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November 10, 2010

Professor Linda Mabbs
Chair, University Senate
1100 Marie Mount Hall
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Dear Chair Mabbs:

The Staff Affairs Committee received a charge at the beginning of the Fall 2010 Semester asking the committee to work with the Council of University System Staff (CUSS) on the issue of recommending expansion of system-wide domestic partner related policies (including sick leave, tuition remission, family medical leave, and nepotism). The SEC asked the Staff Affairs Committee to craft a letter outlining its endorsement of any final recommendations, or provide a status report to the SEC by November 10, 2010.

I am writing on behalf of the Staff Affairs Committee to update the SEC on the recent actions regarding this topic. Early in the Spring 2010 semester, the Senate Staff Affairs Committee spoke with Luke Jensen, Director of the Office of Lesbian, Gay, Bisexual, and Transgender Equity, about efforts to recommend expansion of campus-based benefits to same-sex domestic partners. Over the course of the Spring and Summer months, CUSS discussed the expansion of system-wide domestic partner related policies with the Chancellor.

The committee received notification that on September 17, 2010, the Board of Regents adopted a resolution to comply with the recent Attorney General's Opinion regarding the recognition of same sex marriages validly made in other states. We understand that this resolution will allow same sex spouses, retroactive to July 1, 2010, to be eligible for all spousal USM benefits, notably tuition remission and various types of leave. The resolution will also apply to the USM's nepotism policy. The Board of Regents resolved to work with UNUM to align any appropriate spousal benefits provided under their USM plans with the resolution. Pending or denied applications for tuition remission for the current semester will be notified of the Board's decision. However, because the resolution applies only to same sex marriages, and not to other domestic partnerships, I contacted Luke Jensen to find out whether he felt that a majority of constituents on campus will be served by this resolution.

I met with Luke Jensen on Tuesday, October 26, 2010. It was made clear that the sentiment on campus is that the piece-meal approach to providing benefits for domestic partners has frustrated and exhausted those who have been championing these efforts for over twenty years. We concur that the Attorney General was courageous in his option of recognizing same sex marriages validly made in other states, because it does expand access to benefits for some employees on campus. However, the resolution passed by the Board of Regents does not comprehensively address the issue that CUSS and the Staff Affairs Committee were interested in pursuing. Additionally, the resolution puts the University in the awkward position of having to ask state employees with same sex domestic partners to go out of state to obtain a legal document that will allow them to access state benefits in the State of Maryland.

Because we do not wish to see this issue be removed entirely from the table, and because this is

more than just an issue for staff members, the Staff Affairs Committee would like to recommend that the Senate Committee on Equity, Diversity, and Inclusion (EDI) be charged with continuing work on this subject. If this is granted, we would also encourage the EDI Committee to partner with the President's Commission on Lesbian, Gay, Bisexual, and Transgender Issues, Chaired by Tanner Wray, to potentially develop a resolution for UMCP that would more fully address the needs of domestic partners (sick leave, tuition remission, family medical leave, and nepotism). A major first task for the EDI Committee should be to determine the scope of the issue at the University. Additionally, the Staff Affairs Committee recommends that EDI consult the Legal Office to find out about the legal aspects of this issue, including why the Board of Regents chose the specific coverage of its most recent resolution.

Luke Jensen also mentioned a practice known as "Grossing Up," which has been instated at some institutions to make up for the income tax burden of domestic partner benefits. The Staff Affairs Committee suggests that EDI be asked to research this practice and evaluate whether it should be recommended for consideration at the University. We have attached a document with more information from the Human Rights Campaign website called "Domestic Partner Benefits: Grossing Up to Offset Imputed Income Tax."

Also attached to this letter is the original proposal from Luke Jensen.

Thank you for your consideration of this matter.

Sincerely,

Cynthia Shaw
Chair, University Senate Staff Affairs Committee

Enclosure(s):
HRC document, "Domestic Partner Benefits: Grossing Up to Offset Imputed Income Tax"
Draft of proposal from the Office of Lesbian, Gay, Bisexual, and Transgender Equity

CS/cb

Cc: Reka Montfort, Executive Secretary and Director, University Senate
Luke Jensen, Director of the Office of Lesbian, Gay, Bisexual, and Transgender Equity

Information Retrieved from Human Rights Campaign Website on October 29, 2010

http://www.hrc.org/issues/workplace/benefits/grossing_up.htm

Domestic Partner Benefits: Grossing Up to Offset Imputed Income Tax

The information in this document does not constitute legal advice. For assistance with legal questions specific to your situation, please consult an attorney.

A number of employers have looked to account for the income tax burden of domestic partner benefits by "grossing up" an employee's salary, similar to grossing up award or bonus payments to an employee. This benefit is also sometimes referred to as a "true-up" of the employee's salary. For example, a holiday bonus of \$500 would be reported for tax purposes at a greater value so that the employee actually receives \$500 after taxes. Employees that are taxed on the imputed value of domestic partner benefits generally must pay those taxes each payroll period.

- [Taxation of Domestic Partner Benefits](#)
- [Business Coalition for Benefits Tax Equity](#) - a group of more than 70 major U.S. employers that support legislation to end the federal tax disparity

Who Grosses Up

Although employers have been interested in implementing a gross up benefit for employees receiving partner benefits since as early as 2001, the HRC Foundation was unable to find a particular employer that had implemented the benefit until 2009.

As of July 2010, the HRC Foundation is aware of four for-profit employers -- including **Cisco Systems**, **Google Inc.** and **Kimpton Hotels & Restaurants**. Furthermore, several large businesses and law firms have indicated they will implement the benefit in 2010. More information will be available after the Corporate Equality Index 2011 Report is released in Fall 2010.

- [Kimpton Hotels & Restaurants](#) - video and presentation about their HRC Award for Workplace Equality Innovation in 2010

How "Grossing Up" Works: An Example

Consider an employer that wants to gross up an employee in the 20-percent tax bracket. The fair market value of the employee's non-dependent domestic partner coverage is determined to be \$200 per pay period.

The employee will incur \$40 of tax ($\200×20 percent) for that pay period. To gross up the employee, the employer would need to make an additional payment of \$48 to this employee - \$40 would serve as reimbursement for the tax incurred on the benefits coverage and the other \$8 ($\40×20 percent) would serve as an approximate reimbursement of the tax paid on the gross-up

payment itself. Note that this example does not include state tax, Social Security (FICA) and Medicare taxes.

This example appears in "[Domestic Partner Benefits: An Employer's Guide, 5th Edition.](#)" Copyright 2009 Thompson Publishing Group, Inc.

Notifying Employees

Employers can notify employees of the gross-up benefit through general benefits eligibility documentation available to all employees.

EXAMPLE: Who is eligible for benefits?

All employees regularly scheduled to work 20 or more hours each week are eligible for all benefits. Employees working less than 20 hours per week are eligible to participate in the Retirement Plans and Employee Matching Gifts Program. Coverage will begin on your date of hire. You may enroll your eligible dependents for medical, dental and vision benefits. Dependents are eligible to receive Employee Assistance Program (EAP) services, regardless of enrollment in other benefit plans. Your eligible dependents include:

- Your legal spouse
- Your same- or different-sex partner. To be eligible to enroll in the plans, your partner must meet the criteria outlined under Domestic Partner Eligibility. **Any premium contributions made by [EMPLOYER NAME] on behalf of a non-dependent partner are considered taxable income. However, [EMPLOYER NAME] pays for the tax impact on your behalf; therefore, there is no impact to your net pay. Payroll will gross-up your salary for the value of the insurance provided to your domestic partner. As a result, your gross wages reported on your regular pay stub and in Box 1 of your W-2 will be higher by the amount of the insurance (including the gross-up).**
- Your unmarried children (or step children in your custody) up to the age of 25 who depend on you for support (this includes your partner's children)
- Any dependent child who is incapable of self-support because of a physical or mental disability

Sample Proposal for Grossing Up

Use this sample proposal as a guide when advocating for your own employer to implement grossing up as a standard for employees enrolled in domestic partner benefits that pay an additional imputed income tax.

- [Proposal for Grossing Up to Offset Imputed Income Tax](#)

DRAFT Proposal from Luke Jensen, Director of the Office of LGBT Equity

Domestic Partner Benefits – Completing the Task

Beginning in the early 1990s, discussions about Domestic Partner Benefits at the University of Maryland recognized three levels of benefits: campus benefits, system benefits, and state benefits. In 2006, the campus moved forward in offering campus benefits and President C. D. Mote, Jr. appointed a Human Resources Working Group to examine how we could offer the full range of benefits to domestic partners. The committee was chaired first by John Porcari and later by Ann Wylie. On April 11, 2007, the HR Working Group submitted its recommendations to President Mote. They included the following.

The Working Group recommends that the University of Maryland, College Park, be authorized by the Board of Regents and the State of Maryland to offer the same health insurance benefits for domestic partners that are currently available to spouses of employees. Any additional costs for this benefit would be borne by the institution.

The Working Group recommends that UMCP be authorized by the Board of Regents to offer the same tuition remission benefits for domestic partners enrolled at UMCP that are currently available to spouses. Any additional costs for this benefit would be borne by the institution.

The Working Group recommends that on behalf of the University of Maryland the Board of Regents work with the State to allow domestic partners the same survivor benefits that are currently available to spouses of UMCP employees.

On April 16, 2007, President Mote sent these recommendations to Chancellor William E. Kirwan. The Chancellor determined that the complete University System of Maryland should move forward as one entity on the issue of health care for domestic partners and deferred further consideration to the State. Following legislation passed by the Maryland General Assembly and an official definition of Domestic Partner issued by the Maryland Health Care Commission, both in 2008, and additional legislation passed in 2009, the administration of Governor Martin O'Malley provided access to health care insurance for the domestic partners of all state employees including the University System of Maryland.

Tuition remission and other system-level benefits have gone unaddressed.

This proposal moves that

- a) "UMCP be authorized by the Board of Regents to offer the same tuition remission benefits for domestic partners enrolled at UMCP that are currently available to spouses" as proposed most recently in 2007.

We also propose that domestic partners be included for the following "soft" benefits.

b) Use of sick leave for “illness or injury in the employee’s immediate family and medical appointments, examinations or treatments for the immediate family member with an accredited, licensed, or certified medical provider.”

c) Paid “Bereavement Leave, not to exceed three (3) work days, of five (5) days if overnight travel is required, on account of the death of any member of the employee’s immediate family.”

d) The inclusion of domestic partners in policies regarding Family and Medical Leave. This would simply parallel policies mandated by Federal Law.

Domestic partners should also be included in all other relevant policies of the University System of Maryland.

Because there is an established affidavit employees must submit to access health insurance coverage for Domestic Partners, it is understood that the same form would be used for Tuition Remission. (http://www.uhr.umd.edu/benefits/benefits_forms.cfm)