



The EOC prepared this fact sheet for SMEs. We suggest that you photocopy and distribute it to your employees. Giving your staff information about EO rights helps you meet your legal obligations as an employer.

The right to equal employment opportunities

You have the right to equal employment opportunities. This means you have the right to work in a fair and harassment-free environment which respects difference and offers everyone opportunities regardless of personal characteristics such as gender, disability or family status. Equal opportunity (EO) laws protect this right.

What kind of behaviour does EO law cover?

It is against the law for your employer, manager or co-workers to treat you unfairly (discriminate) because of your:

- 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

It is also unlawful for you to treat anyone in your workplace this way, including your co-workers and supervisor.

Discrimination may be direct or indirect. **Direct discrimination** is when you are treated less favourably because of one of the characteristics listed above. For example, it would be discrimination for an employer to refuse to hire you because you have a psychiatric illness if you are the best candidate and capable of doing the inherent requirements of the job.



Indirect discrimination means imposing the same requirement or condition on everyone, but which has an unfair effect on a particular group of persons (including persons with a particular sex, marital status, family status, or persons with a disability or who are pregnant). For example, if a bank only recruits tellers who are at least 5'8" tall, it is likely that many more women than men are unable to satisfy this requirement. Since being a particular height is not a reasonable requirement for working as a bank teller, this could be "indirect" sex discrimination, as it will disadvantage more women than men.

Sexual and disability-based harassment are also against the law.

Unlawful **sexual harassment** is **unwelcome sexual behaviour** that a reasonable person would anticipate would offend, put down (humiliate), seriously embarrass or threaten (intimidate). Examples include unwelcome touching, hugging, kissing or fondling, groping, displaying or transmitting sexually explicit material (posters, computer screensavers, cartoons, e-mails), telling 'dirty' jokes in the staff room or flirting with colleagues.

Disability harassment includes abuse, teasing, bullying, or other intimidating and offensive acts based on a person's disability. Calling someone names or making fun of them because of their disability would be harassment.

It is against the law to **vilify** someone because they have a disability. **Vilification** is any activity in public that incites hatred, severe ridicule or serious contempt for a person. For example, it would be vilification for a supervisor to tell an employee who uses a wheelchair that she was nothing but a useless burden on society in front of other staff. It would also be vilification for you to make fun of an intellectually disabled co-worker or call him unkind names.

Serious vilification involving threats of physical harm or damage to property, or incitement of others to these acts, is a criminal offence punishable with a fine of up to \$100,000 or two years' imprisonment.

It is also unlawful for a manager or staff member to treat someone less favourably because they 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. Such behaviour is victimization. It could be victimization to stop offering a casual employee shifts because he agreed to act as a witness in court in a colleague's sexual harassment case.

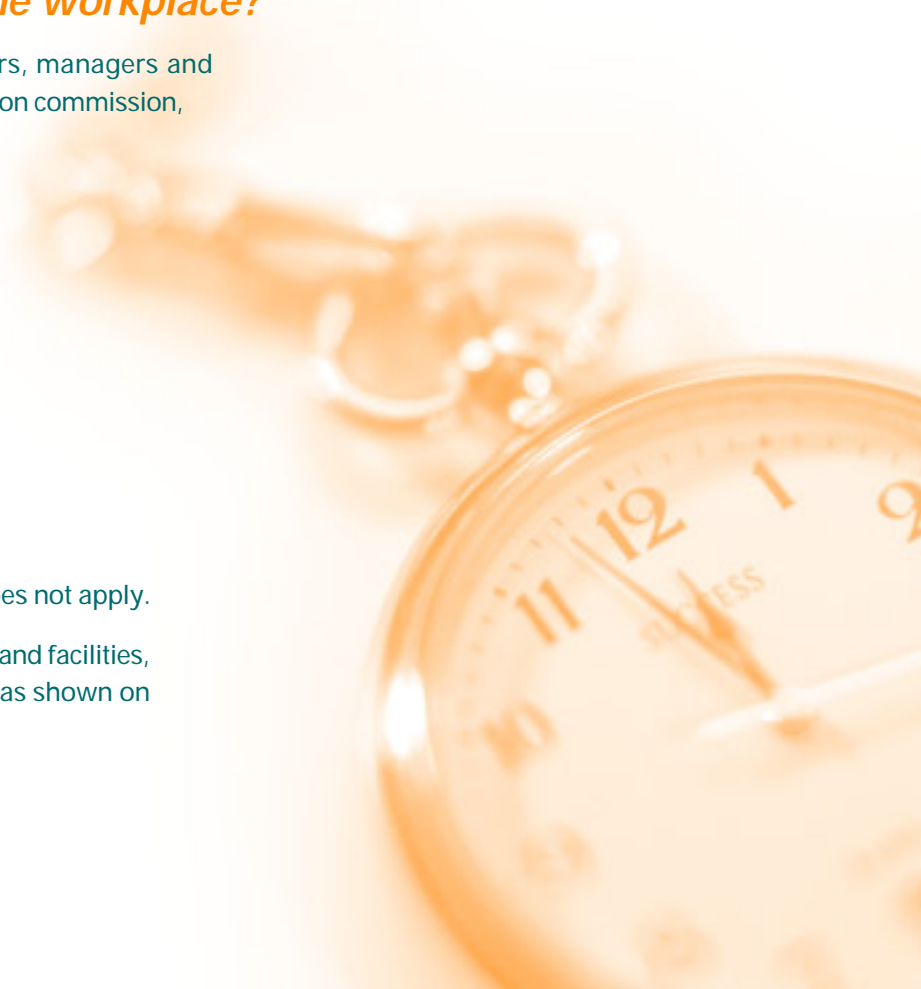
How does EO law apply to the workplace?

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

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

There are limited cases when this protection does not apply.

EO law also covers provision of goods, services and facilities, and other areas of public life. Contact the EOC as shown on the back page of this fact sheet.



What are my responsibilities at work?

Just as you have the right to work in an environment that is free from discrimination, harassment and vilification, you also have the responsibility to do what you can to make sure that the people you work with, including customers, managers or supervisors, also enjoy this right.

We're all different. By respecting this difference and thinking about your own behaviour at work, you can help create a comfortable environment for everyone. Here are just some of the things you should avoid in the workplace:

- Don't engage in behaviour of a sexual nature at work, even if the other person seems to want it.
- Be careful whom you touch. Don't touch people who don't like being touched, and never touch someone in an intimate or sexual way.
- Don't join in if other people are teasing someone.

It's also important to think about how other people might respond to your behaviour. Consider:

- Your tone of voice, gestures and jokes. What seems harmless to you may offend someone else
- How you decorate your workstation or office, or what you display in public areas. This could include your computer screensaver. Jokes might seem funny to you, but you can't be sure how others take them.
- People with disabilities may have some limitations in the way they can perform certain activities. They may need special arrangements at work because of their disability or illness. Try and help where you can. This doesn't mean they will be given a job they can't do, just that they will be given the chance to do a job which they are capable of doing.

Because we don't all see things the same way you might find that you unintentionally offend or upset someone at work. If that happens, immediately step back and apologize if possible. Often an apology is enough to sort things out.

And, if you know someone is being treated unfairly, abused or harassed, encourage him or her to do something about it. Like you, they have the right to work in a discrimination-, harassment-, and vilification-free environment.

What are my employer's responsibilities?

It is your employer's and manager's responsibility to do all that they reasonably can to make sure everyone in the workplace is treated fairly and that discrimination, harassment, vilification and victimization don't happen. They are also required to take all reasonable action to enable a person with a disability to do a job unless that would cause unjustifiable hardship.

Many employers have EO policies to let everyone know what is and isn't acceptable workplace behaviour and to ensure that EO law is followed at every stage of employment, from advertising, interviewing and hiring to termination. They also have procedures for dealing with EO related problems to make sure they are handled fairly and consistently.



What can I do about unfair treatment?

If you feel you are being treated unfairly or harassed, we recommend that you take the following steps:

1. If you can, talk to the person who is causing the problem. Tell them how their behaviour is affecting you and ask them to stop.
2. If this doesn't work or you don't feel comfortable approaching them, find out if your employer has a procedure for handling EO related problems and then do what it says.
3. If there isn't such a procedure, talk to someone you can trust. This might be a person who is responsible for EO at work.
4. For free advice, call the Equal Opportunities Commission's hotline at 2511 8211.
5. If you are still unable to resolve the issue, you can contact the Equal Opportunities Commission to see whether you can make a complaint (details on page 25 of the information brochure).

If you do let your employer know about a problem they must look into it quickly, fairly and confidentially. They should listen to everyone's story and take action to stop discrimination, harassment, vilification or victimization if they believe it is happening.

Not all unfair treatment is against EO law. Personality clashes and favouritism aren't necessarily unlawful. This doesn't mean your supervisor or someone else you trust can't help sort out the problem. You may also have rights under other laws.

Where can I get help?

Equal Opportunities Commission

Unit 2002, 20th Floor, Office Tower
Convention Plaza
1 Harbour Road
Wanchai
Hong Kong
Tel: 2511 8211
Fax: 2511 8142
Email: eoc@eoc.org.hk
Website: <http://www.eoc.org.hk>

