

SUB. 1 TO ORD. AMDT. 13, 08-09

**AMENDING CHAPTERS 19, 25 AND 40 OF THE DANE COUNTY
CODE OF ORDINANCES, REQUIRING EQUAL BENEFITS FOR EMPLOYEES OF
EMPLOYERS CONTRACTING WITH DANE COUNTY AND CREATING CHAPTER 60,
ESTABLISHING A DANE COUNTY DOMESTIC PARTNERSHIP REGISTRY**

The County Board of Supervisors of the County of Dane does ordain as follows:

ARTICLE 1. Unless otherwise expressly stated herein, all references to section and chapter numbers are to those of the Dane County Code of Ordinances.

ARTICLE 2. Section 19.53(1) is amended to read as follows:

19.53 AFFIRMATIVE ACTION COMPLIANCE REQUIRED. (1) (a) Contractors of the county who have a contract for \$5,000 or more are required to demonstrate compliance with the affirmative action provisions of this subchapter in obtaining a balanced workforce.

(b) Notwithstanding the provisions of sub. (a), as a component of ensuring that contractors of the county and their unions do not directly or indirectly discriminate on the basis of sexual orientation and marital status, all contracts must ensure equal total compensation between similarly situated employees with spouses and with domestic partners, as required by s. 25.016.

ARTICLE 3. Section 25.016 is created to read as follows:

25.016 EQUAL BENEFITS REQUIREMENT. (1) Purpose. The purpose of this ordinance is to ensure that equal compensation is provided to all employees of contractors performing work for the County of Dane. It is the County's intent, through the contracting practices outlined in this section, to assure that those companies wanting to do business with the County will equalize the total compensation between similarly situated spouses and those with domestic partners.

(2) As used in this section, the following terms shall have the meanings indicated:

(a) Board means the contract compliance hearing board as defined in s. 19.51(5).

(b) Benefit means any plan, program or policy provided or offered by a contractor to its employees as part of the employer's total compensation package. This includes, but is not limited to, the following types of benefits: bereavement leave, family medical leave, sick leave, health benefits, dental benefits, disability insurance, life insurance, membership or membership discounts, moving expenses, pension and retirement benefits, and travel benefits.

(c) Cash equivalent means the amount equal to the actual cost to the employer for providing insurance benefits to the spouse of a married employee and not provided to a domestic partner, provided that:

1. The benefit would have been provided to the domestic partner if that person was a spouse of the employee; and

2. After making a reasonable effort to provide the benefit to a domestic partner of an employee, the employer is unable to provide the benefit.

(d) Contract means any human services, public works or service contract, and includes subcontracts, but does not include any contract which:
1. Involves only the purchase of goods;

2. Is a contract or lease for use of facilities at the Alliant Energy Center;

3. Is a contract in existence prior to the effective date of this ordinance. The term of such contract shall not be extended unless the requirements of this section are incorporated into the contract.

4. Is a contract with a school district, municipality, or other unit of government; or

5. Involves a collective bargaining agreement in existence prior to the effective date of this ordinance, provided that the contractor must agree to propose to the applicable collective bargaining unit that the equal benefits requirement be incorporated into the agreement upon amendment, extension or other modification occurring after the effective date of this ordinance.

(e) *Contractor* means a person or entity having a service, human services or public works contract with Dane County.

(f) *Domestic partner* means an adult of the same or opposite sex with whom a contractor's employee is living with in a non-marital committed relationship and with whom they share a common residence and responsibility for each other's common welfare. Contractors may require an employee to sign and file a Declaration of Domestic Partnership in conformance with Chapter 60.

(g) *Economic development grant beneficiary* means any employer who is the recipient of an economic development grant from Dane County in the amount of \$5,000 or more.

(h) *Public works contract* means all contracts subject to chapter 40, Dane Co. Ords.

(i) *Service contract* means any contract with the County, for the provision of services to any County department or agency involving the following types of personal services: general labor, clerical work, janitorial work, security (including weapons screening), food service, human services contracts (including transportation), and personal care and home care work paid with County-administered funds for persons with disabilities and the frail elderly, whether the workers are employed directly by the consumer or by a third party. The purchasing agent shall review each bid specification or request for proposal and make a determination as to whether the proposed contract will constitute a service contract.

(3) Applicability. (a) This ordinance shall apply to:

1. All contractors as follows:

a. A contractor's operations located in Dane County, regardless of whether there are employees at those locations performing work on the contract.

b. A contractor's operations on real property located outside of Dane County if the property is owned by the County or the County has the right to occupy the property, and if the contractor's presence at or on that property is connected to a contract with the County; and

c. The contractor's employees located elsewhere in the United States but outside of Dane County, if those employees are performing work on a county contract.

2. All employers who are beneficiaries of economic development grants from the County in the amount of \$5,000 or more.

3. Dane County regarding its employees, including limited term employees.

(b) Notwithstanding anything to the contrary, the purchasing manager or designee may waive the provisions of this section when there is only one prospective contractor willing to enter into a contract with the County on the terms and conditions established by the County, or when the needed services or public works are available only from a sole source and the prospective contractor is not currently disqualified from doing business with the County based on any contract compliance requirements, and such waiver is in the best interest of Dane County. Any such waiver shall be reported to the Personnel & Finance Committee.

(4) All contractors and economic development grant beneficiaries shall provide the same benefits to employees with domestic partners as they do to employees with spouses, or the cash equivalent if a benefit cannot reasonably be provided.

(5) Every public works and service contract, and every grant of economic assistance entered into by the County shall contain the following notice: "The contractor [or grant beneficiary] agrees to provide the same economic benefits to all of its employees with domestic partners as it does to employees with spouses, or the cash equivalent if such a benefit cannot reasonably be provided. The contractor [or grant beneficiary] agrees to make available for County inspection the contractor's payroll records relating to employees providing services on or under this contract or subcontract [or grant]. If any payroll records of a contractor [or grant beneficiary] contain any false, misleading or fraudulent information, or if a contractor [or grant beneficiary] fails to comply with the provisions of s. 25.016, D. C. Ords., the contract compliance officer may withhold payments on the contract; terminate, cancel or suspend the contract in whole or in part; or, after a due process hearing, deny the contractor the right to participate in bidding on future County contracts for a period of one year after the first violation is found and for a period of three years after a second or subsequent violation is found."

(a) Every contractor and grant beneficiary shall provide a similar written notice to any subcontractor.

(6) The County's purchasing agent shall add a summary of the requirement for the equal benefits to the County's standard *Bids & Specifications* document.

(7) For every service contract and economic development assistance grant, a notice of the equal benefits requirement shall be kept posted by the contractor or grant beneficiary at the site of the work in a prominent place where it can be easily seen and read by persons employed in the performance of such contract or grant. The poster shall also provide information of the means the reader may use to file a complaint of violation. In addition, copies of the equal benefit requirement shall be provided to any person employed in the performance of a service contract or economic development assistance grant upon request and within a reasonable period of time.

(8)(a) Upon completion of a contract or grant and before receiving final payment for his or her work on said contract or grant, each contractor or grant beneficiary shall furnish the County with a certification affirming that he or she has complied fully with the requirements of this section. A contractor or grant beneficiary may not receive final payment until such certification is filed.

(b) Where the contractor or grant beneficiary receives regular monthly payments, the certification shall be filed at least quarterly.

(c) When requested by the contract compliance officer, the contractor or grant beneficiary shall also furnish certifications from each of his or her subcontractors.

(9) Each contractor and subcontractor providing County-compensated services and each grant beneficiary receiving an economic development assistance grant shall keep full and accurate records of benefits provided or cash equivalents paid for every employee subject to this section.

(10) The contract compliance officer or designee may demand and examine, and it shall be the duty of every contractor, subcontractor or grant beneficiary and agent thereof to keep and furnish to the contract compliance officer or designee, copies of records which relate to the benefits provided or cash equivalents paid to employees providing County-compensated services.

(11) If requested by any person, the contract compliance officer or designee shall inspect the payroll records of any contractor, subcontractor or grant beneficiary, or agent thereof, providing County-compensated services or receiving an economic development assistance grant to ensure compliance with this section.

(12)(a) An affected employee may file a complaint alleging a contractor's or grant beneficiary's violation of this section. All complaints shall be filed with the contract compliance officer.

(b) The contract compliance officer shall investigate and determine whether there has been a violation of this section and provide copies of a proposed decision to the complainant and the contractor or grant beneficiary. If a violation is found, the proposed decision may include any of the following:

1. Withholding of payments due the contractor or grant beneficiary in an amount sufficient to pay the wages due all affected employees;
2. Termination, suspension or cancellation of the contract or grant, in whole or in part;
3. Debarment for a period of up to three years.

(c) Any person affected by the proposed decision may, no later than 30 days after issuance of the proposed decision, appeal the decision to the board by serving a notice of appeal on the county clerk. If no appeal is taken within the time allotted, the proposed decision shall become final.

(d) Upon the filing of an appeal, the board shall meet on notice, take testimony, receive evidence, allow the parties to call witnesses, allow cross-examination and issue a final decision. The board shall not be bound by common law or statutory rules of evidence, but shall admit all testimony having reasonable probative value, excluding that which is immaterial, irrelevant or unduly repetitious. The board shall give effect to the rules of privilege recognized by law. Basic principles of relevancy, materiality and probative force, as recognized in equitable proceedings, shall govern the proof of all questions of fact. The board may take official notice of any generally recognized fact or established technical or scientific fact, but parties shall be notified either before or during hearing or by full reference in preliminary reports, or otherwise, of the facts so noticed, and the parties shall be afforded an opportunity to contest the validity of the official notice.

(e) The board's final decision may include withholding a sum of money due the contractor or grant beneficiary in an amount sufficient to provide the cash equivalent of benefits not provided as well as termination, suspension or cancellation of the contract or grant, in whole or in part, and debarment.

(13) A department or agency may not award any contract to a contractor nor any grant to a grant beneficiary who has been debarred unless at least three years have elapsed from the date of debarment, unless a shorter time of debarment is specified in the board's final decision.

(a) This subsection does not apply to any contractor, subcontractor or grant beneficiary who has not exhausted or waived all appeals, provided that the period of debarment shall commence as of the date all appeals are exhausted or waived, as appropriate.

(14) The board may promulgate rules to administer this subsection.

(15) A contractor or grant beneficiary shall not retaliate against any employee who files a complaint under this section, and a violation thereof shall be subject to the penalties set forth in sub. (12)(b)2. and 3. above.

(16) No contractor or grant beneficiary may use the equal benefits requirement of this section to reduce the wage paid to any person employed by the contractor or grant beneficiary as of [clerk to insert effective date of this ordinance.]

(17) *Legal effect and severability.* **(a)** Nothing in this section shall be interpreted to alter, contravene or be in conflict with any provision of county, state or federal law.

(b) If any subsection, clause or provision of this section is held invalid, the remainder shall not be affected by such invalidity.

ARTICLE 4. Section 25.15(4) is created to read as follows:

(4) All human services contracts entered into after December 1, 2008 shall be subject to the equal benefits requirement of s. 25.016.

ARTICLE 5. Section 40.15(3) is created to read as follows:

(3) Except as to emergencies of a public works nature, all public works contracts shall be subject to the equal benefits requirement of s. 25.016.

ARTICLE 6. Chapter 60 is created to read as follows:

CHAPTER 60 DOMESTIC PARTNERSHIP REGISTRY

60.01 CREATING A DOMESTIC PARTNERSHIP REGISTRY. The Dane County Clerk shall maintain a Domestic Partnership Registry consistent with the provisions of this ordinance. The purpose of this registry shall be to provide domestic partners with centralized repository for filing of a Declaration of Domestic Partnership for the sole purpose of qualifying for employer-provided benefits for a domestic partner.

60.02 DEFINITIONS. As used in this chapter, the following words and phrases have the meanings indicated:

(1) *Domestic partner* means a person who is engaged in a non-marital committed relationship with an adult of the same or opposite sex, shares a common residence with said person, affirms that they share responsibility for each other's common welfare, and who has executed and filed a Declaration of Domestic Partnership in conformance with this ordinance.

(2) *Domestic partnership* means a non-marital committed relationship of two adults of the same or different sex, who share a common residence and affirm that they share responsibility for each other's common welfare, and have signed and filed a Declaration of Domestic Partnership in conformance with this ordinance.

(3) *Share a common residence* means that both domestic partners share the same residence. It is not necessary that both domestic partners have title to the property where they reside or the legal right to possess the common residence. Domestic partners may share a common residence even if one or both have additional residences. Domestic partners do not cease to share a common residence if one leaves the common residence but intends to return.

60.03 DECLARATION OF DOMESTIC PARTNERSHIP. (1) Domestic partners may file a Declaration of Domestic Partnership with the Dane County Clerk if they swear or affirm the following:

- (a) Both are 18 years of age or older;
 - (b) Neither is married or part of an existing domestic partnership with any third person;
 - (c) They are not related to one another by blood;
 - (d) They have been engaged in a committed relationship with each other for more than 90 days and share responsibility for each other's common welfare; and
 - (e) They share a common residence.
- (2) The Declaration of Domestic Partnership shall require each domestic partner to:
- (a) Swear or affirm that he or she meets the requirements of sub. (1);
 - (b) Provide a current mailing address;
 - (c) Sign the Declaration under penalty of perjury; and
 - (d) Have his or her signature acknowledged by a Notary Public.

(3) No person who has previously signed a filed Declaration of Domestic Partnership may file a new Declaration until a Notice of Termination of Domestic Partnership has been filed with the County Clerk. This provision shall not apply if the previous domestic partnership was terminated due to death of one of the domestic partners.

(4) The Dane County Clerk shall develop a form Declaration of Domestic Partnership and Notice of Termination of Domestic Partnership. The form Declaration shall not add to, delete or alter the requirements set forth in subs. (1) and (2).

(5) The County Clerk shall charge a fee for filing a Declaration of Domestic Partnership of \$35. No fee shall be charged for filing a Notice of Termination of Domestic Partnership. Upon filing in the registry, the clerk shall provide a copy of the document to the domestic partners at the mailing address provided.

60.04 TERMINATION OF DOMESTIC PARTNERSHIP. (1) For purposes of this ordinance, a domestic partnership is terminated, when:

(a) One of the domestic partners dies; or

(b) A Notice of Termination of Domestic Partnership has been filed by at least one domestic partner with the County Clerk.

(2) Termination of a domestic partnership shall be effective upon the date of filing of a Notice of Termination with the County Clerk, or the date of death of one of the domestic partners.

(3) If the facts as stated in a Declaration of Domestic Partnership cease to be true, one or both parties shall file a Notice of Termination of Domestic Partnership with the County Clerk.

(4) Upon receipt of a Notice of Termination of Domestic Partnership, the County Clerk shall return to the filing party two copies of the Notice marked "filed." A copy shall be provided to each of the parties, if jointly filed. A sole filing party shall, within five days, send a copy of the Notice to the other party's last known address.

(5) Upon the termination of a domestic partnership, each former domestic partner who has received or qualified for any benefit or right based upon the existence of the domestic partnership and whose receipt of that benefit or enjoyment of that right has not otherwise terminated, shall give prompt notification to any third party who provides such benefit or right that the domestic partnership has been terminated.

60.05 LEGAL EFFECT. Nothing in this chapter shall be interpreted to alter, contravene or be in conflict with any provision of county, state or federal law.

60.06 SEVERABILITY. If any section, subsection, clause or provision of this chapter is held invalid, the remainder shall not be affected by such invalidity.

ARTICLE 7. NON-CODE PROVISION. This amendment shall first take effect on December 1, 2008.

Adopted by the Dane County Board of Supervisors September 18, 2008.