

# Assisted Cases Settled without Proceeding to Trial

*The following cases were given legal assistance by the EOC after conciliation attempts were unsuccessful during the complaint handling process. The cases were eventually settled before trial by the court.*

## **Cracking the Dress Code (Sex Discrimination)**

*In Hong Kong's first legal challenge to sex discrimination related to work attires, the EOC sought to establish a precedent regarding the application of dress codes between men and women in the workplace and question the stereotypical thinking on gender roles underlying such rules. Subsequently, the case was settled out of court.*

### ◆ **The Complaint**

Jennifer was employed as a teacher at a secondary school. At the first staff meeting before the school year commenced, the school principal announced that all female teachers were required to wear a dress or a skirt to work.

Jennifer reported to the school in a knit top and dress pants on the first school day. She was summoned by the principal for her attire, but the principal later agreed that Jennifer could wear pant suits if she would not wear a dress or a skirt. Despite this agreement, Jennifer was repeatedly criticised for not wearing a dress or a skirt, sometimes even in front of students. Meanwhile, male teachers were not obliged to wear any particular type of



clothing apart from the ban on t-shirts and jeans. Jennifer was aggrieved that male teachers were allowed to wear less formal pants, and they were not required to put on a jacket. She indicated that when she refused to wear skirts but instead put on pant suits to work, the principal took out her employment contract and coerced her, which gave her the feeling that the principal was indirectly requesting her to resign.

Jennifer believed the school had discriminated against her because the school unnecessarily restricted her choice of work wear while the male teachers were not subjected to corresponding requirements. Jennifer felt that in requiring female teachers to wear skirts, the school ignored women's concerns about wearing skirts, including being upskirt easily or being peeped at. The school also ignored the rights of women to keep warm and be safe from being taken upskirt photograph, therefore subjecting female employees to less favourable treatment. Jennifer then lodged a complaint of sex discrimination against the school with the EOC.

### ✓ **What the EOC did**

Upon receiving the complaint, the EOC case officer investigated into the matter and tried to facilitate a settlement by way of conciliation. However, this attempt was unsuccessful. The EOC later gave legal assistance in this case on the basis that the case raised a question of sex discrimination in the field of employment, where a restriction affects members of one gender less favourably than members of the other gender.

Under the Sex Discrimination Ordinance, it is unlawful for an employer to treat a person less favourably than another person in comparable circumstances because of a person's sex. In this case, female teachers were subject to a stricter dress code than male teachers, to the former's detriment. Any dress code policy which requires members of both sexes

to dress in a comparable standard of smartness and conventionality should be reasonable and necessary according to the nature of the job; it should also be applied in an even-handed manner between both sexes.

After a writ was issued, the school agreed to settle the matter by giving an apology and monetary payment to Jennifer. The school also undertook to review its dress code.

### **Points to Note:**

- While the anti-discrimination ordinance does not explicitly state that dress codes are unlawful, employers should avoid setting dress codes that may inadvertently discriminate due to gender, pregnancy, disability or race. Rules and standards should be based on the requirement of the job, not arbitrarily imposed based on stereotypical assumptions. For example, whether female teachers wear skirts or not do not affect the performance of their routine teaching duties. On the other hand, conveying a rigid gender stereotypical image of “women wear dresses” to both teachers and students might pose inconvenience and burden to female teachers.
- Employers should be sensitive when considering exemptions for people with special needs due to their disabilities or religious backgrounds.
- As a good practice, employers should review the code periodically in order to take into account changing social conventions.