

**THE SUPREME COURT OF NEW HAMPSHIRE**

---

**2006 TERM  
JANUARY SESSION**

---

**No. 2006-0432**

---

**Patricia Bedford and Anne Breen**

**v.**

**The State of New Hampshire  
Community Technical College System  
and Division of Personnel**

---

***BRIEF OF AMICI  
STATE EMPLOYEES ASSOCIATION,  
AFT-NEW HAMPSHIRE AND  
NEA-NEW HAMPSHIRE***

Michael C. Reynolds, General  
Counsel  
State Employees Association  
105 N. State Street  
Concord, NH 03301  
(603)271-6384

Teresa D. Donovan, Esquire  
Director of Field Services  
and Collective Bargaining  
AFT-NH  
553 Route 3A Ruggles IV  
Bow, NH 03304  
(603)223-0747

James F. Allmendinger  
Staff Attorney  
NEA-New Hampshire  
9 South Spring Street  
Concord, NH 03301  
(603) 224-7751

**TABLE OF CONTENTS**

	<i><u>Page</u></i>
Statement of the Question .....	1
Interest of <i>Amici</i> .....	1
Background.....	2
Summary of Argument.....	3
Argument	
1.    New Hampshire Particulars.....	3
2.    The Court Below and the Alaska Court reached the correct result.....	5
3.    Health insurance benefits are an important form of compensation, and employers are important sources of health care coverage.....	7
4.    Employers are increasingly offering the same health care benefits to the same-sex domestic partners of their employees as are offered to spouses of employees.....	8
5.    Health care costs for the State and local employers would increase by a relatively small amount.....	9
6.    Some of the added cost to the state will be offset by lower spending on Medicaid and uncompensated health care and by lower training and recruitment costs.....	9
Conclusion.....	11
Oral Argument.....	12
Certificate.....	12
Appendix.....	13
Table of Authorities.....	ii

## TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Alaska Civil Liberties Union v. State</i> , 122 P.2d 781 (2005).....	6-7
<i>Gilman v. County of Cheshire</i> , 126 N.H. 445, 449 (1985).....	4
<i>SEA v. Belknap County</i> , 122 N.H. 614 (1982).....	4
 <u>Statutes</u>	
RSA 457:1-2.....	6
 <u>Other Authorities</u>	
Ash, Michael, and Badgett, M. V. Lee. (2006) “Separate and Unequal: The Effect of Unequal Access to Employment-Based Health Insurance on Same-sex and Unmarried Different-sex Couples.” <i>Contemporary Economic Policy</i> , October Vol. 24, No. 4, 582-599.....	8-10
Badgett, M.V. L. (2006) <i>The Financial Impact of Domestic Partner Benefits in New Hampshire</i> , The Williams Institute on Sexual Orientation Law and Public Policy, UCLA School of Law, accessed at <a href="http://www.law.ucla.edu/williamsinstitute/publications/NHDPBenefitsEconImpact2006.pdf">http://www.law.ucla.edu/williamsinstitute/publications/NHDPBenefitsEconImpact2006.pdf</a> .....	3
Badgett, M. V. L. (2001). <i>Money, Myths, and Change: The Economic lives of lesbians and gay men</i> . Chicago and London: University of Chicago Press.....	7-8
Badgett, M. V. L. (2000). <i>Calculating costs with credibility: Health care benefits for domestic partners</i> , <i>Angles</i> , Vol 5, Issue 1.....	9
Hadley, Jack, and John Holahan. (2003) “How Much Medical Care Do the Uninsured Use, and Who Pays For It?” <i>Health Affairs</i> , Feb., pp. 66-81.....	11
Jones, Cheryl Bland. (2005) “The Costs of Nurse Turnover, Part 2,” <i>Journal of Nursing Administration</i> , Vol. 35, No. 1, January 2005, pp 41-49.....	10
Ragins, B.R., & Cornwell, J.M. (Forthcoming). “We Are Family: The Influence of Gay Family-Friendly Policies On Gay, Lesbian And Bisexual Employees,” in <i>Sexual Orientation Discrimination: An International Perspective</i> , edited by	

M. V. Lee Badgett and Jefferson Frank, Routledge.....	10
Tziner, Aharon, and Assa Birati, “Assessing Employee Turnover Costs: A Revised Approach,” Human Resources Management Review, Vol. 6, No. 2, 1996, pp 113-122.....	11
U.S. Bureau of the Census. 2002. Health Insurance Coverage: 2001. Current Population Reports P60-220, <a href="http://www.census.gov/prod/2002pubs/p60-220.pdf">http://www.census.gov/prod/2002pubs/p60-220.pdf</a> .....	7
U.S. Department of Labor, U.S. Bureau of Labor Statistics, “National Compensation Survey: Employee Benefits in Private Industry in the United States, March 2006,” August 2006. <a href="http://www.bls.gov/ncs/ebs/sp/ebsm0004.pdf">http://www.bls.gov/ncs/ebs/sp/ebsm0004.pdf</a> , last accessed Dec. 4, 2006.....	7

**THE SUPREME COURT OF NEW HAMPSHIRE**

---

**2006 TERM  
JANUARY SESSION**

---

**No. 2006-0432**

---

**Patricia Bedford and Anne Breen**

**v.**

**The State of New Hampshire  
Community Technical College System  
and Division of Personnel**

---

**AMICUS BRIEF OF  
THE STATE EMPLOYEES ASSOCIATION,  
AFT-NEW HAMPSHIRE AND NEA-NEW HAMPSHIRE**

**Question Presented**

Whether the Superior Court correctly concluded that denying employment benefits to two gay state employees constituted discrimination on the basis of sexual orientation where the State conditioned eligibility for those benefits on marriage.

**Interest of Amici State Employees Association, American Federation of Teachers-New Hampshire, and NEA-New Hampshire<sup>1</sup>**

The State Employees Association, AFT-New Hampshire, and NEA-New Hampshire are all labor organizations representing public employees in New Hampshire. Each negotiates collective bargaining agreements that include provision for health

---

<sup>1</sup> Counsel of record have assented to the filing of this Amicus Brief.

insurance and other employment benefits. Each has supported providing same-sex insurance benefits or domestic partner benefits or both in collective bargaining negotiations.

Your Amici believe that the New Hampshire Law Against Discrimination prohibits discrimination in health and other employment benefits on the basis of sexual orientation. Thus your Amici ask that the decision of the Superior Court be affirmed, because denying health insurance and other employment-related benefits to employees with same-sex partners is unlawfully discriminatory. The decision of the Human Rights Commission to the contrary is wrong and was properly overturned.

### **Background**

As the Court knows, health insurance benefits are more important now than ever before. The State Employees Association, AFT-New Hampshire, and NEA-New Hampshire all see this and all hear this from their members. Among those members most aggrieved by the decision of the Human Rights Commission in this matter are employees with same-sex partners denied health insurance coverage and other employment benefits afforded married persons.

The decision of the Human Rights Commission held without significant analysis that, “the legal standard for identifying a comparator-employee demonstrates that the proper comparator is an *unmarried* employee who heterosexual. This provides the comparator that is similarly situated in all relevant respects and a fair congener.” Breen Report, ES(O) 0225-02, September 9, 2003, at 8 (emphasis in original). Your Amici believe that the Human Rights Commission was wrong both as a matter of fact and as a

matter of law—such couples are not “similarly situated in all relevant respects” to unmarried heterosexual couples.

### **Summary of Argument**

The court below rejected the Commission’s view that an unmarried heterosexual couple who can marry “is similarly situated in all relevant respects” to an unmarried couple who cannot marry. The court’s conclusion reflects both evolving legal standards and changing employer practices in the public and the private sectors. This brief addresses those evolving standards and changing practices. All support the decision of the court below, and your Amici ask that that decision be affirmed.

### **Argument**

#### **1. New Hampshire Particulars<sup>2</sup>**

The trend is clear in New Hampshire. Many New Hampshire employers already offer domestic partner benefits to employees, including Dartmouth College, Fisher Scientific International, Sigarms, Inc., and Timberland Co.<sup>3</sup> The University System of New Hampshire (USNH) also offers health, dental, and life insurance benefits to same-

---

<sup>2</sup> The facts recited in Sections 1 and 3-6 are, except as noted otherwise, based on a December 2006 Report, “The Financial Impact of Domestic Partner Benefits in New Hampshire,” by M.V. Lee Badgett, Ph.D., of The Williams Institute on Sexual Orientation Law and Public Policy, UCLA School of Law, attached as an appendix hereto and accessed at <http://www.law.ucla.edu/williamsinstitute/publications/NHDPBenefitsEconImpact2006.pdf>.

<sup>3</sup> *Source*: Human Rights Campaign Foundation, September 9, 2005, report accessed at <http://www.hrc.org/workplace>.

sex domestic partners of its employees. USNH has developed a set of criteria, affidavit forms, and information that allow employees to designate and enroll a domestic partner.<sup>4</sup>

A recent tally by Gay and Lesbian Advocates and Defenders of the largest private service sector and manufacturing employers in New Hampshire confirms that domestic partner benefits are common. Data was available for 29 of the top 40 service sector companies and 28 of the top 40 manufacturing employers in the state. Sixteen manufacturing employers accounting for 70% of employees (in the 28 companies) offer domestic partner benefits. Twenty-two service sector employers accounting for 67% of employment (in the 29 companies with data) offer domestic partner benefits.

This Court knows the importance of benefits in public employment. Such benefits for public employees are “[d]esigned to attract competent individuals into government service, [thus] the benefits are essentially created for the protection of the employee and his family.” *SEA v. Belknap County*, 122 N.H. 614, 621 (1982)(discussing retirement benefits; citations omitted). Indeed, the primary purpose of providing benefits to public employees is to induce competent persons to enter and *remain* in public employment. *Gilman v. County of Cheshire*, 126 N.H. 445, 449 (1985)(discussing sick leave benefits; citations omitted).

Benefits for same-sex domestic partners are also becoming part of the package for other public sector employees in New Hampshire. As noted, the University System makes such benefits available. Public school employees are also bargaining such benefits. In New Hampshire, twenty-two school districts have agreed to provide health insurance and other employment benefits to same-sex domestic partners in collective bargaining agreements.

---

<sup>4</sup> See <http://www.usnhhr.unh.edu/benefits/samesex.html>



The collective bargaining agreement between the State Employees Association and the State be a bar to finding that such benefits are required under law. In that regard, in New Hampshire—and elsewhere—collective bargaining agreements typically provide that they are unenforceable to the extent they are illegal. Thus, virtually all of amici’s collective bargaining agreements contain what is called a “separability clause.” Such clauses are similar to Section 15.1 of the collective bargaining agreement that covers Plaintiffs Bedford and Breen.<sup>5</sup>

Such clauses typically state that those parts of a collective bargaining agreement that are unlawful are unenforceable. The collective bargaining agreement is, simply stated, no bar to a finding that such benefits are required under state law.

Thus the decision of the Human Rights Commission never addresses the actual cost that employees pay without employer-provided domestic partner coverage. If those employees purchases private insurance they pay at least \$200 per month for that private insurance—a low estimate but still very real expense that still reduces income and imposes added burdens. Such was not the wish of the State Employees Association in bargaining its contract with the State.

***2. The Court Below and the Alaska Court reached the correct result***

The court below concluded that because same-sex couples cannot marry in New Hampshire, they are not similarly situated to unmarried heterosexual couples. This conclusion reflects evolving court decisions. As the Alaska Supreme Court has held, in strikingly similar circumstances, “all opposite-sex adult couples may marry and thus

---

<sup>5</sup> See <http://www.nh.gov/hr/cbaseparability2006.html>.

become eligible for these benefits. But no same-sex couple can ever become eligible for these benefits because same-sex couples may not marry in Alaska.” Thus, the Alaska Supreme Court continued, “[t]he spousal limitations in the benefits programs therefore affect public employees with same-sex domestic partners differently than public employees who are married.” *Alaska Civil Liberties Union v. State*, 122 P.2d 781, 783 (2005)(footnote omitted).

The Alaska court rejected arguments based on marriage rather than employment. Thus, “[t]he [Alaska] Marriage Amendment effectively precludes same-sex couples from marrying in Alaska, but it does not explicitly or implicitly prohibit public employers from offering to their employees' same-sex domestic partners all benefits that they offer to their employees' spouses.” *Id.*, 122 P.2d at 786.

What is true of Alaska's Marriage Amendment is equally true of New Hampshire marriage statute, RSA 457:1-2: "It does not address the topic of employment benefits at all.” *Alaska Civil Liberties Union v. State, supra*, 122 P.2d at 786. *Id.*, 122 P.2d at 786 n. 20. And both here and in the Alaska case, it is “implicitly assume[d] on appeal that governments are free to offer employment benefits to their employees' unmarried, domestic partners, including same-sex domestic partners.”

Indeed, many employers—both in the public and the private sectors—offer health insurance and other employment-related benefits to same-sex partners. As discussed more fully below, according to the Human Rights Campaign's database, 264 Fortune 500 companies offer domestic partner benefits.<sup>6</sup> *Alaska Civil Liberties Union v. State*, *supra*, 122 P.2d at 795 n. 64 and 65. Some thirteen states and 130 municipalities provide such coverage as well. *Id.*

3. ***Health insurance benefits are an important form of compensation, and employers are important sources of health care coverage***

Health insurance is a common form of compensation offered by employers to their employees. In 2006, 70% of workers in the private sector were offered health insurance through their employers (U.S. Dept. of Labor, 2006, p. 1). The strong link between health insurance and compensation derives from the historical development of compensation practices, not from family policy (Badgett, 2001). Wage and price controls during World War II led to the provision of health benefits for a family's wage earner instead of direct pay increases (see Badgett, 2001, for a longer discussion).

The historical linkage of health insurance and employment has led to a reliance on employer-provided health coverage in this country. In the United States, almost 60% of people under 65 get health insurance through their own employment or the employment-based health insurance of a family member. (U.S. Bureau of the Census 2006, p. 21) Or, from another angle, 80% of non-elderly people who have insurance get it through employer-provided coverage (U.S. Bureau of the Census, 2002). Without access to

---

<sup>6</sup> See p.8, below. See also the Human Rights Campaign Foundation database at <http://www.hrc.org/workplace>.

family coverage, the same-sex partners and children of gay, lesbian, and bisexual employees are vulnerable to a lack of coverage. Indeed, a recent study demonstrates that 20% of people in same-sex couples lacked health insurance (Ash & Badgett, 2006). People in same-sex relationships were twice as likely as married people to be uninsured (Ash & Badgett).

***4. Employers are increasingly offering the same health care benefits to the same-sex domestic partners of their employees as are offered to spouses of employees.***

Increasingly, U.S. employers are also covering the same-sex domestic partners of employees in the same way that spouses are covered. In 1990, only a handful of employers offered domestic partner benefits, but the number increased dramatically through the 1990s and in this decade (Badgett, 2001). In 2006, one organization that tracks employer policies lists 9,384 employers (HRC database, [www.hrc.org](http://www.hrc.org), Dec. 4, 2006). Recent surveys of U.S. employers find that as many as 56% of employers now provide health care coverage to partners (reported in Luther, 2006). More than half of the Fortune 500, or 264 firms, offer domestic partner benefits (HRC database, [www.hrc.org](http://www.hrc.org), Dec. 4, 2006).

From another perspective, other states increasingly cover their own employees. Thirteen states (California, Connecticut, Illinois, Iowa, Maine, Montana, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington) and the District of Columbia, along with 137 cities and counties, provide coverage to domestic partners of state or local government employees (Human Rights Campaign, 2006).

Overall, state governments and labor market competitors in local government and the private sector are increasingly likely to offer domestic partner benefits to same-sex partners of employees.

5. ***Health care costs for the State and local employers would increase by a relatively small amount.***

State spending on health care and dental benefits for state employees' new spouses would rise slightly if the state covered domestic partners of employees. To calculate the cost increase to the state, M. V. Lee Badgett's report uses FY 2007 working rates and enrollment figures ("Self-Funded Employee and retiree Health Benefit Program, Annual Report," July 1, 2006, State of New Hampshire Dept. of Administrative Services Risk Management Unit). Based on the experience of other employers, approximately 0.5% of New Hampshire active and retired state employees who receive health care benefits, or 173 people, are likely to sign up a domestic partner (Badgett, 2000; Ash and Badgett, 2006). Also, Badgett's report assumes that the employees with domestic partners are spread out across the various plans in the same way that current employees and retirees are distributed. Badgett's report calculates that the State would see a total increase in health care costs of \$1.3 million. Compared with total spending on medical and prescription coverage of \$214 million, the cost increase is a very small 0.6% rise. Spending in the retirement system would be unlikely to increase, since employees can already designate anyone as a beneficiary for retirement and death benefits.

6. ***Some of the added cost to the state will be offset by lower spending on Medicaid and uncompensated health care and by lower training and recruitment costs.***

Offering domestic partner benefits to public employees will likely reduce the number of people who are uninsured or who are currently enrolled in Medicaid and other government-sponsored health care programs. A recent study shows that people with unmarried partners—either same-sex or different-sex partners—are much more likely to be uninsured or on Medicaid than are married people (Ash and Badgett, 2006). One in five people with a same-sex partner are uninsured, as noted above. Otherwise, the state will likely be responsible for at least some of the costs associated with uncompensated care for the uninsured (Hadley and Holahan, 2003). Similarly, some members of same-sex couples who receive Medicaid might become eligible for and will shift to a partner's state health insurance. Such effects will tend to offset the cost of providing coverage to domestic partners of state employees.

The state will likely see lower costs associated with worker turnover when offering domestic partner benefits. A recent study shows that partner benefits reduce gay, lesbian, and bisexual workers' turnover and increase their commitment to firms (Ragins and Cornwell, forthcoming). The authors of this study also conclude that domestic partner benefits are likely to be a powerful recruiting tool for employers that will help offset the cost of providing the benefits.

In order to remain attractive to current or potential employees who have or might someday have domestic partners, the State of New Hampshire will need to offer comparable benefits. Some recent evidence suggests that employees make decisions about job offers based on domestic partner benefits. A March 2003 poll by Harris Interactive/Witeck-Combs found that almost half (48%) of lesbian, gay, and bisexual

employees said that partner benefits would be their most important consideration if offered another job.

This evidence suggests that partner benefits will become increasingly important in competing for talented and committed employees of all sexual orientations. Recruitment and turnover are costly for employers, although the cost varies from job to job (Tziner and Birati, 1996). For example, one recent study calculated the training, vacancy, hiring, and recruiting costs for a registered nurse to be \$62,000 to \$67,000 (Jones, 2005, p. 44). Since partner benefits are expected to reduce turnover and to make state employment more attractive, turnover costs are likely to fall, offsetting at least some of the added expenses.

**Conclusion**

For the foregoing reasons, your Amici respectfully request that the Court affirm the decision of the Superior Court and grant such further relief as is just and proper.

Respectfully submitted,

---

Michael C. Reynolds, General Counsel  
State Employees Association  
105 North State Street  
Concord, New Hampshire 03301  
(603)271-6384

---

Teresa D. Donovan, Esquire  
Director of Field Services  
And Collective Bargaining  
AFT-New Hampshire  
553 Route 3A, Ruggles IV  
Bow, New Hampshire 03304  
(603)223-0747

and

---

James F. Allmendinger  
Staff Attorney  
NEA-New Hampshire  
9 North Spring Street  
Concord, New Hampshire 03301  
(603) 224-7751

**ORAL ARGUMENT**

Your Amici do not request an opportunity to present oral argument.

**CERTIFICATE**

I hereby certify that two copies of the foregoing Brief have this day been mailed first class mail, postage pre-paid, to Counsel for the Plaintiffs and to Michael K. Brown, Senior Assistant Attorney General, New Hampshire Department of Justice.

Dated: \_\_\_\_\_

---

James F. Allmendinger



**APPENDIX**

# The Financial Impact of Domestic Partner Benefits in New Hampshire

DECEMBER 2006



*the*  
Williams  
INSTITUTE

M. V. Lee Badgett, Ph.D.

[Badgett@law.ucla.edu](mailto:Badgett@law.ucla.edu)

The Williams Institute on Sexual Orientation Law and Public Policy

UCLA School of Law

## The Financial Impact of Domestic Partner Benefits in New Hampshire

What would be the financial implications of offering domestic partner benefits to state employees in New Hampshire? Recent scholarly research and information from government agencies lead to the following findings:

1. *Health insurance benefits are an important form of compensation, and employers are important sources of health care coverage.*
2. *Employers are increasingly offering the same health care benefits to the same-sex domestic partners of their employees as are offered to spouses of employees.*
3. *Health care costs for the State and local employers would increase by a small amount.*
4. *Some of the added cost to the State will be offset by lower spending on Medicaid and uncompensated health care, and by lower training and recruitment costs.*

Below we present calculations and summaries of studies that generate these claims.

### **1. Health insurance benefits are an important form of compensation, and employers are important sources of health care coverage.**

Health insurance is a common form of compensation offered by employers to their employees. In 2006, 70% of workers in the private sector were offered health insurance through their employers (U.S. Bureau of Labor Statistics, 2006). The strong link between health insurance and compensation derives from the historical development of compensation practices, not from family policy (Badgett, 2001). Wage and price controls during World War II led to the provision of health benefits for a family's wage earner instead of direct pay increases (*see* Badgett, 2001 for further discussion).

The historical linkage of health insurance and employment has led to a reliance on employer-provided health coverage in this country. In the United States, almost 60% of people under 65 get health insurance through their own employment or the employment-based health insurance of a family member (Mills, 2002).

Without access to family coverage, the same-sex partners and children of gay, lesbian, and bisexual employees are vulnerable to a lack of coverage. Indeed, a recent study demonstrates that 20% of people in same-sex couples lacked health insurance (Ash & Badgett, 2006). People in same-sex couples were twice as likely as married people to be uninsured (Ash & Badgett, 2006).

### **2. Employers are increasingly offering the same health care benefits to the same-sex domestic partners of their employees as are offered to spouses of employees.**

## The Financial Impact of Domestic Partner Benefits in New Hampshire

Increasingly, U.S. employers are also covering the same-sex domestic partners of employees in the same way that spouses are covered. In 1990, only a handful of employers offered domestic partner benefits, but the number increased dramatically through the 1990s into this decade (Badgett, 2001). In 2006, one organization that tracks employer policies lists 9,384 employers offering health benefits to the domestic partners of employees (Human Rights Campaign, 2006). Recent surveys of U.S. employers find that 14% to 56% of employers now provide health care coverage to partners (Luther, 2006). More than half of the Fortune 500, or 264 firms, offer domestic partner benefits (Human Rights Campaign, 2006).

The same trend is clear in New Hampshire. Many New Hampshire employers already offer domestic partner benefits to employees, including C&S Wholesale Grocers, Inc., Dartmouth College, Fisher Scientific International, Sigarms, Inc., and Timberland Co. (Human Rights Campaign, 2006). The University System of New Hampshire (USNH) also offers health, dental, and life insurance benefits to the same-sex domestic partners of its employees. USNH has developed a set of criteria, affidavit forms, and information that allow employees to designate and enroll a domestic partner.

A recent tally by Gay and Lesbian Advocates & Defenders of the largest private service sector and manufacturing employers in New Hampshire confirms that domestic partner benefits are common. Data was available for 29 of the top 40 service sector companies, and 28 of the top 40 manufacturing employers in the state. Sixteen manufacturing employers accounting for 70% of employees (in the 28 companies) offer domestic partner benefits. Twenty-two service sector employers accounting for 67% of employment (in the 29 companies with data) offer domestic partner benefits.

From another perspective, New Hampshire's government peers increasingly cover their own employees. Thirteen states (California, Connecticut, Illinois, Iowa, Maine, Montana, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington) and the District of Columbia, along with 137 cities and counties, provide coverage to domestic partners of state or local government employees (Human Rights Campaign, 2006).

Overall, the State of New Hampshire's public sector peers and labor market competitors in government and the private sector are increasingly likely to offer domestic partner benefits to same-sex partners of employees.

## The Financial Impact of Domestic Partner Benefits in New Hampshire

### 3. Health care costs would increase by a small amount.

State spending on health care and dental benefits for state employees' dependents would rise slightly if the state covered the domestic partners of employees. To calculate the cost increase to the state, this report uses FY 2007 working rates and enrollment figures (Dept. of Administrative Services Risk Management Unit, 2006). Based on the experience of other employers, approximately 0.5% of New Hampshire active and retired state employees who receive health care benefits, or 173 people, are likely to sign up a domestic partner (Badgett, 2000; Ash & Badgett, 2006). Also, I assume that the employees with domestic partners are spread out across the various plans in the same way that current employees and retirees are distributed. By using the above numbers I calculate that the State would see a total increase in health care and dental costs of \$1.3 million. Compared with total spending on medical and prescription coverage of \$214 million, the cost increase is a very small 0.6% rise. Spending in the retirement system would be unlikely to increase, since employees can already designate anyone as a beneficiary for retirement and death benefits.

### 4. Some of the added cost to the state will be offset by lower spending on Medicaid and uncompensated health care and by lower training and recruitment costs.

Offering domestic partner benefits to public employees will likely reduce the number of people who are uninsured or who are currently enrolled in Medicaid and other government-sponsored health care programs. A recent study shows that people with unmarried partners—either same-sex or different-sex partners—are much more likely to be uninsured or on Medicaid than are married people (Ash & Badgett, 2006). One in five people with a same-sex partner are uninsured, as noted earlier. That study also finds that if employers offer domestic partner benefits, some people who are currently uninsured are likely to receive insurance. Therefore, it is likely that the state is already responsible for at least some of the costs associated with uncompensated care for the uninsured (Hadley & Holahan, 2003). Similarly, some members of same-sex couples who receive Medicaid might become eligible for a partner's state health insurance and will shift to such coverage. Both effects will tend to offset the cost of providing coverage to the domestic partners of state employees.

The state will also likely see lower costs associated with worker turnover when offering domestic partner benefits. A recent study shows that the extension of partner benefits has the effect of reducing gay, lesbian, and bisexual employee turnover and increasing their commitment to firms (Ragins & Cornwell, forthcoming). The authors of this study also conclude that domestic partner benefits are likely to be a powerful recruiting tool for employers that will help offset the cost of providing the benefits.



## The Financial Impact of Domestic Partner Benefits in New Hampshire

In order to remain attractive to current or potential employees who have or might someday have domestic partners, the State of New Hampshire will need to offer comparable benefits. Some recent evidence suggests that employees make decisions about job offers based on domestic partner benefits. A March 2003 poll by Harris Interactive/Witeck-Combs found that 6% of heterosexual workers reported that domestic partner benefits would be the most important factor in deciding to accept a new job-more than those who would look for on-site child care. In that study, almost half (48%) of lesbian, gay, and bisexual employees said that partner benefits would be their most important consideration if offered another job. Furthermore, 7% of heterosexual workers who actually changed jobs reported that partner benefits were the most important factor in that decision-a factor almost as common as changing jobs for better retirement benefits (12%).

This evidence suggests that partner benefits will become increasingly important in competing for talented and committed employees of all sexual orientations. Recruitment and turnover are costly for employers, although the cost varies from job to job (Tziner & Birati, 1996). For example, one recent study calculated the training, vacancy, hiring, and recruiting costs for a registered nurse to be \$62,000 to \$67,000 (Jones, 2005). Since partner benefits are expected to reduce turnover and to make state employment more attractive, turnover costs are likely to fall, offsetting at least some of the added expenses.

December 2006

WILLIAMS INSTITUTE STUDY

## The Financial Impact of Domestic Partner Benefits in New Hampshire

### References

Ash, Michael and Badgett, M. V. Lee. 2006. "Separate and Unequal: The Effect of Unequal Access to Employment-Based Health Insurance on Same-sex and Unmarried Different-sex Couples." *Contemporary Economic Policy* 24 (4): 582-599.

Badgett, M. V. Lee. 2001. *Money, Myths, and Change: The Economic Lives of Lesbians and Gay Men*. Chicago and London: University of Chicago Press.

Badgett, M. V. Lee. 2000. "Calculating Costs with Credibility: Health Care Benefits for Domestic Partners." *Angles* 5(1): 1-8. [http://www.iglls.org/media/files/Angles\\_51.pdf](http://www.iglls.org/media/files/Angles_51.pdf) (accessed December 22, 2006)

DeNavas-Walt, Carmen, Proctor, Bernadette D., Lee, Cheryl Hill and U.S. Census Bureau. 2006. "Income, Poverty, and Health Coverage in the United States: 2005." *Current Population Reports* P60-231. <http://www.census.gov/prod/2006pubs/p60-231.pdf> (accessed Dec. 4, 2006).

Dept. of Administrative Services Risk Management Unit, State of New Hampshire. 2006. *Self-Funded Employee and Retiree Health Benefit Program: Annual Report*. Concord: State of New Hampshire.

Hadley, Jack and John Holahan. 2003. "How Much Medical Care Do the Uninsured Use, and Who Pays For It?" *Health Affairs* 22:66-81. <http://content.healthaffairs.org/cgi/content/abstract/hlthaff.w3.66v1> (accessed Dec. 20, 2006).

Human Rights Campaign, 2006. Private Sector Employer Database. [http://www.hrc.org/Template.cfm?Section=Search\\_the\\_Database&Template=/CustomSource/WorkNet/srch.cfm&searchtypeid=1&searchSubTypeID=1](http://www.hrc.org/Template.cfm?Section=Search_the_Database&Template=/CustomSource/WorkNet/srch.cfm&searchtypeid=1&searchSubTypeID=1) (accessed Dec. 20, 2006).

Jones, Cheryl Bland. 2005. "The Costs of Nurse Turnover, Part 2: Application of the Nursing Turnover Cost Calculation Methodology." *Journal of Nursing Administration* 35(1):41-49.

Luther, Samir. 2006. *Domestic Partner Benefits: Employer Trends and Benefits Equivalency for the GLBT Family*. Washington, D.C.: Human Rights Campaign. [http://www.hrc.org/content/NavigationMenu/Work\\_Life/Get\\_Informed2/The\\_Issues/DomesticPartnerBenefits-March2006-Final.pdf](http://www.hrc.org/content/NavigationMenu/Work_Life/Get_Informed2/The_Issues/DomesticPartnerBenefits-March2006-Final.pdf) (accessed Dec. 20, 2006).

Mills, Robert J. and U.S. Census Bureau. 2002. "Health Insurance Coverage: 2001." *Current Population Reports* P60-220. <http://www.census.gov/prod/2002pubs/p60-220.pdf> (accessed



## The Financial Impact of Domestic Partner Benefits in New Hampshire

Dec. 20, 2006).

Ragins, B.R. and Cornwell, J.M. 2007. "We Are Family: The Influence of Gay Family-Friendly Policies on Gay, Lesbian and Bisexual Employees," in M. V. Lee Badgett and Jefferson Frank, eds. *Sexual Orientation Discrimination: An International Perspective*. Oxford: Routledge Iaffe Advances in Feminist Economics.

Tziner, Aharon and Assa Birati. 1996. "Assessing Employee Turnover Costs: A Revised Approach." *Human Resources Management Review* 6(2): 113-122.

U.S. Bureau of Labor Statistics, U.S. Department of Labor 2006. *National Compensation Survey: Employee Benefits in Private Industry in the United States*. Washington, DC: U.S. Department of Labor. <http://www.bls.gov/ncs/ebs/sp/ebsm0004.pdf> (accessed Dec. 4, 2006).

December 2006

WILLIAMS INSTITUTE STUDY