

## Victimisation (Disability Discrimination)

*Victimisation means treating a person less favourably because he/she has made or plans to make a discrimination complaint, takes legal action, acts as witness against discrimination or helps somebody else do so. Victimisation is an unlawful act under the anti-discrimination ordinances, including the Disability Discrimination Ordinance (DDO).*

### ◆ **The Complaint**

Mary worked for a dental clinic. She suffered from work injury and as a result, had to take sick leave from time to time. After commencing a personal injury action against the dental clinic, she was forced by the clinic to go on sick leave because of her work injury. One year later, she was dismissed. Mary lodged a disability discrimination complaint (in respect of the forced sick leave) and a victimisation complaint (in respect of the eventual dismissal) against the dental clinic with the EOC.

### ✓ **What the EOC Did**

The EOC commenced an investigation after receiving the complaint. The dental clinic denied that it discriminated against or victimised Mary, and claimed that her dismissal was due to a restructuring exercise. However, there was no documentary evidence supporting the claim. Conciliation between the parties was attempted but unsuccessful.

After assessing the merits of the case, the EOC decided to assist Mary in commencing legal action against the clinic for disability discrimination and victimisation. Legal advice was provided by the EOC's lawyers, who also assisted in the settlement negotiations with the dental clinic. The

parties eventually reached a settlement. Mary received a settlement sum as compensation and the dental clinic agreed to conduct an internal investigation into the matter.

### **Points to Note:**

- Disability-related absence is often required by employees in order to recuperate from illnesses and disabilities. Employers should balance between the accommodation of such needs and their operational requirements.
- Under the DDO, it is unlawful for an employer to discriminate against a person with a disability or sickness by dismissing that person. Where an employee's disability hinders his/her capacity to perform the job duties, consideration of providing reasonable accommodation by the employer should be given, unless the employee is unable to carry out the inherent requirements of the job even when provided with such accommodation, or if such accommodation would cause the employer unjustifiable hardship.
- It is also unlawful for an employer to victimise an employee, i.e. to give the employee worse treatment, after the latter has lodged or made plans to lodge a complaint or take legal action relating to disability discrimination.