

Study on Pregnancy Discrimination in Small and Medium Enterprises

Study Brief

Introduction

The Equal Opportunities Commission (EOC) has decided to commission a research project entitled “Study on Pregnancy Discrimination in Small and Medium Enterprises”. The study will provide an overview on discrimination against pregnant women in small and medium enterprises (SMEs) in Hong Kong. Furthermore, views from employers, human resources (HR) practitioners and relevant stakeholders will be solicited about possible measures to redress pregnancy discrimination in SMEs.

Background

2. The EOC has the statutory responsibility to work towards the elimination of discrimination on the ground of pregnancy. Under the Sex Discrimination Ordinance (SDO) and in the employment field, it is unlawful for an employer of a Hong Kong establishment to subject a woman to a disadvantage or dismiss her on the ground of her pregnancy. All types of employment (including contract work) are covered under the SDO.

3. Pregnancy discrimination has a significant negative impact on victims’ mental health (e.g., under stress, loss of self-esteem and confidence) as well as their family, finances, career and job opportunities. According to records of complaints under investigation, the EOC commonly receives a significant number of employment-related complaints involving pregnancy discrimination under the SDO. In 2011/2012, the EOC investigated a total of 329 employment-related SDO cases. Among them, 177 cases (54%) involved pregnancy discrimination. In 2012/13, the EOC investigated 309 employment-related SDO cases. Out of these, 124 cases (40%) involved pregnancy discrimination.

Prevalence of Pregnancy Discrimination

Overseas Situation

4. Research studies indicate that despite strengthened legislation as well as enhanced organisational benefits in some cases, one in three women, for various reasons, find it difficult to return to work after maternity leave. These reasons include: concerns about childcare, financial issues, their inability to maintain work-family balance, and the attitude of their supervisor and other employees upon their return

from maternity leave. Regarding the organisation's point of view, one of the most damaging stereotypes is the belief that the pregnant employee is no longer committed to her job and may not return to work after childbirth.¹ This belief is held to the extent that managers and supervisors act thereon, leading to unfair discrimination for returning mothers regardless of their profession and position.

5. Globally, survey findings² revealed that 31% of businesses had concerns about hiring returning mothers. The concerns included that returning mothers might shortly take time off to have another baby, would show less commitment in work, and their skills might not be up to date. The companies in India (52%) and in China (40%) were particularly worried about the reduced commitment shown by working mothers. Ironically, it was interesting to note that 56% of the responding companies generally believed that returning mothers could bring important skills to the businesses. Furthermore, 72% of firms believed that companies which ignored working mothers were missing out on an important part of the prospect pool of talents.

6. The impacts of maternity will be substantially different in SMEs when compared to larger organisations. The SMEs are likely to find it more difficult to cover for absences and there is evidence to suggest that many SMEs hold very negative views about maternity. A report by the Equal Opportunities Commission in the United Kingdom³ found that 36% of the employers in SMEs (compared to 22% of large organisations) agreed that “pregnancy places an undue cost burden on the organisation”, whereas 17% agreed that “there is often resentment amongst the wider team towards women who are pregnant or on maternity leave”. Another survey⁴ revealed that 64% of the SME employers did not expect mothers to return to work, 59% had no “return to work” policy and 16% said that they did not want staff on maternity leave to return, citing reasons such as “reduced level of concentration” and “lacking enthusiasm”.

Local Situation

7. Local manufacturing enterprises with fewer than 100 employees and non-manufacturing enterprises with fewer than 50 employees are regarded as SMEs. As at June 2014, there were about 320,000 SMEs in Hong Kong. They accounted for over 98% of the total business units and provided job opportunities to nearly 1.3 million persons, about 47% of total employment (excluding civil service).⁵ Most of the SMEs were in the import/export trade and wholesale industries, followed by the retail

¹ Halpert J.A., Wilson M.L. & Hickman J.L. (1993). Pregnancy as a source of bias in performance appraisals. *Journal of Organizational Behavior*, 14:649-663.

² Regus (2011). *Mother's Day? – A study of trends in hiring working mothers across the globe*.

³ Young V. & Morrell J. (2005). *Pregnancy discrimination at work: a survey of employers*. Equal Opportunities Commission, UK.

⁴ Survey carried out by Reabur (HR consultancy, 2011).

<http://www.hrmagazine.co.uk/hro/news/1019966/employers-dont-expect-mothers-return-maternity-leave>

⁵ Figures for total business units and total employment (excluding Civil Service) are not meant to represent the overall situation and the entire labour market due to incomplete coverage of the Quarterly Survey of Employment and Vacancies. Users should bear this in mind when interpreting the respective figures.

industry. They accounted for over 50% of the SMEs in Hong Kong and represented about half of SME employment.

8. The findings of EOC's study on discrimination in the workplace⁶ revealed that pregnancy discrimination in SMEs appeared to be rather serious. In recruitment, many SME employers expressed that they would prefer not to hire pregnant women, regardless of their qualifications and experiences. In the working environment, the common allegations of pregnancy discrimination are that the victim was forced to resign, face unreasonable hardship or be demoted when she told the employer of her pregnancy or after the maternity leave. The cause of such discriminations may be due to extra costs incurred in providing leave for medical check-ups and maternal leave as well as prejudicial assumptions that women are less committed to their careers due to childbearing.

9. Findings of a local survey⁷ also revealed that over 70% of people in the society considered that situations of employers choosing not to hire pregnant women did happen. The number of those who thought that these cases "always happen" constituted about 30%. It is no better after the pregnancy. In a 2011 global survey by the office provider Regus, barely one-third of respondent firms in Hong Kong were willing to hire working mothers, lower than the global average of 36%.

Measures of Redressing Pregnancy Discrimination

10. There are significant differences in the career trajectories that women and men follow over the employment cycle. In effect, stereotypical thinking surrounding childcare responsibilities remain one of the most deeply entrenched causes of gender inequality. Traditional gender roles are at work: the women as the family's caretakers and the men as the primary breadwinners. As for the society, it already struggles with the consequences of our extremely low fertility rate and in embracing this stereotypical thinking, it further misses the chance to benefit from a wider pool of talents and capabilities.

11. Nevertheless, when complaints were lodged against SMEs, employers commonly believed that their action had not been discriminatory. They claimed that the women were dismissed due to financial problems in the business necessitating redundancies, or because of a record of poor performance. To worsen the situation, such discrimination claims often resulted in a tightening up of procedures and greater documentation in SMEs. The impacts varied for individual employers, from a more wary management style and a loss of faith in the legal system, to a loss of trust in employing women of child-bearing age.

⁶ Equal Opportunities Commission, HKSAR (2014). *Study on Discrimination in the Hong Kong Workplace*.

⁷ Women's Commission, HKSAR (2011). *Survey on "What do Women and Men in Hong Kong Think About the Status of Women at Home, Work and in Social Environments?"*

12. To redress pregnancy discrimination, there is a need to restate the case for maternity rights, so that employers and HR practitioners understand why women should receive a certain level of protection and entitlements. Based on the SDO, the SMEs should formulate a written policy on addressing pregnancy discrimination and promoting equality. Knowledge and communication are crucial and a practical guide to handling pregnancy at work could be a useful management tool. For employees, improved information for women regarding their entitlements around pregnancy, maternity leave and return to work is needed. In particular, younger women, women with lower levels of education and newly-arrived women from mainland China should be targeted.

13. Rapidly rising property prices, rental costs and living expenses mean that many Hong Kong households cannot rely on a single earner to support the family. Dual-income families have become the norm. Financial constraints and job insecurity may be forcing women to return to work earlier than they would like and earlier than is optimal for their child's development. To address returning mothers' concern that the quality of care provided to a child in early years can be critical to his or her development, an expansion in maternity leave or parental leave would benefit vulnerable mothers and their children. Among mothers who can afford it, the preferred option is to take a longer period of no paid maternity leave than the ten weeks' statutory paid leave (which is significantly shorter than the International Labour Organisation's recommended minimum standard of 14 weeks). For those mothers of modest incomes, they have to rely on live-in domestic helpers to take care of their children. Regarding low-income families, affordable and good-quality childcare services provided by the Government or non-governmental organisations (NGOs) have become critical.

14. How will employers respond to the afore-mentioned needs of returning mothers? In light of family-friendly workplaces, they are associated with a range of favorable outcomes for the health and well-being of the female workforce. Such workplaces have in place a policy on equality and diversity and offer flexible options such as the availability of flexible working hours or location, part-time working and job-sharing arrangement. In recent years, provision of flexible working has grown and the employers who use flexible working practices report clear benefits including staff retention and engagement. Therefore, a wider implementation of flexible employment practices should be encouraged for relevant stakeholders^{8,9}, with the SMEs in particular.

⁸ Singapore is making progress through incentives to companies for instituting flexible work patterns, including grants to spur flexible working arrangements. It resulted in adoption of work-life integration initiatives by an increasing number of companies. Significant enhancements were made to maternity benefits and tax relief, which supported working mothers and caregivers. A national "dads for life" movement was launched to encourage shared care-giving responsibilities. Enhanced paid child-care leave has resulted in many more fathers taking off time for child care.

⁹ *Working Women Are Japan's Only Hope for Avoiding Economic Catastrophe*
<http://www.theatlantic.com/business/archive/2013/06/working-women-are-japans-only-hope-for-avoiding-economic-catastrophe/276535/>

15. In the past decade, gender mainstreaming seeks to ensure that women and men have equitable access to, and benefit from, society's resources and opportunities, with the aim of achieving women's advancement and gender equality. Pregnancy discrimination appears to impose a great hurdle for working mothers in employment, especially employees in SMEs. In this connection, it is essential to evaluate the types and degrees of pregnancy discrimination against female workforce in SMEs as well as to solicit ways to solve the problem. The EOC encourage proposals provided by research teams having in-depth comprehension and expertise experience in the study of issues about pregnancy discrimination and gender equality.

Specific Objectives

16. The study is expected to be a fact-finding exercise with specific objectives as follows:

- (a) To conduct a literature review of local and overseas policies, preventive measures and mitigating practices relating to pregnancy discrimination in employment.
- (b) To investigate women's experiences of pregnancy at work with a view to assessing levels and types of pregnancy-related discrimination in SMEs, in relation to its occurrence: (i) during the period of pregnancy; and (ii) when transiting back into employment after childbirth.
- (c) To examine job nature and organisational factors that will influence the likelihood of unfair treatment of women during pregnancy and afterbirth in SMEs.
- (d) To assess the take-up of maternal and parental leave among women having children less than 6 years old: (i) How difficult it is to take such leave; and (ii) how SME employers top up such leave arrangements.
- (e) To identify practices in minimizing unfair treatment and probable policy interventions in redressing pregnancy discrimination in SMEs.

17. Research teams are welcome to cover other specific issues which would facilitate the fact-finding exercise. Such suggestions and related research design should be included in the research proposal and will be counted towards the team's score in the assessment exercise.

Research Proposal

18. Research teams who are interested in taking up the research project are required to submit a proposal to the EOC in accordance with paragraph 19 below. The proposal should include, but not limited to, the following:

- information to be collected to achieve the research objectives,
- detailed sample design,
- pilot survey to verify testing instruments and procedures,
- process of data collection, including recruitment of respondents, and designing questionnaires and discussion guidelines, etc.,
- quality control measures in both field work and office editing,
- data processing and data analysis,
- precision of results,
- working schedule of the entire project,
- number of interviewers / facilitators and their qualifications,
- qualification and experience of the research team and of the principal investigator, and
- quotation and method of payment.

Specification of Services

19. The researchers are required to specify research focus, sampling design, design of questionnaires and discussion guidelines, fieldwork and quality control, data processing and data analysis, and final report according to the following conditions:

- ***Research Focus:*** Considering the research objectives, the research team should identify and define the variables, and decide on the types of data to be collected.
- ***Sampling Design:*** The study may involve the methods below. Alternative sampling methods will be considered when they are deemed appropriate.

Questionnaire Survey: A general territory-wide survey of representative sample of working population aged 15 or above. It aims to evaluate the prevalence of pregnancy discrimination in employment and solicit public views on how to tackle with the problem.

One-to-One In-depth Interviews: Participants are recruited from working mothers who have once experienced pregnancy discrimination in SMEs. They should be discriminatory cases perpetrated by employers / HR practitioners of different sectors / industries.

Focus Group Discussion Survey: Participants are recruited from employers / HR practitioners in SMEs. The grouping might be based on: (i) interviewees' background in terms of genders, marital status and having children or not; (ii) SMEs of different sectors / industries; (iii) Hong Kong- / overseas- based

companies; and (iv) company sizes (i.e. number of employees). Other relevant categorization options are welcome for consideration.

The research team has to discuss regularly with EOC staff in developing an appropriate sampling method and designing robust questionnaires and discussion guidelines, which should be approved by the EOC.

- ***Fieldwork and Quality Control:***

- (a) All interviewers / facilitators should have a basic knowledge of equal opportunity issues and be thoroughly trained before they commence.
- (b) All interviews / focus group discussion sessions should be conducted in a sensitive manner about equal opportunity issues. The EOC will provide additional briefing for the successful bidder.
- (c) A detailed quality control process needs to be identified.

- ***Data Processing and Data Analysis:***

- (a) All research data must be processed on computer. Data can be aggregated as composite scores whenever necessary.
- (b) Information on data processing, measurement of variables and the use of statistical analysis should be provided.
- (c) Detailed plans of tabulations and statistical analyses of the research should be prepared for EOC's consideration.

- ***Presentation of Research Results:***

- (a) A bilingual [Chinese and English] full report of the research, including a glossary of definition of terms and technical jargons, should be produced. The format of the report should be agreed by the EOC. The full report should include the following as its contents: research objectives, methodology, findings, discussions, and recommendations and implications.
- (b) A validated and clean data file in a mutually agreed format on computer diskettes should be submitted to the EOC.
- (c) An oral presentation of the research results to the EOC should be made plus the attendance at a media briefing, if so requested by the EOC.

- ***Timing:*** It is expected that the project will be completed within a timeframe of 12 months.

- ***Copyright:*** Copyright of the research report, data collected and information derived from the survey shall remain the property of the EOC.

- ***Budget:*** All expenditure items should be grouped under appropriate categories and justifications must be given to support purchase of equipment items.

- **Evaluation:** Research progress is subject to monitoring by the EOC. It is imperative to submit progress reports and/or present results orally as means of process evaluation.

Submission of Proposal

20. It is noteworthy that the study is of a small scale, with well-defined scope and sufficient references for information. Cost and quality of the project will be considered concurrently.

21. One original and one duplicate copy of the proposal in bilingual (English and Chinese) setting should be submitted by hand or courier to the EOC Office *on or before 26 January 2015*. The envelope should be marked with the project title and “Attention: Miss Lau”. The research team, that has submitted a proposal, may be required to give an oral presentation to members of the EOC.

**Equal Opportunities Commission
19/F., CityPlaza Three, 14 Taikoo Wan Road,
Taikoo Shing, Hong Kong**

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