

Pregnancy Discrimination

4

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 the completion of her 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 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:

Injury to feelings	HK\$	88,500
Exemplary damages	HK\$	75,000
	HK\$	163,500

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 difference to the Plaintiff, but limited to a period of three months, as the Court realised that work in the private sector offered no guarantee of security of salary and employment.

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