemptions shall be directed to the Procurement Services Division prior to contract award, in writing, and with sufficient justification for resolution. Documentation of final determinations for waivers and exemptions shall be retained with contracts or agreements in accordance with document retention requirements.

Equal Benefits Ordinance provisions and requirements are not applicable when the terms and conditions violate or are inconsistent with a public agency grant, subvention or agreement, or the instructions of an authorized representative thereof.

Equal Benefits Ordinance provisions and requirements are not applicable to transactions entered into pursuant to cooperative purchasing agreements approved by the City Council or through legal contracts of other governmental jurisdictions or public agencies without competitive bidding by the City.

7. COMPLAINTS TO THE CITY

Complaints received by departments shall be coordinated with the Procurement Services Division for resolution. Alleged violations of the Equal Benefits Ordinance provisions and requirements shall be treated as confidential matters to the extent permitted by law. Complaints received and all related investigation documents are exempt from disclosure pursuant to California Government Code Sections 6254 and 6255 to the extent permitted by law. City staff shall have the right to request payroll and benefit information and to examine a contractor's employee benefit program(s) related to a complaint. Investigations shall be limited to the alleged violation(s), individual(s) and for the time period of performance on the City contract or agreement. The City's failure to investigate an alleged violation or otherwise enforce any of the EBO provisions does not create a right of action or right to recover damages from the City by any person.

Employees alleging a violation of the ordinance may bring an action in the appropriate division of the Superior Court of California to obtain remedy including reinstatement, injunctive relief, compensatory and punitive damages and reasonable attorney fees and costs. An employee may bring action against a City contractor for violation of the ordinance independent of filing a complaint with the City.

8. EQUAL BENEFITS ORDINANCE VIOLATIONS

Contractor violations of the Equal Benefits Ordinance (EBO) shall be directed to the City Manager and City Attorney's office for final determination and resolution. In addition to all available legal or equitable remedies, the City Manager may exercise the following rights and remedies to correct a contractor violation:

- Suspension and/or termination of the contract
- Repayment of any or all of the contract amount disbursed by the City of Sacramento
- Debarment for future contracts until all penalties and restitution have been paid in full
- Debarment for future contract for up to two years
- Imposing a penalty payable to the City in the sum of \$50 for each person for each calendar day during which a person was discriminated against in violation of the ordinance

The City shall be entitled to recover reasonable attorney fees and cost associated with any action to enforce the Equal Benefits Ordinance.

9. COMPLIANCE MONITORING

Compliance with the policies herein will be monitored by the Procurement Services Division. Monitoring may include the review of department eligible Equal Benefits Ordinance (EBO) contracts, spot audits, or other methods deemed necessary and appropriate by the Finance Director. On a periodic basis, the Finance Department will provide reports and information to each Department Director about contractor EBO requirements, performance and compliance. These reports are to be used by departments and the Finance Department to identify EBO trends, requirements and enforcement standards.

10. ADMINISTRATIVE AUTHORITY FOR POLICY COMPLIANCE

The Director of Finance is responsible for ensuring that Equal Benefits Ordinance (EBO) eligible contracts and agreements are administered in conformance with this policy. Accordingly, the Director of Finance has the authority to make administrative adjustments to procedures herein if such adjustments are deemed necessary to achieve policy compliance. Such administrative adjustments may be applied citywide, by department, by organization, or individually, as deemed appropriate by the Director of Finance. Administrative remedies to achieve policy compliance will usually be applied before pursuing formal disciplinary procedures. The decision of the Director of Finance to utilize administrative remedies will be based on evidence of failure on the part of individuals, organizations, or departments to comply with the policies herein.