

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: 3/3/08

☐ Consent
☐ Workshop

☒ Regular
☐ Public Hearing

Department

Submitted By: Human ResourcesSubmitted For: Human Resources

I. 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 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

Approved by: _____

Assistant County Administrator

Date

12/10/07

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____

ADDITIONAL FTE

POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes____ No

Budget Account No.: Fund____ Dept____ Unit____ Object____

Program Code _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:


County Funds

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Administration Comments:

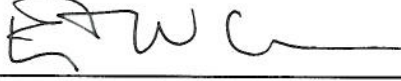
If denied, there will be no fiscal impact. If approved, however, there will be an impact which is currently indeterminable.

 12-14-07
OFMB 12-13-07
CN 12/11/07

 12/14/07
Contract Dev. and Control
12/14/07

B. Legal Sufficiency:

This item complies with current
County policies.

 12-14-2007
Assistant County Attorney

C. Other Department Review:

Department Director

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			
ORGANIZATION	DOMESTIC PARTNER LEAVE POLICY	ORGANIZATION	DOMESTIC PARTNER 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 partners	PBSO	No leave policy covering domestic partners
West Palm Beach	Accrued leave can be used for domestic partners	City of Gainesville	Accrued leave can be used for domestic partners
Palm 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.