



中小企平等機會錦囊

Equal Opportunities:
Concise Guide
for Small and Medium Enterprises



平等機會委員會
EQUAL OPPORTUNITIES COMMISSION

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1 平等機會有利營商 Equal Opportunities Benefit Business

不論什麼規模的企業，員工都是最寶貴的資產；機構能善用人力資源，是成功發展的重要元素；當中涉及機構能否聘用到最好、最適合的僱員，以及能否鼓勵員工士氣，保留人才。

在一個實踐平等機會的工作間，管理層作出任何人事決定，都會基於客觀適切的考慮，而非不相關的因素；此外，公司也會確保員工在沒有歧視騷擾的情況下安心工作。換言之，就是認同、鼓勵並創造條件讓僱員發揮所長。實踐平等機會有利營商，好處包括：

- 良好和諧、互相信任的工作關係
- 提升僱員的士氣和效率
- 穩定的工作環境，減低員工流失率
- 多元化的團隊，迎合不同客戶的需要

Employees are the most valuable assets for organisations irrespective of the scale of the business. A vital element of a company's successful development is whether it can best use its human resources. This involves the recruitment of the most suitable and the best qualified employees, the nurturing of staff morale and the retention of talents.

Decisions made by the management in an equal opportunities ("EO") workplace are based on objective considerations instead of irrelevant factors. In addition, the company should ensure that the work environment is safe for the employees and is harassment- and discrimination-free. In other words, the aim is to create an environment to support and encourage employees to realise their potential to the fullest extent. The advantages of implementing EO practices in business include:

- Harmonious work relationship with mutual trust
- Increased commitment and efficiency from employees
- Stable working environment and lower staff turnover
- Diverse team catering to the needs of different clients

任何企業違反平等機會法例，都要負上法律責任；僱主也有機會須為員工的違法行為負法律責任。違反平等機會法例，會造成有形或無形的損失，包括：

- 因投訴而引致的賠償、處理投訴的時間成本
- 商譽損失
- 員工不信任公司、流失率上升
- 生產力及效率下降

Companies are liable for any breach of the EO legislation. Employers may also be liable for the unlawful acts done by their employees. Damages, tangible or intangible, caused by the violation of the EO legislation include:

- Compensation arising from complaints and the time cost for handling complaints
- Loss of goodwill
- Diminished trust in the company, resulting in higher staff turnover
- Decrease in productivity and efficiency

因此，僱主必須：

1. 認識平等機會法例
2. 採取合理切實可行措施，包括實施平等機會政策，防範員工違法

Employers should therefore:

1. Understand the EO legislation
2. Adopt reasonably practicable steps including implementation of EO policies to prevent employees from committing unlawful acts

2 平等機會法例 Equal Opportunities Legislation

香港目前實施四條平等機會法例：

- 《性別歧視條例》(第480章)
- 《殘疾歧視條例》(第487章)
- 《家庭崗位歧視條例》(第527章)
- 《種族歧視條例》(第602章)

The four EO Ordinances currently implemented in Hong Kong are:

- The Sex Discrimination Ordinance (Cap 480)
- The Disability Discrimination Ordinance (Cap 487)
- The Family Status Discrimination Ordinance (Cap 527)
- The Race Discrimination Ordinance (Cap 602)

在法例指定範疇內，基於下列的原因對一個人作出歧視行為，可能違法：

- 性別
- 殘疾
- 懷孕
- 家庭崗位 (照顧直系家庭成員的責任)
- 婚姻狀況
- 種族

指定範疇包括僱傭、提供貨品、服務及設施等。

僱員、求職者和透過外判商聘用的員工，都在保障之列。

除歧視外，性騷擾、基於殘疾或種族的騷擾，殘疾或種族中傷/嚴重中傷，皆屬違法行為。

It may be unlawful to discriminate against a person on the following attributes :

- Sex
- Disability
- Pregnancy
- Family status (responsibility for the care of an immediate family member)
- Marital status
- Race

in the fields stipulated by the ordinances, including employment, provision of goods, services and facilities etc.

Employees, job applicants and workers hired through contractors are all protected by the ordinances.

In addition to discrimination, sexual harassment, harassment on the ground of disability or race, and vilification / serious vilification on the ground of disability or race are also unlawful.

3 何謂歧視? What is Discrimination?

直接歧視指基於任何上述的原因而給予某人較差的待遇。

Direct Discrimination occurs when a person is treated less favourably because of the above attributes.

例子 Example :

一名餐廳侍應因病入院做手術，放病假一個月後醫生證明他已完全康復。但他在復工的第一天被解僱，原因是公司擔心他的健康狀況不能勝任繁重的工作。該項解僱有可能構成直接殘疾歧視。

A restaurant waiter was admitted to hospital for surgery because of illness. He was certified to have completely recovered after taking sick leave for a whole month. However, he was dismissed the first day he returned to work because the company worried that he would not be able to handle the heavy workload. The termination of employment may amount to direct disability discrimination.

間接歧視是指對所有人施加相同的條件或要求，但這些條件或要求實際上對平等機會法例所保障的人士造成負面的影響，因他們比其他群體較難符合這些條件或要求；而這些條件或要求是沒有充份理據支持的。

Indirect discrimination occurs when a condition or requirement is applied to all people, but such a condition or requirement adversely impacts the group of persons protected under the EO laws because it is more difficult for them to comply with the condition or requirement when compared to other groups, and the condition or requirement is not justifiable.

例子 Example :

一位僱主若要求處理顧客電話查詢的僱員必須具有良好的中文書寫能力，可能違法。由於非華裔的香港人比較難符合這要求，這語言的要求可能對他們構成間接歧視。但如果僱主能提出理據證明該要求或條件，是與工作相關的，且不會超出擔任有關工作所需的程度，則不屬違法。

It may be unlawful for an employer to demand good written Chinese as a job requirement for a position handling telephone enquiries from customers. The language requirement may indirectly discriminate against non-Chinese racial groups in Hong Kong as they are likely less able to comply with the requirement or condition. It would, however, not be unlawful if the employer is able to justify such requirement by showing that the requirement or condition is relevant to and not more demanding than what is required for doing the job.



4 性騷擾、殘疾騷擾及種族騷擾 Sexual Harassment, Disability Harassment and Racial Harassment

對他人做出涉及性而不受歡迎的行為，或基於別人的殘疾或種族而對其做出不歡迎的行為，而一個合理的人在考慮所有相關情況以後，會預期該人會感到受冒犯、侮辱、驚嚇，都是違法行為。如果這些涉及性的行為或基於別人的種族做出的行為對他人構成一個有敵意或具威嚇性的環境，亦屬違法行為。

It is unlawful for a person to engage in any unwelcome conduct of a sexual nature in relation to another person, or to engage in unwelcome conduct on the ground of the disability or race of the other person, where a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated. It is also unlawful for a person to engage in conduct of a sexual nature, or engage in conduct on the ground of the race of another person, which creates a hostile or intimidating environment for the other person.



「使人受害」的歧視

僱主必須正視有關平等機會的投訴。因為他人提出歧視指稱或投訴而給予其較差待遇，稱為「使人受害」的歧視，是違法行為。法例也同樣保障協助別人投訴的人士。

Discrimination by way of "victimisation"

Employers must take all complaints about equal opportunities seriously. It is unlawful to discriminate by way of "victimisation", which means treating a person who makes an allegation of discrimination or lodges a complaint of discrimination less favourably. The law also protects persons who assist another person to lodge a complaint of discrimination from victimisation.

5 法律責任 Legal Liability

個人和機構都須為違法行為負上法律責任。

僱員作出違法行為，僱主一樣有機會要承擔責任(轉承責任)，除非僱主能證明已採取合理切實可行措施防範僱員作出違法行為，方可免責。

B 訴皇上皇集團有限公司 (DCEO 9/2010)

B小姐為被告機構的僱員，受到被告所聘用的點心工人性騷擾。B向被告投訴，但被告沒有採取任何行動。當B表示要報警時，被告向她施壓，要求她不要這樣做，否則會同時解僱騷擾者和B。

被告最終安排騷擾者與B會面，騷擾者按照要求向B道歉，但他道歉時表現無禮，B被激怒之下掌摑了騷擾者。被告隨即把她解僱。B其後向平等機會委員會(平機會)提出投訴，分別追究騷擾者對她作出性騷擾和被告在性騷擾事件上應負上的轉承責任。B針對騷擾者而提出的投訴透過平機會的調停得以解決，而對被告人的個案則根據《性別歧視條例》被帶上法庭。

Individuals and organisations are liable for unlawful acts.

Employers would be vicariously liable for the unlawful acts committed by their employees in the course of employment, unless they have taken reasonably practicable steps to prevent such acts from happening in the workplace.

B v King Of the King Group Ltd. (DCEO 9/2010)

Miss B, an employee of the defendant, was sexually harassed by a dim sum worker employed by the defendant. B lodged a complaint with the defendant, yet no action was taken. When B indicated that she would report the case to the police, she was warned by the defendant not to do so otherwise both the harasser and B would be dismissed.

The defendant eventually arranged a meeting between the harasser and B. Upon request, the harasser apologised to B, but in a disrespectful manner. B was so enraged that she slapped him. B was then dismissed by the defendant. B lodged a complaint with the Equal Opportunities Commission ("EOC") against the harasser for sexual harassment, and a complaint against the defendant for vicarious liability. The case against the harasser was settled through conciliation by the EOC, but the case against the defendant was brought before the court.

法庭的裁決

法庭裁定騷擾者的行為是違法的性騷擾。由於被告沒有採取合理切實可行的措施，防止工作間的性騷擾，因此被告須為點心工人的作為負上法律責任。法庭判被告向B賠償港幣八萬元及訟費。

Judgment

The court found that the harasser had committed unlawful acts of sexual harassment. Since the defendant **had not taken any reasonably practicable steps** to prevent sexual harassment in the workplace, it was liable for the unlawful acts done by the dim sum worker. The defendant was sentenced to pay B HK\$80,000 as damages and the court costs.

6 合理切實可行措施 Reasonably Practicable Steps

貴機構有沒有採取下列措施？

Has your company taken the following steps?

- ☒ 制訂平等機會政策
- ☒ 制訂處理平等機會投訴的程序
- ☒ 教育員工瞭解平等機會法例及有關的公司政策
- ☒ 委任合適的人選處理有關平等機會事宜
- ☒ Formulate a policy on equal opportunities
- ☒ Establish complaint handling procedures
- ☒ Educate staff on EO legislation and related company policies
- ☒ Appoint suitable staff members to handle the issues of EO in the workplace

此外，採取良好管理措施，可以避免歧視，確保決策公平公正，得到員工的信任，從而鼓勵士氣，建立一個高效率、人人能發揮所長的團隊。

Furthermore, implementation of good management practices helps to prevent discrimination, ensure fair and just decisions, and gain the trust of employees. This can help to improve staff morale and build an efficient team where everyone can be their best self.

良好管理措施例子 Examples of Good Management Practices :

劃一甄選準則

在所有涉及篩選過程的人力資源決策上，例如：招聘、晉升、調職、裁員等，都採用劃一甄選準則。

劃一甄選準則是一套客觀準則，劃一施用於所有求職者或僱員。僱主可按照工作所需，從教育、經驗、知識、技能及才能等方面定出要求，按此客觀標準審視各人的工作能力，從而選擇最適合的人。僱主須避免著眼非必要的要求、條件或作出無根據的假設，以免對受反歧視條例保障的求職者或僱員造成歧視。

Consistent Selection Criteria

Consistent selection criteria should be adopted in human resources decision process that involves selection, such as recruitment, promotion, transfer or redundancy.

Consistent selection criteria is a set of objective criteria consistently applied to all job applicants or employees. Employers can draw up a list of job-related requirements under various categories including education, experience, knowledge, skills and abilities etc. All the candidates are assessed on the basis of these objective criteria in order to select the most suitable person. Employers should avoid applying non-essential requirements, conditions or making groundless assumptions as this may result in discrimination against applicants or employees protected by the EO legislation.

家庭友善措施

採取家庭友善措施，可協助僱員平衡工作與家庭責任，例如彈性工作時間，讓僱員因應個人或生活需要，在特定時間範疇內，選擇上下班時間，公司沒有損失，卻可讓員工更安心地工作，實屬雙贏方案。

Family-friendly Policies

Adopting family-friendly policies such as flexible working hours can help employees to achieve work-life balance. Allowing employees to choose their preferred working hours within a specific time frame, in accordance with their personal needs, would cause no loss to a company. Yet it would enable employees to work with ease. This is definitely a win-win practice.

中小企可參考或使用下述平機會提供的資料和服務，推行並實踐平等機會，預防歧視及騷擾行為：

Small and Medium Enterprises (SMEs) may make reference to the following information and services provided by the EOC for the implementation of equal opportunities and prevention of discrimination and harassment in the workplace:

- 中小型企業平等機會資料套(內含平等機會政策與平等機會問題處理程序樣本) — 資料套介紹如何通過四個簡易步驟履行機構的法律責任，亦因此獲得平等機會帶來的裨益
- 僱傭實務守則 — 闡釋良好管理措施
- 培訓服務 — 除為機構提供專用培訓課程外，員工亦可到平機會辦事處參加課程
- 平等機會之友會 — 歡迎僱主、人力資源從業員、職場培訓員和負責平等機會事宜的工作人員參加，交流經驗，獲取有關平等機會的最新資訊
- Equal Opportunities Essentials Kit for SMEs (a sample equal opportunities policy and a sample procedure for handling EO related problems included) — The Essentials Kit explains how companies can meet their legal obligations by taking four simple steps and the benefits of equal opportunities
- Code of Practice on Employment — provides detailed examples of good management practices
- Training service — In addition to the tailor-made training workshops for individual organisations, employees may participate in the regular training courses held in the EOC Office
- EO Club — Employers, human resources practitioners, workplace trainers, and equal opportunities officers are all welcome to join this platform, where they can exchange experience and gain the latest information on equal opportunities

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7 其他資源 Other Resources

勞工處互動就業服務

Interactive Employment Service of the Labour Department

網址 Website : <http://www2.jobs.gov.hk>

電郵 Email : esadmin@labour.gov.hk

勞工及福利局《有能者·聘之約章》及共融機構嘉許計劃

Talent-Wise Employment Charter and Inclusive Organisations Recognition Scheme by the Labour and Welfare Bureau

網址 Website : http://www.lwb.gov.hk/charter_scheme

電話 Tel : 3153 4307 / 3153 4308

傳真 Fax : 2543 0486

電郵 Email : charterscheme@lwb.gov.hk

香港社會服務聯會商界展關懷計劃

The Hong Kong Council of Social Service Caring Company Scheme

網址 Website : <http://www.caringcompany.org.hk>

電話 Tel : 2864 2966

傳真 Fax : 2864 2991

電郵 Email : caringcompany@hkcss.org.hk



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