

## Pregnancy Discrimination

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### **Lam Wing Lai v YT Cheng (Chingtai) Ltd DCEO 6/2004**

#### ◆ **Background**

The Plaintiff was employed in 2001 as an executive secretary to the Director of the Defendant. Her work performance was satisfactory, as evidenced by her salary increment after she had passed the probation period. Later, the Plaintiff became pregnant. In February 2002, the Plaintiff suffered a threatened miscarriage and informed her boss of the condition. From June to August 2002, the Plaintiff needed to take frequent sick leave due to further pregnancy complications. During this period, the Plaintiff discovered that a permanent secretary was recruited. She worried that the new secretary would be her replacement, though the Defendant assured her then that it would not be the case.

After the Plaintiff gave birth, the Defendant's human resources manager told her that her boss thought she should stay at home to look after her baby and take more rest given her poor health situation. Nevertheless, the Plaintiff resumed duty upon her completion of maternity leave in November 2002 as scheduled. However, she was moved to another work station with no properly equipped computer. In addition, she was not given her original duties. A week later, she was dismissed under the pretext that a customer had complained about her.

The Plaintiff brought proceedings against the Defendant under the Sex Discrimination Ordinance (SDO) and the Family Status Discrimination Ordinance (FSDO).

✓ **The Court's decision**

The Court found that the Plaintiff had established the relevant facts so that inferences could be drawn to support her claims of pregnancy and family status discrimination. On the other hand, the Defendant had failed to offer a reasonable explanation to the Plaintiff's dismissal. Therefore, the Court found that the Defendant discriminated against the Plaintiff on the grounds of pregnancy and family status.

As a result, the Plaintiff was awarded a total of HK\$163,500, with the breakdown of the damages as follows:

|                           |                                |
|---------------------------|--------------------------------|
| <b>Loss of income</b>     | HK\$ 88,500                    |
| <b>Injury to feelings</b> | HK\$ 75,000                    |
|                           | <hr/> <b>HK\$163,500</b> <hr/> |

The Court granted damages for loss of income as it took the Plaintiff four and a half months to find a new job. Since the new job's salary was lower than the one offered by the Defendant, the Court had also awarded the salary's difference to the Plaintiff, but limited to a period of three months, as the Court realized that work in the private sector offered no guarantees of security of salary and employment.

For the injury to feelings, the Court considered that the Plaintiff had worked for the Defendant for one and a half years in a respected position and had established friendships with colleagues. Therefore, the amount of injury to feelings awarded was slightly higher than in other cases.

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**Chan Choi Yin v Toppan Forms (Hong Kong) Ltd  
DCEO 6/2002**

◆ **Background**

The Plaintiff began her employment as an Account Manager with the Defendant in 1997. Around a year later, she became pregnant. After giving pregnancy notice to the Defendant, the Plaintiff faced a series of less favourable treatments by the Defendant. These included derogatory remarks made by the senior management about her pregnancy, repeated demands by her supervisor ordering her to return to work during sick leave and black rainstorm warnings, and transfer to a new team which resulted in a substantial reduction of her income and difficult working conditions.

The less favourable treatments continued when the Plaintiff resumed duty upon the completion of her maternity leave in 1999. Particularly, she was transferred to another division against her will, resulting in a further reduction of her income as well as a demotion.

As a result, the Plaintiff lodged a complaint with the EOC. Later, the Defendant informed her that she would be made redundant