



On 24 January 2008, the seminar “Our Ten Years under the DDO – Moving Forward, Changing Culture” was organized by the Equal Opportunities Commission to review the impact of the Disability Discrimination Ordinance (DDO) since its implementation and to explore the way forward. Participants had raised a number of questions in different sessions of the Seminar. Due to time constraint, many questions were not able to be answered by individual speakers in the Seminar. Questions relating the work of the EOC are now recorded verbatim (with some translation) and replied as follows:

1. The eczema problem of an employee, who has served the company for over ten years, has become worse recently. His was diagnosed as at the “socially withdrawn” level. I believe that he does not get any support from his family. (He lives alone and is not close to his parents). Because of the eczema, his self-esteem is low. The illness deteriorates because of work pressure (he has to deal with colleagues and customers). In the last 6 months, he was often absent (sick leave) from work. His absence has adversely influenced his health and the daily operation of the unit that he serves. As an employer, can I force him to receive treatment? Will such an act constitute disability discrimination? (Supplementary information: That employee has already taken more than 380 days of sick leave. He is on no pay leave now). (English Translation)

There are laws in Hong Kong to enforce compulsory treatment (e.g., Mental Health Ordinance and Quarantine and Prevention of Disease Ordinance) for some specific diseases. But in general the acceptance of treatment or not is the basic human rights of an individual, the Equal Opportunities Commission (EOC) does not consider that employers can order their employees to receive treatment compulsorily.



According to the Disability Discrimination Ordinance, it may not be unlawful for an employer to terminate employment with an employee who could not fulfill the inherent requirements of his/her job. However, in the process of assessing whether the employee could fulfill the inherent requirements of his/her job, the law also requires the employer to consider providing reasonable accommodation in order to facilitate the employee to carry out his/her job duties. The above information is provided for reference only. Readers should not treat the above information as specific legal advice.

2. Are there any EOC Members are ex-mental illness patients so that they can directly express their views to the Commission? Will there be any? How? (English Translation)

The EOC Members are directly appointed by the Chief Executive of the HKSAR. The EOC Members have been individuals from all walks of life who are enthusiastic in equal opportunities issues. For the EOC, we welcome any person who is able to promote equal opportunities to participate in our work.

3. Newspaper headlines that report violent incidents related to persons with mental illness in a sensational approach would incite the public to discriminate against persons with mental illness. Would EOC conduct any survey in connection to this and develop and implement policies to prohibit such practices? (English Translation)



Media coverage of certain types of news has long been a major area of concern for persons with mental illness and the ex-patients. The EOC has also noted the increasing concern as expressed in various channels by individuals who have been suffering from mental illness and the ex-patients. Therefore, the EOC is planning to organize a seminar about news coverage and mental illness. The date, time and details of the seminar will be announced in due course.

4. Will the EOC or Labour Department act as a referring agency to provide employers with opportunities to learn sign language? Can the EOC contact the related organization(s) or provide a list of related organizations? Or, EOC may hold a campaign, to encourage the employer to learn various ways of communication with the disable with hearing

difficulty? (English Translation)

It is in a good direction to encourage employers to learn / adopt alternative ways to communicate with persons with hearing impairment. The Equal Opportunities Commission (EOC) would consider this suggestion in the promotional activities in future.



To promote awareness of the needs of employees with disabilities, especially those with hearing impairment, among employers and human resources practitioners, the EOC organized a seminar “Preventing Disability Harassment and Handling Employees in Mental Distress” on 29 April 2008 for EO Club Members. Among the guest speakers invited are psychiatrists, representatives from the Hong Kong Society for the Deaf, representatives from small and medium enterprises that have employed persons with disabilities/hearing impairment, and EOC representatives. They shared with the audience their professional knowledge and good management practice based on real-life experience with reference to the Disability Discrimination Ordinance. Participants also exchanged views of effective ways to communicate with persons with hearing impairment in order to improve efficiency and avoid misunderstanding and discrimination.



In respect of referral, since the sign language courses are commercial in nature, the EOC is not in a position to refer students to the courses. If you want to learn sign language, you may like to contact individual hearing impairment concern groups for information. If you are interested to be linked to Non Governmental Organizations that provides services to persons with disabilities, please click the Link on the [EOC website](#).

5. Professional practical training of students with disabilities is not a relationship of employment. Are organizations that offer training opportunities having the same duties as employers under the current discrimination legislation? If an organization that offers the practical training is worried about the potential risk that may bring to the students by a student teacher who has mental illness, can the organization reject such a practical training arrangement? Or can the organization reject practical training if the student teacher concerned could not meet the practical training or teaching requirements? What is the role of the intermediary? For example, can the

intermediary disclose the health conditions of the student teacher to the organization that offers training opportunity? (English Translation)

The current anti-discrimination legislation (Disability Discrimination Ordinance) not only requires employers to give persons with disabilities equal opportunities to receive on-the-job training and professional training, it also requires, qualifying bodies, services and facilities providers (including those providing professional practical training) to do the same. Intermediaries are also required to give persons with disabilities equal opportunities under the current anti-discrimination legislation. Any person who intentionally commits or assists any other person to commit an act of discrimination is in breach of the anti-discrimination law. The term “mental illness” includes a wide range of illness; we should not make any assumption about a person’s well being simply because he/she has mental illness. Persons with mental illness or ex-patients can perform their job well and they should be entitled to the same opportunities as their counterparts. The above information is provided for reference only. Readers should not treat the above information as specific legal advice. For information relating to personal information, we suggest readers to contact the Office of the Privacy Commissioner for Personal Data Hong Kong for details.

6. In the group discussion session, the experience sharing focused mainly on the disabled persons and deaf. There is not much sharing and discussion on the employment situation and difficulties faced by persons with intellectual impairment. What do the speakers think? Is there a lack of complete information on employment situation of persons with intellectual impairment? (English Translation)

We are not able to discuss the employment situation and difficulties faced by persons with disabilities in the seminar because of the time constrain. The EOC would consider these topics proactively in planning future conferences.



7. We are often being asked for the number of persons with disabilities employed. However, we are not able to provide the information because we do not ask our staff whether they have any disability and we do not have such statistics. If we need to count the persons with disabilities in our organization, employees will be required to declare

their disabilities. Will the employees consider such practice disability discrimination? Is there any effective and appropriate way to collect such data? (English Translation)

The definition of “persons with disabilities” in local communities may be much narrower than the definition as set out in the Disability Discrimination Ordinance (DDO). Under the DDO, the term “disability” covers a wide range which includes a disability that presently exists; previously existed but no longer exists; may exist in the future; or is imputed to a person. (Please refer to section 2 of DDO). Generally speaking, it may not amount to discrimination for an employer to collect the information of job candidates or employees. However, if the purpose of collecting the information is discriminatory or in the process of collecting information or after having had collected information, discriminatory acts are committed against the person whose information is disclosed, the employer may have contravened the law. (Note: If the information required by the employer is used to ascertain (1) whether the job candidate / employee is able to carry out the inherent requirement of a job; or (2) whether the job candidate / employee would require services or facilities that are not required by job candidate / employee without a disability, the act of requiring information is not unlawful. Please refer to section 42 of the DDO for information.)

8. There was a family with one family member diagnosed as having depression and another with severe intellectual impairment. This family applied for transfer to a larger unit but was rejected application. An officer from the Housing Department told them that only persons with disabilities who had to undergo renal dialysis treatment and who were hyperactive were eligible to larger units. Was the situation above discriminatory? What could the EOC do? (English Translation)
9. Patients in the mental wards of public hospitals operated by the Hospital Authority are not allowed to have naps during day time. They are ordered to sit in a room from morning to evening, and are only allowed to go to bed at night. Such a requirement is considered inhumane by the patients and their family members. Does that requirement contravene the discrimination ordinance? I hope the EOC would communicate with the Hospital Authority in order to improve the service in mental wards. (English Translation)

In response to Q8 & Q9:



Some participants raised questions on individual cases. However, due to the limited information provided, we regret that we are not able to give a full reply. In considering whether an incident is related to any unlawful discrimination issues, the EOC has to understand the information of the incident in detail, and would not reduce to judgment hastily. If you suspect that you or your family members may have been unlawfully discriminated against, please contact our officers for information.

Both the Labour Department and the EOC would like to address the following issue:

1. Do persons with disabilities have equal opportunities to receive on-the-job training? How to ensure such equal treatment? (English Translation)

Reply from the Labour Department : The Selective Placement Division of the Labour Department provides employment services to disabled job seekers and at the same time encourages employers to provide suitable on-the-job training to their employees. To provide on-the-job training to employees is also consistent with employers' own interests.

Reply from the EOC: According to the DDO, it is unlawful for an employer to discriminate persons with disabilities in the provision of opportunities for promotion, transfer or training. In order to comply with the good management practices, the EOC recommends employers to establish a set of consistent selection criteria for recruitment, promotion, training and transfer. When there is an opportunity for promotion, training and transfer, all employees who intend to apply for the job should be notified the requirements and related procedures of the application, and all eligible employees should be informed in writing. (Please refer to the Disability Discrimination Ordinance Code of Practice on Employment).

