STEPS TO NEGOTIATING
LGBT-INCLUSIVE CONTRACT LANGUAGE

While Hawai‘i law protects lesbian, gay, bisexual and transgender workers from discrimination, a union contract with explicit protections - and a union that is a strong advocate for LGBT rights - is still a worker’s best protection. Also, because same-sex couples are not recognized under federal law, protections and benefits for same-sex couples and their families do not automatically apply unless union contract language is specifically inclusive.

Below are steps you can take towards making your union contracts more LGBT-inclusive and towards ensuring all union members under the same contract receive equal benefits and compensation. [Adapted from information provided by Pride At Work, AFL-CIO]

BEFORE YOU BEGIN – RESEARCH
As with any contract negotiation, you need to come to the bargaining table prepared. For each of the areas to follow, consider membership concerns, what objections you might expect from management and gather your facts.

PREPARING FOR MANAGEMENT QUESTIONS
• Do other worksites of this employer and/or other employers in this job sector provide this benefit?
• Does this employer provide this benefit for their corporate office staff?
• Has your Local or International Union negotiated and won these benefits at other sites?
• What would the real costs be for this benefit – and how many (or few) members of the bargaining unit would likely potentially exercise this benefit?

PREPARING YOUR MEMBERSHIP
• Does your union conduct membership meetings, bargaining surveys or other outreach to assess members’ concerns and priorities, and if so, are LGBT-specific issues explicitly included?
• Does your local or international union have a policy, bylaw, or convention resolution calling for LGBT equality and inclusiveness?
• Is your union pro-active in making space for LGBT union members to articulate their concerns? Are there opportunities to educate fellow union members about these issues?
• What kind of education or training does your union conduct with leadership and/or your bargaining team before bringing new issues to the table?
• What resources do you need to raise awareness with your union members, staff and officers?
ISSUE #1: NONDISCRIMINATION PROTECTIONS
While Hawai‘i law now prohibits discrimination in employment on the basis of sexual orientation and gender identity or expression, a union contract is a worker’s best protection from discrimination. It lets your members know that the union supports everyone, and it provides a first level of defense from discrimination by management.

• What language exists in your current contract? Does it cover both sexual orientation AND gender identity and expression?

Sample model language*:
The employer is committed to maintaining a work environment free of harassment, discrimination, intimidation or retaliation. The employer will comply with all applicable federal, state, and local government laws concerning discrimination. The employer further agrees not to discriminate against any employee in policies and practices including, but not limited to: hiring, placement, upgrading, transfer, promotion, demotion, compensation, benefits, job assignment, or discipline, based on categories including, but not limited to: race, religion, sex, age, sexual orientation, gender identity, gender expression, marital status, age, disability, citizenship status, veteran status and union activity.

ISSUE #2: DEFINING SPOUSE, PARTNER AND FAMILIES
One contract section of significant importance to LGBT workers is the definitions section – because our family relationships are not covered under state law in most states. It’s common for employers to want to require extensive “proof of relationship” documentation, including an affidavit, to accept claims of domestic partnership, including proof long-term cohabitation and joint bank accounts and property ownership - far more than any legally married couple would ever be expected to provide.

• In which sections does your contract use words like “spouse” and “family”, such as bereavement leave, pension benefits and access to simple benefits such as fitness club use or company discounts?
• Does your current contract define spouse, partner or “family”?
• Are domestic partnership “proof of relationship” requirements comparable to the burden on heterosexual married couples?

Sample model language*:
Family is defined as the spouse (including domestic partner, and partner in a civil union), children (including step-children, children of domestic partner and partner in a civil union, and hanai children), brother, sister, mother, or father (including hanai mother or father) of an employee. Domestic partners are defined as a same-sex or opposite sex couple who share a committed relationship with an expectation of mutual support, are both of the age of consent in Hawai‘i, and are not married to or in a civil union or domestic partnership with another individual.

ISSUE #3: HEALTH INSURANCE
Unions want to ensure that their LGBT members have equal access to the care they need and benefits for their partners and families just like all the other members in the bargaining unit. Many employers believe that the cost of providing domestic partner benefits is too prohibitive to justify the good will that results from equitable benefits. In practice, however, the cost for most

* We recommend having proposed contract language reviewed by your union’s labor attorney or legal department.
employers is relatively minimal, typically a 1% to 2% increase over current benefit costs, according to a 2006 study by the Williams Institute at UCLA Law School.

- Are domestic partners, partners in a civil union, and same-sex spouses recognized in another jurisdiction covered under your health insurance plan? What steps are required to cover such a partner or spouse?

Most health insurance plans do not currently provide coverage for transgender health care needs, including transition-related services, such as therapy (including voice therapy), hormones, surgical procedures, and electrolysis. Employers and insurers may talk about the significant expense of these procedures. It is important to remember that unlike a benefit such as vision or dental, this is a health benefit that a finite number of members will ever use.

- Are there aspects to health benefits that need to be negotiated directly with the insurance provider?
- Are transgender health care needs included in your plan?

Federal COBRA law does not include domestic partners, so same-sex couples only have COBRA protections for their families if the contract specifies it.

- Do you have contract language on COBRA that extends this benefit to domestic partners?

With the enactment of civil unions in Hawai‘i, same-sex couples may soon be able to file joint state tax returns, but then must still file individually at the federal level. Because of the federal DOMA (so-called “defense of marriage”) law, employees who receive domestic partner benefits for their same-sex partner must pay taxes on that benefit as if it were extra income (unless the partner can be listed as a dependent). This means that, essentially, a worker whose domestic partner is covered on his/her plan is paying more for the same coverage that a married worker gets. To address this lack of parity, some contracts now include reimbursements to employees to cover the added tax burden.

Sample model language*:
In recognition of the added tax burden that results from the disparate treatment in federal and state tax laws of married heterosexual couples and same sex domestic partners, an employee whose health insurance coverage is for himself or herself and a domestic partner shall be reimbursed as follows: The employer shall “Gross Up” the tax liability such that the employee shall be reimbursed in a net amount equivalent to the tax liability incurred by the employee as a result of the treatment of the additional premium as income to the employee. The employee shall demonstrate the additional tax liability by providing exact copies of the filed tax returns of the employee and the domestic partner, as well as a tax return prepared as a joint return for a couple that would be treated as married under the tax laws. These tax returns shall be accompanied by an affirmation (in the case of an attorney employee) or a notarized affidavit (for all other employees), attesting to their financial accuracy.

**Issue #4: FMLA**
The federal Family and Medical Leave Act requires employers to grant an eligible employee up to a total of 12 work weeks of unpaid leave during any 12-month period for the birth and care of a newborn child of the employee, for placement with the employee of a son or daughter for adoption or foster care, to care for an immediate family member (spouse, child or parent) with a

*We recommend having proposed contract language reviewed by your union's labor attorney or legal department.
serious health condition; or to take Medical leave when the employee is unable to work because of a serious health condition.

However, because of DOMA (the so-called Defense of Marriage Act), same-sex couples are still barred from accessing FMLA to care for their partner, because the relationship is not recognized under federal law. NOTE: Under the Obama administration, family definitions were broadened to allow FMLA leave to include children of same-sex couples or other children in non-traditional households (for example, an aunt as the primary caregiver.)

- Does your contract have language that adds FMLA-equivalent coverage inclusive of domestic partners and partners in a civil union?

**Sample model language**:  
*All leaves available to married couples under the federal Family and Medical Leave Act shall be made available to employees in domestic partnerships, civil unions, and same-sex marriages recognized in another jurisdiction; the definition of spouse in the FMLA shall be understood to include domestic partner, partner in a civil union, and same-sex spouse recognized in another jurisdiction, and the definition of child in the FMLA shall be understood to include child of a domestic partner, partner in a civil union, and/or same-sex spouse recognized in another jurisdiction.*

**ISSUE #5: BEREAVEMENT AND COMPASSIONATE LEAVE**

Do your contract provisions for leave in the event of death of a family member include LGBT-inclusive definitions of family?

**Sample model language**:  
*An employee who suffers the death of a spouse or domestic partner, parent, step-parent, sibling, step-siblings, child, step-child, grandparent, grandchild, spouse or domestic partner of a child or step-child, parent of a spouse or domestic partner, or live-in mate or non-traditional family member with whom the employee shared an emotional commitment and interdependence, shall be entitled to __ days’ leave of absence with pay.*

**ISSUE #6: SICK LEAVE**

Does your contract include provisions for members to use their sick leave to take care of a family member? If so, is this contract language inclusive of same-sex partners and their children?

**ISSUE #7: PENSION BENEFITS.**

*In the event of the death of an employee, contracts provide a vital benefit to ensure that union members’ families will be provided for in the wake of that family tragedy. If an employee in a same-sex couple does not specifically designate their domestic partner as the beneficiary for their pension and life insurance, most courts award the benefits to other family members rather than the domestic partner.*

- If the plan is a defined benefit plan or 401(k), the employer or union can allow the union member to designate beneficiaries.

- If the employer or union also offers life insurance, make sure that the plan allows the employee to list anyone, including a domestic partner, as a beneficiary of the life insurance.

* We recommend having proposed contract language reviewed by your union’s labor attorney or legal department.
ISSUE #8: WORKPLACE SAFETY

LGBT workers, and in particular transgender workers, often face high levels of harassment at work. This ranges from verbal harassment to employment discrimination to threats to a workers’ physical safety. All workers deserve a safe and respectful work environment.

- Do you have contract language addressing harassment, bullying or workplace violence?
- Does your union or workplace have education and training programs for union stewards, employees and/or management that focus on workplace safety and issues of respect?
- Is contract or employer “zero tolerance” language inclusive of LGBT issues?
- Do you address workplace safety in labor-management meetings?
- What education and training would be useful for your members, leaders and/or for the employer?

Sample model language*:

*The employer is committed to maintaining a work environment that is as free as possible from acts or threats of violence or intimidation. The employer will make reasonable efforts to ensure the safety and security of all its employees.*

ISSUE #9: INTERNATIONAL UNION BENEFITS.

Does your International Union provide any benefits for members?

- Do you have programs that offer discounted health club memberships, loans, mortgages, credit cards, pharmacy programs or other benefits?
- Review the list of all International Union program benefits and make sure every benefit is available to domestic partners/partners in a civil union/same-sex spouse recognized in another jurisdiction and children if applicable.

* We recommend having proposed contract language reviewed by your union’s labor attorney or legal department.