

November 15, 2004

## Court Orders Enforcement of New York City's Equal Benefits Law

On November 8th, a State Supreme Court Justice ruled that New York City must implement the Equal Benefits Law ("EBL")<sup>1</sup> that requires New York City contractors to provide equal employment benefits to domestic partners as such contractors provided for employees with spouses. See *Council of the City of New York v. Michael R. Bloomberg*, N.Y. Sup. Ct., No. 115214/04, 11/09/04. With the implementation of the EBL for City contractors, New York joins the ranks of several other major cities across the country that have passed similar legislation, including San Francisco, Seattle, and Los Angeles.

Last week's ruling is but one stop in the EBL's rocky road to implementation. The EBL was initially passed by the City Council on May 5, 2004, and then vetoed by Mayor Bloomberg, whose veto was subsequently overridden by the City Council on June 28, 2004. Although the EBL was scheduled to become effective on October 26, 2004, the Mayor sought a temporary restraining order in October to stay implementation of the law, which was ultimately denied. The November 8th decision came at the request of the City Council to require the Mayor to implement the law. Nevertheless, the head lawyer for the City said in a November 9th statement that Mayor Bloomberg would appeal the ruling.

### Covered Employers

The EBL applies only to businesses with City contracts of at least \$100,000 (either individually or when aggregated for the preceding 12 months). Such contracts include those with an interest in real estate, work, labor, services, supplies, equipment, materials, construction related services, or any combination thereof. Contracts relating to the investment of assets held in trust by the City or contracts relating to the investment of City monies are expressly exempted. The EBL, however, applies only to business that secure or renew City contracts after the law took effect.

### Covered Employees

The EBL creates obligations only with respect to those qualified domestic partners of employees working in New York City during the term of the contract, or those employees who work outside of New York City but are directly fulfilling the terms of the contract.

### Domestic Partner Requirements

"Domestic partners," under this law, include persons who have registered as such in New York City. Under City law, a domestic partnership may be registered by two people who meet all of the following conditions: (1) both persons are New York City residents or at least one person is employed by the City; (2) both are at least 18 years old; (3) neither is married; (4) neither is a party to another current domestic partnership or was a party of a former partnership within 6 months prior to registration; (5) they are not related by blood; (6) they have a close and committed personal

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<sup>1</sup> See Local Law 2204/027, N.Y.C. Admin. Code § 6-126.

relationship, live together, and have been living together on a continuous basis; and (7) they execute an affidavit of domestic partnership submitted to the City clerk. "Domestic partners" also include persons who are members of a marriage that is not recognized by the state of New York, domestic partnership, or civil union, lawfully entered into in another jurisdiction. Alternatively, benefits may be extended to those employees who would not qualify otherwise but who satisfy the requirements of the contractor's internal registry for domestic partners. A contractor that institutes such a registry may verify the existence of a domestic partnership, but only to the extent that such verification is undertaken equally for employees with domestic partners and employees with spouses.

### **Covered Benefits and Other Obligations Under the Law**

The EBL prohibits a covered employer from discriminating in the provision of employment benefits between employees with spouses and employees with homosexual and heterosexual domestic partners. Covered benefits include, but are not limited to, health insurance, pension/retirement benefits, disability benefits, life insurance, as well as family, medical, parental, and other leaves. The law prohibits retaliation against employees who request equal benefits or who inform the City of a contractor's failure to provide equal benefits.

### **Penalties**

A violation of the EBL is deemed to be a material breach of the employer's contract with the City. Contractors are provided the opportunity to respond to claims of EBL violations. Violations of the EBL can result in an action by the City for the imposition of sanctions, required compliance, recovery of damages, and a declaration of default/non-responsibility, as well as an employee or domestic partner action in law or equity against the contractor.

### **Certification, Implementation, and Other Issues**

Before entering into any covered contract with the City, the contractor must certify that it offers equal benefits to employees with domestic partners (with an exception for certain religious or denominational organizations which may provide benefits to "household members"), and that it will not engage in retaliation prohibited by the EBL against an employee. The EBL can be waived by the contracting agency under certain limited circumstances, such as in the case of emergency contracts. Moreover, under the law, a contractor can: require employees to pay excess costs over equivalent spousal benefit costs; pay the cash equivalent for benefits it is unable to provide; and avoid income tax liabilities triggered by the provision of EBL benefits. Employers may request an extension of time of up to three months to take any administrative action that may be necessary before its equal benefits programs can be implemented.

While an appeal is pending and the EBL's future remains uncertain, both sides will begin the work on how the EBL should be carried out. Covered employers must also take the necessary steps to evaluate and modify their existing benefit plans and policies and to ensure compliance with the law before they renew an existing contract or bid for new work with the City.

For further details on the EBL's requirements and its current status, please do not hesitate to contact your Seyfarth Shaw LLP attorney for assistance or contact any Labor & Employment attorney on the website at [www.seyfarth.com](http://www.seyfarth.com).



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