

# Conciliated Cases

## 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 complained that male teachers were allowed to wear less formal pants, and they were not required to put on a jacket.

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. Feeling humiliated, Jennifer 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 granted legal assistance in this case on the basis that the case raises 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 subjected to a stricter dress code than male teachers, to their 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.
- Employers should use sensitivity 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.

*Tip: For more information, refer to the EOC's Good Management Practice Series on Dress and Appearance Codes.*

