

Report of the Domestic Partner Benefits Committee

To: University Senate

From: Margaret Severson, Chair (Faculty)
Emma Halling, Member (Student)
Natalie Parker, Member (Unclassified Staff)
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Re: Report of the Domestic Partner Benefits Committee

Date: Revised and Resubmitted 03/27/2015

Charges to the Committee; Meetings; Guiding Policies

In January 2014, the above referenced faculty and staff were asked by then University Senate President Nancy Kinnersley to join the newly formed University Senate Domestic Partner Benefits Committee. As context for the work of this new committee, the 2010 *Report of the University Senate Task Force on Domestic Partner Benefits* was reviewed, and it is understood that the formation of this 2014 committee was designed to reexamine “the issues and possibilities” raised in this Task Force’s report, “in light of recent developments.”

Specifically, in 2014 the Domestic Partner Benefits Committee received these charges:

- 1) The committee should update the findings of the 2009 study on expansion of domestic partner benefits. In doing so, it should reflect both changes that have been made at KU and in the larger society since the production of that report. Changes should include the expansion of bereavement benefits, Supreme Court rejection of key provisions of the Defense of Marriage Act, the Affordable Care Act, etc.
- 2) Determine if there is evidence that domestic partnership benefits could affect KU’s competitiveness in recruitment and rates of retention of faculty and staff, giving particular attention to matters of diversity and equity.
- 3) Identify the necessary steps that the University of Kansas would need to follow to adopt domestic partnership benefits for employees of the University.
 - a) Note the sources of authority for any changes in benefits policy that might be recommended, e.g., changes in statute, Regents’ policy, or KU policy.
 - b) Note how KU’s peer institutions have implemented domestic partnership benefits.
 - c) Examine the feasibility of recognizing legal marriages and partnerships from other states that are not currently recognized in Kansas.
 - d) Report plan and recommendation for action to SenEx by March 1, 2014.

Work of the Committee

While the Committee met several times (February 13, March 28, April 24 [in part with Rachel Rolf, KU Associate General Counsel]) in spring 2014, we did not meet in fall 2014.¹

At the outset it is important to note that, in pertinent parts, KU's Nondiscrimination, Equal Opportunity, and Affirmative Action policy (<http://policy.ku.edu/IOA/nondiscrimination>) last reviewed 12/14/2014, reads as follows:

“Specifically, the University of Kansas prohibits discrimination on the basis of race, color, ethnicity, religion, sex, national origin, age, ancestry, disability, status as a veteran, sexual orientation, marital status, parental status, gender identity, gender expression and genetic information in the University’s programs and activities.

...

The University of Kansas is committed to the full participation of previously excluded or neglected classes of people. Thus, it is also the policy of the university to prohibit discrimination on the basis of sexual orientation, marital status, parental status, gender identity, and gender expression. The university's nondiscrimination policy extends to employment practices, conditions of employment, personnel actions and all other educational programs and activities of the university and its affiliates. It also extends to any retaliatory actions by an individual and his/her associates that may arise as a result of a discrimination complaint. Leaders in the university community continuously examine all areas of the institution, make policy decisions, and implement strategies to eliminate and prevent discrimination wherever necessary.”

This policy can be construed to support the provision of domestic partner benefits, though as will be seen and consistent with the findings of the Task Force in 2010, the University of Kansas continues to “discriminate against KU faculty and employees with domestic partners” (p. 2; 2010 Report). Further, Kansas state statutes and Board of Regents’ policy have not changed in this regard over time and thus set the tone for discriminatory practice, and regretfully, in a very recent widely-publicized statement, Governor Sam Brownback rescinded former Governor Kathleen Sebelius’s executive order banning state agencies from discriminating on the basis of sexual orientation or gender identity. While the Governor’s action is not directly applicable to KU’s nondiscrimination policy, and Chancellor Gray-Little quickly issued an email assuring the KU faculty, staff, and student body of the university’s commitment to inclusiveness “without

¹ The Chair takes full responsibility for not having submitted this report earlier; my responsibilities for the university and the School of Social Welfare since May 2014 definitely drew my attention elsewhere. That said, I can assure you that I and all of the members of this committee are deeply committed to seeing that the full array of benefits offered to faculty, staff, and students at the University of Kansas be realized for domestic partners.

fear of discrimination,”² it can be viewed as one more hostile gesture in the effort to secure rights and benefits for the domestic partners of KU’s faculty, staff, and student constituents.

This report, and the committee’s discussions and inquiries should be viewed within the frame set forth by the KU anti-discrimination policy provisions.

Update on 2009 Findings

Much has happened on the national judicial scene since the 2009 study on expansion of domestic partner benefits at KU and its peer institutions. Most notable is the number of states that now recognize same-sex marriage or issue marriage licenses to same-sex couples. When Alabama began issuing marriage licenses to same-sex couples on February 9, 2015, the number of states to do so rose to 37. While the U.S. Supreme Court is expected to rule on the constitutional guarantee, if any, of Americans’ right to enter into same-sex marriage, clearly the majority of the separate states has determined the legality, under state statute or judicial order and with the compliance of the clerks who issue marriage licenses, of same-sex marriage.

As important as these state and federal court decisions are to same-sex marriages, as to the issue at hand in this report, they are only relevant to same-sex marriages. Presumably, if the US Supreme Court finds same-sex marriage to be a constitutional right of all Americans, all Kansas authorities will be forced to issue the relevant marriage licenses, and the benefits now available to “spouses” of KU faculty, staff, and students will be available to all spouses. This committee believes that, in the effort to attract and maintain the best of faculty, staff, and student contingents, the domestic partner benefit agenda must include same and other sex partners who remain committed and unmarried.

KU Associate General Counsel Rachel Rolf, in a meeting with the committee on April 24, 2014, indicated that Kansas Revised Statute 23-101³ had not changed to include partnerships other than that of “two parties who are of opposite sex.” The *Kansas Marriage Amendment*, a legislatively backed constitutional amendment approved by Kansas voters (with 70% of the vote) in 2005, similarly defined marriage as “a civil contract between one man and one woman only...,” but was declared unconstitutional by a three judge panel of the 10th Circuit Court of Appeals in June 2014. In a complex series of court decisions since, during which time some marriage licenses were issued to same sex couples in Kansas, the matter is now pending in the United States Supreme Court with hope of a final resolution to come in summer 2015.

² <http://chancellor.ku.edu/news/2015/feb11>

³ KSA [23-101](#) reads: Nature of marriage relation. (a) The marriage contract is to be considered in law as a civil contract between two parties who are of opposite sex. All other marriages are declared to be contrary to the public policy of this state and are void. The consent of the parties is essential. The marriage ceremony may be regarded either as a civil ceremony or as a religious sacrament, but the marriage relation shall only be entered into, maintained or abrogated as provided by law.

In addition to identifying Kansas regulations governing the definition of marriage, Ms. Rolf indicated that in its development of policy for state universities, the Board of Regents is bound by "... the laws of the State of Kansas and the United States"⁴ and is thus without power to grant benefits to university members and their domestic partners.

Finally, Ms. Rolf also referenced challenging tax and regulatory implications to providing domestic partner (regardless of the terms used) benefits coverage.

The Relationship between Recruitment, Retention and Benefits

Ms. Rolf indicated to the Committee that there are no data collected by the University regarding the number of employees and students who decline to come to KU because of KU's limited benefits, or of the number of employees and students who leave KU because of its limited benefits. Obviously, this is critical information that goes to the determination of the potential impact of offering domestic partner benefits. Anecdotally, many of our peer institutions identify recruitment and retention as driving issues behind the development of their policies.

Peer Institutions

As its first task and spearheaded by Emma Halling and members of Student Senate, this Committee sought information regarding KU's peer institutions' policies on domestic partner benefits. The selection of peer universities chosen for this inquiry was based on those institutions identified in KU's **Bold Aspirations**⁵ initiative. As a template, we borrowed the format of Table 1 found in the 2010 Taskforce report, and added all of the identified peer institutions for comparison purposes. The information contained in the Table on page 5 of this report is updated to reflect the relevant benefit information available on these peer universities' websites as of February 2015, as well as updated information that KU Human Resources provided as of March 26, 2015. This new information serves as the catalyst for the submission of this revised report.

Of note in this Table is that every peer university except for the University of Virginia offers a range of domestic partner benefits, and most offer what are considered the premier benefits, i.e., medical and dental insurance, albeit in some cases, not using the term domestic partners to describe the recipients of coverage. Even in the case of the University of Virginia, its President has been quoted as clearly favoring same sex partner benefits.

⁴ See, Chapter 1: Board of Regents Members, Operations and Staff 3(a)(i)(4) @ http://www.kansasregents.org/about/policies_by_laws_missions/board_policy_manual_2/chapter_i_board_of_regents_members_operations_and_staff_2/chapter_i_full_text#basic

⁵ See, <http://provost.ku.edu/sites/provost.drupal.ku.edu/files/docs/strategic-plan-20110914.pdf>; p. 58

	KU ⁶		MICHIGAN STATE ⁷		INDIANA (IU) ⁸		SUNY Buffalo		COLORADO Boulder ⁹		VIRGINIA ¹⁰		FLORIDA UF ¹¹		OREGON ¹²		UNC-CH ¹³		IOWA (UI) ¹⁴		MIZZOU ¹⁵	
	LS	DP	LS	DP	LS	DP	LS	DP	LS	DP	LS	DP	LS	DP	LS	DP	LS	DP	LS	DP	LS	DP
Accidental Death Dismemberm't	X		X	X													X	X	X	X	X	X
Bereavement LV	X	X			X	X															X	?
COBRA	X																				X	X
Dental Insurance	X		X	X	X	X	X	X	X	X			X	X	X	X	X	X	X	X	X	X
EAP	X																					
Family Med Leave	X				X	X			X	X											X	?
Faculty/Family Hous'g	X																X	X				
Flex Spending	X																					
Life Insurance	X		X	X	X	X							X	X			X	X			X	X
Long Term Care	X																					
Medical Insurance	X		X	X	X	X	X	X	X	X			X	X	X	X			X	X	X	X
Parental Leave	X				X	X																
Recreation Fac'Its	X	X																				
Sick Leave	X	X			X	X															X	?

⁶ See Appendix I for a full list of benefits and the scope of their coverage, provided by KU's Human Resources Department on March 26, 2015. Only the KU benefits clearly available to "domestic partners", "qualified adults", and "other qualified adults" are marked on this table.

⁷ Applies to *Other Eligible Individuals* (OEI), see <http://www.hr.msu.edu/benefits/oei.htm>

⁸ See, <http://www.indiana.edu/~uhrs/benefits/dp/dp.html> Other IU benefits e.g. recreational facilities may be provided to DPs; listed by individual programs

⁹ It appears that most benefits are available to same sex DPs, spouses, and common-law spouses; only those specifically mentioned are noted in this table.

¹⁰ Univ. of Virginia does not offer DP benefits; see the strong statement issued by University Senate in 2014. Also see University President's actions in support of same-sex partner benefits @ <https://www.insidehighered.com/news/2014/07/18/partner-benefits-higher-ed-evolve-more-states-recognize-gay-marriage>

¹¹ see, <http://hr.ufl.edu/benefits/new-employees/domestic-partners/> Domestic partners are eligible for all voluntary benefits

¹² " ...Public Employees' Benefit Board extend employee health and dental benefit coverage to [DPs] of all eligible employees, ... June 1, 1998, subject to ...: [DPs] shall include both same gender and opposite gender partners of eligible employees. Coverage shall be provided to domestic partners and their family members to the same extent it is currently provided to family members under current applicable administrative rules." See, <http://uodos.uoregon.edu/Programs/LGBTEducationandSupport/DomesticPartnerBenefits.aspx>

¹³ UNCCH'S benefit programs for domestic partners include student housing, family and parental leave; and three other programs "provided directly by the University." See: <http://hr.unc.edu/files/2012/11/benefitoverview1.pdf>.; in addition, see: <http://hr.unc.edu/benefits/benefit-plans/benefits-eligibility-for-same-sex-spouses/>

¹⁴ <http://hr.uiowa.edu/benefits/domestic-partners> - benefits vary by employment classification

¹⁵ "Sponsored Adult Dependent": @ http://www.umsystem.edu/totalrewards/benefits/sponsored_adult_dependent_ga; "?" indicates these benefits are "under consideration"

Tuition Benefit		X X		X X		X X		X ?
Vision Insurance	X		X X			X X		X X

Benefits at the University of Kansas

The Committee appreciates director Ola Faucher and Human Resources staff efforts to detail the benefits currently offered in part or in whole, to the unclassified professional staff, faculty, academic staff and / or university support staff. The Committee realizes that the desire to offer premium benefits to partners of our faculty and staff is a widely embraced objective by the HR department and across the University.

The reality is that the list of benefits found in the Appendix of this report reveals a patchwork of options which may or may not be available to any one employee group, depending on the authority of the governing unit (the State of Kansas [provision of medical and dental insurance and COBRA], the Kansas Board of Regents [sick leave]; private industry [Employee Assistance Programs; Flex Spending, e.g. NueSynergy], the University of Kansas [bereavement leave], and the actual KU employee [e.g. in the naming of beneficiaries]).

Significantly, this list of “benefits” is not available on the KU website. Indeed, a search of the University website using the term “domestic partners” revealed only a benefit related to access to the KU Recreation Services (<http://recreation.ku.edu/spousedomestic-partner>), and even this policy is difficult to understand with its separate provisions for “spouses” and “domestic partners.” A search using the terms “qualified adult” (see KU’s Bereavement Leave policy) and “other qualified adult” (on the KBOR website, under “sick leave of unclassified employees,” https://kansasregents.org/about/policies_by_laws_missions/board_policy_manual_2/chapter_ii_governance_state_universities_2/chapter_ii_full_text#leaves) reveals different definitions. For example, the KU Bereavement policy requires that the employee has “a committed personal relationship with and shares a common domestic life with a faculty or staff member and has done so for the previous 6 continuous months” (see <http://policy.ku.edu/human-resources/bereavement-leave>).

In sum, what at first glance presents a long and significant list of benefits that may (depending on the status of the employee, the governing unit that administers the benefit, and /or the wishes of the employee) be available to domestic partners or qualified adults or other qualified adults, quickly ends in the realization that the most valuable benefits – medical and dental insurance – are not available to partners of employees, however labeled and defined. As the Table on page 5 shows, 8 of KU’s 10 peer institutions offer health and 9 of 10 peer institutions offer dental benefits to unmarried or same-sex married partners. Further, at least 5 peer institutions offer life insurance to partners and 3 offer tuition benefits.

Committee Findings:

(a) At the present time this Committee is unable to identify any changes in Kansas statutes, Regent's policies, or KU policies that would authorize changes in KU's benefits policy. The pending US Supreme Court decision may have a bearing on certain domestic partners in this regard. The Committee suggests, in the recommendations section that follows, other inquiries that may yield ideas for changes in KU's current benefits policy.

(b) As seen in the Table found on page 5 of this report, most of KU's peer institutions are providing a higher level of benefits, including the premium insurance benefits, to domestic partners. As peer institutions, these are also our competitors for faculty, staff, and students.

(c) The United States Supreme Court may resolve the issue of same-sex marriage during this term. Certain counties in Kansas have already moved to recognize legal marriages between same-sex couples. Domestic partnerships for same sex and opposite sex couples, while authorized in the City of Lawrence and the City of Topeka, are not widely recognized elsewhere in Kansas.

(d) This report was originally submitted to the University Senate Executive Committee on February 23, 2015. This revision is submitted March 27, 2015.

Recommendations

The Committee recommends the University explore how the recent decision to extend federal benefits to same sex couples might impact KU's ability to offer the same, on the basis of KU's receipt of federal funds.

The Committee recognizes there is an urgent need for relevant data that can inform the issue of extending domestic partner benefits to faculty, staff, and students. How many potential employees and students decide not to join the KU family because these benefits are not offered? How many faculty, staff, and students have terminated their affiliation with the University because these benefits are not offered? Have discussions taken place with other Kansas state universities to identify effective strategies to amend the Kansas statutes and Board of Regents' regulations that currently inhibit the offering of domestic partner benefits?

The Committee recommends that a continually updated list of benefits or non-benefits, as the case might be, such as those found in the appendix to this report, be made available in one place on the University of Kansas's website, perhaps cross referenced using the variety of terms now used to describe a significant other living in a committed relationship with a KU employee.

The Committee recommends that the University Senate continue to monitor the status of and changes in the allocation of domestic partner/qualified adult benefits. Consideration should be given to asking that Dr. Nate Thomas, KU's Vice-Provost for Diversity and Equity, be involved in the ongoing efforts with this Committee, to understand the impact of current policies and to track progress in the provision of benefits to domestic partners.

The Committee believes that the provision of benefits to nonmarried committed partners of employees is essential to a mentally and physically healthy workforce and urges the Senate to speak with one voice in its advocacy for changes in State, Board of Regents', and University benefits policies.

Appendix 1: List of Benefits (This list was provided to Committee Chair Margaret Severson, via email, by Ola Faucher, on March 26, 2015)

1. Accidental Death and Dismemberment – this benefit is only provided to eligible employees and they can designate any beneficiary.
2. Bereavement Leave – KU’s bereavement leave policy allows faculty and staff to be granted bereavement leave with pay upon the death of a close relative, the death of a qualified adult, or the death of a close relative of a qualified adult. The definition of “qualified adult” is An individual (other than a close relative, employee, or tenant) who has a committed personal relationship with and shares a common domestic life with a faculty or staff member and has done so for the previous 6 continuous months. <http://policy.ku.edu/human-resources/bereavement-leave>
3. COBRA – this is part of the state of Kansas health insurance program and provides for continuation of health insurance coverage after loss of coverage. The state of Kansas health plan currently defines spouse as a “lawful wife or husband.”
4. Dental Insurance - this is part of the state of Kansas health insurance program and they define who is eligible to be covered under the plan. The state of Kansas health plan currently defines spouse as a “lawful wife or husband.”
5. Employee Assistance Program (EAP) – this benefit is offered by the state of Kansas. EAP services are provided to eligible employees, their family members living in the same household (including same-sex partners) and dependent children. Although this is a state of Kansas program, it has different parameters than the health plan and, per HIPPA, they do not share with the state of Kansas info about who utilizes the program.
6. Family Medical Leave (FMLA) – This is not a separate category of leave but is instead the use of accrued paid or unpaid leave. Based on Kansas Board of Regents policy (see # 14) sick leave can be used by unclassified professional staff, faculty and academic staff for “other qualified adults” (definition provided below). Vacation leave (for those eligible) or unpaid leave can also be used for FMLA leave.
7. Faculty/Family Housing – I believe Student Housing allows domestic partners guest housing or temporary housing in Sunflower apartments. I do not believe they require complex directors to have a “legal spouse.”
8. Flexible Spending – health care flexible spending account expenses can be filed for eligible dependents if the individual can be claimed as a dependent for federal income tax purposes (per NueSynergy, the state of Kansas third party administrator).
9. Life Insurance – this benefit is provided to eligible employees and they can designate any beneficiary.

10. Long Term Care – this benefit is offered by the state of Kansas to eligible employees and other eligible family members, including spouses (as recognized by state law), siblings, parents, in-laws and grandparents.
11. Medical Insurance - this is part of the state of Kansas health insurance program and they define who is eligible to be covered under the plan. The state of Kansas health plan currently defines spouse as a “lawful wife or husband.”
12. Parental Leave – Like FMLA leave, this is not a separate category of leave but is instead the use of accrued paid or unpaid leave. Based on Kansas Board of Regents policy (see # 14) sick leave can be used by unclassified professional staff, faculty and academic staff for “other qualified adults” (definition provided below). Vacation leave (for those eligible) or unpaid leave can also be used for parental leave.
13. Recreation Facilities – Services are provided to domestic partners who can demonstrate shared household status.
14. Sick Leave - Pursuant to Kansas Board of Regents (KBOR) policy, unclassified professional staff, faculty and academic staff may use sick leave for other qualified adults. KBOR defines "other qualified adult" as an individual with a committed personal relationship with an unclassified employee and who lives in such unclassified employee’s household. (Full text of KBOR policy below.)
15. Tuition Benefit – The only benefit offered to any University employee is in-state tuition for children if qualifying and the Coke scholarship for qualifying children. The University also has a tuition assistance program for employees.
16. Vision Insurance - this is part of the state of Kansas health insurance program and they define who is eligible to be covered under the plan. The state of Kansas health plan currently defines spouse as a “lawful wife or husband.”

KBOR Sick Leave policy for faculty & unclassified staff (not university support staff)

“Sick leave with pay may be granted only for the necessary absence from duty because of the personal illness, disability or legal quarantine of the employee; or the personal illness or disability of a member of the employee's family or other qualified adult when the illness or disability reasonably requires the employee to be absent from work. "Personal illness or disability" shall be defined to include pregnancy, termination of pregnancy, adoption, childbirth and the recovery there from. "Employee's family" shall include persons related to the employee by blood, marriage or adoption and minors residing in the employee's residence as members of the employee’s household. “Other qualified adult” means an individual with a committed personal relationship with an unclassified employee and who lives in such unclassified employee’s household.”