

# **Equal Opportunity Essentials Kit for Small to Medium Enterprises (SMEs)**



## **The kit contains:**

- Detailing information about EO rights, responsibilities and benefits including a checklist and FAQs
- Fact sheet for employees
- Sample equal opportunity policy
- Sample procedure for handling EO related problems

## Table of Contents

|  |          |
|--|----------|
| Equal opportunity is better for business   | <b>4</b> |
| Getting the most from this kit   | <b>5</b> |
| Your EO essentials kit at a glance   | <b>5</b> |
| <b>Step 1: Understanding equal opportunities: rights, responsibilities, benefits</b>   |          |
| <ul style="list-style-type: none"> <li>• What is EO? <span style="float: right;"><b>6</b></span></li> <li>• What does EO law say? <span style="float: right;"><b>6</b></span> <ul style="list-style-type: none"> <li>➤ Discrimination</li> <li>➤ Sexual harassment, disability and racial harassment</li> <li>➤ Vilification</li> <li>➤ Victimization</li> </ul> </li> <li>• How does EO law apply to your business? <span style="float: right;"><b>11</b></span></li> <li>• What are your responsibilities? <span style="float: right;"><b>12</b></span></li> <li>• Are there any cases when discrimination may be lawful? <span style="float: right;"><b>15</b></span></li> <li>• What happens if someone makes a complaint against my business? <span style="float: right;"><b>17</b></span></li> </ul> |          |
| <b>Step 2: Find out how well your business is meeting its EO responsibilities</b>  |          |
| <ul style="list-style-type: none"> <li>• EO Checklist <span style="float: right;"><b>18</b></span></li> </ul>  |          |
| <b>Step 3: Use our tools to manage EO effectively</b>  |          |
| <ul style="list-style-type: none"> <li>• Sample EO action plan <span style="float: right;"><b>20</b></span> <ul style="list-style-type: none"> <li>➤ Action 1: Have an EO policy</li> <li>➤ Action 2: Have a procedure for handling EO related problems</li> <li>➤ Action 3: Provide regular information about EO</li> <li>➤ Action 4: Appoint an existing and appropriate employee to look after EO</li> </ul> </li> </ul>  |          |
| <b>Step 4: Get help and information</b>  |          |
| <ul style="list-style-type: none"> <li>• Frequently asked questions <span style="float: right;"><b>23</b></span></li> <li>• Information, advice and help with EO <span style="float: right;"><b>28</b></span></li> <li>• Legal assistance and information <span style="float: right;"><b>28</b></span></li> </ul>  |          |
| <b>Tools</b>   |          |
| <ul style="list-style-type: none"> <li>• Fact sheet for employees</li> <li>• Sample equal opportunity policy</li> <li>• Sample procedure for handling EO related problems</li> </ul>   |          |

## **Equal opportunity is better for business**

If you are running one of Hong Kong small to medium enterprises (SMEs), you are probably well aware that managing a successful business is a full-time job.

SMEs are vital to the economy of Hong Kong. To be competitive these days you need to take steps to ensure that you follow the law, and effectively hire and manage staff.

When it comes to your workforce, equal opportunity (EO) is one area you can't afford to ignore. It applies to all businesses regardless of size.

As the examples in this kit show, following EO law offers a number of benefits to business as well as reducing the risk of legal liability, and costly and time consuming disputes. Applied appropriately, EO principles can create a work environment in which everyone can be comfortable, improving staff productivity, morale, and workplace stability. And, because it fosters diversity, EO can promote innovation, open new markets and enhance customer service and satisfaction.

As part of our commitment to establishing a culture of excellence, equality and enterprise, the EOC has worked with SMEs to ensure that this kit contains the information you need. We urge you to take the time to work through it. Following the four simple steps set out in this kit on page 5 and using the tools we have provided will help your business enjoy the benefits of EO as well as meet your obligations.

### **Getting the most from this kit**

This kit has been designed for busy people. It contains a practical outline of everything you need to know about EO. We suggest you go through all the materials if possible, but if time is short you can use the 'Your EO essentials kit at a glance' guide below to quickly find the information you need.

This kit is not a substitute for legal advice. For information and help with individual inquiries or issues, we recommend that you refer to the contacts section on page 28.

## Your EO essentials kit at a glance

|                        |   |
|------------------------|---|
| <b>Step 1</b><br><br>↓ | <b>Understanding equal opportunities: rights, responsibilities, benefits (explained on page 6)</b><br><br>Find out how EO applies to your business, what the law says, employers' responsibilities, defences, when discrimination may not be unlawful.  |
| <b>Step 2</b><br><br>↓ | <b>Use our checklist to find out how well your business is meeting its EO responsibilities (explained on page 18)</b><br><br>A 'good score' is just the beginning. EO is an issue that needs ongoing attention. This kit includes tools to help your business meet its responsibilities and enjoy the benefits of EO. |
| <b>Step 3</b><br><br>↓ | <b>Use the EOC's tools to implement EO effectively (explained on page 20)</b> <ul style="list-style-type: none"><li>● Four-step EO action plan</li><li>● Fact sheet for employees</li><li>● Sample EO policy</li><li>● Sample procedure for handling EO related problems</li></ul>                                    |
| <b>Step 4</b>          | <b>Contact the EOC for information and help (details on page 23)</b><br><br>FAQs, which include many employers' questions about EO and their answers, plus useful contacts.   |

## **STEP 1**

### **Understanding equal opportunities: rights, responsibilities, benefits**

#### **What is EO?**

EO is about respecting differences. In employment this means recognizing and fostering the different strengths and characteristics that people bring to the workplace. It means finding the best person for the job and promoting equality of opportunities regardless of sex, disability, pregnancy, marital status, family status or race. For your business, it means operating and supervising a workplace that is free of unlawful discrimination, harassment, vilification, and victimization, which are explained on pages 7-10.

This kit includes tools developed by the EOC to help you promote equal opportunity and eliminate unlawful workplace behaviour.

#### **What does EO law say?**

The following behaviour is unlawful in the workplace and in the course of employment:

|                       |   |
|-----------------------|---|
| <b>Discrimination</b> | Treating someone less favourably because of a protected characteristic<br><b>(details on page 7)</b>  |
| <b>Harassment</b>     | Unwelcome, abusive, insulting, offensive, seriously embarrassing, threatening, humiliating behaviour of a sexual nature, or based on a person's disability or race<br><b>(details on page 9)</b>        |
| <b>Vilification</b>   | Activities in public that incite hatred, severe ridicule or serious contempt for a disabled person or a person from a particular racial group<br><b>(details on page 9)</b>                             |
| <b>Victimization</b>  | Treating someone less favourably because they or a third person make or intend to make an EO complaint, or take legal action, or because they help someone else to do so<br><b>(details on page 10)</b> |

## Discrimination

It is against the law to treat a job applicant or employee less favourably (discriminate) because of their:

- **Sex**
- **Pregnancy**
- **Disability** – temporary or permanent, past, current, future or presumed, intellectual, psychiatric or physical impairment, including the presence of a virus in the body causing disease or illness. Associates of a person with a disability are also covered
- **Marital status** – being single, married, separated, divorced, or widowed
- **Family status** – being responsible for care of an immediate family member, which includes relatives by blood, adoption and marriage
- **Race** – race, colour, descent, national origin and ethnic origin. Race of near relatives is also concerned.

Equal opportunity law applies to employees as well as employers. Employees have responsibilities as well as rights, just as employers have rights as well as responsibilities. You will find more details about employees' rights and responsibilities in the fact sheet for employees.

Discrimination may be direct or indirect. **Direct discrimination** happens when you treat someone less favourably on one of the above grounds; for example, you do not hire a suitably qualified job applicant because she has two pre-school children and you believe that she will not be committed to the job due to her family status.

Anna applied for a job as a quantity surveyor at a small construction firm. Although Anna seemed to be the best applicant for the job, the owner was worried about hiring her because of her gender. The owner was concerned that this might cause problems in an all-male workplace. However, the owner wanted to be fair and employ the best applicant. A friend who also operated a business told the owner about the EOC. The owner rang the EOC hotline for advice. He found out that it would be unlawful to reject Anna for a position she is qualified simply because she is a woman. The EOC reassured him that other businesses have successfully employed people of a minority gender. Finally, Anna was employed. After a short period of time, she proved to be a productive and valuable worker.

**Indirect discrimination** is often less obvious than direct discrimination. It means imposing the same requirement or condition on everyone where doing so has an unfair effect on a particular group (including people of a particular sex, marital status, family status, race, or people with a disability, or pregnant women). The application of such requirement or condition is not justified in the relevant circumstances.

For example, if a bank only recruits tellers who are at least 5'8" tall, it is likely that more women than men are unable to satisfy this requirement. In fact, there is no reasonable justification for the requirement. You do not need to be a certain height to work as a bank teller. The bank's policy of only recruiting people of a particular height is indirect discrimination. It affects women negatively compared with men as fewer women can meet the requirement than men. In this case the requirement causes indirect sex discrimination.

Lin worked at a clothing factory as a machinist. Her supervisor praised her work. When Lin applied for a promotion, she was unsuccessful. It was because the company had a policy that trainee supervisors must attend training sessions that were held at weekends for convenience. Lin was unable to go to these sessions because she had to take care for her elderly mother on weekends when her mother's carer had time off. Lin was unable to make alternative arrangement. Lin contacted the EOC for advice and found out that the company's policy may constitute indirect discrimination because people with family responsibilities (i.e. with the family status of carer) may be less able to attend weekend training than people without such responsibilities and the company could not justify holding training at weekends. Lin advised her employer of this and they organized training during working hours.

EO can help you keep your best employees and avoid the costs and disruption of recruiting new staff.

## **Sexual harassment, disability and racial harassment**

Sexual, disability and race-based harassment are also against the law. Harassment may happen between employees, between supervisor and employee or employee and supervisor. It may also occur between your staff and your customers.

Unlawful **sexual harassment** is **unwelcome sexual behaviour** that a reasonable person would anticipate, having regard to all the circumstances, it would offend, put down (humiliate), seriously embarrass or threaten (intimidate) another. Examples include inappropriate physical contact (hugging, kissing, touching) and displaying or transmitting sexually explicit material (posters, computer screensavers, cartoons, e-mails).

It is a kind of sexual harassment if a person, alone or together with other persons, engages in conduct of a sexual nature which creates a hostile or intimidating environment for others. For example, loudly discussion about a person's sex life or sex jokes in the office.

**Disability or racial harassment** includes abusive, bullying, or other intimidating and offensive acts based on a person's disability or race, including the disability of the person's associate(s) or the race of his/her near relative(s). For example, calling someone names or making fun of them because of their disability or race.

It is also an unlawful racial harassment if a person, alone or together with other persons, creates a hostile or intimidating environment for others on the ground of race, such as displaying a racist poster in the workplace.

## **Vilification**

It is against the law to **vilify** someone because they have a disability or are from a particular racial group. **Vilification** is any activity in public that incites hatred, severe ridicule or serious contempt for a person with a disability or from a particular racial group. For example, it would be vilification for a supervisor to publicly tell an employee who uses a wheelchair that he was nothing but a useless burden on society. It is also an unlawful vilification if a person publishes racially derogatory remarks against a person with a particular national origin.

**Serious vilification** involves threats of physical harm or damage to property, or incitement of others to these acts on the ground of disability or race. It is a criminal offence punishable with a fine of up to \$100,000 and two years' imprisonment.

## **Victimization**

If people have problems they should be encouraged to raise them or complain. It is unlawful for management or staff to treat them less favourably because they or a third person make or intend to make an EO complaint, or take legal action, or because they help (or intend to help) someone else to do so.

It could be victimization to stop offering a job to a casual employee because that person agreed to act as a witness in a co-worker's sexual harassment case. Likewise, it could be victimization to demote a supervisor who was a complainant of a sexual harassment case.

## How does EO law apply to your business?

EO law applies to business owners / operators, supervisors and all employees, including those on commission, casual workers, and contractors. It covers:

- hiring
- terms and conditions of employment
- pay scales
- benefits of employment
- training
- promotion
- transfers
- dismissal
- redundancy
- termination

Some exceptions apply to employment. See page 15 for details.

EO law also covers **provision of goods, facilities and services, access to premises**, and **disposal and management of premises**, as well as many other areas of public life. Contact the EOC as shown on page 28 for more information.

**Provision of goods, facilities and services** applies to retailers, hotels, guesthouses, restaurants and bars among others. It covers the way you offer customers your goods, facilities or services, the quality of these, and the terms on which you provide them. It would be unlawful for a waiter to refuse to serve a customer because she was pregnant, for example, or for a jewellery shop owner to deny entry to a person with children.

**Disposal and management of premises** covers renting and buying property as well as accommodation. It applies to real estate agents, landlords, property developers, and hostels among others. Refusing a person with a disability access to accommodation or deciding not to rent an apartment to a particular race would both be discrimination if based on disability or race.

## **What are your responsibilities?**

### **Liability for your employees' actions (vicarious liability)**

You are legally liable for all employees' actions done in the course of their employment (in the workplace and outside it and whether or not you knew about it) unless you can show you have taken reasonably practicable steps to prevent the unlawful behaviour. This is known as vicarious liability. It means, for example, that if one of your employees sexually harassed another, the employee who was sexually harassed could make a complaint against you as his/her employer as well as against the person who harassed him/her.

### **Employer's defence (taking reasonably practicable steps)**

If you can show that you have taken reasonably practicable steps to prevent unlawful behavior, you would have a defence to a discrimination, harassment or vilification complaint.

Felix worked as a cook at a busy restaurant. The waitresses used to tease him because he was single and always went straight home after work instead of staying to have a drink with the other staff. The waitresses asked him why he did not like women and suggested that he was gay. One woman, in particular, made many jokes of a sexual nature to Felix. The restaurant owner had taken many steps to meet its EO obligations. It had an EO policy and the manager had given a fact sheet to all staff. In addition the owner told all staff to stop this inappropriate behaviour. If Felix had decided to make a formal complaint against the restaurant, the owner could raise the defence that he took reasonably practicable steps to prevent sexual harassment by having an EO policy, telling staff about it and warning everyone that harassment would not be tolerated in the workplace.

As the employer you are legally liable for the actions of your employees unless you can successfully raise the defence that you have taken reasonably practicable steps to prevent unlawful behaviour from happening.

If someone makes a complaint against an employer, the EOC or court will look at the size and nature of the business when determining what constitutes reasonably practicable steps. Requirements for an SME would not be as strict as for a large, multinational corporation.

By appropriately following our simple four-step EO action plan you should be able to demonstrate that you have taken reasonably practicable steps in the event that an EO complaint arises against you or your business.

|          |   |
|----------|---|
| Action 1 | Have an EO policy<br>(details on page 20 and you can use our sample equal opportunities policy)   |
| Action 2 | Have a procedure for handling EO related issues<br>(details on page 21 and you can use our sample procedure for handling EO related issues) |
| Action 3 | Provide staff with regular information about EO<br>(see fact sheets for employees and FAQs on page 23)                                      |
| Action 4 | Appoint an existing and appropriate employee to handle EO issues at your workplace  |

See pages 20-22 for more detail.

### **Individual liability**

An individual who unlawfully discriminates, harasses, vilifies or victimizes an employee, colleague, supervisor or customer will be legally liable for that behaviour.

### **Liability for helping someone act unlawfully**

A person may be legally liable for helping someone act unlawfully. This could mean intentional aiding, instructing or putting pressure by providing benefit or threatening on someone to discriminate against, harass, vilify or victimize another.

## **Reasonable accommodation**

The law requires you to make any reasonable changes to work practices or facilities that would make it possible for a person with a disability to do a job. This is known as **reasonable accommodation**. Examples include:

- adapting recruitment procedures, for example, allowing a person with a visual impairment to take an oral selection test rather than a written test
- modifying business premises to provide facilities such as a ramp allowing wheelchair access
- changing work schedules, for example, allowing an employee with Diabetes nonstandard breaks to eat or administer insulin as required to maintain healthy blood sugar levels

By making reasonable accommodation for an employee who can do the job (unless doing so will cause you unjustifiable hardship – explained on page 16), you will enjoy the benefit of having a competent and productive staff member as well as meeting your legal obligations. You might even increase business by broadening your appeal to different markets.

## **Are there any cases when discrimination may be lawful?**

EO law recognizes that businesses must operate competitively. In certain limited circumstances it will not be unlawful to discriminate:

1. when sex, race or absence of a disability is a **genuine occupational requirement**
2. when a person is unable to carry out the **inherent requirements** of the job because of his/her disability
3. when accommodation for persons with disabilities would cause an employer **unjustifiable hardship**

### **Genuine occupational requirement**

Sex would be a genuine occupational requirement for an attendant in a women-only changing room.

An employer would not have to employ a wheelchair user who applied for a position as a resident caretaker in their establishment. As long as the building has no suitable accommodation or toilet facilities for persons with disabilities and making those facilities available will create unjustifiable hardship to the establishment.

In addition, an employer can hire a person of a particular racial group if the job requires authenticity of a photographic model in the production of visual images.

### **Inherent requirements of the job**

EO law does not require you to employ a person who cannot do the job. For example, it may not be unlawful discrimination to refuse to hire a person with a visual impairment as a security guard, where being able to see is an essential condition to achieve the inherent requirements of the job.

## **Unjustifiable hardship**

Whether reasonable accommodation for employees with disabilities would cause **unjustifiable hardship** will depend on the following:

- What is the nature of the accommodation? Is it **reasonable**? What will it cost?
- How does the disability limit that person in doing a certain job?
- What are the **financial circumstances** of the employer?
- What is the nature of any benefit or detriment likely to accrue or be suffered? For example, a ramp to accommodate an employee who uses a wheelchair would also benefit customers who use wheelchairs and parents with prams.

## **What happens if someone makes a complaint against my business?**

If someone makes a complaint against you, it may be by issuing a writ at the District Court or lodging a complaint with the EOC. The following is a summary of what will happen if a complaint comes to the EOC. For more information about complaints (including how we handle them), contact the EOC hotline at 2511 8211 or visit the EOC website at [www.eoc.org.hk](http://www.eoc.org.hk).

### **1. The EOC investigates the complaint**

Complaints must be in writing. The EOC will investigate the complaint if it is about something that is against EO law.

### **2. Where appropriate, the EOC conciliates the complaint**

This is a confidential meeting of all sides to try and resolve the issue. Attending a conciliation meeting does not mean that you admit legal liability; you simply agree to try and sort things out. If conciliation is not successful, the person making the complaint may decide to take legal action. For more details, ask for our free brochure, *What is conciliation?*

If you would like more information, have a look at the FAQs on page 23, call the EOC hotline at 2511 8211, or visit the EOC website at [www.eoc.org.hk](http://www.eoc.org.hk).

Now that you have learned about EO, you can find out how well your business is managing its EO responsibilities by moving to Step 2 and completing our checklist on page 18.

## **STEP 2**

### **Find out how well your business is meeting its EO responsibilities**

#### **Checklist**

Use this checklist to find out how well your business is meeting its EO responsibilities. This kit includes tools to help you implement EO effectively, starting with a simple four-step EO action plan on page 20 - 22. The EOC can also help with information, advice and training (see page 28 for details).

#### **Place a tick in the applicable box.**

Q1. Do you have an EO policy?

- yes**                       **no (see sample EO policy)**

Q2. Is EO part of all your work practices, from advertising job vacancies and recruitment to termination?

- yes**                       **no (see sample EO policy)**

Q3. Do you have a procedure for resolving EO related problems?

- yes**                       **no (see sample procedure for handling EO related problems)**

Q4. If you have an EO policy and / or procedure for resolving EO related problems, have you taken action to ensure all staff have read it/them and know where to obtain a copy/ies if necessary?

- yes**                       **no (more details in our EO action plan on page 20-22)**

Q5. Have you taken action to ensure all employees understand what is and is not acceptable behaviour in the workplace?

- yes**                       **no (more details in our EO action plan on page 20-22)**

Q6. Have you made it clear to staff that discrimination, harassment, vilification and victimization will not be tolerated, and that any issues or complaints will be handled as fairly as possible without victimization of the person who raises the problem?

- yes**                       **no (more details in our sample EO policy and sample procedure for handling EO related problems)**

Q7. Do you give all staff regular information and training about EO?

- yes**                       **no (more details in Action 3 of our EO action plan on page 20-22)**

Q8. Is someone responsible for EO at your workplace?

- yes**                       **no (more details in our EO action plan on page 20-22)**

Q9. Do staff know who the person responsible for EO is?

- yes**                       **no**

| ANSWER   | COMMENT   |
|--|---|
|  <b>9 yes's</b>     | You are doing very well. We suggest that you continue the good work by regularly reviewing your EO policies and work practices. |
|  <b>6 - 8 yes's</b> | Your company has made a good start at implementing EO. Use the tools in this kit to focus on the areas you have not completed.  |
|  <b>3 - 5 yes's</b> | You have some way to go in implementing EO and this kit contains a number of tools to help you.                                 |
|  <b>0 - 3 yes's</b> | Your EO implementation is incomplete. Please read this kit and get more information from the EOC.                               |

## **STEP 3**

### **Use our tools to manage EO effectively**

Now that you have completed our checklist, you will have a better idea of how much work your business needs to do to manage EO effectively. This section of the kit includes tools to help you.

A simple 4-step EO action plan

- A fact sheet for employees which you can photocopy or upload to company's intranet to distribute to staff
- A sample EO policy which you can adapt and use
- A sample procedure for handling EO related problems which you can use or adapt

### **Sample EO action plan**

#### **Action 1: Have an EO policy**

It is important to make a formal statement of commitment to EO through a policy. You, as owner or manager of the business, should endorse this written policy with the company chop. You should then display or circulate the policy in the workplace. To assist you, we have included a sample equal opportunities policy in this kit. You can simply adapt and use it to suit your business. It will help you meet your legal obligations as an employer. If you decide to develop your own policy, it should, as a minimum, state:

- that unlawful behaviour such as discrimination, harassment, vilification and victimization will not be tolerated
- what kind of behaviour is unacceptable
- what to do about unlawful discrimination, harassment, vilification or victimization

As in our sample policy, we recommend that you consider taking the scope of behaviour covered by the policy beyond current law to include unfair treatment, harassment or vilification based on age and sexual orientation, as such behaviour could cause EO related problems. As a minimum your policy should be consistent with current EO law.

## **Action 2: Have a procedure for handling EO related problems**

It is nearly always better for EO related problems to be handled in-house. We have included a sample procedure for handling EO related problems. As with the policy it is for you to use, adapt or change as necessary. It will help you meet your legal obligations as an employer.

The best way to ensure issues are handled effectively and, wherever possible, consistently, is to have your own written procedure for handling EO related problems.

The procedure should be simple and accessible, confidential and impartial. It should allow for different ways of dealing with issues, from self-help (for example, speaking to the person causing the problem) through to formal investigation by management. It should provide for the quickest possible resolution of problems. The procedure should state that victimization will not be tolerated.

The person responsible for EO (see Action 4 on page 22) should also be accountable for ensuring the procedure is followed and reviewed as required.

## **Action 3: Provide regular information about EO**

All staff and management need to know about the EO policy and procedure for handling EO related problems as well as the importance of equal employment opportunities. They need to know what is and is not acceptable behaviour and what their rights and responsibilities are. You should regularly provide employees with up-to-date EO information. Make EO part of the information you give all new staff. Consider photocopying the fact sheet and giving each staff member a copy.

In the event that someone makes a complaint against you or your business, simply having written policies may not be enough to show that you took 'reasonably practicable' steps to prevent unlawful behaviour.

We suggest you use the tools of this kit (including fact sheet for employees, sample equal opportunities policy and sample procedure for handling EO

related problems) to implement EO. For further assistance, call the EOC for advice and information. We can provide publications on many topics and can even design and deliver training for your workplace. See page 28 for contact details.

#### **Action 4: Appoint an existing and appropriate employee to look after EO**

It is important for someone to have responsibility for EO in your workplace. This can be part of the duties of an existing employee. Ideally this person should be trained in EO, or at least informed about EO, and about related issues such as confidentiality and problem resolution. The role needs to be publicized and be seen to have some authority and support from you as the business owner or manager. The person who looks after the human resources department of your company may be best suited to this role.

When it comes to meeting your legal obligations and being able to raise the defence that you have taken reasonably practicable steps to prevent unlawful behaviour, taking these steps is a good start. EO is an ongoing issue, however. You will need to keep checking your policy and procedure, or ask the EOC to check your policy and procedure. And you will need to make sure that staff stay informed about EO. Help is available. See page 28 for useful contacts.

## **STEP 4**

### **Get help and information (Frequently asked questions)**

Here are some questions based on the many inquiries the EOC receives from employers each year. If you need more information, you will find our contact details on page 28. The EOC is here to assist you. We can offer advice, information and support to help you implement EO in your workplace. This section of the kit also includes other useful contacts.

**Q1: I generally prefer to hire married women because they are more reliable. A friend told me this is discrimination and against the law. Is he right?**

A1: Your friend is correct. It is against the law to treat a job applicant or employee less favourably because of their marital status (e.g. married, single, divorced). That would include refusing to hire a suitably qualified applicant simply because she was not married. There is not any hard evidence to suggest that single people are less reliable than married people. If an applicant seems to be the best person for the job, we suggest you hire that person regardless of marital status.

**Q2: I run a ladies' clothing store. I recently hired a young business graduate as the manager. Now he is complaining that he is being sexually harassed. He says his staff (all female) are always asking him about his personal life, offering him sex tips and teasing him about not being married. Can women sexually harass men?**

A2: While male to female sexual harassment is more common, it can happen the other way round and between people of the same sex. Any unwelcome sexual behaviour which a reasonable person anticipates that it would offend, humiliate, seriously embarrass or intimidate (threaten) another is against the law. The behaviour you describe is sexual, it is obviously not welcome, and it is clearly upsetting your manager; plus, on the information you have given, it seems that any reasonable person would realize this would be the case. Tell your staff their behaviour is not acceptable in the workplace. [There is a fact sheet for employees in this kit which you could photocopy and give to employees in a situation like this.]

**Q3. I run a construction business. I recently hired a graduate engineer. I am not convinced engineering is women's work, so I have offered her a lower salary than the others until she proves herself. Now she is complaining that it is against the law to pay her less because she is a woman.**

A3. It is against the law to employ someone on less favourable terms (which includes wages) simply because of his or her sex. If you have concerns about hiring someone in the future, you could agree on a probationary period and make ongoing employment dependent on performance. However, such probationary periods should be the same for men and women.

**Q4. There has been a downturn in business. Do I have to keep a job open for an employee who is currently on maternity leave? We have been managing fine without her.**

A4. Unless her job has genuinely become redundant, you are legally obliged to keep it (or a suitable job at the same level) open for her. It would be against the law to give her job to someone else and then claim it had become redundant.

**Q5. One of the workers at my factory came to see me, claiming his colleagues were harassing him. He is a bit slow and it just sounds like teasing to me. For example, he claims his lunch and hardhat were stolen several times last week and that his supervisor yelled at him because he was not wearing a hardhat, even though his supervisor knew the others had taken it.**

A5. If your employees are teasing this young man and treating him unkindly because he is a person with intellectual disability, it may be unlawful harassment. Behaviour of the kind you describe could be humiliating and offensive, and certainly not welcome. It sounds as though your supervisor and staff need some information about what is acceptable behaviour at work. If you do not give them such information and make it clear that you will not tolerate such behaviour, you could be legally liable if the young man made a formal EO complaint. The EOC can help. Call our hotline and ask for some information about

disability harassment.

**Q6. Do I have to offer a pregnant employee training? She will be going on maternity leave soon anyway.**

A6. It is against the law to treat an employee less favourably than others because she is pregnant. This would include refusing her training opportunities that you offer to everyone else. Many women do return to work from maternity leave. Showing her that she is a valued employee and being a caring employer can enhance the general staff morale. This will keep the talents and save you the cost of hiring and training new employees.

**Q7. I run a cleaning business, which specializes in hospital cleaning. Due to budget cutbacks by one of my biggest clients, I am going to have to make some staff redundant. The only vacancies left will be in an all-male ward, so I was planning on making my female staff redundant. One of them heard about my plan and came to see me. She claimed it would be discrimination for me to only make female staff redundant under these circumstances. I want to do the right thing. Please advise.**

A7. **If sex were a genuine occupational qualification** you could make your female staff redundant. However, in this case sex is not a qualification for general cleaning duties, as neither privacy nor the physical requirements of the job are an issue. You could be acting unlawfully by only making female staff redundant.

**Q8. I run a warehouse. We only employ a couple of women in the office, one to answer phones and the other to do the books. The bookkeeper came to see me recently, saying she feels uncomfortable because her male colleagues have been telling her about their sexual exploits and asking advice about their sex lives. She is also unhappy because one man in dispatch has a screensaver of a topless woman on his computer. I do not encourage this behaviour, but I have not interfered either so far. They are adults, after all.**

A8: Yes, they are adults, but all the behaviour you have described could constitute **sexual harassment**, which is against the law. As an employer, you have an obligation to ensure that all your employees work in an environment that is free of sexual harassment. Although you have not actively supported the behaviour, failing to do anything about it could leave you legally liable along with the individuals responsible and their supervisor, as it does not seem you have taken **reasonably practicable** steps to prevent sexual harassment, as required by law. It sounds as though your employees need some information about what is and is not acceptable behaviour at work. Contact the EOC. We offer advice, information and even training for all sorts of workplaces.

**Q9. My store manager hurt his back at work and took sick leave while it healed. When the injury recurred and he tried to take more leave I told him we just cannot afford to keep him on. He is letting the whole team down by staying on leave while we are understaffed. I made it clear that I cannot afford to employ a replacement while I am paying him to be on sick leave. Now he is threatening to make a discrimination complaint against me. It is nothing personal against him. I am just trying to keep my business going.**

A9: Are there any other jobs your store man could do while his injury heals? Could you change his work arrangements to allow less lifting (by using equipment such as a forklift, for example) and regular rest breaks? He could probably still contribute in different ways. Perhaps he could do some paperwork. You are legally obliged to make **reasonable accommodation** to allow your store man to continue to work unless doing so would cause **unjustifiable hardship**. Call the EOC for advice about how to accommodate your employee, or if you cannot, what might constitute unjustifiable hardship.

**Q10. I run a small real estate agency. My office manager recently returned to work after three months' maternity leave. She has worked for me for seven years and received an annual adjustment every year until this year. I do not see how I can calculate the adjustment properly this time because she was away on maternity leave.**

A10. Even though your office manager had several months' leave, she should still be assessed for her entitlement to an annual adjustment. Remember, you could be acting unlawfully by failing to give her a salary increase simply because she was pregnant for some time during the year.

**Q11. My company is recruiting a cleaning worker. We require all job applicants to attend a Chinese written test. A Pakistani, who has been living in HK for many years, applies for the job. Although he can speak fluent Cantonese, he cannot write Chinese. Finally, the Pakistani failed the test and we refused to hire him. Is it an indirect racial discrimination?**

A11. You should consider if it is justifiable to ask job applicants to attend Chinese written test even though they only apply for a job of cleaning worker. If your company imposes the same requirement or condition on every applicant where doing so has an unfair effect on a particular racial group, it constitutes an indirect racial discrimination unless your company can justify the reason behind.

**Q12. My company hires some ethnic minority employees, but the local staff often makes fun of them by calling them unkind and race-related names in the workplace. Will I have any legal liability?**

A12. It is an unlawful racial harassment as your local staff engages in unwelcome conduct against the ethnic minority employees on the ground of race in the workplace. As an employer, you have to take up vicarious liability of employees' act, unless you can show that you have taken reasonably practicable steps to prevent such unlawful act, such as formulating equal opportunities policy, setting up internal complaint handling system, arranging training and etc.

## **Information, advice and help with EO**

At the EOC we are here to help all businesses, small as well as large. We offer advice and information through our hotline (contact details below). We produce written information and can even run training if you need it. We assist many different workplaces, understand the law and have the experience to give employers and employees the information they need about EO.

### **Equal Opportunities Commission**

- Address: 19<sup>th</sup> Floor, City Plaza 3, 14 Tai Koo Wan Road, Hong Kong
- Office Hour: Monday to Friday – 8:45am to 5:15pm  
Closed on Saturdays, Sundays and Public Holidays
- Telephone: 2511 8211
- Fax: 2511 8142
- Email: [eoc@eoc.org.hk](mailto:eoc@eoc.org.hk)
- Website: <http://www.eoc.org.hk>

### **Legal assistance and information**

Legal Aid Department

- Address: 24<sup>th</sup> Floor, Queensway Government Offices, 66 Queensway, Hong Kong
- Telephone: 2537 7677
- Fax: 2537 5948
- Email: [ladinfo@lad.gov.hk](mailto:ladinfo@lad.gov.hk)
- Website: <http://www.lad.gov.hk/>

### **Published by the Equal Opportunities Commission**

All rights reserved. Reproduction of any part of this publication is permissible on condition that it is for non-profit making purposes and an acknowledgement of this work is duly made in the reproduction. Applications for other reproduction should be made to the Equal Opportunities Commission.

### **Disclaimer**

This information kit is no substitute for legal service, and the Equal Opportunities Commission will not be liable for any direct, indirect or consequential loss arising from the use of the information contained in this document.