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Assignment #2: Human Resources Policy Paper
PA 725
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Professor Ginsburg

MEMOMORANDUM

DATE: November 20, 2006
TO: Rick Rosan, President, Urban Land Institute
FROM: Kate White, Executive Director, ULI San Francisco District Council
RE: Domestic Partners Benefits

Per your request, please see rationale below for the expansion of ULI employee benefits to same-sex couples. This is a dynamic issue and only piecemeal progress has been made around the globe, but ULI has an opportunity to seize leadership. While in the majority of American states employers are not legally required to offer such benefits, ULI is a global, high-profile organization and thus I recommend ULI establish a universal policy that would place the organization at the forefront of equitable rights for employees.

Current ULI Benefits

As of 2004, the U.S. average benefits plan constituted nearly one-fifth of total compensation packages for employees¹ -- an important part of employee attraction and retention. ULI offers a number of benefits for spouses of employees that currently do not extended to same-sex couples including health insurance, family leave, retirement, welfare/insurance and flexible spending accounts.

¹ Luther, Samir. Human Rights Campaign. Domestic Partner Benefits: Employer Trends and Benefits Equivalency for the GLBT Family. 2006. pg. 1

Legally Required Benefits for Same-Sex Couples

International

In four countries same-sex couples have been granted the right to marry – and complete rights and privileges equal to those granted to heterosexual couples: Netherlands, Belgium, Canada, and Spain. South Africa is likely to pass same-sex marriage this month. Many other European countries have extended at least some level of benefits to domestic partners. In all cases, companies with offices in these countries must abide by the new rights.

Federal

Here in the United States, the U.S. General Accounting Office recently issued a report noting that there are “a total of 1,138 federal statutory provisions classified to the United States Code in which marital status is a factor in determining or receiving benefits, rights, and privileges.” Thus, the issue of same-sex marriage is an issue that can affect many U.S. legal requirements – including employment benefits. Whether employers must offer the same benefits coverage to same-sex couples depends in a large part on whether a particular benefit is federally mandated or state-mandated. ²

While it is true that because of the passage of the Defense of Marriage Act in 1996 (DOMA) federally required benefits need not be provided to same-sex couples. DOMA

² Matucci, Willam, Coverdale, Brent. Impact of Same-Sex Marriages on employment and Benefits. Employment Relations Today. Hoboken: Winter 2005. Vol.31, Iss4; pg. 70-71

applies to all federal laws, and actually precludes the extension of certain benefits to same-sex couples, such as Social Security, Medicare, and federal tax laws.³ However, there is no legislation or legal precedent that prohibits employers from providing domestic partnership benefits. For example, employers do have the option of extending COBRA and FMLA to same-sex partners. ULI should do as much as it can within its power to address the inequity same-sex couples face.

State

On the state level, legal requirements vary greatly. The tide is turning: since 2003 under Massachusetts law, same-sex married couples are entitled to all benefits of marriage. A Massachusetts employer who fails to provide the same level of benefits to same-sex couples as it provides to opposite-sex couples, could be subject to a discrimination lawsuit. Vermont – and, as of this month, New Jersey – recognizes “civil unions” for same-sex couples as equivalent to marriage. Finally, a handful of States (California, Hawaii, New Jersey, Maine, District of Columbia), have same-sex “domestic partnerships” which, while not rising to the same level as a marriage or a civil union, provide at least some level of legal benefits to same-sex couples.⁴

Local

As of March 2006, 11 cities and the state of California have enacted an “equal rights ordinance” that requires contractors with a government entity to extend benefits to same-sex partners. ULI regularly contracts with cities (primarily for Advisory Service Panels)

³ Matucci and Coverdale, pg. 71

⁴ Matucci and Coverdale pg. 74

and should be prepared for the opportunity to enter contracts with jurisdictions that have equal rights ordinances.

Domestic Partner Employee Benefits in the Private & Public Sectors

Beyond basic legal requirements, voluntary benefits for same-sex couples have been gaining traction over the past decade in both the public and private sectors. Forty-nine percent of the Fortune 500 corporations now offer domestic partner health benefits.⁵ Twelve states and numerous localities have special civil rights protection for sexual orientation.⁶

Organizational Advantages

On the basis of equal rights and promotion of diversity it makes sense for ULI to join the leaders of the public and private sector by extending benefits to same-sex couples. Instituting such policies could assist ULI attract a larger pool of candidates, increase ULI's ability to recruit and retain highly qualified employees, and promote loyalty.⁷ Finally, because the issue of same-sex marriage and legal status is continually in flux, it would be administratively prudent for ULI to establish a universal policy across state and national lines.

⁵ Luther, Samir. Human Rights Campaign. Domestic Partner Benefits: Employer Trends and Benefits Equivalency for the GLBT Family. 2006. pg. 2

⁶ Matucci and Coverdale; pg. 69

⁷ Duncan, William. Domestic Partnership Laws in the United States: A Review and Critique. Bingham Young University Law Review. 2001. pg. 968

Budgetary Implications

The foremost concern surrounding extension of benefits to domestic partners usually focuses on the budgetary implications. In reality, the impacts are generally minimal. A recent study revealed that majority of employers who instituted such policies – 64% -- experienced a total financial impact of less than 1 percent of total benefit costs, while only 5 percent of employers experience financial impacts of 3 percent or greater of total benefits costs.⁸ This small budgetary impact would be greatly outweighed by the organizational advantages mentioned above.

Conclusion

Globally, the western world is moving towards the legal recognition of same-sex partnerships – in both the public and private sectors. Instead of being behind the curve, ULI should be on the cutting-edge of setting equitable treatment of employees. ULI should immediately extend all marriage-related employee benefits to committed same-sex partners (please see model American Airlines policy attached).

⁸ Luther, Samir. pg. 6