



CITY AND COUNTY OF SAN FRANCISCO HUMAN RIGHTS COMMISSION

QUICK REFERENCE GUIDE TO EQUAL BENEFITS COMPLIANCE

➤ *Step 1: Understand the Law*

What does the law require?

Effective June 1, 1997, Chapter 12B of the San Francisco Administrative Code was amended to prohibit the City and County of San Francisco from entering into contracts or leases with any entity that discriminates in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of employees.

Who is covered by this law?

All entities who hold or seek to enter into contracts with the City and County of San Francisco for public works or improvements, for a franchise, concession or lease of City property, or for goods, services or supplies to be purchased at the expense of the City and County are covered by this law. The law does not cover entities with which the City does less than \$5,000 worth of business per year. Subcontractors are not required to comply with this law. Each party to a joint venture must comply independently.

What benefits are covered?

In most cases, the law applies to all benefits offered by a contractor to its employees who have spouses or domestic partners and all benefits offered directly to such spouses or domestic partners, even when the employee pays the entire cost of the benefit. This includes, but is not limited to, medical insurance, retirement plans, leaves of absence (such as bereavement and family medical leave), use of company facilities, and discounts.

What is a domestic partner?

The law defines a domestic partner as any person whose domestic partnership is currently registered with a governmental body pursuant to state or local law. This includes both same-sex and opposite-sex couples. To comply with the law, verification of domestic partnerships may take place only to the same degree and in the same manner as marriages are verified.

What if a company will comply but needs time to do it?

Once a contractor makes it clear that it will comply with Chapter 12B (by submitting a 12B Declaration indicating compliance), in certain situations ending discrimination in benefits may be delayed. For instance, offering medical insurance may be delayed until the contractor's next open enrollment period; other benefits, such as bereavement leave, may be delayed until the contractor's personnel policies can be revised. Benefits offered through a union agreement may also be delayed under certain circumstances. For more information, see Rules of Procedure section II.E., Substantial Compliance Affidavit (Form HRC-12B-103), or contact the HRC.

What if a contractor is unable to offer benefits equally?

Some contractors are unable to find an insurance company willing to offer domestic partner coverage. Others may find that a federal law prohibits extending a particular benefit to domestic partners

on the same basis as it is extended to spouses. When a contractor takes all reasonable measures to stop discriminating, but can't for reasons outside its control, it can comply with Chapter 12B if it agrees to pay a cash equivalent. The HRC decides whether reasonable measures have been taken. A cash equivalent is the amount of money paid by an employer for the spousal benefit that is unavailable for domestic partners, or vice versa. For more information, see Rules of Procedure section III, Reasonable Measures Application (Form HRC-12B-102) or contact the HRC.

➤ *Step 2: Complete a Chapter 12B Declaration (Form HRC-12B-101)*

Answering the Questions

Section 1 asks for information about your company. Please complete all items; if you don't know your vendor number, you may leave that item blank.

Section 2, Question 1A asks whether your company prohibits discrimination against people based on the categories listed. This policy does not need to be in writing.

- Answer "YES" if your company does have such a policy.
- Answer "NO" if your company does not have such a policy.

Question 1B asks whether your company agrees to include a nondiscrimination clause in all subcontracts entered into for the performance of a substantial portion of any contracts you have with the City. This clause must include all of the categories listed in question 1a. You must answer this question even if your company will not be entering into any subcontracts associated with work performed for the City.

- Answer "YES" if you will agree to include a non-discrimination clause in subcontracts.
- Answer "NO" if you will not agree to include a non-discrimination clause in subcontracts.

Question 2A asks whether your company offers benefits (such as medical insurance) to employees' spouses or to employees because they are married (such as bereavement leave which can be taken because of the death of a spouse, or family medical leave which can be taken because of a spouse having a serious medical condition).

- Answer "YES" if you offer any such benefits.
- Answer "NO" if you do not offer any such benefits.
- If you have no employees, you should answer "NO."

Helpful hint: *You are considered as offering a benefit even if you don't pay for it. If access to the benefit is offered, but the cost must be paid in whole or in part by the employee, you should still answer "YES."*

Question 2B asks whether your company offers benefits (such as medical insurance) to employees' domestic partners or to employees because they are in a domestic partnership (such as bereavement leave which can be taken because of the death of a domestic partner, or family medical leave which can be taken because of a domestic partner having a serious medical condition).

- Answer "YES" if you offer any such benefits.
- Answer "NO" if you do not offer any such benefits.
- If you have no employees, you should answer "NO."

Helpful Hint: To comply, your answers to questions 2A and 2B should be the same. In very limited circumstances, you may comply without offering benefits equally. See Reasonable Measures Application, Form HRC 12B-102.

Question 2C should be filled out **ONLY** if you have answered "YES" to question 2A and/or 2B. It asks you to indicate which benefits you offer to spouses (or employees because they are married), which benefits you offer to domestic partners (or employees because they are in a domestic partnership), and which benefits you do not offer. Please indicate only those benefits offered. If you offer benefits not already listed, write them in where it says "other". Remember, offering access to a benefit is still considered a benefit, even if your company does not pay for it.

Note: If you can't offer all benefit in a nondiscriminatory manner because of reasons outside your control, (e.g., there are no insurance providers willing to offer domestic partner coverage) you may be eligible for Reasonable Measures compliance. To comply on this basis, you must agree to pay a cash equivalent, submit a completed Reasonable Measures Application Form (HRC-12B-102) with all necessary attachments, and have your application approved by the HRC. For more information, see Rules of Procedure section II.B. or contact the HRC.

➤**Step 3: Attach the Necessary Documentation**

Section 3 states that you must submit documentation that verifies all benefits marked in your answer to Question 2C are offered in a nondiscriminatory manner. When possible, it is best if you submit this documentation along with your Declaration form. For policies that are unwritten, submit a letter to the HRC indicating this. Use the list below as a guide for the type of documentation needed.

Medical Insurance - A statement from your medical insurance provider that confirms spouses and domestic partners (as defined under this law) receive equal coverage in your medical plan. This may be in a letter from your insurance provider, or reflected in the eligibility section of your official insurance plan document. Similar documentation is needed for other types of insurance plans.

Retirement Plans (including 401k & pension plans) - The sections of your pension plan detailing how employees receive benefits. This should cover joint annuity options and pre-retirement death benefits. Documentation should indicate that employees with domestic partners and employees with spouses receive the same benefits and payment options.

Bereavement Leave - Your bereavement leave or funeral leave policy indicating the benefit is offered equally. If your policy allows employees time off from work because of the death of a spouse, it should also allow for time off because of the death of a domestic partner. If the policy allows for time off due to the death

of a parent in-law or other relative of a spouse, it must include time off for the death of a domestic partner's equivalent relative.

Family Leave - Your company's Family and Medical Leave Act policy. All companies with 50 or more employees must offer this benefit. Your policy should indicate that employees may take leave because of the serious medical condition of their spouse or domestic partner.

Parental Leave - Your company's policy indicating that employees may take leave for the birth or adoption of a child, to care for a child who is ill, and/or to attend school appointments. If leave is available for step-children (the spouse's child) then leave also should be available for the child of a domestic partner.

Employee Assistance Program - Your company's employee assistance program policy confirming that spouses, domestic partners and their parents and children are equally eligible (or ineligible) for such benefits.

Relocation & Travel - Your company's policy confirming that expenses for travel or relocation will be paid on the same basis for spouses and domestic partners of employees.

Discounts, Facilities & Events - Your company's policy confirming that discounts, facilities (e.g. gym) and events (e.g. holiday party) are equally available to spouses and domestic partners of employees.

Credit Union - Documentation from the credit union indicating that spouses and domestic partners have equal access to credit union services.

Child Care - Documentation that the children of spouses (step-children) and children of domestic partners have equal access to child care services.

Other Benefits - Documentation of any other benefits listed to indicate that they are offered equally.

➤**Step 4: Use the Available Resources**

The Human Rights Commission has developed resources to help with the compliance process:

Rules of Procedure for guidelines on how the Ordinance is being implemented; definitions of the terms used in the Ordinance; and information on jurisdiction and other matters.

Resource Materials for in-depth answers to commonly asked questions on medical benefits, pensions plans, taxation; information on the cost of providing domestic partner benefits; and sample employee policies.

Insurance List of insurance providers around the country willing to write policies inclusive of domestic partners.

You can get copies of these documents by calling the Human Rights Commission at 415-252-2500, or download them from the Commission's website at: www.sfhrc.org.



CITY AND COUNTY OF SAN FRANCISCO HUMAN RIGHTS COMMISSION

S.F. ADMINISTRATIVE CODE CHAPTERS 12B & 12C DECLARATION: NONDISCRIMINATION IN CONTRACTS AND BENEFITS (HRC-12B-101)

► Section 1. Vendor Information

DATE & TIME RECEIVED BY HRC
(FOR HRC USE ONLY)

Name of Company: _____

Name of Company Contact Person: _____

Phone: _____ Ext.: _____ Fax: _____

E-mail Address: _____

Vendor Number (if known): _____

Federal ID or Social Security Number: _____

Approximate Number of Employees in the U.S.: _____

Are any of your employees covered by a collective bargaining agreement or union trust fund? Yes No

Union name(s): _____

► Section 2. Compliance Questions

Question 1. Nondiscrimination – Protected Classes

A. Does your company agree it will not discriminate against its employees, applicants for employment, employees of the City, or members of the public on the basis of the fact or perception of a person’s membership in the categories listed below? **Please note:** a “YES” answer is required for compliance. Please answer yes or no to each category.

- | | | | | | |
|-------------------|------------------------------|-----------------------------|--|------------------------------|-----------------------------|
| • Race | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Sex | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Color | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Sexual orientation | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Creed | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Gender identity (transgender status) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Religion | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Domestic partner status | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • National origin | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Marital status | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Ancestry | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Disability | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Age | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • AIDS/HIV status | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Height | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Weight | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

B. Does your company agree to insert a similar nondiscrimination provision in any subcontract you enter into for the performance of a substantial portion of the contract you have with the City? **Please note:** you must answer this question even if you do not intend to enter into any subcontracts.

Yes No

Question 2. Nondiscrimination – Equal Benefits for Employees with Spouses and Employees with Domestic Partners

A. Does your company provide or offer access to any benefits to employees with spouses or to spouses of employees?

Yes No

B. Does your company provide or offer access to any benefits to employees with (same or opposite sex) domestic partners* or to domestic partners of employees?

Yes No

Questions 2A and 2B should be answered YES even if your employees pay some or all of the cost of spousal or domestic partner benefits.

*The term “Domestic Partner” includes both same-sex and opposite-sex couples who have registered with any state or local government domestic partnership registry. See S.F. Admin. Code Ch. 12B.1(c).

If you answered “NO” to both Questions 2A and 2B, go to Section 4, complete and sign the form, filling in all items requested.

If you answered “YES” to either or both Questions 2A and 2B, please continue to Question 2C.

(OVER)

Question 2. (continued)

- C. Please check all benefits that apply to your answers above and list in the “other” section any additional benefits not already specified. Note: some benefits are provided to employees because they have a spouse or domestic partner, such as bereavement leave; other benefits are provided directly to the spouse or domestic partner, such as medical insurance.

BENEFIT	Yes for Employees with Spouses	Yes for Employees with Domestic Partners	No, this Benefit is Not Offered	Documentation of this Benefit is Submitted with this Form
• Health Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Dental Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Vision Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Retirement (Pension, 401(k), etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Bereavement Leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Family Leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Parental Leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Employee Assistance Program	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Relocation & Travel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Company Discount, Facilities & Events	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Credit Union	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Child Care	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Dependent Life Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Note: If you can't offer a benefit in a nondiscriminatory manner *because of reasons outside your control*, (e.g., there are no insurance providers in your area willing to offer domestic partner coverage) you may be eligible for Reasonable Measures compliance. To comply on this basis, you must agree to pay a cash equivalent, submit a completed Reasonable Measures Application Form (HRC-12B-102) with all necessary attachments, and have your application approved by the HRC. For more information, see Rules of Procedure section II B or contact the HRC.

➤ **Section 3. Required Documentation**

YOU MUST SUBMIT SUPPORTING DOCUMENTATION

to verify each benefit marked in Question 2C. Without proper documentation, your company cannot be certified as complying with Chapters 12B & 12C. For example, to document medical insurance submit a statement from your insurance provider or a copy of the eligibility section of your plan document; to document leave programs, submit a copy of your company's employee handbook. If documentation of a particular benefit does not exist, attach an explanation. For more information see the Quick Reference Guide at <http://www.sfgov.org/site/uploadedfiles/sfhumanrights/forms/quickref.pdf> or contact the HRC.

Have you submitted supporting documentation for each benefit offered? Yes No

➤ **Section 4. Executing the Document**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this _____ day of _____, in the year _____, at _____, _____
(City) (State)

Signature

Mailing Address

Name of Signatory (please print)

City, State, Zip Code

Title

➔ **Submit this form and supporting documentation to:** HRC, 25 Van Ness Ave., Suite 800, San Francisco, CA 94102-6033, or to the City department that sent it to you if the department so requests.

✓ **Resource Materials** and additional copies of this form may be found at: www.sfhrc.org.

☎ **For assistance** please contact the Human Rights Commission at 415-252-2500 (TTY: 415-252-2550).



**CITY AND COUNTY OF SAN FRANCISCO
HUMAN RIGHTS COMMISSION**

**Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits
REASONABLE MEASURES APPLICATION**

Submit this form and supporting documentation to the Human Rights Commission (along with Form HRC-12B-101) **ONLY IF** you:

- a. Have taken all reasonable measures to end discrimination in benefits; and
- b. Are unable to do so; and
- c. Intend to offer a cash equivalent to employees for whom equal benefits are not available.

You must submit the following information with this form:

1. The names, contact persons and telephone numbers of benefits providers contacted for the purpose of acquiring nondiscriminatory benefits;
2. The dates on which such benefits providers were contacted;
3. Copies of any written response(s) you received from such benefits providers, and if written responses are unavailable, summaries of oral responses; and
4. Any other information you feel is relevant to documenting your inability to end discrimination in benefits, including, but not limited to, reference to federal or state laws which preclude the ending of discrimination in benefits.

I declare (or certify) under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Name of Company (please print)

Mailing Address of Company

Signature

City, State, Zip

Name of Signatory (please print)

Telephone Number

Title

Vendor Number

Date

Definition of Terms¹

A. REASONABLE MEASURES

The Human Rights Commission will determine whether a City Contractor has taken all reasonable measures upon the review of HRC Form 12B-102 and attached compelling documentation provided by the City Contractor that demonstrates that it is not possible for the City Contractor to end discrimination in benefits. A determination that it is not possible for the City Contractor to end discrimination in benefits shall be based upon a consideration of such factors as:

- (1) The number of benefits providers identified and contacted, in writing, by the City Contractor, and written documentation from these providers that they will not provide equal benefits;
- (2) The existence of benefits providers willing to offer equal benefits to the City Contractor; and
- (3) The existence of federal or state laws which preclude the City Contractor from ending discrimination in benefits.

B. CASH EQUIVALENT

"Cash Equivalent" means the amount of money paid to an employee by a City Contractor who, despite taking all reasonable measures, is unable to end discrimination in benefits. The cash equivalent shall be the amount of money paid by the City Contractor for the benefit given to a similarly situated employee.² To the extent that a City Contractor limits the availability of any benefit to the spouses of employees, or vice versa, the availability of a cash equivalent may be similarly limited.³ The cash equivalent payment shall be made either on the same schedule as the City Contractor uses for the benefit given to employees with spouses, or, if no such schedule exists, on another schedule so long as such payment is made no less than once per month. No cash equivalent payment will be required where making such a payment would violate federal or state law.

¹ Taken from the Rules of Procedure for the Nondiscrimination in Contracts: Equal Benefits Provisions of Chapter 12B of the San Francisco Administrative Code.

² The following scenario is provided as an example of similarly situated employees: A City Contractor with locations in Dallas, TX and Bridgeport, CT, offers spousal health insurance to its employees. After taking all reasonable measures, the City Contractor is still unable to provide health insurance for the domestic partners of its employees. The cash equivalent it would pay to its Bridgeport employees would be the amount of money paid by the City Contractor for benefits given to employees with spouses in Bridgeport; the cash equivalent the City Contractor would pay to its Dallas employees would be the amount of money paid by the City Contractor for benefits given to employees with spouses in Dallas.

³ The following scenario is provided as an example of limiting the availability of a cash equivalent: A City Contractor limits the availability of spousal health insurance coverage to only those spouses who are not already covered by their own employer's health insurance plan. This City Contractor is unable to provide health insurance to the domestic partners of its employees and instead offers a cash equivalent. The City Contractor may limit the availability of a cash equivalent payment to only those employees whose domestic partners are not already covered by their own employer's health insurance plan.



CITY AND COUNTY OF SAN FRANCISCO
HUMAN RIGHTS COMMISSION

SUBSTANTIAL COMPLIANCE AUTHORIZATION FORM
Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits
(HRC-12B-103)

This form, and supporting documentation, must be submitted to the Human Rights Commission (along with HRC-12B-101) by entities seeking to contract with the City and County of San Francisco that wish to delay ending their discrimination in benefits pursuant to the Rules of Procedure, as set out below.

Fill out all sections that apply. Attach additional sheets as necessary.

A. Open Enrollment

Ending discrimination in benefits may be delayed until the first effective date after the first open enrollment process following the date the contract with the City and County begins, provided that the City Contractor submits to the Human Rights Commission evidence that reasonable efforts are being undertaken to end discrimination in benefits. This delay may not exceed two years from the date the contract with the City is entered into, and only applies to benefits for which an open enrollment process is applicable.

Date next benefits plan year begins: _____

Date nondiscriminatory benefits will be available: _____

Reason for Delay: _____

Description of efforts being undertaken to end discrimination in benefits: _____

B. Administrative Actions and Request for Extension

Ending discrimination in benefits may be delayed to allow administrative steps to be taken to incorporate nondiscriminatory benefits into the City Contractor's infrastructure. The time allotted for these administrative steps shall apply only to those benefits for which administrative steps are necessary and may not exceed three months. An extension of this time may be granted at the discretion of the Director of the Human Rights Commission or the Director's designee, upon the written request of the City Contractor. Administrative steps may include, but are not limited to, such actions as computer systems modifications, personnel policy revisions, and the development and distribution of employee communications.

Description of administrative steps and dates to be achieved: _____

If requesting extension beyond three months, please explain basis: _____

(OVER)

C. Collective Bargaining Agreements (CBA)

Ending discrimination in benefits may be delayed until the expiration of a City Contractor's Current collective bargaining agreement(s) where **all** of the following conditions have been met:

1. The provision of benefits is governed by one or more collective bargaining agreement(s);
2. The City Contractor takes all reasonable measures to end discrimination in benefits either by requesting that the Unions involved agree to reopen the agreements in order for the City Contractor to take whatever steps necessary to end discrimination in benefits or by ending discrimination in benefits without reopening the collective bargaining agreements; and
3. In the event that the City Contractor cannot end discrimination in benefits despite taking all reasonable measures to do so, the City Contractor provides a cash equivalent to eligible employees for whom benefits are not available. Unless otherwise authorized in writing by the Director of the Human Rights Commission or the Director's designee, this cash equivalent payment must begin at the time the Unions refuse to allow the collective bargaining agreements to be reopened, or in any case no longer than three (3) months from the date the contract with the City is entered into.

*For a delay to be granted under this provision, **written proof** must be submitted with this form that:*

- *The benefits for which the delay is requested are governed by a collective bargaining agreement;*
- *All reasonable measures have been taken to end discrimination in benefits (see Section C.2, above); and*
- *A cash equivalent payment will be provided to eligible employees for whom benefits are not available.*

D. Closest Approximation Available

A City Contractor will not be deemed to be discriminating in the provision of benefits where, after taking all reasonable measures, the City Contractor is unable to end discrimination in benefits and instead provides the closest approximation of equal benefits available. If the cost of providing the closest approximation of equal benefits is at least 33% less expensive than the cost of providing equal benefits, the City Contractor must also make a cash equivalent payment.

For a delay to be granted under this provision, a contractor must submit with this form:

1. *A description of benefits currently offered;*
2. *A description of the closest approximation of benefits to be offered to those employees for whom current benefits are unavailable;*
3. *A completed Reasonable Measures Form HRC-12B-102, documenting that the current benefits are not available to all employees; and*
4. *If the contractor's cost of providing equal benefits is 33% less than the cost of providing the closest approximation of benefits, written proof must be submitted that a cash equivalent payment will be made.*

I declare (or certify) under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Name of Company (please print)

Mailing Address of Company

Signature

City, State, Zip

Name of Signatory (please print)

Telephone Number

Title

Vendor Number

Date