
OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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Equal Benefits Ordinance

OVERVIEW

On October 19, 2010 the City Council will consider an Equal Benefits Ordinance (EBO). The ordinance aims to promote a policy of “equal pay for equal work” for City contracts by requiring that the City contract only with entities that provide equal benefits to employees with spouses and employees with domestic partners. This ordinance was proposed by Councilmember Todd Gloria and was presented to the Rules Committee on June 30, 2010. It was passed with a vote of 5-0 with direction that Council District Three, the Mayor, City Attorney and IBA prepare an ordinance and the proper amendments to the San Diego Municipal Code for implementation. The proposed EBO was also presented to both the City’s Human Relations Commission as well as the Citizens’ Equal Opportunity Commission. Both Commissions have endorsed the Ordinance.

If approved, this ordinance would require all contractors doing business with the City to offer employees in a domestic partnership the same benefits offered to married employees. It is important to note that the EBO would not require City contractors to begin offering benefits not previously offered. If a contractor does not offer benefits to married employees, the EBO would not require the contractor to offer benefits to employees in domestic partnerships before entering into a contract with the City.

The purpose of this report is to identify potential issues surrounding enforcement and implementation of the EBO. The IBA reviewed the proposed ordinance along with information provided by Council District Three and City staff from the Living Wage Division of the Administration Department. The IBA also contacted the City of Los Angeles and the City/County of San Francisco to discuss procedures for implementing their EBO.

FISCAL/POLICY DISCUSSION

The Equal Benefits Ordinance and the Living Wage Program

Administrative duties for implementation of the EBO will be conducted by the Living Wage Division of the Administration Department. The EBO is expected to closely mirror how the City's Living Wage Ordinance is monitored and enforced. Because of these similarities it was determined by staff that this division has the greatest capacity to effectively administer the program. Rules for compliance and enforcement of the EBO have not yet been finalized. However, staff has stated that these rules would be similar to the City's Living Wage Ordinance.

The Living Wage Program is responsible for the continual monitoring of the City's contracts for compliance with the mandates of the Living Wage Ordinance, and responding to and resolving complaints from employees of contracted firms. The administrative duties for the LWO also include:

- Identification of applicable contracts
- Maintenance of records related to LWO compliance
- Investigation of LWO complaints
- Response to concerns of the Mayor, Council, community-based organizations and the general public

Unlike the Living Wage Ordinance, it is anticipated that the EBO would apply to all contracts with the City (with a few exceptions that are outlined in the ordinance). The Purchasing and Contracting Department indicated that this proposed ordinance would apply to approximately 400 contracts annually. Currently, there are approximately 150 contracts annually that must comply with the Living Wage Ordinance.

The Living Wage Program has two full time employees. Since staffing levels are not expected to increase with the enactment of this ordinance, the IBA questioned whether the amount of staff is sufficient to fulfill all duties related to both the Living Wage Ordinance and the proposed EBO. City staff indicated that they have sufficient resources necessary to properly administer the proposed ordinance. It was explained that the process would be streamlined and many of the same resources that are used for the Living Wage Program would be utilized for this program. This includes outlining similar rules for administration of the program, using similar forms and updating the current Living Wage website to reflect the new program.

Compliance and Monitoring of the Equal Benefits Ordinance

Staff of the Living Wage Division anticipates that a section stating the requirement to comply with the EBO would be included on City Request for Proposals (RFPs) or a contractor bid. During the contract award phase, the identified lowest, most responsible bidder will be required to sign a Certificate of Compliance stating they will comply with the EBO. This process is similar to the one used for the Living Wage Program.

Compliance of the proposed EBO is expected to be monitored on a complaint-driven basis. The contractor would not be required to provide documentation of the benefits they provide upon being awarded the contract. However, as per the proposed Ordinance, the City reserves the right to access contractor documentation and records if a complaint is made or any other time to verify compliance. City staff of the Living Wage Division believes that enforcement of this kind should be sufficient to properly administer the program.

Review of other California Cities/Counties

The City/County of San Francisco and the City of Los Angeles also have Equal Benefits Ordinances. The documentation necessary to ensure compliance of these programs differs from what the City of San Diego proposes. For example, as found on the City/County of San Francisco Human Rights Commission's website, their rules to comply with the Equal Benefits Ordinance require that *all* contractors who bid on a covered contract provide documentation of these benefits. This documentation is needed before a contract is awarded.

The procedure that the City of Los Angeles' Office of Contract Compliance (OCC) follows to ensure compliance of its Equal Benefits Ordinance differs from San Francisco. While documentation is still required to ensure compliance, the difference is that documentation is only required by the contractor who is awarded the contract. Once the contract is awarded, the contractor has 30 days to provide the necessary documentation. The contract cannot be executed until this documentation is received.

As stated previously, the documentation necessary to ensure compliance of these programs differs from what the City of San Diego proposes. A contractor subject to comply with the EBO must sign a Certificate of Compliance. However, additional documentation outlining the benefits the contractor offers is not required at that time.

Fiscal Impact

As indicated in a September 24, 2010 report from the City's Living Wage Manager, the cost to contractors to extend equal benefits health coverage is not expected to increase. The Living Wage Manager has spoken with a number of insurance service providers and the Risk Management Department to confirm this. Our office also independently verified the findings in the report, which included speaking with an insurance agency. The insurance providers were in agreement that all major carriers offer policies with domestic partner coverage. Cost to the contractor would depend on how they structure their benefit allotment. Cost to the City is also not expected to increase. The Risk Management Department stated, "The City doesn't track domestic partners separately from spouses, therefore the premiums are the same whether the employee is covering a spouse or domestic partner."

CONCLUSION

The IBA reviewed the proposed ordinance along with information provided by Council District Three and City staff from the Living Wage Division of the Administration Department. While our office supports the intent of the proposed EBO we recommend monitoring staff capacity to ensure adequate enforcement of both the Living Wage and Equal Benefits ordinances.

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