

# 不必要的身體檢查

## Unnecessary Medical Test

### 投訴內容

李先生於2007年3月獲一家物業管理公司聘用為顧客服務主任。李先生的上司及同事都十分友善，他很快便適應新的工作環境。

兩星期後，李先生的上司要求他和其他新入職員工接受身體檢查。他的上司解釋，這是公司慣例，目的是為員工提供度身訂造的醫療保險計劃。李先生於是按指示進行檢查。三月底，診所的護士通知李先生，他被測出對愛滋病呈陽性反應。

李先生聽到這個消息後十分傷心，但令他更難受的是，上司對他的態度有所改變——他變得冷漠，甚至避免與李先生交談。李先生懷疑上司和同事知道了他的健康狀況。幾天後，物業管理公司以減省職位為由解僱了李先生。然而，李先生後來發現，公司在報章刊登了有關他原來職位的招聘廣告。

李先生指稱，僱主是基於他的殘疾而將其解僱。他說：「我不明白為何他們要這樣對我。我的身體狀況並不影響工作表現。」李先生其後向平等機會委員會(平機會)投訴。

### 平機會的行動

接到投訴後，平機會個案主任分別與李先生和物業管理公司進行了多次討論。雙方同意透過提早調解來解決問題，以避免較費時的調查過程。經過個案主任主持幾輪調解會議後，雙方就和解條

### The Complaint

Mr. Lee was hired by a property management company as a customer service officer in March 2007. His supervisor and colleagues were all friendly to him and he adapted very well to the new environment.

Two weeks later, Mr. Lee and other new staff were asked by the supervisor to undergo a medical check-up. His supervisor explained that the check-up was a part of the company's practice to provide a tailor-made medical insurance plan for individual staff. Mr. Lee complied with the request. In late March 2007, a nurse from the clinic informed Mr. Lee that he tested HIV positive.

Mr. Lee was upset about the news, but what made him feel even worse was the change in his supervisor's attitude. His supervisor became aloof and avoided having conversations with him. Mr. Lee wondered if his supervisor and other colleagues knew about his health condition. A few days later, the company terminated his employment stating that his position was no longer required. Later, Mr. Lee discovered that the company had re-advertised for his position in the newspapers.

Mr. Lee alleged that his employer had discriminated against him on the ground of his disability by terminating his employment. "I do not understand why they have done this to me," said Mr. Lee. "Being HIV positive does not affect my performance". He lodged a complaint with the Equal Opportunities Commission (EOC).

### What the EOC did

Upon receiving the complaint, the EOC case officer held several discussions with Mr. Lee and the property management company. The parties in dispute agreed to settle the matter through early conciliation to avoid a relatively lengthy investigation process. The EOC case officer held several rounds of conciliation after which



款達成共識。公司同意向李先生作出金錢賠償及發出道歉信，亦會檢討內部的平等機會政策及為員工提供有關培訓。日後的僱員身體檢查中，亦會剔除愛滋病測試。

both parties reached a consensus on the terms of settlement. The company agreed to provide Mr. Lee monetary compensation and a letter of apology. It also agreed to review its equal opportunity policy and provide training to its staff in relation to the issue. The company also agreed to remove HIV test from the employment-related medical examinations in future.

### 法理依據 *What the law says*



僱主要求僱員進行入職前體檢的情況相當普遍，檢查通常在招聘的最後階段進行。法例雖沒有禁止入職前體檢，但若這些檢查的目的是為了歧視有殘疾的人士，便可能違反《殘疾歧視條例》。僱主只能在下列情況要求應徵者進行入職前體檢：(a)藉以確定應徵者有否能力在有遷就或沒有遷就的情況下執行工作的固有要求；或 (b)檢查應徵者有否患傳染病，以便僱主採取合理措施保障公眾健康。

《殘疾歧視條例》規定，假如申請人患有傳染病，僱主為合理地保障公眾健康而不聘請該人，亦不屬違法。根據《殘疾歧視條例》，愛滋病患者或愛滋病帶菌者均不會被視為患有傳染病。

Pre-employment medical examinations are common and are usually conducted in the final stages of the recruitment process. These medical examinations are not prohibited under the law. However, if the purpose of the examination is to discriminate against an applicant on the ground of disability, it may contravene the Disability Discrimination Ordinance (DDO). An employer should only suggest a pre-employment medical examination for the purpose of determining whether the applicant: (a) is able, with or without any accommodation, to perform the inherent requirements of the job; or (b) carries any infectious disease so that the employer may act reasonably to protect public health. The DDO provides that it is not unlawful to reject an applicant who has an infectious disease, if it is reasonably necessary for the protection of public health. Under the DDO, neither AIDS nor HIV infection are to be treated as infectious diseases.