

BOARD OF COUNTY COMMISSIONERS

INTER-OFFICE MEMORANDUM

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To: Lillian Bennett, Director
Human Resources

AUG 06 2010

Amy Cox, Manager
Human Resources

LEON COUNTY
HUMAN RESOURCES

From: Herbert W. A. Thiele, Esq. 
County Attorney

Date: August 6, 2010

Subject: Overview of Proposed Revisions to the Leon County Personnel Policies and Procedures Manual to Extend Employee Benefits to Domestic Partners

This follows up on our meeting and conversations of last week and this week concerning the agenda item which is being prepared for the Board of County Commissioners concerning various revisions to the Leon County Personnel Policies and Procedures Manual, as well as modifications to the County's Agreement with Capital Health Plan, to provide for domestic partner benefits.

We have reviewed both the content of the procedures as well as done some preliminary research concerning the implementation of such a program by a local government here in Florida.

While we understand that other local governments in Florida have implemented some or all of the same provisions regarding domestic partner benefits, our office still has a concern with regard to the potential applicability of Florida Statutes §741.212. This provision of the Florida Statutes, in general, prohibits the state and its political subdivisions from "recognize (ing) for any purpose in this state" marriages between persons of the same sex, or "relationships between persons of the same sex which are treated as marriages." There have been no court cases interpreting this provision so we are unable to make a determination about its applicability. However, we wanted to at least point out that this provision exists and it may at some point come into play with regard to the applicability of the domestic partner benefit provisions.

In addition, we note that in the current version of the Capital Health Plan Member Handbook Endorsement regarding domestic partner benefits, there is a provision which indicates that dependent child(ren) of the subscribers domestic partnership are not eligible for coverage under this group plan. The revised policies do provide for such coverage. You have informed us that the representative of CHP has acknowledged that they are modifying this provision, but we need

to make sure that an endorsement to the CHP coverage is received prior to the implementation of the policies.

We also have some concerns, but are not able to arrive at any conclusions, with regard to any arguments that have been made on a constitutional level with regard to the provision of such benefits. But again, we wanted to make note that such an argument could be made with regard to these policies in the future.

Finally, although you have prepared and we have reviewed the necessary Affidavits which would need to be submitted, along with the proof of the status of the domestic partnership that is set forth therein, we do have significant concerns with regard to the implementation and enforcement of the provisions set forth therein. Since, as stated in Florida Statutes §741.212, the state does not recognize nor would they accept any documentation for recordation for the domestic partners of the same sex (like they do for marriage certificates), there is no independent verification available to the County for the claimed domestic partnership. Thus, the Human Relations Department will have to rely upon what documentation is produced and the representations of the individuals involved.

We also have some concern with regard to the termination of the benefits when a domestic partnership is concluded in some fashion. In the policies it is entirely based upon the voluntary notification by the employee of such cessation of the partnership. Again, since no documentation would be found in the public records or court files with regard to the termination of the domestic partnership, there are concerns with regard to the administration of this provision.

The purpose of this memorandum then was merely to point out some areas of concern, although not prohibitive of the implementation of this proposed policy. Should you have any questions, please contact the County Attorney's Office.

HWAT:eal

cc: Parwez Alam, County Administrator
Vincent Long, Deputy County Administrator
Alan Rosenzweig, Assistant County Administrator

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The 2009 Florida Statutes

[Title XLIII](#)
DOMESTIC RELATIONS

[Chapter 741](#)
MARRIAGE; DOMESTIC VIOLENCE

[View Entire Chapter](#)

741.212 Marriages between persons of the same sex.--

(1) Marriages between persons of the same sex entered into in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, or relationships between persons of the same sex which are treated as marriages in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, are not recognized for any purpose in this state.

(2) The state, its agencies, and its political subdivisions may not give effect to any public act, record, or judicial proceeding of any state, territory, possession, or tribe of the United States or of any other jurisdiction, either domestic or foreign, or any other place or location respecting either a marriage or relationship not recognized under subsection (1) or a claim arising from such a marriage or relationship.

(3) For purposes of interpreting any state statute or rule, the term "marriage" means only a legal union between one man and one woman as husband and wife, and the term "spouse" applies only to a member of such a union.

History.--s. 1, ch. 97-268.