



U.S. Department of Justice

SEP 3 2009

Washington, D.C. 20530

Mr. Kevin E. Mahoney
Associate Director
Division for Human Capital Leadership
and Merit System Accountability
Office of Personnel Management
1900 E Street, NW
Room 7470
Washington, D.C. 20415

Dear Mr. Mahoney:

In the Office of Personnel Management's July 10, 2009, memorandum, Director Berry requested that agencies review benefits, workplace flexibilities, and policies to determine whether they are available to, or could be extended to, the same-sex domestic partners of their employees.

The Department of Justice (DOJ) conducted an agency-wide review to ensure that no benefits or flexibilities were missed. I am enclosing the results of this review.

DOJ's point of contact for this report is Ms. Jeanarta C. McEachron, Assistant Director, Human Resources Policy and Advisory Services. She may be reached on (202) 514-3663 or by electronic mail at Jeanarta.C.McEachron@usdoj.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Rod Markham", with a long horizontal flourish extending to the right.

Rod Markham
Director, Human Resources

Enclosure

cc: Michelle Sweeny
Human Capital Officer

Federal Benefits for Same-Sex Domestic Partners

September 2, 2009

Benefit Type	Average Cost Per Employee	Legal Authority (statute, regulation, DOJ policy, GSA policy, union agreement)	Benefit Currently Provided Same-Sex Domestic Partners (Y/N)	Implementation Issues to Make Benefit Available	Timeframe to Extend the Benefit
Death Gratuity Payment policy (\$10,000)	\$10,000	P.L. 104-208 DOJ Order 1200.1, Chapter 6	yes	Payment is provided to the personal representative. The domestic partner could be entitled to it if the deceased employee listed the domestic partner as a beneficiary in their will.	Immediate
Department of Labor's Death Gratuity Payment (Order of precedence – the employee may designate 50 percent to anyone, the other 50 percent is by order of precedence)	\$100,000	5 U.S.C. 8102a	Yes	If a properly executed Designation of Beneficiary form is submitted and lists the domestic partner as a beneficiary; however, if there is no designation of beneficiary form, then it is based on order of precedence.	Immediate

Sick leave is broad enough to cover same sex partners.	TBD	5 CFR 630.201(b)			Implement now. An agency is responsible for interpreting the definition to ensure that all employees are treated fairly and consistently." 65 Federal Register 37233 (June 13, 2000).
Annual Leave	TBD	5 CFR 630, Subpart C			An employee's use of annual leave is not based on family member relationship.
Family Medical Leave Act	TBD	5 CFR 630.120 and 1202	No	OPM currently defines "spouse" to mean an individual who is a husband or wife pursuant to a marriage that is a legal union between one man and one woman, including common law marriages between one man and one woman in States where it is recognized. (Requires statutory change.)	Unknown
"Rest and Recuperation" (Leave and Travel Policy for Personnel on Overseas Assignments or Details)	To Be Determined (TBD)	DOJ Order 1200.1, Chapter 13 DOJ uses the term " State Department regulations		Seek OGC concurrence. JMD HR will amend DOJ's policy to align with State	Within 60 days.

		(3 Foreign Affairs Manual (FAM) 3721.4(c)(d)) 22 U.S.C. 4081(6)		Department policy. Department's Overseas Policy will be revised to state that DOJ follows State Department's regulations. Memo will be issued to state DOJ's alignment with State's regulations.	
Federal Employees Group Life Insurance Program (FEGLI)	TBD	5 CFR 870.801 and 802	Yes	If a properly executed Designation of Beneficiary form is submitted and lists the domestic partner as a beneficiary; however, if there is no designation of beneficiary form, then it is based on order of precedence.	Immediate. Contingent upon state law.
Federal Long Term Care Insurance Program (FLTCIP)	TBD	5 U.S.C. 9001 5 CFR 875	No	Not at present. The Office of Personnel Management (OPM) must redefine "qualified relative" under 5 U.S.C. 9001(5)(D) to include a domestic partner. OPM is in the process of changing the definition	Within one year
Federal Employees Health Benefits (FEHB)	TBD	5 U.S.C. 8901 5 CFR 890.302	No	A domestic partner is not eligible for the Federal Employees Health Benefits	Unknown

				(FEHB) program; therefore, not eligible for this insurance. FEHB follows the definition of “spouse” provided in the Defense of Marriage Act.	
Federal Employees Dental and Vision Insurance Program (FEDVIP)	TBD	5 CFR 894.101	No	A domestic partner is not eligible for the Federal Employees Health Benefits (FEHB) program; therefore, not eligible for this insurance. FEHB follows the definition of “spouse” provided in the Defense of Marriage Act.	Unknown
Flexible Spending Account (FSA)	TBD	5 CFR 892.101, 5 CFR 890.302	No	A domestic partner is not eligible for the Federal Employees Health Benefits (FEHB) program; therefore, not eligible for FSA. FEHB follows the definition of “spouse” provided in the Defense of Marriage Act.	Unknown

Thrift Savings Plan (TSP)	TBD	5 CFR 1651.2	Yes	If a properly executed Designation of Beneficiary form is submitted and lists the domestic partner as a beneficiary; however, if there is no designation of beneficiary form, then it is based on order of precedence.	Immediate
Retirement – Survivor Annuity (Civil Service Retirement System)	TBD	5 CFR 831.603	No	The retirement regulations follow the definition of “spouse” provided in the Defense of Marriage Act	Unknown
Retirement – Survivor Annuity Insurable Interest (Civil Service Retirement System)	TBD	5 CFR 831.613	Yes	An insurable interest may exist between the retiree and any other individual who has a reasonable expectation of financial benefit that would terminate upon the death of the retiree. An insurable interest will be presumed between individuals of near relationship and may be demonstrated in other cases.	Immediate

Retirement – Survivor Annuity (Federal Employees Retirement System)	TBD	5 CFR 842.602	No	The retirement regulations follow the definition of “spouse” provided in the Defense of Marriage Act	Unknown
Retirement – Survivor Annuity Insurable Interest (Federal Employees Retirement System)	TBD	5 CFR 842.605	Yes	An insurable interest may exist between the retiree and any other individual who has a reasonable expectation of financial benefit that would terminate upon the death of the retiree. An insurable interest will be presumed between individuals of near relationship and may be demonstrated in other cases.	Immediate
Unpaid Compensation of Deceased Employee	TBD	5 U.S.C. 5581, 5582	Yes	If a properly executed Designation of Beneficiary form is submitted and lists the domestic partner as a beneficiary; however, if there is no designation of beneficiary form, then it is based on order of precedence.	Immediate

Employee Assistance Program (EAP) counseling services to domestic partners	TBD	DOJ Order 1200.1, Chapter 7	Yes	The definition of "Family Member" includes "significant other."	Immediate
Policy for Employees on Overseas Assignment	TBD				
Diplomatic Immunity	TBD	Vienna Convention on Consular Relations of 1969	Yes	Department of State redefined "family member" to include same sex domestic partner.	Immediate
Diplomatic Passport	TBD	22 CFR 51.3(b)	Yes	Department of State redefined "family member" to include same sex domestic partner.	Immediate
Access to Embassy health unit	TBD	22 USC 4084 16 FAM 114 and 121	Yes	Department of State redefined "family member" to include same sex domestic partner.	Immediate
Access to evacuation (medical)	TBD	22 USC 4081(6) 3 FAM 3710 14 FAM 534 16 FAM 114	Yes	Department of State redefined "family member" to include same sex domestic partner.	Immediate
Compete for eligible family members employment at Posts	TBD	Vienna Convention on Diplomatic Relations of 1961	Yes	Department of State redefined "family member" to include same sex domestic partner.	Immediate

Relocation benefits for family members	TBD	14 FAM 531.3	Yes	Department of State redefined "family member" to include same sex domestic partner.	Immediate
Home Leave	TBD	5 CFR 630, Subpart F	No	Applies only to the individual Federal employee who meets the requirement of section 6304(b) of title 5, United States Code, for the accumulation of a maximum of 45 days of annual leave earned and may be granted home leave in accordance with section 6305(a) of that title. An employee's use of annual leave is not based on family member relationship.	Unknown
Annual Leave (during R&R travel)	TBD	5 CFR 630, Subpart C	No	Applies only to the individual Federal employee to whom subchapter I of chapter 63 of title 5, United States Code, applies. An employee's use of annual leave is not based on family member relationship.	Unknown

Overseas Travel Expenses (Home Leave, R&R, or RRBs)	TBD	28 U.S.C. § 530A			
DOJ Policies Currently Under Review					
Overseas Leave Policy					
Leave Administration					
Extended Assignment Incentives					
Agency Grievance Procedures					
Payment of Tuition Costs for Dependents of Employees in a Territory, Commonwealth, or US Possession					