

CITY OF SAN DIEGO
EQUAL BENEFITS ORDINANCE
(San Diego Municipal Code Chapter 2, Article 2, Division 43)



FREQUENTLY ASKED QUESTIONS

What is the Equal Benefits Ordinance [EBO]?

The Equal Benefits Ordinance requires the City to contract only with entities that do not discriminate in the provision of benefits between employees with spouses and employees with domestic partners and their respective families.

When does the EBO apply?

The EBO applies to contracts entered into, awarded, amended, renewed, or extended on or after January 1, 2011.

What types of contracts are covered by the EBO?

The EBO applies to all agreements with the City for goods, services, consultant services, public works construction, grants from the City, and leases of City property. The EBO does not apply to subcontracts.

How does the EBO define a “domestic partner”?

“Domestic partner” means any two adults in a relationship pursuant to the requirements for filing as domestic partners under CA Family Code section 297 and who have registered as domestic partners with a governmental entity pursuant to state or local law authorizing such registration, or with an internal registry maintained by the employer of at least one of the domestic partners.

What benefits are included in the EBO?

The EBO applies to all benefits offered by an employer including:

- medical, dental, vision insurance;
- pension, retirement, 401(k) plans;
- bereavement, family, parental leave;
- childcare, employee assistance programs;
- discounts, credit union memberships; travel or relocation expenses; and
- any other benefit.

Are there any exceptions to the EBO?

The EBO does not apply to:

- subcontracts;
- contracts with a sole source or with the State of CA, counties, districts, public authorities, joint power agencies, and any other public entity (this exception does not apply to non-profit organizations or nonprofit corporations awarded a contract per SDMC §23.3222);
- cooperative procurement contracts;
- contracts with a collective bargaining agreement in effect prior to January 1, 2011;
- contracts for gifts or donations to the City; and
- contracts where EBO applicability would be inconsistent with or violate federal or state regulations.

What is a covered contractor required to do under the EBO?

To comply with EBO requirements, a contractor must:

- submit an *EBO Certification of Compliance* form prior to award, signed under penalty of perjury, affirming that equal benefits will be provided to employees with spouses and to employees with domestic partners for the duration of the contract.
- notify employees of the firm's equal benefits policy at time of hire and during open enrollment periods and post an *EBO Notice to Employees* in an area frequented by employees stating: "During the performance of a contract with the City of San Diego, the contractor will provide equal benefits to its employees with spouses and its employees with domestic partners."
- allow the City access to documents and records, upon request, to confirm EBO compliance.

What if a contractor is unable to offer benefits equally?

If a contractor takes all reasonable measures to end discrimination in provision of benefits but cannot offer equal benefits prior to contract award for reasons outside its control, the contractor may request approval to comply with the EBO through payment of a cash equivalent. A cash equivalent is money paid to an employee for a spousal benefit that cannot be made available for domestic partners. The contractor must amend policies to extend those benefits for which a cash equivalent is not available (such as leave time) and must notify employees of the availability of a cash equivalent in lieu of equal benefits.

What does a contractor affirm in the *EBO Certification of Compliance*?

A contractor indicates the firm's EBO compliance status:

- Compliant because:
 - firm offers identical benefits to spouses and domestic partners; or
 - no benefits are offered to spouses or domestic partners; *or*
 - firm has no employees, *or*
 - contractor has collective bargaining agreement(s) in place prior to January 1, 2011, that has not been renewed or expired.
- Request approval to pay affected employees a cash equivalent in lieu of equal benefits because:
 - firm made reasonable efforts but is unable to comply before contract award; *and*
 - firm agrees to extend any benefits for which a cash equivalent is not available; *and*
 - firm agrees to notify employees of the availability of a cash equivalent in lieu of equal benefits.

Which of a contractor's employees are covered by the EBO?

When the EBO applies, a contractor must offer equal benefits to:

- all employees at the contractor's operations within City limits, regardless of whether employees perform work on the contract;
- all employees at the contractor's operations on City owned or occupied property outside City limits, if contractor's presence there is connected to the contract; and
- only employees who work on the City contract if employees are located outside City limits but in the U.S.

Is a contractor required to submit supporting documentation with their *EBO Certification of Compliance*?

No, a contractor is not required to submit supporting documentation with their *EBO Certification of Compliance*. However, this form is signed under penalty of perjury, and at its own discretion the City may request such supporting documentation at any time.

What types of EBO supporting documentation might be requested by the City?

To determine compliance with EBO requirements, the City may request:

- Employee Handbook section(s) regarding benefit policies;
- Basic Plan Document cover page, eligibility section, and other relevant sections;
- statements of confirmation from insurance providers;
- Summary Plan Description cover page and distribution section; and
- any other relevant documents or records (please see *Summary of Equal Benefits Standards and Documentation* chart on last page).

What happens if a contractor does not provide benefits equally?

If a contractor does not provide benefits equally, the City may:

- cancel, terminate or suspend the contract;
- retain money due to the contractor;
- debar the contractor and declare the contractor to be non-responsible under Article 2, Chapter 2, Division 32 of the San Diego Municipal Code; and
- pursue other legal remedies.

What if a contractor is subject to a collective bargaining agreement?

The EBO does not apply to a collective bargaining agreement (CBA) in effect prior to January 1, 2011. However, the contractor must agree that if the CBA is subsequently amended, extended, or otherwise modified, the contractor will propose to the union to incorporate EBO requirements.

What if the cost for a contractor to provide a benefit to an employee's domestic partner is more than the cost to provide the benefit to an employee's spouse?

In that case, a contractor may offer the benefit to an employee's domestic partner under the condition the employee agrees to pay the extra cost. (A contractor may do the same if benefit costs for an employee's spouse are more than benefit costs for an employee's domestic partner.) The contractor may pass on to an employee only the actual costs and cannot include administrative expenses or tax consequences for the contractor.

What should an employee do if they believe their firm is in violation of the City's EBO?

An *EBO Employee Complaint* form (in English and Spanish) is posted on the City's website. All complaints of violations of the EBO will be investigated.

Who administers the City of San Diego EBO?

The Equal Benefits Program is sited in the City's Administration Department. For further information, please call (619) 533-3948 or visit the City's website at:

www.san.diego.gov/administration – select Equal Benefits Program.

SUMMARY OF EQUAL BENEFITS STANDARDS AND DOCUMENTATION

BENEFIT TYPE	EBO COMPLIANT STANDARDS	ACCEPTABLE DOCUMENTATION
Medical, Dental, Vision Insurance Dependent Life Insurance Employee Assistance Program	Domestic partner is "any two adults in a relationship pursuant to requirements for filing as domestic partners under CA Family Code section 297 and who have registered as domestic partners with a governmental entity pursuant to state or local law authorizing such registration, or with an internal registry maintained by the employer of at least one of the domestic partners." Any requirements for proof of relationship or waiting periods apply equally to spouses and domestic partners. If available, COBRA-like continuation coverage is extended equally to spouses and domestic partners.	Basic Plan cover page, eligibility section and other relevant sections or correspondence from carrier
Retirement, Pension, 401(k), etc.	Any retirement or savings offers the same distribution options for spouses and domestic partner beneficiaries.	Summary Plan, Basic Plan or Adoption Agreement cover page and distribution section
Bereavement, Family, Parental Leave Childcare Discounts, Credit Union Membership Travel or Relocation Expenses	Where "spouse" is used, the term "domestic partner" must be included. "Immediate family" definition must be in bereavement policy, if firm has a bereavement policy; when in-laws are included, equivalent members of domestic partner's family must be explicitly included. <i>Sample definition:</i> Immediate family includes employee's spouse or domestic partner; a parent, child or sibling of the employee, spouse or domestic partner; and spouse or domestic partner of the employee's parents, children or siblings.	Employee Handbook benefits sections

**CITY OF SAN DIEGO
EQUAL BENEFITS PROGRAM**

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www.sandiego.gov/administration

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THE CITY OF SAN DIEGO

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Ordinance



"to promote a policy of
'equal pay for equal work'
for City contracts"