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Oakland Faces Legal Fight Over Partners Benefits State agency says policy favors same-sex couples

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A state labor agency plans to sue the city of Oakland over its policy offering medical benefits to city employees' same-sex partners, an action that Governor Pete Wilson says could doom a similar policy just passed by the University of California regents.

State Labor Commissioner Jose Millan said yesterday he will take the city to court if officials don't extend medical benefits currently available to same-sex partners to opposite-sex partners as well.

Oakland officials said they have no intention of changing their policy — despite an order issued by Millan in October. Millan's ruling said the policy discriminates based on sexual orientation, in violation of state law.

``We are going to stand by our policy," said Oakland city attorney Jayne Williams. ``The state can file action to compel us, and at that time, we will argue our position."

Millan's ruling was made after a complaint was filed in July by Majid Ayyoub, an Oakland city employee who was unable to obtain health benefits for his female domestic partner.

The Ayyoub case became a central feature of Governor Pete Wilson's unsuccessful bid to block the UC regents' new domestic partner policy two weeks ago. The regents narrowly approved the new policy — which excludes heterosexual partners — despite Wilson's opposition. [an error occurred while processing this directive] ``We are faced with, at a minimum, the very high risk of being compelled to offer benefits to heterosexual unmarried couples," Wilson said at last month's meeting. ``It appears to be an all-or-nothing proposition."

Millan's ruling was upheld by John Duncan, acting director of the Department of Industrial Relations, on November 14. Both men are Wilson appointees. A number of cities — including San Francisco, Los Angeles and San Diego — offer domestic partner benefits to their employees. But until the regents' decision last month, Oakland was the only governmental body in the state to exclude heterosexual couples.

``Oakland sticks out like a sore thumb," said Ayyoub's attorney, Thomas F. Coleman of Los Angeles.

After Wilson referred to the Oakland case, UC attorneys broadened their policy to include blood relatives who are dependents of UC employees.

The policy, which was ultimately approved in a 13-12 vote, applies to adults ``in a long-term, committed domestic relationship who are precluded from marriage because they are of the same sex or incapable under California law of a valid marriage because of family relationship."

Because UC functions autonomously from other state agencies, UC officials believe the university is not bound by the decision in the Oakland case. ``We see this as no hindrance to the regents' action," said UC spokesman Rick Malaspina.

Wilson argued that if Ayyoub prevails in his case against Oakland, UC would also face lawsuits and be required to broaden its policy as well. He said the policy undermines the institution of marriage and the privileges and benefits available under law to married couples.

Labor Commissioner Millan has not ruled on UC's policy, and no case has been filed with him on the question.

Yesterday, he said the UC policy does not face the same legal problems that Oakland's does.

In addition to the different wording of the two policies, Oakland appears to have run into legal problems because the city first offered dental and vision care to all domestic partners, regardless of sexual orientation, only to later restrict medical benefits to same-sex partners.

``It's not the same thing at all," Millan said yesterday. ``It (UC's policy) is perfectly valid under the labor code. I think it would be fine, as long as it's not based on actual or perceived sexual orientation" but instead on the inability to marry, Millan said last night.

Chronicle staff writer Thaa Walker contributed to this report.

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