

The New York Times

FRIDAY, SEPTEMBER 21, 1990

+

Suit Over Death Benefits Asks, What Is a Family?

By TAMAR LEWIN

In what is apparently the first Federal lawsuit of its kind, the surviving lesbian partner of a deceased A.T.&T. employee has charged the company with discrimination for refusing to pay her the same death benefits it would have paid to a husband.

Sandra Rovira, who filed the suit, says her life with Marjorie Forlini, an A.T.&T. manager who died of cancer two years ago, was as much a marriage as any heterosexual union. The women had even formalized their relationship in a 1977 ceremony for relatives and friends, and they exchanged rings and vows.

"Margie and I bought a house together and raised my kids together, and when she was sick, I washed her, I went to the doctors with her, I prayed with her," said Ms. Rovira, 42 years old, of New Rochelle, N.Y., who was married before she met Ms. Forlini. "She died in my arms. But when I called A.T.&T., they treated me as if I was nothing and our whole relationship was nothing. It was so humiliating. We were a family like any other family, and we deserved to be treated like one."

A.T.&T. says its benefits are for legal spouses only, and since the law does not recognize homosexual unions, it does not either. "We recognize that this is someone who's hurting, but this was not a legally protected marriage," said Maureen Lynch, an A.T.&T. spokeswoman.

With more homosexual couples living openly in long-term relationships, the question of what constitutes a family is becoming a pressing one — for the courts and for employers, whose benefits policies are coming under attack.

Over the last five years, many cities have recognized "domestic partnerships" for some limited purposes. And many other efforts to have the benefits of marriage extended to domestic partners are under way, in legislatures and in the courts.

The changing status of domestic partnerships also affects unmarried heterosexual couples, who face similar problems in obtaining health insurance and death benefits. But unmarried heterosexual couples have the option of getting married.

"I think there will be broader recognition of domestic partnerships

in the next five years, at least in large cities," said Nan Hunter, a professor at Brooklyn Law School and former director of the American Civil Liberties Union's Lesbian and Gay Rights Project. "The law is not very well developed yet, but I expect that there will be more cases in a variety of contexts, asserting that where a nontraditional couple's relationship functions as a marriage, it should be treated as a marriage."

Issues to Be Settled

But even for those sympathetic to the concept, nettlesome questions remain. For while marriage is a clearly defined status, there is no consensus about what constitutes a domestic partnership. Do the partners have to live together? And, if so, for how long? Must they contract to be responsible for each other's support? Or is a simple affirmation of a committed relationship enough? And should there be a formal process for dissolving the partnership?

The question of what constitutes a family comes up in many areas, including housing rights and sick leave plans:

¶ In 1989, New York's highest court ruled that a gay couple was legally considered a family under New York City's rent control laws. At the same time, the city board of education is being sued by gay teachers seeking health insurance for their domestic partners.

¶ Municipal employees in several cities, including Los Angeles, Madison, Wis., and Berkeley, Calif., are entitled to sick leave to care for a domestic partner, or bereavement leave to attend the partner's funeral. A law with similar provisions was adopted, then overturned by a referendum, in San Francisco, and will soon be back on the ballot. And in Seattle, a law was passed giving benefits to city employees' partners, but it now faces an active repeal initiative.

¶ A few unions and municipalities, and a handful of private employers, including the American Psychological Association, The Village Voice and Ben & Jerry's Homemade Inc., the Vermont-based ice cream company, offer health insurance to the domestic partners of their employees or members. But the Internal Revenue Service recently ruled that the cost of insurance premiums is taxable income for the domestic partner.

¶ Several places, including West Hollywood, Calif., Ithaca, N.Y., and Madison, allow all residents, not just municipal employees, to register domestic partnerships with the municipi-

pal clerks. Because private employers are not compelled by law to offer benefits to domestic partners, registering might not result in any tangible benefits, but it might help to establish the right to family membership rates at the local Y, or to visiting privileges when one partner is hospitalized.

Many experts on family law and domestic partnerships see such registrations as a necessary first step toward the widespread recognition of domestic partnerships. And, they say, homosexual partners are not the only ones who stand to gain.

"People may think of this as primarily a gay issue, but in the places where domestic partnerships are being recognized, the majority of those who take advantage of it are unmarried heterosexual couples," said Arthur Leonard, a New York Law School professor who writes a newsletter on gay issues.

Many municipalities that have been offering benefits to domestic partners agree, saying that about half the participants are unmarried heterosexuals.

Despite the new policies of a few employers and municipalities, advocates for gay people say changing something as fundamental as society's concept of a family is not quick work.

"It's a real uphill battle," said Paula Ettelbrick, legal director of the Lambda Legal Defense and Education Fund, a New York-based gay rights advocacy group, and the lawyer who is representing Ms. Rovira against A.T.&T. "We're talking about overhauling a whole system that was based on the 1930's family consisting of a male wage-earner, a nonworking wife and some kids."

Lag in Benefits Programs

Ms. Ettelbrick said the A.T.&T. case, filed last month in Federal District Court in Manhattan, is a perfect example of how changes in social realities have outpaced employer benefits.

"They have a corporate policy that, like a lot of corporate policies, says they don't discriminate on the basis of sexual orientation or marital status," said Ms. Ettelbrick. "But gay and lesbian employees can't get married, so because of their sexual orientation, they're denied the benefits that spouses get, even though, where there's a death, they have the same needs as any other family that's lost a wage-earner."

Experts say private employers have been reluctant to expand benefit

Suit Over Death Benefits Asks, What Is a Family?

packages to include domestic partners. "It's a trend in the public sector much more than in the private sector," said Stephanie Poe, a spokeswoman for the Employee Benefit Research Institute, a nonprofit research group based in Washington. "In this economic climate most employers are not expanding their benefits and would bring in domestic partners only with extensive cost controls, such as imposing waiting periods." She added that they might exclude pre-existing medical conditions, and might refuse to cover those at high risk of serious illness, like those infected with the AIDS virus.

"We talk to employers and unions and insurance companies and the question that always comes up is, where do you draw the line," said Thomas F. Coleman, who heads the Los Angeles-based Family Diversity Project, a nonprofit research and education group. "Having a registration system is very helpful in providing some evidence that the people are not just making it up at the last minute when they want something, but that they have considered themselves a family, and held themselves out as a family all along."

Ms. Forlini and Ms. Rovira clearly considered themselves a family, intermingling their lives and finances for the 12 years before Ms. Forlini's death. Frank and Alfred, Ms. Rovira's two sons, lived with them from the time they were 11 and 8, and Ms. Forlini claimed one or both of them as dependents on her tax returns for many years.

Ms. Rovira took care of Ms. Forlini while she was ill. And when Ms. Forlini died, in 1988, Ms. Rovira and Frank were the ones with her.

The A.T.&T. benefits plan for managers provides for a year's pay to the spouse and unmarried dependent children under 23 of an employee who dies of an illness. In addition, the plan says A.T.&T. may, at its discretion, pay some benefit to other relatives who have been dependent on the employee.

Ms. Forlini's lawsuit seeks damages "in excess of \$75,000." The suit says the company breached its own policy of not discriminating on the basis of sexual orientation or marital status and in so doing violated the Federal pension laws.

'Not for People Like Me'

"I was Margie's executor, and when I was going through her personal things, I saw the pension and benefits book," said Ms. Rovira, who works as a lawyer for the Legal Aid Society. "At first I just put it away, but then I thought I certainly felt like a spouse, so I would call A.T.&T. and ask. Their reaction was that I was being ridiculous, that this was not for people like me. Then as I thought more, I said that even if I didn't qualify, my children probably would."

Ms. Rovira said A.T.&T. told her over the phone that there was no application for benefits and that she would not qualify. Ms. Rovira said she then sent the company a formal request for death benefits, along with extensive documentation of her relationship with Ms. Forlini. She said A.T.&T. did not acknowledge receiving her request until weeks later, when she called to inquire about its status and was told that her claim had been rejected.

A spokeswoman for A.T.&T. said the denial of benefits does not violate the company policy of not discriminating on the basis of sexual orientation or marital status.

"If we have a benefit for spouses and you don't have a spouse, that doesn't mean we've discriminated on the basis of marital status," said Maureen Lynch, of A.T.&T. "If you're single, you're not being discriminated against, you just don't have anybody who's eligible for that benefit. And from a philanthropic standpoint, A.T.&T. has done a lot for the gay community, and is widely considered a very good place for gay people to work."



Marilynn K. Yee/The New York Times

"People may think of this as primarily a gay issue, but in the places where domestic partnerships are being recognized, the majority of those who take advantage of it are unmarried heterosexual couples," said Arthur Leonard, a New York Law School professor who writes a newsletter on gay issues.



Alan Zale for The New York Times

Sandra Rovira, who is suing A.T.&T. for refusing to pay her benefits after the death of her lesbian partner that it would have paid a husband.