

LOS ANGELES CITY TASK FORCE ON FAMILY DIVERSITY
RESEARCH TEAM ON GOVERNMENTAL
EMPLOYEE BENEFITS

Submitted by:

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SUMMARY OF RECOMMENDATIONS

IT IS RECOMMENDED that the Los Angeles City Council resolve to eliminate disparate treatment in the award of employee benefits based on marital status and to promote equal treatment of all employees, in all aspects of compensation, regardless of marital status.

IT IS RECOMMENDED that the City of Los Angeles develop a mechanism for recognizing domestic partnerships and amend Los Angeles Administrative Code Sections 4.127 and 4.127.1 to permit employee leave for the sickness or death of a domestic partner.

IT IS RECOMMENDED that the Los Angeles City Council request a legal opinion from the Los Angeles City Attorney or the California Attorney General re: whether awarding survivor benefits to an eligible spouse upon the death of a retired employee constitutes discrimination in the award of employee benefits based on marital status in violation of California Government Code Section 12940.

IT IS RECOMMENDED that the City of Los Angeles expand its existing child care policy to include elder care, making the policy, in essence, a dependent care policy.

IT IS RECOMMENDED that the Mayor issue an executive order directing the personnel department to review current city personnel practices and authorize them to take whatever steps are

necessary, including meeting and conferring with employee groups, to modify and enhance the City's role as a model employer in the area of dependent care. The areas which the Personnel Department should give serious consideration to should include, but not be limited to, flexible work schedules, liberal maternity/paternity leave policy, and the use of leaves to care for elderly dependent relatives.

IT IS RECOMMENDED that the City of Los Angeles give serious consideration to the feasibility of on-site or near-site inter-generational dependent care centers. These programs could make use of vacant city facilities, in much the same way the Optimum House program has done, and make the spaces available to City employees. Additionally, the Mayor should direct Project Restore, which is presently working to restore City Hall, to look at the feasibility of including an on-site dependent care center in its restoration plans.

IT IS RECOMMENDED that the City contract with an outside agency to establish an employee assistance program that would provide employees with confidential counseling on a variety of matters. If at all possible, the City should contract with an organization that could also provide counseling for employees in the area of dependent care.

IT IS RECOMMENDED that the City of Los Angeles adopt a flexible benefits plan which permits employees to elect health or other insurance coverage for domestic partners, and provides dependent care benefits.

INTRODUCTION

The terms employee benefits, or fringe benefits, have been used interchangeably to refer to a set of benefits which make up an employee's compensation package. Health insurance, sick leave, leaves for personal purposes such as maternity or bereavement, pension plans, deferred compensation or other tax-deferred earnings plans, and vacation benefits are the traditional components of many employee benefits programs. In today's competitive employment marketplace, the purpose and point of employee benefits is frequently overlooked. In many instances, and in the case of the employees of the City of Los Angeles in particular, the traditional benefits package no longer meets the needs of current employees.

In the beginning, the pay check or weekly wage represented the total remuneration for the services rendered by an employee. This began to change during the Industrial Revolution when pension plans, with long deferred vesting and strict employer controls, were introduced in an attempt to keep an employee tied to a particular job.^{1/} Further changes in societal concepts of employee benefits occurred in World War II when significant labor shortages were experienced on the homefront. Salary alone was no longer a sufficient inducement to attract the desired personnel, and something more had to be offered. Since wages and salaries were subject to federal stabilization rules which had been enacted during the Depression, employers were compelled to offer different kinds of employee benefits in order to attract the limited labor supply.^{2/}

Benefits were first designed, in other words, as a tool to attract and hold the desired type and number of employees. Contemporary analysts still acknowledge that benefits plans ". . . should aid (or at least not impede) the hiring of desired people."^{3/} After the employee has been attracted to a particular employer by the offer of a certain type or level of benefits, the agreement by the employer to compensate the employee at a particular level becomes a contractual obligation. Indeed, California courts have determined that benefits, such as retirement benefits, ". . . do not derive from the beneficence of the employer, but are properly part of the consideration earned by the employee."^{4/}

Since the philosophy of employee benefits is to compensate the employee in addition to the monetary compensation offered in the form of wages and salaries, it is therefore critically important that the employer understand the needs and wishes of its employees. If a workforce were homogeneous, the needs of the employees would be fairly easily anticipated by the well-informed employer, and the design of an attractive benefits package would pose no problem.^{5/} Today's benefits plans were for the most part, however, designed in past decades, and have been geared historically toward a single-wage-earner family, with life, medical and accident plans covering the employee, and sometimes dependents.^{6/}

The problem which has arisen in recent years is the growing degree to which contemporary employees deviate from the historical norm. In today's workforce, women compose 45% of those

employed.^{7/} The phenomena of households with two adults, both employed, with no children, is becoming common enough to merit an acronym -- DINK (Dual Income No Kids). The number of women with young children who are working is increasing, but the average working woman still earns only about 60% of what the average working man earns.^{8/} Perhaps even more significant is the fact that, with the number of elders in our society growing steadily, employees, and female employees in particular, face increased demands to care for aging family members.^{9/}

Families themselves are changing, and moving away from the 1950's ideal "nuclear family" of father, mother, two children. Today, one in two marriages ends in divorce,^{10/} 14% of all white children and 54% of all black children are being raised in a household headed by a female,^{11/} and only 28% of California households can be said to conform to the "traditional" models.^{12/} The 1980 United States Census revealed that almost 40% of Americans live in "non-family" households, either alone or with other adults and/or children.^{13/} This finding is consistent with a recent survey of women employees of the City of Los Angeles which revealed that 41% of the approximately 6000 respondents lived with another adult not their husband or wife.^{14/}

Given these changes, an employer designing a benefits package must be more aware than ever before that benefits are designed to be part of the employee's total compensation package. To be competitive, the employer must compensate an employee in a way that the employee can utilize. For example, the single working

mother needs child care benefits and sick leave to care for family members, but may not need, or be in a position to utilize, a deferred compensation plan or spousal medical coverage.

But the most important aspect of current benefits programs which are out of synchronization with the contemporary realities of family life is the fact that employees doing the same job are being compensated differently. Discrimination has been defined as the making of decisions based on criteria other than productivity.^{15/} The decision to compensate one employee in the form of employee benefits at a higher level than another employee is discriminatory when the only basis for making the decision is the fact that the privileged employee conforms to an outdated societal norm which the benefits package was designed to service. Many employers, including the City of Los Angeles, need to reexamine their traditional program with an eye toward developing a non-discriminatory means of assuring that each employee is compensated at a level equal to the compensation given another employee of the same job classification doing the same work. Otherwise, those employers who refuse to recognize the changing family lifestyles of today's employee will not only find themselves out of the competition for the most desired workers, but burdened with a benefits program that can only be described as wasteful.^{16/}

CURRENT CITY BENEFITS

Although the subject of employee benefits is one of

concern to all employers, this report focuses on governmental employee benefits and, more specifically, on benefits available through the City of Los Angeles. The basic benefits offered by the City to its employees at the current time include health and dental care, retirement, vacation, sick leave and bereavement leave. The City currently offers employees a choice of four health plans and subsidizes the monthly premiums at a rate agreed upon in each employee group's Memorandum of Understanding.^{17/} Retirement benefits are available to all employees, and several options may be elected upon retirement for receipt of accrued benefit funds.^{18/} Vacation leave is available at a rate based on the employee's number of years of City service.^{19/} Sick leave due to illness of the employee is available with the number of days being negotiated between the City and the employee's group and memorialized in the Memorandum of Understanding. Sick leave is also available for the employee to care for an ill family member, as that term is defined in the Los Angeles Administrative Code.^{20/} Finally, bereavement leave is offered for the death of a family member, as defined in the Los Angeles Administrative Code.^{21/}

The basic benefits offered by the City are available to all employees. The quality, and in some cases quantity, of benefits, however, is directly related to an employee's marital status. In the area of health benefits, for example, the subsidy negotiated by the City is generally intended to cover the cost of the monthly premium for the lowest cost health plan for the employee, spouse and one dependent.^{22/} The total benefit subsidy negotiated, therefore, is considered part of each employee's total

compensation package, but not every employee receives the full benefit. A City employee who is a member of the clerical unit, for example, receives a maximum monthly subsidy for health care of \$253.00.^{23/} This would be sufficient to cover the entire cost of the employee's health care if he or she had elected the Kaiser Health Plan, and it would also cover the cost of insuring the employee's spouse and one dependent child.^{24/} A single employee who signed up for the Kaiser Health Plan would also not have to pay any premium since the monthly cost of the plan, \$88.62, would be covered by the City's subsidy.^{25/} The single employee would not, however, receive any monetary reimbursement for the unexpended part of the subsidy which in this example totals \$161.38. The single employee is thus not receiving all of the compensation he or she is entitled to and is in fact subsidizing the cost to the City of the married employee's health coverage.

In addition to treating employees differently in the awarding of employee benefits based on marital status, the City also treats "married" employees differently based on whether the employee's relationship conforms with the statutory definition of marriage^{26/} or whether the employee is living with a domestic partner. Health insurance benefits are available only to the employee, his or her "lawful spouse" or financially dependent unmarried children, legally adopted children, or legally appointed wards by the court.^{27/} Sick leave and bereavement leave are granted only for the illness or death of the employee's "spouse" or other member of the "immediate family."^{28/} Finally, only an employee with an "eligible spouse" can elect to have survivor

benefits paid to that spouse from the employee's retirement fund after the death of the employee.^{29/}

The restriction of benefits to employees whose marriage or marriage-like relationship is "lawful" is plainly stated in all of the City employee benefits. Thus, employees who choose to or are able to comply with the legal requirements of a lawful marriage are given preference, and "greater", or at least additional, benefits than employees who do not, or are not able, to marry but who nevertheless live in a marriage-like family relationship. Whatever the City's "feelings" with regard to the appropriateness of any employee's living situation, the fact remains that the employee with a "lawful" spouse is receiving greater compensation, in the form of benefits, than the employee doing a like job who shares his or her life with a domestic partner.

MEETING EMPLOYEE NEEDS - NOW AND IN THE FUTURE

Designing an employee benefits package to meet the needs to current City employees requires addressing not only existing benefits which are being awarded inequitably but also areas where no benefits are available but are needed. Health and leave benefits, for example, should be awarded not on the basis of marital status or family relationships, but, rather, on the reality of modern family obligations.

From a strictly legal standpoint, an employer is permitted to provide, through a bona fide health plan, greater or additional

benefits to employees with dependents than to those without or with fewer dependents.^{30/} Such disparate treatment based on the employee's marital status is not against the law, but it does raise important questions with regard to why one group of employees should receive greater total compensation than another group. Moreover, such a practice singles out the marital relationship, with the assumed dependency of spouse and children, as more worthy of greater protection through compensation than another relationship in which the employee might have equal or greater responsibilities. Why, for example, should the employee with a spouse and child receive more total compensation than the employee who is responsible for caring for a dependent unrelated adult, or an aging parent, or an unrelated child? If each employee in the above example is entitled to be compensated equally for performing the same tasks, why are they being treated differently in the awarding of employee benefits?

The simple answer seems to be that this is simply the way our society has functioned for some time. California courts have long recognized that "the state has a legitimate interest in promoting marriage."^{31/} This strong public policy favoring marriage is promoted by legislatively conferring rights and benefits on married persons which are not afforded to unmarried persons.^{32/} This policy seems to be founded in a 19th Century concept of the family as properly consisting of a male wage-earner with a female, non-working, dependent spouse and dependent children. With this concept as a model, and a societal interest in perpetuating and promoting the existence of the model, it is

logical that most employers would design their compensation system to include benefits which would be attractive to this ideal group. What happens, however, when this 19th Century concept collides, as it has, with 20th Century reality?

What happens, arguably, is that the justification for preferring one employee's family relationship to another employee's relationships, and in compensating the preferred employee at a higher level than the other, simply collapses. An employee benefits system which treats employees differently based on marital status loses its internal logic when the reason for that different treatment, the societal interest in the promotion of marriage, has diminished. When the system is designed to meet the needs of only 28% of the population who fit the "traditional" model, it is not fulfilling the needs of the majority of employees.

The same rationale which supports greater compensation for married employees in the form of health insurance benefits also gives married employees greater benefits in the area of sick and bereavement leave. The Los Angeles Administrative Code defines the family relationships which are "preferred" and for which an employee may receive leave if needed.^{33/} An employee may receive sick days off or bereavement days off, up to a number agreed upon between the employee's group and the City in the employee's Memorandum of Understanding, for the illness or death of a member of the employee's "immediate family." The "immediate family" is defined as including the father, mother, brother, sister, spouse, child, grandparents, grandchildren, step-parents or step-children

of the employee.^{34/} Additionally, bereavement leave may be granted for the death of any relative living in the employee's household.^{35/} This definition presumes that the majority of employees conform to a traditional family model, when in fact, as noted above, "traditional" families are in the minority. Again, some employees are being compensated at a higher rate than others simply because their family relationships are deemed "preferable" and "more worthy" of support by the City. In reality, however, the employee who lives with a domestic partner or other adult in a family relationship, would be just as grieved and need just as much time to take care of family business associated with a death as an employee whose spouse or parent died.

There is also a potential legal issue with regard to treating employees with spouses differently from employees with a domestic partner for purposes of making available to the employee the option to elect to receive survivor benefits upon death after retirement. Although state law permits disparate treatment based on marital status in the awarding of health care benefits,^{36/} there is no similar exception for discrimination based on marital status in the awarding of retirement benefits. Thus, to compensate a married employee to a greater degree than a single employee by permitting the married employee to secure protection for a surviving spouse after the employee's death and to deny the same benefit to a designated beneficiary of a single employee could very well constitute unlawful discrimination in the awarding of employee benefits based on marital status.^{37/}

Besides medical benefits, leaves and retirement benefits, there are additional benefit areas where the City is not currently meeting employee needs and where the potential exists for greater disparity in the future unless something is done. Child care is a particularly important area of benefit services that is being neglected. Although the City has adopted a child care policy, it is not specific enough to indicate what steps the City intends to take to meet child care needs.^{38/}

As important as child care is today, employees who must become eldercare-givers may soon outnumber those who care for dependent children.^{39/} Millions of mid-life or older working adults find themselves caught between work, raising their own children, and trying to care for older parents. In fact, adult children provide 80 percent of the health and social services needed by their aging parents, and the great majority of these care-givers are women.^{40/}

The number of Americans 65 years of age and older grew twice as fast as the rest of the population in the last two decades.^{41/} Advances in formerly terminal diseases such as cancer and heart disease, combined with life prolonging medical technologies, have contributed to a greater life span for all Americans. But diseases such as Alzheimers and Parkinson's, which require long-term custodial care, are emerging as a more serious threat to a greater number of elderly people.^{42/} Nursing home care is expensive and can easily erode a middle-income person's life savings and assets.^{43/} Institutional care, required by

increasing numbers of the elderly is not reimbursed by Medicare, except for a rather limited time period. Nor is there any significant private insurance available for custodial care.^{44/}

The stress on working adults of providing such care is not quantifiable but is no less real. It directly affects the employee's ability to do his or her job and as such should be of concern to the City of Los Angeles as an employer. A 1984 survey conducted by the New York Business Group on Health found that absenteeism, lateness and use of unscheduled days off to care for the aged were mentioned as a problem by two-thirds to three-fourths of the 69 respondents. Excessive phone use by employees with aged relatives was reported by nearly two-thirds of the companies surveyed. The companies also felt that the responsibilities inherent with caring for an aged relative negatively affected the employee's work. Three-fifths of the companies observed excessive stress and physical complaints and nearly one-half reported a decrease in productivity and quality of work.^{45/}

Care-givers are not the only employees who face problems that can impact on their work. The fact of the matter is that at some point in their lives, most people need professional counseling to help them deal with a wide array of personal problems. These problems run the gamut from the headline grabbing issue of substance abuse, to marital problems, to dealing with the death of a loved one, to financial counseling. Problems in these areas can manifest themselves in the form of depression, anxiety, sleeplessness and exhaustion. The result is costly to the

employees in terms of their physical and mental well-being and costly to the employer in terms of lost time and impaired work performance.

As an employer with an expressed commitment to the well being of city employees, as exemplified by programs such as the annual "Wellness Fair", the City has an obligation to insure that its workforce remains productive. One of the ways it can accomplish this goal and reinforce its commitment to the well being of City employees is to take positive steps to address the growing needs and concerns of its employees through an Employee Assistance Program. Such programs are vital and will become even more so if the City continues to press for the adoption of a drug testing policy, one of the cornerstones of which must be the inclusion of a treatment program.

SOLUTIONS AND RECOMMENDATIONS

It is obvious from the above discussion that there are many areas of employee benefits where the City of Los Angeles is either not meeting employee needs, will not meet future needs because of changing circumstances, or is awarding existing benefits in a discriminatory manner. In possible recognition of these problems, the City is currently considering whether a flexible benefits program would be appropriate for the City's needs. This sub-committee believes that the flexible benefits approach would be the best possible method of dealing with problems of unmet needs

and discrimination, so long as the City includes in the program those benefits which can in fact be utilized by employees.

A flexible benefit plan (also known as cafeteria plan) would allow employees to choose some or all of their benefits whether it be different levels of one type of benefit, such as health plans, or different types of benefits, such as life insurance, dental coverage or cash. The City may then subsidize all, or only a portion, of the benefits selected by the employee.

Some of the benefits the City might offer include health insurance (employee and spouse, domestic partner or dependent) dental insurance, life insurance, dependent life insurance, accidental death and dismemberment insurance, long term disability insurance, child care, or elder care subsidy, vision insurance, group auto insurance, savings plan contribution and cash.

There are three main types of cafeteria plans. The first, the modular design, presents employees with a choice of prepackaged benefits. Each package contains a fixed combination of benefits grouped together to meet the needs of a particular segment of the employee group.

The flexible spending account (FSA) design is the second type of plan. This plan gives the employee a choice between taxable cash and pretax payment of nontaxable expenses. Deposits enter the account as plan sponsor contributions usually through a salary reduction agreement. A salary reduction agreement lets

participants decide whether to take salary as taxable wages or put it into a FSA. Disbursements are made from the FSA to pay for eligible nontaxable expenses. FSAs deal more with defining the tax status of money than with trading among welfare benefits.

Finally, the third type of cafeteria plan available is the core-plus options plan. It allows employees to make selections among various options that complement a fixed core of benefits which serve as a minimum level of coverage that the city would require for their employees. The cost to the employer is dependent upon the amount of the employer's contribution and the benefits chosen by the employer.

Whatever type of plan design is selected, these benefits plans are only beneficial to employees if they provide the benefits that employees actually need. If a flexible benefits plan fails to recognize that approximately 11% of its employees live with domestic partners,^{46/} for example, and limits the availability of its "menu" of benefits to coverage appropriate for spouses or traditional family members only, much of the justification for reviewing the current benefits system would be lost. The plan finally adopted by the City must include the elements necessary for the City to respond to the reality of today's employee's needs rather than to perpetuate the myths and stereotypes of yesterday.

The introduction of the concept of flexible benefits would create an appropriate atmosphere to examine the long-standing practice of awarding greater compensation in the form of employee

benefits to married employees. Given the increasing number of employees whose family relationships do not mimic "traditional" 19th Century models upon which this practice is based, it seems appropriate at this time to reevaluate the justification for disparate treatment. Even though discrimination based on marital status is legally permissible in awarding health benefits, an employer the size of the City of Los Angeles should not perpetuate a benefits system where the rationale for discriminating in the award of benefits is no longer convincing. This committee therefore makes the following recommendation:

IT IS RECOMMENDED THAT THE LOS ANGELES CITY COUNCIL RESOLVE TO ELIMINATE DISPARATE TREATMENT IN THE AWARD OF EMPLOYEE BENEFITS BASED ON MARITAL STATUS AND TO PROMOTE EQUAL TREATMENT OF ALL EMPLOYEES, IN ALL ASPECTS OF COMPENSATION, REGARDLESS OF MARITAL STATUS.

Just as there is little justification for continuing to base an employee's rate of compensation on his or her marital status, there is similarly little justification for awarding greater benefits to an employee with a spouse than to an employee with a domestic partner. The purpose of employee benefits is not to "bless" or otherwise legitimize the familial relationships of City employees, but, rather, to compensate them consistent with their skills and abilities and to a degree sufficient to meet their societal and family responsibilities. Whether the individuals whom

an employee chooses to include in his or her family meet with the approval of the City or society at large is irrelevant to the greater issue of the employee's need to provide for, associate with, and protect those individuals. All employees should be treated equally within each separate job classification, and no employees should receive preferential treatment in the awarding of compensation simply because they have socially acceptable family relationships.

Included in this Report is a report submitted by the research team on Gay and Lesbian Couples.^{47/} The report recommends that the City develop a mechanism to recognize domestic partnerships and amend the Los Angeles Administrative Code definitions of "immediate family" for purposes of family sick leave and bereavement leave to include domestic partners.^{48/} The definition of domestic partner need not be limited to homosexual relationships but could include heterosexual couples who are living together but have not married, as well as other non-traditional adult living arrangements. This sub-committee endorses both of those recommendations:

IT IS RECOMMENDED THAT THE CITY OF LOS ANGELES DEVELOP A MECHANISM FOR RECOGNIZING DOMESTIC PARTNERSHIPS AND AMEND LOS ANGELES ADMINISTRATIVE CODE SECTIONS 4.127 and 4.127.1 TO PERMIT EMPLOYEE LEAVE FOR THE SICKNESS OR DEATH OF A DOMESTIC PARTNER.

It is not surprising that the most common argument against extending employee benefits to employees with marriage-like relationships is not the employer's interest in promoting marriage, but, rather, the burden of the additional cost of such benefits. For example, in a March 4, 1985 report to a City Councilman, the City Administrative Officer focused his comments almost entirely on the financial burden of extending health care benefits to domestic partners of employees.^{49/} The report estimated the cost of additional health care benefits at \$1.7- \$3.4 million. ^{50/} This figure is admittedly frightening to City legislators, but the report fails to take into consideration the fact that the people who would be effected would probably not all seek to enroll their domestic partner in a health plan. Just as married employees frequently do not enroll their spouses for receipt of health benefits because the spouse is working and has their own coverage,^{51/} so too would many of the domestic partners of employees be independently able to supply their own health insurance needs and would not be interested in coverage through the City's plan. It seems illogical to assume a "worst-case" scenario without any effort to delete from the possible financial cost of expanding benefits the probable percentages of eligible employees who would not choose such coverage.

The idea of providing benefits for an employee's domestic partner is not new and is currently being offered by other municipalities and institutions. For example, the Worker's Trust, which is a member owned, cooperatively run non-profit business, offers insurance coverage to individuals, organizations and the

self-employed. ^{52/} It has offered "named partner" coverage since 1980. The named partner must permanently reside with the member in the member's home and be designated on a standard application form. They have recently added a three month waiting period for unmarried couples.

The Village Voice, an East Coast Newspaper organization, has provided health, dental and disability and life insurance to "spouse equivalents" of gay and non-gay employees since 1982.^{53/} To qualify as a spousal equivalent the domestic partner must have shared the household of the employee for one year. The employee must also file a declaration with the insurance plan and the Village Voice personnel office for the domestic partner to be eligible for coverage.

The American Psychological Association has a three year experimental plan to offer coverage to "spouse equivalents" of its members.^{54/} Here the spouse equivalent must be 21 years old, unmarried, live with the unmarried insured member, provide proof of good health and be identified to the company in writing. Again, there is a one year waiting period.

The University Students Co-Op Association in Berkeley purchased individual Blue Cross memberships for their employees' domestic partners.^{55/} They required the employee and partner to live in a marriage-like situation and share the necessities of life. They were not required to live together. USCA has now

switched to Worker's Trust for same-sex and unmarried couples coverage.

The Berkeley School Board in 1984 voted to extend spousal benefits to domestic partners of its employees. Partners must file a declaration that they live together, share common necessities of life, are not married to anyone else, are mentally competent to contract, are each other's sole domestic partner and are responsible for each other's common welfare. ^{56/} The partners must agree to inform the district's personnel office if the circumstances attested to in the affidavit change, and a six-month waiting period is required after a domestic partnership affidavit is terminated before another affidavit can be filed.

The City of Berkeley became the first municipality to provide employment-related benefits to the domestic partners of City employees in 1984.^{57/} More recently, the City of West Hollywood has adopted a domestic partnership ordinance that encompasses many of the same features of Berkeley's domestic partnership affidavit system.^{58/} The implementation of domestic partnership benefits has thus been accomplished, or at least undertaken, on a variety of fronts without apparent financial ruin. There is little reason to exclude such coverage for employees of the City of Los Angeles, particularly in a flexible benefits package which would permit the employee to choose only that coverage he or she requires.

Further, the City Administrative Officer's report also fails to take into consideration the importance of extending

official recognition to the varied familial relationships of City employees, particularly gay and lesbian employees. These individuals are welcomed into the City family and assured an equal opportunity at employment and promotion, and are ostensibly protected by the City ordinance that specifically prohibits disparate treatment based on sexual orientation in the awarding of compensation or employee benefits.^{59/} In reality, however, their relationships, many of them as stable and financially interdependent as those of heterosexual employees, are unacknowledged and their family needs and responsibilities often unfulfilled. There is little justification for the City to continue treating its homosexual employees as second-class citizens, unworthy of receiving the same benefits as their similarly situated heterosexual co-workers, and every reason to develop a mechanism to acknowledge the employee's familial relationships.^{60/} At least for purposes of awarding employee benefits, an effort should be made to eliminate disparate treatment of employees based on whether their spouse-like primary relationship satisfies the definition of marriage included in the Civil Code.

With regard to the impact of a domestic partnership ordinance on survivorship benefits of retirement plans, a more thorough legal analysis is probably needed. As far as this sub-committee has been able to determine, no one has as yet challenged the legality of the City's limiting survivor benefits to the married spouses of employees. The City's recognition of domestic partnerships, at least for purposes of awarding employee benefits, could lead logically to a desire on the part of some

employees to elect survivor benefits for their domestic partner.
This committee therefore makes the following recommendation:

IT IS RECOMMENDED THAT THE CITY COUNCIL REQUEST
A LEGAL OPINION FROM THE LOS ANGELES CITY
ATTORNEY OR THE CALIFORNIA ATTORNEY GENERAL RE:
WHETHER AWARDING SURVIVOR BENEFITS TO AN
ELIGIBLE SPOUSE UPON THE DEATH OF A RETIRED
EMPLOYEE CONSTITUTES DISCRIMINATION IN THE AWARD
OF EMPLOYEE BENEFITS BASED ON MARITAL STATUS IN
VIOLATION OF CALIFORNIA GOVERNMENT CODE § 12940.

With regard to the issues of child care and elder care,
the current City policy regarding child care is a step in the right
direction of offering benefits that meet employee needs. Many
current flexible benefits programs recognize the need for offering
child care subsidies as part of the benefits "menu" made available
to employees. Other employers, including the Department of Water
and Power, have addressed the need by providing on-site child care
for employees.^{61/} Since the issues of both child and elder care
involve many of the same problems for employees and could be
uniformly addressed, the committee makes the following
recommendations:

IT IS RECOMMENDED THAT THE CITY EXPAND THE
EXISTING CHILD CARE POLICY TO INCLUDE ELDER
CARE, MAKING THE POLICY, IN ESSENCE, A DEPENDENT
CARE POLICY.

Additionally, the City must take a more active role in the development and implementation of dependent care programs. The City should be using its internal systems of communication to highlight medical findings, estate planning and other information relating to aging and the care of elders. Workshops could be provided and support groups formed to help employees deal with the problems and issues of dependent care and in identifying local support services. The City might also develop a regionwide network of resources and referral services to provide care-givers with information about available child care and elder care centers and encourage employees to make use of these services. Above all, the committee makes the following recommendation:

IT IS RECOMMENDED THAT THE MAYOR ISSUE AN EXECUTIVE ORDER DIRECTING THE PERSONNEL DEPARTMENT TO REVIEW CURRENT CITY PERSONNEL PRACTICES AND AUTHORIZE THEM TO TAKE WHATEVER STEPS ARE NECESSARY, INCLUDING MEETING AND CONFERRING WITH EMPLOYEE GROUPS, TO MODIFY AND ENHANCE THE CITY'S ROLE AS A MODEL EMPLOYER IN THE AREA OF DEPENDENT CARE. THE AREAS WHICH THE PERSONNEL DEPARTMENT SHOULD GIVE SERIOUS CONSIDERATION TO SHOULD INCLUDE, BUT NOT BE LIMITED TO, FLEXIBLE WORK SCHEDULES, LIBERAL MATERNITY/PATERNITY LEAVE POLICY, AND THE USE OF LEAVES TO CARE FOR ELDERLY DEPENDENT RELATIVES.

The current survey being conducted of City employees will hopefully provide necessary information concerning the needs of employees for assistance in the area of dependent care. There are many creative options in addition to simply permitting employees to elect subsidized child or elder care as an employee benefit. Intergenerational dependent care centers could be developed which would benefit both the elderly and children by providing care for the child and interaction for both. Intergenerational care centers would make it possible for the working care-giver to address multiple familial concerns and responsibilities. With this in mind:

IT IS RECOMMENDED THAT THE CITY GIVE SERIOUS CONSIDERATION TO THE FEASIBILITY OF ON-SITE OR NEAR-SITE INTERGENERATIONAL DEPENDENT CARE CENTERS. THESE PROGRAMS COULD MAKE USE OF VACANT CITY FACILITIES, IN MUCH THE SAME WAY THE OPTIMUM HOUSE PROGRAM HAS DONE, AND MAKE THE SPACES AVAILABLE TO CITY EMPLOYEES.

ADDITIONALLY, THE MAYOR SHOULD DIRECT PROJECT RESTORE, WHICH IS PRESENTLY WORKING TO RESTORE CITY HALL, TO LOOK AT THE FEASIBILITY OF INCLUDING AN ON-SITE DEPENDENT CARE CENTER IN ITS RESTORATION PLANS.

Finally, the City needs to recognize the stresses affecting City employees occasioned by changing family circumstances. Many businesses and institutions already provide

employee assistance programs to help employees having difficulty facing the demands of their work or life. In contrast, one of the major health insurance options available to City employees, Connecticut General, does not even cover out-patient psychological counseling. With today's growing concern about substance abuse in the workplace, it behooves the City to at least provide minimal counseling and referral services for services and programs available in the community, if not on-site counseling services. With this in mind:

IT IS RECOMMENDED THAT THE CITY CONTRACT WITH AN OUTSIDE AGENCY TO ESTABLISH AN EMPLOYEE ASSISTANCE PROGRAM THAT WOULD PROVIDE EMPLOYEES WITH CONFIDENTIAL COUNSELING ON A VARIETY OF MATTERS. IF AT ALL POSSIBLE, THE CITY SHOULD CONTRACT WITH AN ORGANIZATION THAT COULD ALSO PROVIDE COUNSELING FOR EMPLOYEES IN THE AREA OF DEPENDENT CARE.

CONCLUSION

Employee benefits are not offered merely as the physical and visible sign of an employer's regard for the employee. Rather, they represent a form of compensation above and beyond the salary or wages agreed upon between employer and employee. In these days of low inflation, slow economic growth, and evaporating municipal resources, creative and useful benefits can be an extremely useful means for governmental employers to attract and hold competent and

qualified employees. Since traditional benefits systems are seldom either creative or useful, in the sense that all employees are able to utilize all services offered, more and more employers are turning to flexible benefits packages to satisfy employee needs and eliminate troublesome problems with discriminatory treatment.

The City of Los Angeles should be among those employers adopting flexible benefits programs. A benefits plan which subsidized all employees equally regardless of marital status would eliminate the troublesome inequities between the compensation packages available to married and unmarried employees. Such a plan would permit the large percentage of the employee population that does not conform to traditional models of family relationships to purchase, or have the City purchase, appropriate coverage for domestic partners or other dependents. Finally, a flexible benefits program could include options for dependent care which would address the concerns of a growing number of employees whose parents or adult dependents are aging.

In summary, then, this committee recommends the following:

IT IS RECOMMENDED THAT THE CITY OF LOS ANGELES
ADOPT A FLEXIBLE BENEFITS PLAN WHICH PERMITS
EMPLOYEES TO ELECT HEALTH OR OTHER INSURANCE
COVERAGE FOR DOMESTIC PARTNERS, AND PROVIDES
DEPENDENT CARE BENEFITS.

FOOTNOTES

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5/ Klein, James P., "Tax Effective Total Compensation," Tax Law & Practice Course Handbook Series Number 237, p. 7 (Practicing Law Institute, 1985).

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14/ City of Los Angeles Commission on the Status of Women, Survey (1987).

15/ Willborn, p. 10.

16/ Klein, pp. 11-12.

17/ City of Los Angeles, Health & Dental Care Program (Employee Benefits Office, Personnel Department), 9/1/86, pp. 1, 22.

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19/ Los Angeles Administrative Code § 4.245.

- 20/ Los Angeles Administrative Code § 4.127.
- 21/ Los Angeles Administrative Code § 4.127.1.
- 22/ Op. Cit., City of Los Angeles, Health & Dental Care Program, pp. 19, 22.
- 23/ Id., pp. 21, 22.
- 24/ Id., p. 19.
- 25/ Ibid.
- 26/ California Civil Code Section 4100.
- 27/ Op. Cit., City of Los Angeles, Health & Dental Care Program, p.2.
- 28/ Los Angeles Administrative Code §§ 4.127, 4.127.1.
- 29/ Charter of the City of Los Angeles § 508.2.
- 30/ California Government Code § 12940 (a) (3) (ii).
- 31/ Hinman v. Department of Personnel Admin. (1985) 167 Cal.App.3d 516, 527, 213 Cal.Rptr. 410.
- 32/ Ibid.
- 33/ Los Angeles Administrative Code §§ 4.127, 4.127.1(a).
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48/ Id. at pp. _____.

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