Agenda Item No.

1E-1

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM SUMMARY

Meeting Date: Feb. 5, 2008	[] Consent	[X] Regular {
	[] Workshop	[] Public H

Department

blic Hearing **Human Resources**

Submitted By:

Submitted For:

Human Resources

EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to deny: A request by the Palm Beach County Human Rights Council to create a domestic partnership leave program affording leave benefits and job protection to registered domestic partners and their children in addition to federally mandated leave protection as provided under the Family and Medical Leave Act (FMLA).

SUMMARY: As a covered public agency, the County is required by the FMLA to grant twelve work weeks of leave to eligible employees for the birth of a child, the employee's own serious health condition or the serious health condition of a parent, child or spouse. The FMLA defines spouse as "a husband or wife as defined or recognized under State law" (29 CFR 825.113)¹. Staff found that while the County cannot legally extend the definition of spouse under the FMLA, similar leave benefits and protections for domestic partners can be made available. However, it is inadvisable to create a leave program affording the same protections and benefits provided by the FMLA to domestic partners and their children.

Employees involved in domestic partnerships are not excluded from leave protection provided by the FMLA. Those employees remain eligible for FMLA leave for their own serious health condition and that of their parents and children. Under the FMLA, a child is defined as the biological, adopted, or foster child, stepchild, legal ward, or the child for whom the employee stand in the place of a biological parent. Provided the employee involved in a domestic partnership has sole or shared parental responsibility for the child, that child is an eligible family member and the employee may take FMLA leave to care for the child's serious health condition. In this instance family care leave to care for the children of domestic partners duplicates leave benefits already available under both the FMLA and the County's leave policy. Countywide (EC)

BACKGROUND: The provision of additional leave benefits and protections to persons involved in registered domestic partnerships will not absolve the County from providing FMLA benefits to those employees. Under the FMLA an employee is allowed to take twelve work weeks of leave for a qualifying event during which time the County is obligated to continue the employee's health benefits and protect that employees position with the County. A domestic partnership leave program with protections mirroring the FMLA would result in increasing the maximum amount of protected leave time an employee involved in registered domestic partnership could be absent from work and the length of time the County would be financially obligated to continue health care benefits from twelve to 24 work weeks. This effect is referred to as stacking. An example of stacking of benefits would occur when domestic partners are pregnant. The employee involved in the domestic partnership could be absent for twelve work weeks during the pregnancy under a domestic partnership leave program and then absent an additional twelve work weeks under the FMLA for the birth of the child resulting in a total of 24 work weeks of absence.

A domestic partnership leave program also will not create leave benefits and protections for domestic partners equal to those provided in the FMLA for married persons. Such a program would have the opposite effect by creating the availability of 24 work weeks of leave for domestic partners, while married persons and those persons not involved in a domestic partnership would remain limited to twelve work weeks of leave protection and benefits under the FMLA. The difference in leave benefits for married persons and for persons involved in registered domestic partnerships rests on the State's failure to include persons in partnerships in the legislative definition of marriage. This difference is given to similar distinctions domestic partnerships in the legislative definition of marriage. This difference is akin to similar distinctions on the basis of marital status found in the federal tax code, social security benefits and property ownership rights. Creating a program affording additional leave protection and benefits to domestic partners will not redress perceived inequities in the FMLA suffered by persons involved in domestic partnerships.

¹Florida Statutes definition of marriage at §741.212(3) specifically excludes every other relationship except

the legal union between one man and one woman. Attachments: 1. Survey Recommended by: Department **Director** Date Ollung Approved by: **Assistant County Administrator**

II. FISCAL IMPACT ANALYSIS

A.	Five Year Summar	y of Fiscal Im	npact:				
Fis	scal Years	2008	2009	2010	<u> 2011</u>	2012	
Opera Exteri Progr	al Expenditures ating Costs nal Revenues am Income (County) nd Match (County)			: 			
NET	FISCAL IMPACT			are see a			
	DITIONAL FTE TIONS (Cumulative	·					
ls Iter Budge	n Included in Curren et Account No.: Fun	id Dept	Yes Unit_ code	Object_	-		
B.	Recommended So	urces of Fun	ds/Summar	y of Fiscal Imp	pact:		
	County Funds						
C.	Departmental Fisca	al Review:					
		<u>III.</u>	REVIEW C	<u>OMMENTS</u>			
A.	OFMB Fiscal and/o If denied, there there will be	e mill be	nofiscal	impact. 1	fapprove try indet	d, however, erminable	ı
	OM 3.0 DEMI	12·14-07 B 5/1/07	12/11/7	Contract I	uni f. Jan Dev. and Con	eoonitz 12/14/ trol	DT
B.	Legal Sufficiency:				mplies with curre		
	Assistant County	Attorney	<u>4.14</u> .20	700			
C.	Other Department	Review:					
	Department Dire	ector		l			

This summary is not to be used as a basis for payment.

EXHIBIT A:

An internet search of governmental entities throughout the State found thirteen agencies allowed employees to use some type of regularly accrued leave to care for a domestic partner, four of which have a leave policy mirroring the protections and benefits of the FMLA.¹

FLORIDA MUNICIPALITIES							
ORCANICATION!		ORGANIZATION	DOMESTIC PARTIMER LEAVE POLICY				
Broward School District	No leave policy covering domestic partners	City of Lake Worth	Accrued leave can be used for domestic partners				
Broward County	Accrued leave can be used for domestic partners	Palm Beach Gardens	Accrued leave can be used for domestic partners (eff. 11/15/07)				
Town of Jupiter	No leave policy covering domestic partners	Miami-Dade School District	Accrued leave can be used for domestic partners				
PBC Tax Collector	FMLA-like leave for domestic partners	Monroe County	Accrued leave can be used for domestic partners				
Port of Palm Beach FMLA-like leave for domestic PBSO partners		PBSO	No leave policy covering domestic partners				
West Palm Beach Accrued leave can be us for domestic partners		City of Gainesville					
Palm Tran	Im Tran Accrued leave can be used for domestic partners PBC Clerk and Comptroller		No leave policy covering domestic partners				
Solid Waste Authority	Accrued leave can be used for domestic partners	PBC Property Appraiser	FMLA-like leave for domestic partners				
Key West	FMLA-like leave for domestic partners						

¹The governmental entities selected based on inclusion of data provided by *Partners Task Force for Gay & Lesbian Couples: Governments Offering Benefits* and *Gay Rights Info: States, Counties, Cities and Towns with Some Type of Benefit or Recognition to Domestic Partners for Homosexuals* governmental agencies which allowed internet access to leave policies.