

Fair and Square: Discrimination in the Hong Kong Workplace



By Equal Opportunities Commission

- Discrimination in the workplace is a troubling and under-reported issue in Hong Kong that has an impact on everything from staff morale to company profitability.
- Current Hong Kong laws protect against the most common forms of workplace discrimination, but there are still legal loopholes that need to be plugged.

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play

Has this ever happened to you or someone you know?

You became ill and required sick leave. When you returned to work, you were dismissed.

You applied for a job that requires overseas travel or night shifts. During the interview, however, you were told that women and parents of young children would not be suitable for the role.

You have to fend off inappropriate sexual comments and jokes from a colleague while at work, making you feel humiliated and uncomfortable.

Discrimination at work is a real and under-discussed issue in Hong Kong that affects a company's organisational effectiveness, staff productivity and bottom line. By proactively and pre-emptively addressing the issue, employers and HR professionals can protect themselves from legal liabilities and benefit from the positive business impact of inclusive policies.

The current picture

In September 2014, the Equal Opportunities Commission (EOC) announced the findings of the Study on Discrimination in the Hong Kong Workplace, which looked at the types and extent of workplace discrimination and explored ways on how to address these problems. It included a random sampling of 2,008 successful household interviews, 18 one-on-one in-depth interviews with employees who encountered discrimination or harassment, as well as focus group discussions with employers and HR professionals from companies of various sizes.

The findings were alarming, with nearly one in five respondents (18%) experiencing some forms of discrimination or harassment while seeking a job or at work. The most typical forms are:

1. age discrimination (64%)
2. gender discrimination (21%)
3. sexual harassment (17%)
4. family status discrimination (14%)
5. pregnancy discrimination (10%)

Even more worryingly, 94% of surveyed participants who faced discrimination did not take any action after the incident. Also, 51% did not speak to anyone about it. This could be due to job loss fear, as three-quarters of respondents said that the people who discriminated against them were their superiors. Discrimination was also found to be more common in small- and medium-sized enterprises (SMEs), as 40% of victims reported they were engaged in SMEs at the time of the discriminatory act.

As mentioned above, the most common type of workplace discrimination is age discrimination, with the median age of respondents falling between the age of 40-49. Almost half (49%) claimed that they encountered age discrimination when seeking a job, and 22% said it happened in the course of their work.

Interestingly, the median age of the population based on government statistics is 42.5, which means Hong Kong ranks 12th among the world's most rapidly ageing places. Notably, the median age rose from 20 in 1966 to 39 in 2006. According to estimates, the median age of Hong Kong's population will further increase to 46 by 2036.

Age discrimination is also common against younger people. Nearly one-third (32%) of survey respondents agreed with this statement: "Young people are not patient enough to learn, and thus it will waste company's resources on their training."

Stereotyping also negatively impacts the way workers are perceived and assessed at work. Once women have children, they tend to be seen as being less committed to their career. Indeed, pregnancy discrimination remains one of the most common complaints received by the EOC. According to the EOC's 2014 study, many employers and HR practitioners from SMEs and bigger companies said that they would not hire pregnant women, regardless of their qualifications and experiences.

Meanwhile, people with disability continue to frequently face stereotypes about their capabilities. In a 2010 survey by the EOC, over half of the respondents agreed that only simple, repetitive work was appropriate for workers with disabilities, including people with HIV/AIDS and chronic illness.

Legal protection

At present, Hong Kong has four specific ordinances to prohibit discrimination in a variety of fields, including employment. From January to September 2014, the EOC handled 690 complaints under the current anti-discrimination ordinances, of which around 72.5% were employment-related.

But it is worth noting that while the laws protect everyone against harassment due to race and disability, age discrimination – the most common form according to the study – is not covered under current laws. Other gaps remain in the existing legislation. For instance, although there are laws against sexual harassment (unwelcome conduct of a sexual nature), there are none against harassment on the basis of one's sex (unwelcome conduct because one is a woman or a man).

A promising development is a recent bill to amend the *Sex Discrimination Ordinance*. The proposal seeks to shield goods and service providers

Case of Age Discrimination

X, who is in her 40s, worked for an office supplies company for over 20 years. She received hardships at work for a period of time: she was transferred from department to department; her salary was changed from a commission-based one to a fixed sum without allowance; and her sales targets were increased higher and higher. She was eventually offered a redundancy package. She considered what happened to her as age discrimination because several similar cases had happened in the company before. In fact, her position was finally filled by a new employee.

She decided to consult the Labour Department but was told that nothing could be done as the company had provided her with a compensation package.

Although upset and angry about the incident, X was unaware of other channels for filing complaints.

Note: The above information is intended for reference only and should not be taken as legal advice.

from acts of sexual harassment by customers, including incidents that happen aboard Hong Kong-registered ships and aircraft while outside the city.

Loopholes in the law may be one of the reasons why discrimination remains a reality in many Hong Kong workplaces. Without explicit obligations, some companies may not see the need to enact policies that go beyond complying with the legal minimum. There is a need for stronger legal protection, and the EOC's ongoing review of existing anti-discrimination laws is one way to achieve this.

In addition, employers may not be sufficiently aware of the issue, given how many discrimination and harassment victims are hesitant to report the incident or take action afterwards. As such, some organisations may not feel that discrimination is a pressing problem that requires proactive measures.

In a 2013 survey based on 198 returned questionnaires, the EOC found that 43% of respondent companies had no anti-sexual harassment policy of any kind. Of

these, 46% indicated that there was no urgency to formulate a policy statement on sexual harassment and 37% never thought of developing such a policy. In the EOC's 2014 study, the focus group and in-depth interviews also revealed that the absence of formal anti-discrimination policies was particularly common among SMEs and even larger companies.

An inclusive workplace

Adopting preventive measures is better than redressing wrongs after the fact, as they provide clear mechanisms for handling complaints. Such policies also allow employers to effectively deal with discrimination issues and cultivate an inclusive workplace. Various research show that a discrimination-free workplace can encourage employees to be their best selves, which in turn allows them to work at optimal levels.

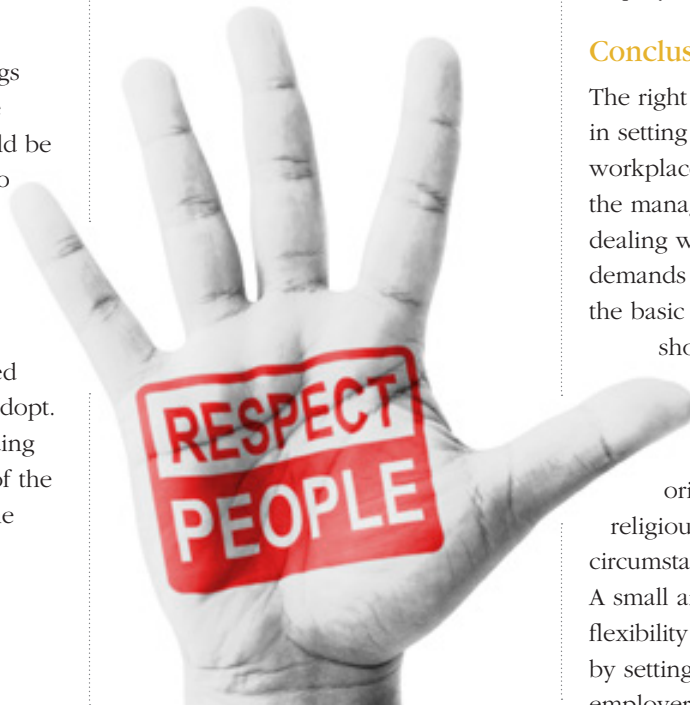
It should also be noted that under the anti-discrimination law, employers may be liable for the discriminatory acts of their employees committed in the course of work. This applies even if employers do not approve or have no knowledge of such

deeds, unless they can prove that they took reasonably practicable steps to prevent them. As such, establishing appropriate policies may help companies to avoid costly legal entanglements and low staff morale.

Many SMEs may think that tackling workplace discrimination requires resources they do not have or adjustments they cannot afford. But there are “small” things that companies can do to reduce discrimination. Sometimes it could be as small as flexible work hours to accommodate the special needs of employees.

The EOC has also produced a corporate policy framework on handling discrimination related complaints that companies can adopt. Such guidelines may vary according to the company and the nature of the work, but they should include the following elements:

1. objectives
2. key contact person(s) for complaints handling;
3. procedures for handling complaints, including confidentiality assurance;
4. responsibilities of various parties;
5. relevant definitions; and
6. methods to communicate policies to staff and how to keep the rules relevant.



The last point is particularly important. Some companies with existing policies may not have clearly communicated them to employees, leading to a lack of awareness in the workplace. It is vital that employers ensure that any policies are made known and readily accessible to employees at all levels.

Conclusion

The right policies are instrumental in setting the tone for an inclusive workplace culture and in conveying the management's seriousness in dealing with discrimination issues. This demands commitment beyond meeting the basic legal requirements and

should take into consideration the needs and particulars of individual employees, including age, sexual orientation or gender identity, religious beliefs, and family circumstances and responsibilities. A small amount of investment and flexibility can pay out big rewards by setting a company apart as an employer of choice.

Case of Pregnancy Discrimination

Y was first employed by a company under a one-year contract. Near the end of her contract, she signed a second contract which extended her employment period under the one-year contract continuously for another nine months.

Immediately after signing the contract to extend her employment, Y gave a notice of pregnancy to her employer. The next day, the company cancelled the extension contract, but later offered a new one under which the start of her extended employment was postponed by one day, meaning there was a one-day break between the first contract and the extension contract. The company refused to give Y paid maternity leave because of the one-day break.

After failing to claim for maternity leave at the Labour Tribunal, Y lodged a complaint with the EOC against the company for pregnancy discrimination.

The EOC commenced an investigation. The company denied discrimination. Conciliation between the parties was attempted but was unsuccessful.

After assessing the merits of the case, the EOC decided to assist Y in commencing legal action for pregnancy discrimination. The Court ruled in favour of Y because there would not have been a one-day break (and Y would have been entitled to paid maternity leave) but for her pregnancy.

The Court ordered the company to pay Y the value of her maternity leave pay, injury to feelings, exemplary and other damages.

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