

AMENDING CHAPTER 25 OF THE DANE COUNTY CODE OF ORDINANCES.
REGARDING EQUAL BENEFIT REQUIREMENTS FOR LOAN RECIPIENTS

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 25.016 is amended 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, grant beneficiaries, and loan recipients 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..

(h) *Loan recipient* means any person who receives a loan of any amount, other than a reverse mortgage loan, from Dane County.

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

(j) *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..

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

4. All loan recipients.

(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, economic development grant beneficiaries, and loan recipients 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, every grant of economic assistance, and every loan entered into by the County shall contain the following notice: "The contractor [grant beneficiary or loan recipient] 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 [grant beneficiary or loan recipient] agrees to make available for County inspection the contractor's [grant beneficiary's or loan recipient's] payroll records relating to employees providing services on or under this contract or subcontract [grant or loan]. If any payroll records of a contractor [grant beneficiary or loan recipient] contain any false, misleading or fraudulent information, or if a contractor [grant beneficiary or loan recipient] fails to comply with the provisions of s. 25.016, D.C. Ords., the contract compliance officer may withhold payments on the contract [grant or loan]; terminate, cancel or suspend the contract [grant or loan]; in whole or in part; or, after a due process hearing, deny the contractor [grant beneficiary or loan recipient] the right to participate in bidding on future County contracts [grants or loans] 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, grant beneficiary, or loan recipient 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, economic development assistance grant, or loan, a notice of the equal benefits requirement shall be kept posted by the contractor, grant beneficiary, or loan recipient 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, grant, or loan. 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, economic development assistance grant, or loan upon request and within a reasonable period of time.

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

(b) Notwithstanding the provisions of sub. (a), Human Services contractors that are paid 1/12th of an annual contract per month may receive final payment prior to filing the required certification, but must file said certification on an annual basis at the completion of the contract term.

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

(9) Each contractor and subcontractor providing County-compensated services, each grant beneficiary receiving an economic development assistance grant, and each loan recipient 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, grant beneficiary, or loan recipient 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, grant beneficiary, or loan recipient, or agent thereof, providing County-compensated services or receiving an economic development assistance grant or loan to ensure compliance with this section.

(12)(a) An affected employee may file a complaint alleging a contractor's, grant beneficiary's, or loan recipient'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, grant beneficiary, or loan recipient. If a violation is found, the proposed decision may include any of the following:

1. Withholding of payments due the contractor, grant beneficiary, or loan recipient in an amount sufficient to pay the wages due all affected employees;

2. Termination, suspension or cancellation of the contract, grant, or loan, 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, grant beneficiary, or loan recipient in an amount sufficient to provide the cash equivalent of benefits not provided as well as termination, suspension or cancellation of the contract, grant, or loan, 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, nor any loan to a loan recipient 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, grant beneficiary, or loan recipient 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, grant beneficiary, or loan recipient 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, grant beneficiary or loan recipient may use the equal benefits requirement of this section to reduce the wage paid to any person employed by the contractor, grant beneficiary, or loan recipient.

(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.

[EXPLANATION: This amendment makes the equal benefits requirement applicable to any person who receives a loan from Dane County, and broadens the applicability of the equal benefits requirement to all economic development grant beneficiaries, regardless of the grant amount.]