

Family Vs. Work — Case Analysis

It is unlawful under the Family Status Discrimination Ordinance for an employer to discriminate against an employee on the ground of his/her family status. A person with a family status means that he/she has a responsibility for the care of an immediate family member, related to the person by blood, marriage, adoption and affinity.

Direct discrimination occurs if a person is treated less favorably than another person because of his/her family status. Indirect discrimination occurs when a condition or requirement, that is not justifiable, is applied to everyone but in practice adversely affects persons who have family status.

Case Studies

Case Study 1:

Ah Cheung was a driver of a coach company. He used to have his day off on Sundays. As the clients now required transport service on Sundays, all drivers were asked to work on Sundays, and had their day off on weekdays. Ah Cheung complained to the EOC that he was indirectly discriminated against by the company because of his family responsibilities. He alleged that he had to take care of his aged parents as he needed to help them with some domestic chores or take them to a Chinese restaurant every Sunday.



Analysis of the Case:

The new requirement i.e. asking drivers to work on Sundays is justifiable because of operational needs, but could be discriminatory in effect. For Ah Cheung's case, however, he could still look after his retired parents on weekdays, and not necessarily on Sundays. Ah Cheung himself agreed to this. The new requirement caused no detriment to him and therefore there was no unlawful discriminatory act.

Case Study 2:



Mr. Lee was employed as a warehouse assistant for more than 9 years. He worked from 8am – 5pm. His wife was a salesperson and worked from 2 – 10pm. Mr. Lee was responsible for preparing dinner for his 10-year old son, and he had been exempted from working overtime with the approval given by his former supervisor. However he would work overtime till 7pm during peak season. The company later insisted that all its employees must work overtime to 9pm or 10pm. Mr. Lee, who had the responsibility of caring for his young son, could not comply with that requirement. The company then dismissed him.

Analysis of the case:

It is a balancing exercise to consider the justifiability of a requirement imposed by the employer and the effect on an individual employee. Economic reasons and administrative efficiency are valid factors to be taken into account, as is the effect of the discriminatory treatment on the complainant. **To determine where the balance lies, both parties must explore if there are any feasible alternatives or adjustments to the requirement.** In this case, the company is unable to justify why “each and every” employee must meet that condition i.e. to work overtime until “9 or 10pm”. The fact that the employer has exempted Mr. Lee from working overtime in the past indicates that the requirement may not be a justifiable one. Also, the company has exempted another employee to work overtime as that employee has taken up another part time evening job. The EOC recommended the two parties to settle the matter by conciliation but the company refused to do so. Later, the EOC granted legal assistance to the complainant and the matter was subsequently settled out of court.