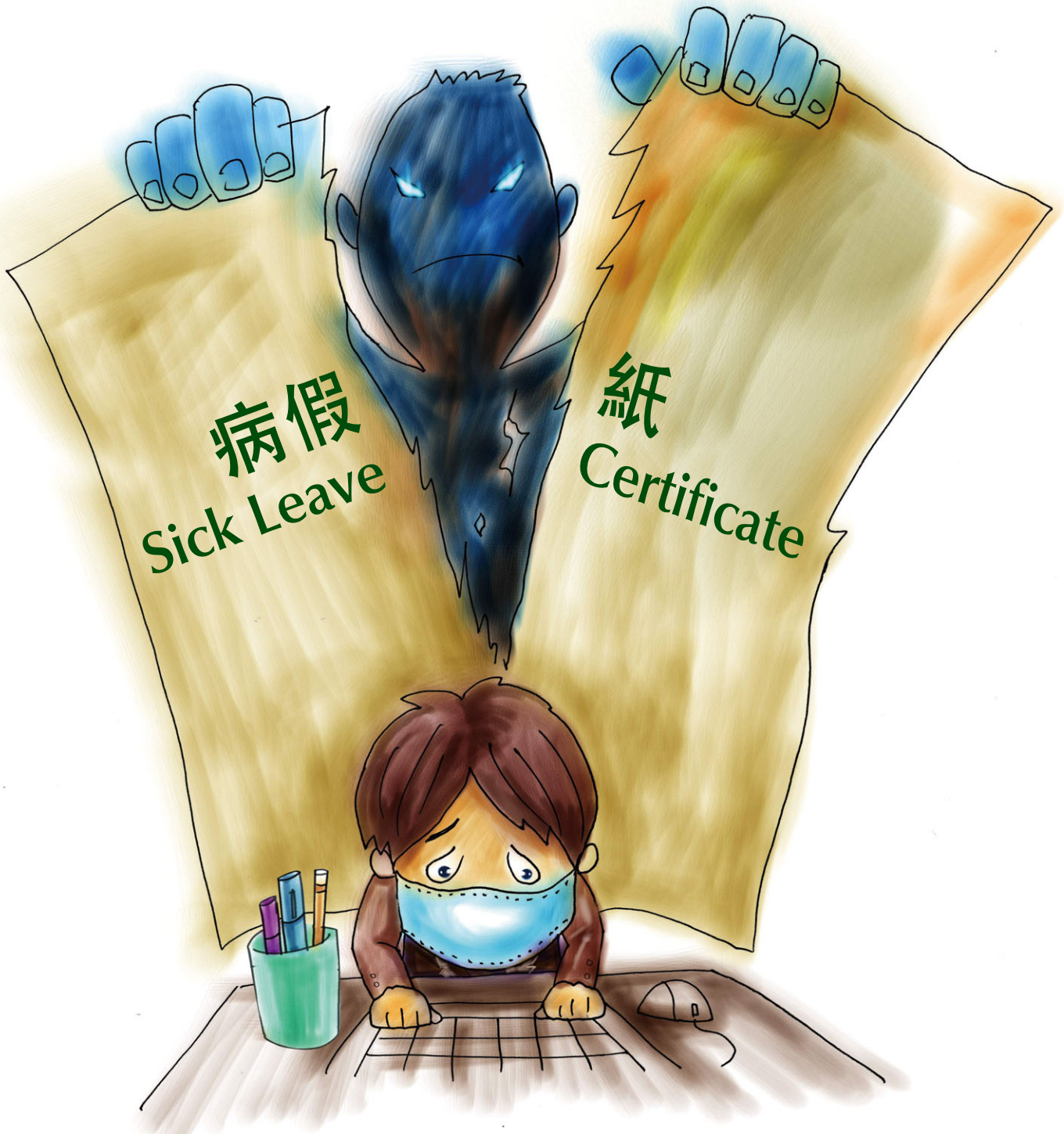


病假屬法定權益

Sick leave is a statutory entitlement.



背景

香港的四條反歧視法例(即《性別歧視條例》、《殘疾歧視條例》、《家庭崗位歧視條例》和《種族歧視條例》)禁止基於性別、懷孕和婚姻狀況的歧視；性騷擾；殘疾歧視、殘疾騷擾和中傷；家庭崗位歧視；種族歧視、騷擾和中傷等違法行為。

各條例有關僱傭範疇的條文，不僅保障僱員，也保障求職人士和合約員工。條例又涵蓋職業介紹所、成為合夥人、加入專業團體和工會等活動。至於有關非僱傭範疇的條文，涵蓋的範疇包括教育、提供貨品或服務、參加會社和體育活動、處所的處置和政府活動等。

處理投訴程序

若有人認為自己在法例保障的範疇內受到歧視，可親自或透過代表向平機會作出書面投訴。平機會調查投訴時，會研究與個案相關的資料，雙方也有充分機會作出回應和反駁。在認為合適的情況下，平機會將致力透過調解解決問題，協助涉事雙方達成和解。若無法達成和解，投訴人可向平機會申請其他方式的協助。平機會將審視每宗申請，考慮有否涉及原則問題，和申請人在沒有協助下自行處理個案的能力。平機會提供的協助包括：法律意見、法律協助或其他平機會認為適當的協助。

Background

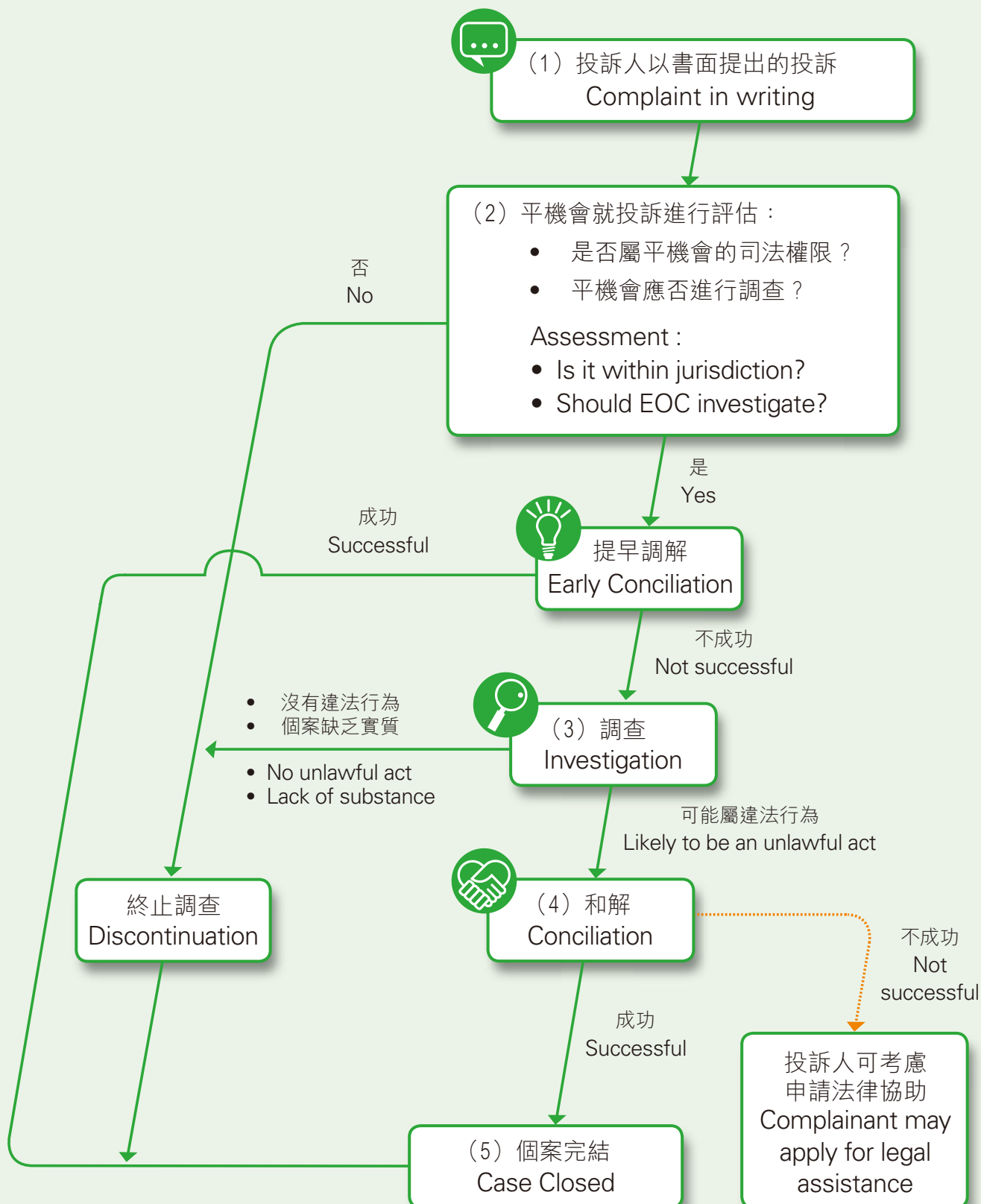
Hong Kong's four anti-discrimination ordinances, namely the Sex Discrimination Ordinance (SDO), the Disability Discrimination Ordinance (DDO), the Family Status Discrimination Ordinance (FSDO) and the Race Discrimination Ordinance (RDO), prohibit unlawful behaviours such as discrimination on the grounds of sex, pregnancy, and marital status; sexual harassment; disability discrimination, harassment and vilification; family status discrimination; and racial discrimination, harassment and vilification.

The employment-related provisions of the ordinances provide protection not only to employees, but also to job applicants and contract workers. They also cover activities relating to employment agencies and admission to partnerships, professional bodies and trade unions. The non-employment-related provisions cover areas such as education, the provision of goods or services, participation in clubs and sporting activities, the management of premises, and government activities.

Complaint Handling Procedure

Those who feel that they have been discriminated against on protected grounds can lodge a complaint in writing, either personally or through a representative, with the EOC. When investigating the complaint, information relevant to the case will be examined and parties will be given adequate opportunities to respond and rebut. When it is considered appropriate, we endeavour to resolve the matter through conciliation, helping the parties involved to reach a settlement. If a settlement cannot be reached, the complainant may apply to the EOC for other forms of assistance. We look at each application individually, considering issues of principle, as well as the ability of the applicant to deal with the case unaided. Assistance granted can include advice, legal assistance, or any other forms of assistance deemed appropriate.

向平機會提出投訴
Taking a Complaint to the EOC



共處理16,808宗查詢

查詢服務是平機會的重要工作之一。2011/12年度，我們處理了16,808宗查詢：其中8,076宗屬一般查詢，8,732宗屬具體事項查詢。大多數人透過電話熱線作出查詢，其次分別是書面查詢及親臨平機會與職員面談。

一般查詢是指問及有關平機會活動和反歧視法例的條文；而具體事項查詢是指查詢的情節或事件有可能變成投訴。在收到的8,732宗具體事項查詢中，2,114宗與《殘疾歧視條例》有關，955宗與《性別歧視條例》有關，386宗與《種族歧視條例》有關和209宗與《家庭崗位歧視條例》有關；其餘5,068宗則屬其他範疇的查詢（表1）。

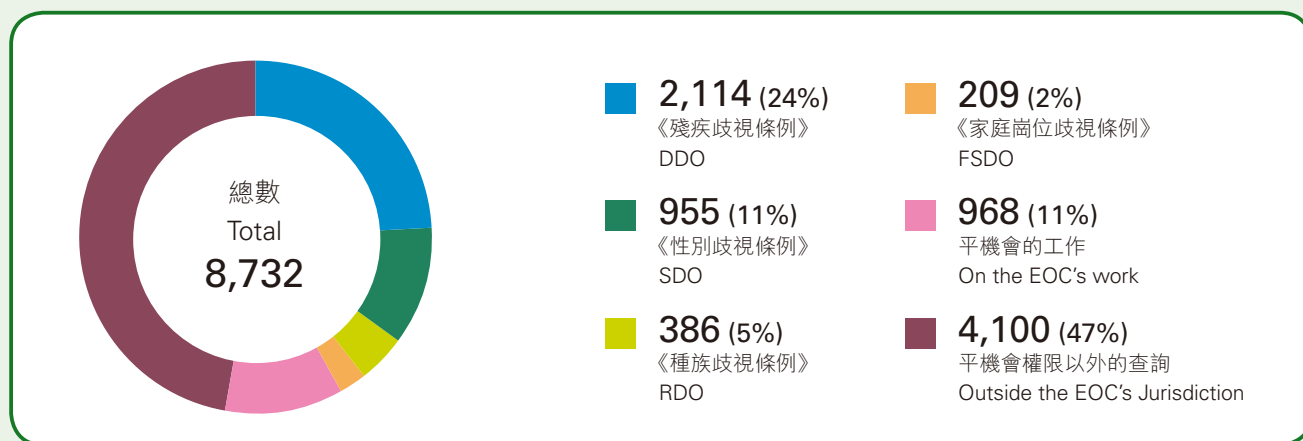
16,808 Enquiries Handled

Our enquiry service is an important aspect of our work. In 2011/12, we handled 16,808 enquiries: 8,076 general enquiries and 8,732 on specific situations. The largest proportion of enquiries is made through our telephone hotline, followed by writing and face-to-face interviews respectively.

General enquiries relate to questions on our activities and the provisions of the anti-discrimination laws, while specific enquiries cover questions on scenarios or incidents that may become complaints. Of the 8,732 specific enquiries received, 2,114 were related to the DDO, 955 to the SDO, 386 to the RDO and 209 to the FSDO, while the remaining 5,068 were about other issues (Figure 1).

表1：已處理8,732宗具體事項查詢

Figure 1: 8,732 Specific Enquiries Handled



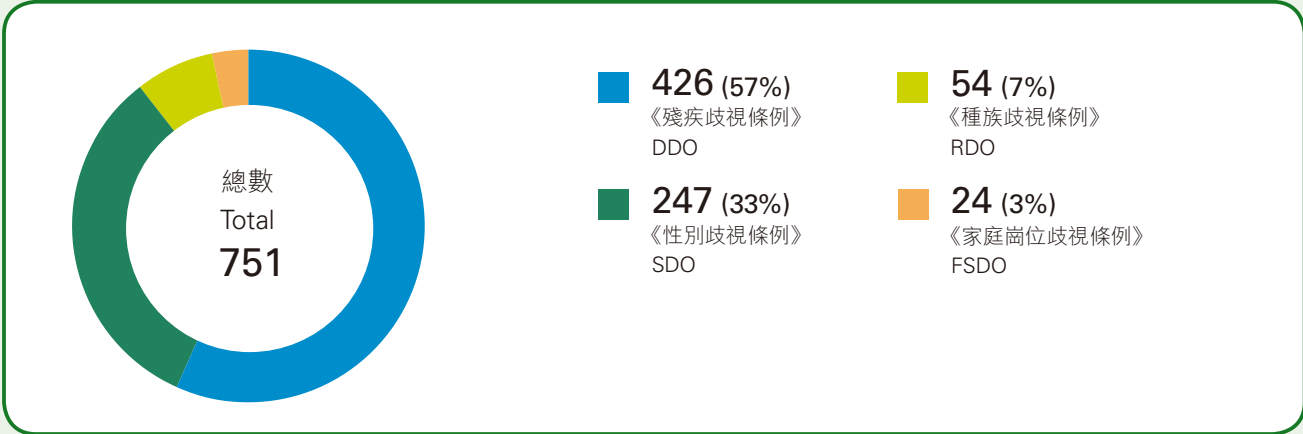
共處理1,042宗投訴

本年度平機會共收到751宗由個別投訴人提出涉及違法行為的新投訴（表2），較去年度的835宗減少了10%。最多投訴與《殘疾歧視條例》有關（426宗），其次為《性別歧視條例》（247宗）、《種族歧視條例》（54宗）和《家庭崗位歧視條例》（24宗）。

1,042 Complaints Handled

During the year, the EOC received 751 new complaints of allegedly unlawful acts lodged by individual complainants (Figure 2), a 10% decrease from the previous year's figure of 835. The largest proportion was complaints under the DDO (426), followed by the SDO (247), RDO (54) and FSDO (24).

表2：共收到751宗新歧視投訴
Figure 2: 751 New Discrimination Complaints Received



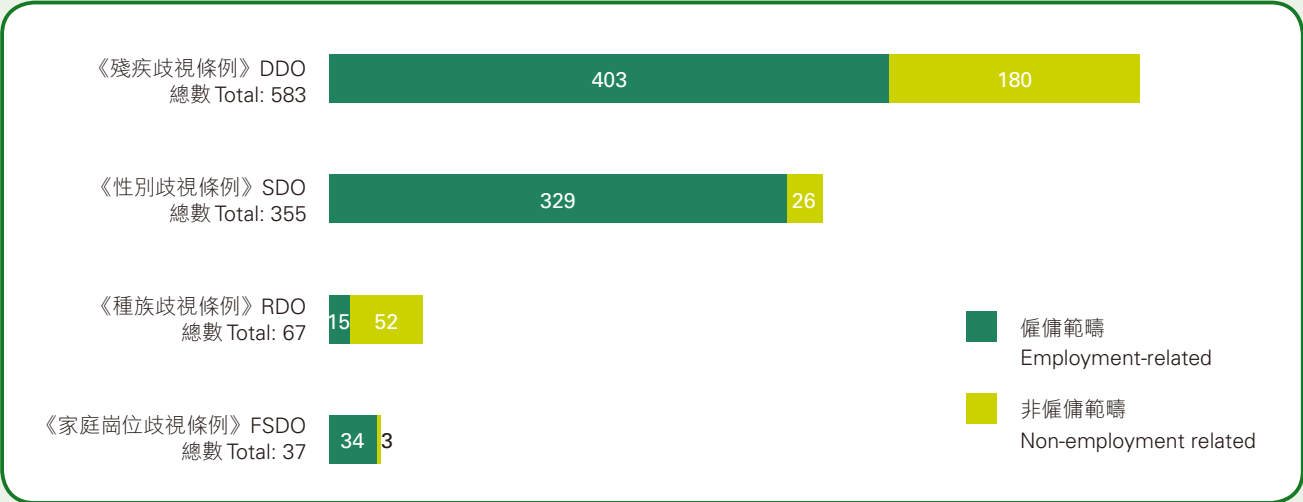
連同去年未完成的個案，平機會共處理了1,042宗投訴（表3），較上年度減少7%。此外，平機會亦主動調查了117宗潛在歧視的事件。

Together with cases carried over from the previous year, the EOC handled a total of 1,042 complaints (Figure 3), a 7% decrease from the previous year. In addition, the EOC handled 117 investigations into incidents of potential discrimination.

本年度的成功調解率為64%，上年度為68%。

The successful conciliation rate was 64% during the year, compared to 68% in the previous year.

表3：已處理的1,042宗投訴
Figure 3: 1,042 Complaints Handled



有關《殘疾歧視條例》 的投訴

2011/12年度共調查了583宗投訴，其中403宗(69%)屬僱傭範疇，而180宗(31%)屬非僱傭範疇。有關僱傭範疇的殘疾歧視個案，大多數與病假和工傷有關。主要爭論在於履行工作固有要求的能力、給予僱員的遷就或不合情理的困難。至於不屬僱傭範疇的個案，主要涉及提供貨品、設施或服務，或處所通道問題。

Complaints related to the Disability Discrimination Ordinance (DDO)

A total of 583 complaints were investigated in 2011/12, of which 403 (69%) were employment-related and 180 (31%) were non-employment related cases. For employment-related disability discrimination cases, the majority were in relation to sick leave and work injuries. The disputes were mainly over the ability to perform the inherent requirement of a job, accommodation given to an employee, or unjustifiable hardship. For those cases not related to employment, the majority involved the provision of goods, facilities or services or access to premises.

個案1：殘疾人士洗手間 Case 1 – Restroom Facilities for People with Disability

事件經過

阿寶是一位電動輪椅使用者。他指出在某公共大樓使用殘疾人士洗手間時遇上困難，由於廁所門不夠闊，電動輪椅進入後就不能關門。阿寶於是向平機會作出投訴。

雙方經過數次電話討論後，同意無需進行詳細調查，並出席了提早調解會議。

結果

有關機構決定，改裝殘疾人士廁所門是最實際的解決辦法。他們建議把廁所的推拉門改成趟門，以增加廁內的可用空間。阿寶接受這項和解條款，個案調解成功。

注意要點

根據《殘疾歧視條例》，提供服務及設施時，若在使用服務或設施的條件或條款上歧視殘疾人士，即屬違法。

本案的公共大樓儘管已為殘疾人士提供了專用洗手間，但電動輪椅使用者卻無法使用。因此，光提供設施是不足夠的，必須關顧和瞭解殘疾人士的實際需要，確保他們能真正使用有關設施。



What happened?

Paul is a motorised wheelchair user. He claimed that he had difficulty using a toilet for people with disability at a public building because the door was not wide enough to accommodate his wheelchair. That meant that if he entered the toilet, he could not close the door. Paul lodged a complaint with the EOC regarding the issue.

An early conciliation meeting, which bypassed a detailed investigation, was arranged after numerous phone conversations with the concerned parties.

Outcome

The concerned organisation decided that modifying the door of the disabled toilet would be the most practicable way to resolve the issue. They proposed changing the swing door of the disabled toilet to a sliding door so as to increase the space in the toilet. Paul accepted the settlement terms. The conciliation was successful.

Points to note

Under the Disability Discrimination Ordinance, it is unlawful to discriminate against a person with disability in the usage terms or conditions of the services and facilities.

In this case, even though a toilet for people with disability had been provided, it was not conducive for use by a motorized wheelchair user. Simply having special facilities is not enough. Care must be taken to understand the real needs of people with disability and to ensure that the facilities can be practically used by them.

個案2：人人有書讀 Case 2 – Education For All

事件經過

阿力四歲入學，在一所津貼學校讀書。十歲那年讀五年級，由於他在校內有行為問題，學校要求他接受專注力不足／過度活躍症評估。心理學家確診他有輕度專注力不足／過度活躍，只需接受行為治療，不需服藥。心理學家要求學校准許她觀察阿力的校內表現，以建議合適的療程，但被學校拒絕。阿力的媽媽稱，經心理學家診斷後，學校對阿力的態度有所改變。校方通知阿力媽媽，為免騷擾其他同學，只准阿力上課半日。但阿力媽媽反對，於是學校建議她自行聘請一位助教陪阿力上半日課或申請退學。



阿力媽媽最後選擇配合學校要求，出錢聘請一位助教，以便阿力能在同一間學校完成小六。

快學期尾時，阿力收不到學校中學部派發的報名表，其他同班同學卻都收到了。

阿力媽媽指稱學校基於阿力的殘疾而在以下方面給予阿力較差待遇，包括：1)不合理地要求他見心理學家；2)要求阿力媽媽為阿力聘請一對一的助教；3)不派中學報名表給阿力。

結果

經過調查後，平機會建議提早調解。學校同意向阿力媽媽賠償見心理學家及聘助教的費用，事情得到解決。

注意要點

教育機構若基於學生的殘疾而給予該學生較差待遇，即屬違法。教育機構應向學生提供合理的遷就，除非這樣做會為校方帶來不合情理的困難。教育機構應開心見誠與家長一起商討如何為學生制定最合適的安排。學校有責任確保殘疾人士有平等機會接受優質教育，並為所有學生(不論有否殘疾)提供一個安全又有秩序的學習環境。

What happened?

Alex had been in a subsidised school since he was four years old. When he was ten and studying in Primary Five, the school requested that Alex be assessed for Attention Deficit and Hyperactivity Disorder (ADHD) as he was having behavioural issues at school. A psychologist diagnosed him with mild ADHD, which could be treated simply with behavioural therapy

without the need for medication. The psychologist requested that the school allow her to observe Alex's in-school behavior in order to suggest appropriate therapy, but the school refused. His mother, Mary, claimed that the school's treatment of Alex changed with the diagnosis. The school notified Mary that Alex would only be allowed to attend a half-day of school in order not to disturb the other students. When Mary rejected this arrangement, the school requested Mary to pay for a teaching assistant to sit with Alex for half the school day; or Alex to leave the school.

Mary eventually complied with the school's demand and paid to hire a teaching assistant, so that Alex could complete Primary 6 in the same school.

Towards the end of the school term, Alex was not issued the enrolment notice to continue in the secondary section of the same school as other Primary 6 students in his class.

Mary alleged that the school had treated Alex less favourably on the ground of his disability in the following ways: 1) unreasonably requesting him to see a psychologist; 2) requesting Mary to hire a one-on-one teaching assistant for him; 3) not issuing him the secondary school enrolment notice.

Outcome

After investigating into the complaint, early conciliation was recommended by the EOC. The matter was settled with the school agreeing to pay the amount incurred by Mary for the consultation with a psychologist as well as the hiring of the teaching assistant.

Points to note

It is unlawful for an education establishment to treat a student less favourably on the ground of his/her disability. Reasonable accommodation should be provided unless its provision would impose unjustifiable hardship on the institution. It is advisable to discuss arrangements with the parents openly in order to work out the most feasible solution for the student. Schools have a responsibility to ensure that people with disabilities have equal access to quality education, and provide all students, including students with disabilities, a safe and orderly learning environment.

有關《性別歧視條例》 的投訴

根據《性別歧視條例》提出的投訴中，懷孕歧視及性騷擾個案繼續高踞首兩位。常見的性騷擾行為包括：涉及性而不受歡迎的身體接觸；與性有關的言論及玩笑，令投訴人感到受冒犯。

在作出報告期間，平機會調查了共355宗就《性別歧視條例》提出的投訴，其中329宗屬僱傭範疇。54%的投訴(177宗)屬懷孕歧視，另外29%的投訴(94宗)為性騷擾。平機會亦調查了26宗非僱傭範疇的投訴，50%個案(13宗)與性別歧視有關，46%個案(12宗)與性騷擾有關。

Complaints related to the Sex Discrimination Ordinance (SDO)

Pregnancy discrimination and sexual harassment continue to occupy the top two ranks of cases lodged under the SDO. Common acts of sexual harassment include unwelcome physical contact of a sexual nature, verbal sexual comments, and suggestions and jokes which the complainants found offensive.

In the reporting period, the EOC investigated a total of 355 SDO cases, of which 329 concerned employment-related allegations. 54% of them (177 cases) involved pregnancy discrimination, while 29% involved sexual harassment (94 cases). Investigations were also made into 26 non-employment related allegations, 50% (13 cases) of which were related to sex discrimination, and 46% (12 cases) were related to sexual harassment.

個案3：懷孕導致解僱 Case 3 – Pregnancy Leads to Dismissal

事件經過

亞莉剛加入一間國際貿易公司任職行政經理。工作了才一星期，她得知自己懷孕，於是通知上司。六天後，亞莉的上司對她說，要終止僱用合約，即時生效，理由是她的身體狀況不適合現時的工作。上司指出此職位要經常離港，差不多四分之一工作日子要外出公幹。但是亞莉記得上司之前說過，她只需每隔四至五個月才外出公幹一次。她認為上司所說的解僱原因不過是藉口。經過調查後，平機會發現亞莉有可能因為懷孕而受到不公平對待。公司提供的資料不足以充分證明解僱亞莉完全與她懷孕無關。因此，平機會建議雙方進行調解。

結果

經過調解會議及多次電話洽談後，個案終於達成和解。公司同意給亞莉金錢賠償。



注意要點

任何僱主如因僱員懷孕而歧視並解僱她，即屬違法。平機會收到的大部分懷孕歧視投訴個案都屬僱傭範疇。懷孕歧視通常涉及以下一些行徑：懷孕期間遭到口頭批評、被施壓要求辭職、在計算花紅或調整薪金時遭到較差待遇、放完產假復職時被解僱，或職位被替假員工永久取代。平機會處理投訴時，會逐宗投訴作個別考慮。假若僱主決定給予懷孕員工較差待遇的其中一個原因與懷孕有關，根據《性別歧視條例》，該決定會被視為基於員工的懷孕而作出，亦即屬違法行為。平機會會深入調查事件，如：工作的固有要求、員工的表現、營商環境及架構變動等，以確定僱主行為的真正原因。機構備有良好人力資源管理常規肯定有助減少這類紛爭的發生。

What happened?

Julie had just joined an international trading company as an Administration Manager. She had been with the company for just a week when her pregnancy was confirmed, and she accordingly informed her supervisor. Six days later, Julie's supervisor told her that her employment contract would be terminated with immediate effect as her physical condition was not suitable for the present job. He cited that the job required frequent travel overseas for almost a quarter of her working days. Julie, however, recalled her supervisor saying that she would have to travel only once every four or five months. She believed the reason given by her supervisor for her dismissal was just an excuse. Upon investigation, the EOC found that there was a possibility that Julie was treated unfairly due to her pregnancy. The information provided by the company was also insufficient for the purpose of justifying that Julie's termination was completely unrelated to her pregnancy. Thus, conciliation was recommended for the case.

Outcome

After a conciliation meeting and numerous phone conversations, a settlement was reached. The company agreed to give Julie a monetary compensation.

Points to note

It is unlawful for an employer to discriminate on the ground of an employee's pregnancy by dismissing her. Most of the pregnancy discrimination complaint cases brought to the EOC are in the employment field. They often take one of the following forms: verbal criticism during the pregnancy, applying pressure to resign, less favourable treatment in bonus calculations or salary adjustments, dismissal upon return from maternity leave or posts being taken over permanently by the relief staff. Each complaint needs to be considered on a case-by-case basis. A decision to treat an employee less favourably may be the result of many factors.

However, under the Sex Discrimination Ordinance, even if only one of these factors is related to the employee's pregnancy, the decision would be deemed to be unlawful as it was made on the ground of the employee's pregnancy. Investigation probes into details such as inherent requirements of the job, performance issues, the business environment, and organisational changes to see whether there are genuine reasons for the employer's action. Good human resource practices can certainly help to minimise these types of disputes.

有關《種族歧視條例》 的投訴

平機會本年度共調查了67宗根據《種族歧視條例》提出的投訴，其中15宗(22%)屬僱傭範疇，52宗(78%)屬非僱傭範疇。77%非僱傭範疇的投訴涉及提供貨品、設施或服務方面的種族歧視。

Complaints related to the Race Discrimination Ordinance (RDO)

During the year, we investigated a total of 67 RDO cases, 15 (22%) of which were employment-related and 52 (78%) non-employment related. 77% of non-employment related cases were in the provision of goods, facilities and services.

個案4：少數族裔人士不獲發信用卡 Case 4 – Refusal to Issue Credit Card to an Ethnic Minority Person

事件經過

已在香港住數年的戴夫是烏干達人。他在銀行開立了儲蓄戶口，後來向同一間銀行申請信用卡。

不久，他收到銀行的信，拒絕他申請信用卡，他感到驚訝，並懷疑銀行是因為他的種族而拒絕他的申請，於是向平機會投訴。

經平機會調查後，銀行解釋當中存在溝通問題，產生了誤會。戴夫申請信用卡被拒，不是因為他的種族或信貸紀錄，而是因為他未提交足夠文件。他們致電給戴夫解釋事件，並繼續批核程序。

結果

個案透過提早調解得以解決。銀行聯絡戴夫，取得所需文件後，批核了他的信用卡申請。戴夫對結果感到滿意。



注意要點

《種族歧視條例》規定，在提供貨物、設施及服務時，若基於某人的種族而對該人作出歧視，即屬違法。在戴夫的個案中，若銀行是因為他的種族而拒絕他的申請，可構成種族歧視。判斷是否存有種族歧視時，會考慮提供服務時的態度和質素。

What happened?

Dave, a Ugandan who has been living in Hong Kong for several years, opened a savings account with a bank and subsequently applied for a credit card with the same bank.

He was shocked to receive a letter declining his application for a credit card. He suspected the bank declined his application because of his race. He lodged a complaint with the EOC.

Upon investigation by the EOC, the bank explained that there was a miscommunication. The credit card application was rejected not on the ground of Dave's race or his credit report, but because of insufficient documents. They would call Dave to explain the matter and continue with the approval process.

Outcome

The case was settled by early conciliation. The bank contacted Dave, obtained the required documents, and subsequently approved his credit card application. Dave was satisfied with the outcome.

Points to note

It is unlawful under the Race Discrimination Ordinance to discriminate against a person on the ground of race in providing goods, facilities and services. In Dave's case, it might have amounted to race discrimination if the bank had rejected his application because of his race. The manner and quality in which the service is provided is also taken into account in determining race discrimination.

有關《家庭崗位歧視條例》 的投訴

本年度平機會共調查了37宗家庭崗位歧視投訴，其中34宗(92%)屬僱傭範疇，3宗(8%)屬非僱傭範疇。僱傭範疇的大多數指稱(68%)是關乎基於家庭崗位而被解僱。

平機會的主動調查

平機會又根據觀察所得的情況，或一些不想直接參與調查或調解的受屈人或第三者所報告的違法行為，主動作出調查。在這些情況下，平機會會聯絡有關人士，查詢事件，解釋反歧視法例的條文，並建議他們加以糾正。在2011/12年度，我們處理了117宗這類個案，它們大多數屬殘疾歧視類別(主要關於通道和提供服務的問題)，其次是性別歧視方面(主要是招聘和提供服務的問題)。

Complaints related to the Family Status Discrimination Ordinance (FSDO)

During the year, a total of 37 FSDO allegations were investigated, 34 (92%) of which were employment-related and 3 (8%) non-employment related. The majority (68%) of the allegations in the employment field were related to dismissal on the ground of family status.

EOC-initiated Investigations

The EOC also initiates investigations into incidents involving unlawful acts that we notice, or which are brought to our attention by third parties or aggrieved individuals who do not wish to be involved in the investigation or conciliation process. Under these circumstances, the EOC approaches the concerned parties to inquire into the matter, explain the relevant provision, and advise them to rectify the situation. During the year under review, we handled 117 such cases, with the majority falling in the DDO category (mainly on accessibility and service provision), followed by the SDO (mainly on recruitment and service provision).

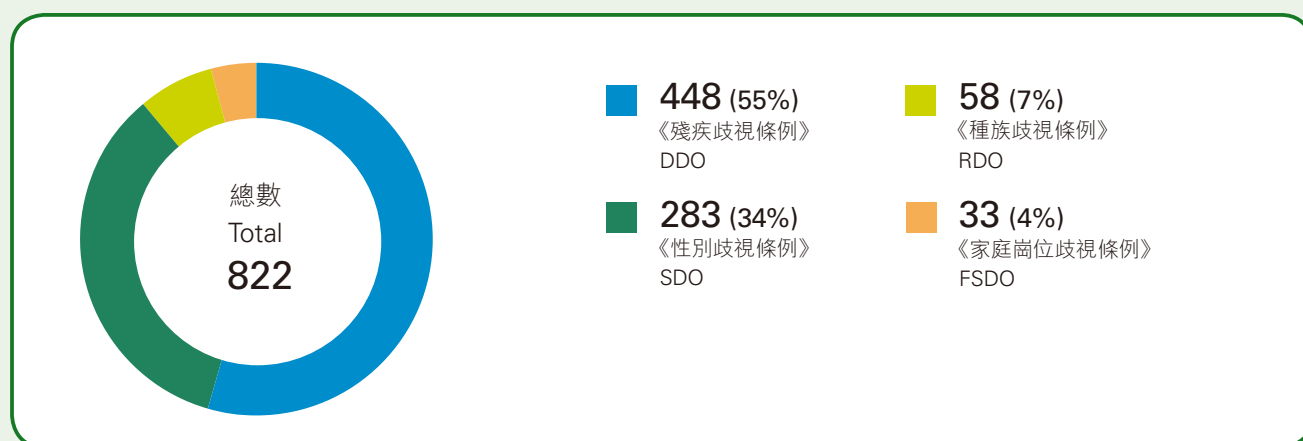


調解

2011/12年度在1,042宗進行調查的個案之中，有822宗已完結。已完結個案中，殘疾歧視個案佔55%(448宗)，其次為性別歧視個案，佔34%(283宗)；種族歧視個案佔7%(58宗)和家庭崗位歧視個案佔4%(33宗)。

表4：已完結個案－據條例分類

Figure 4: Concluded Cases – Breakdown by Ordinances

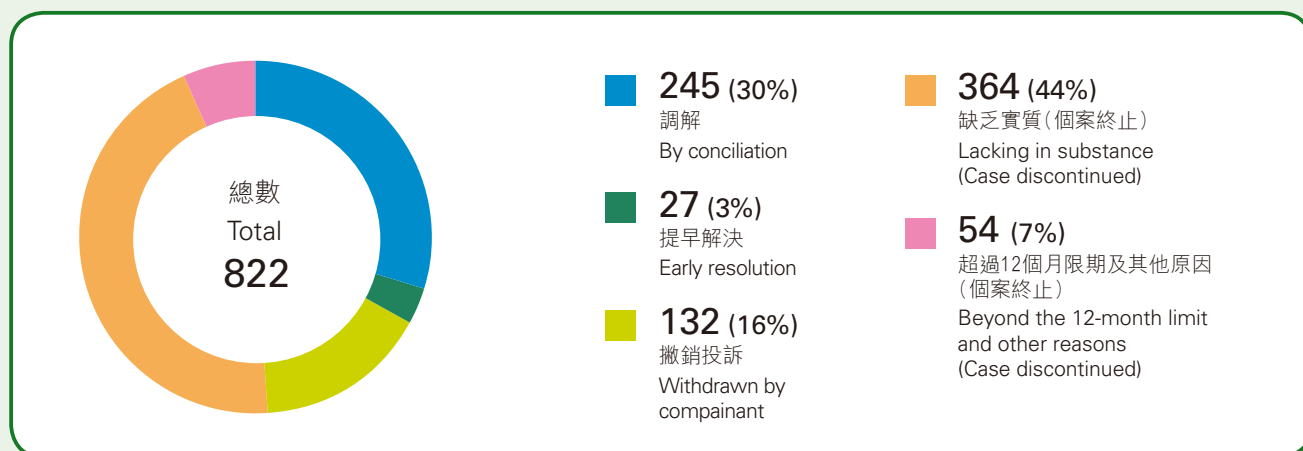


在822宗已完結的個案中，有245宗進行了調解，其中158宗成功調解，調解成功率為64%。有27宗個案是雙方在調查完成前已提早解決；有132宗投訴人不想繼續追究，或是收到答辯人初步回覆後因進一步理解情況，而撤回投訴。有418宗個案因各種原因(包括：缺乏實質、無發現違法行為、超過12個月追溯期才提出投訴等)而被終止。(表5)

Conciliation

Of the 1,042 cases under investigation in 2011/12, we concluded 822 cases. DDO cases made up 55% (448) of concluded cases, followed by SDO cases at 34% (283), RDO cases at 7% (58), and FSDO cases at 4% (33).

Of the 822 cases concluded, 245 proceeded to conciliation, with 158 being successfully conciliated. The successful conciliation rate was 64% during the year. 27 cases were resolved early between the parties before the investigation was completed. A total of 132 cases were withdrawn due to complainants having no desire to pursue the case further or understanding the situation better after receiving an initial response from the respondents. 418 cases were discontinued due to various reasons, including lacking in substance, no unlawful act found, and complaints lodged beyond the 12-month time bar. (Figure 5)

表5：已完結的個案－根據所採取的行動分類**Figure 5: Concluded Cases – Breakdown by Action Taken**

法律協助

若投訴未能達致和解，平機會有權為申請法律行動的投訴人提供協助。平機會的法律及投訴專責小組會根據平機會法律服務科的意見，決定是否給予協助。法律及投訴專責小組由不同界別的成員組成，包括學者、僱主、律師、立法會議員、非政府組織及職工會代表，以平衡社會上不同持份者的意見。

平機會給予協助的形式包括：由平機會的律師向申請人提供法律意見、取得及評估更多的資料或證據、或由平機會的律師或平機會聘請的私人執業律師在訴訟中擔任申請人的法律代表。

本年度，平機會共處理了69宗有關法律協助的申請，其中24宗獲得協助，43宗不獲給予法律協助，1宗申請人撤銷申請，1宗仍在處理。（有關申請的分類詳情，見表6。）

Legal Assistance

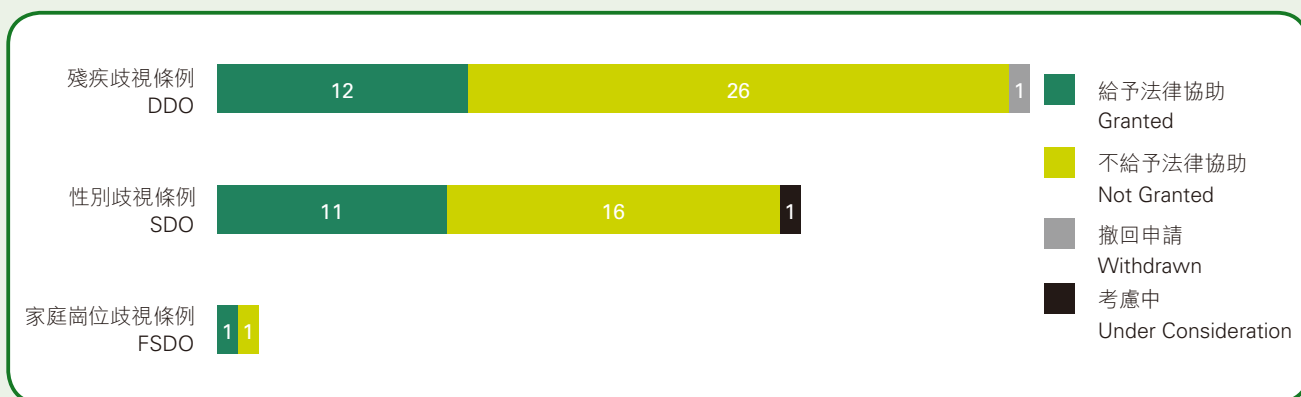
When a complaint has been lodged, but not settled, the EOC has the authority to grant assistance to applicants who wish to take legal action with regard to the complaint. Upon receiving legal advice from our lawyers, the EOC's Legal and Complaints Committee decides whether or not to grant assistance in a case. The Legal and Complaints Committee consists of a diverse combination of members, including academics, employers, lawyers, legislators, NGOs, and trade union representatives, in order to present a balanced view of the various stakeholders in society.

The assistance granted by the EOC may include legal advice to the applicant by EOC lawyers, legal services relating to the gathering and assessment of further information or evidence, representation in legal proceedings by EOC lawyers or by lawyers in private practice engaged by the EOC.

During the year, we handled 69 applications for assistance. Of these, 24 were granted legal assistance, 43 were not granted, 1 was withdrawn by the applicant, and 1 was still being considered at the end of the period. (See Figure 6 for the breakdown of applications by ordinance.)

表6：按照條例申請法律協助的分類

Figure 6: Breakdown of Applications for Legal Assistance (by Ordinance)



2011/12年度沒有種族歧視個案申請法律協助。

There was no RDO case application for legal assistance in 2011/12.

給予或不予法律協助的原因

在決定是否給予法律協助時，平機會考慮多方面因素，包括個案是否涉及原則問題、個案的複雜程度、有否其他協助及證據的強弱。平機會會就個別的申請作考慮，很多時候是否提供法律協助會受多種因素影響。

以下是給予法律協助的主要原因：

- 個案能就某些重要法律問題確立先例
- 可引起市民對香港常見歧視問題的關注，如懷孕歧視及通道設施等問題
- 可推動制度改變，消除歧視

Reasons for Granting or Declining Legal Assistance

In deciding whether or not to grant legal assistance, the EOC considers a wide range of factors, such as whether a question of principle is involved, the complexity of the case, the availability of other sources of assistance, and the strength of evidence. The applicability of these factors can vary from case to case, and often a combination of reasons is involved in reaching a decision.

The main reasons for granting legal assistance may include the following:

- Establishing a precedent on important legal issues
- Raising public awareness in areas of discrimination which are still prevalent in Hong Kong, such as pregnancy discrimination and accessibility to premises
- Encouraging institutional changes to eliminate discrimination

以下是不給予法律協助的主要原因：

- 證據不足，個案難以在法庭上獲勝訴
- 個案並不涉及重要的原則問題
- 運用法律程序處理也無法達致有意義的結果

法律協助個案

獲平機會提供法律協助的個案，在我們律師的協助下，雙方往往能以調解方式達成和解。

在2011/12年度，有14宗獲法律協助的個案在展開法律程序前已解決，毋需對簿公堂。當中有8宗與《性別歧視條例》的僱傭範疇有關；4宗與《殘疾歧視條例》的僱傭範疇有關；而與《種族歧視條例》的教育及僱傭範疇相關的個案各有1宗。在這14宗個案中，有8宗的投訴人取得法律意見或達到其目的後，已不再採取進一步行動。尚餘6宗個案在和解條款保密的情況下已獲解決。

另有22宗於本年度或之前已獲法律協助的個案仍在處理中，截至現階段為止，這些個案仍未有結果或未展開法律程序。

The main reasons for declining legal assistance may include the following:

- The evidence is insufficient to support a good prospect for success in court.
- The case does not involve an important question of principle.
- No meaningful result can be achieved by way of legal proceedings.

Legally Assisted Cases

For cases in which legal assistance is granted, parties can often successfully reach a settlement through negotiations with assistance from our lawyers.

In 2011/12, 14 cases in which legal assistance was granted before and during the year were resolved without the need to commence legal proceedings. Of these, eight were employment-related SDO cases; four were employment-related DDO cases; and two were RDO cases in education and employment respectively. In eight of these 14 cases, no further action was taken after the complainant had received legal advice or after their objective had met. The remaining six cases were settled on confidential terms.

Twenty-two other cases where legal assistance was granted before and during the year are still in process, with no outcome having been reached and no court proceedings having commenced at the end of the period under review.

沒有展開法律程序便已解決的個案

Assisted cases concluded without commencing legal proceedings

《性別歧視條例》SDO:	8
《殘疾歧視條例》DDO:	4
《種族歧視條例》RDO:	2
	14

以下是獲得法律協助並於展開法律行動前已在平機會協助下達成和解的一些典型個案，具參考價值。

The following cases provide a useful look at some of the typical cases granted legal assistance and settled by the EOC before legal action commenced.

獲得法律協助，並達成和解的個案

Selected Cases of Legal Assistance Concluded by Settlement

個案1：僱傭範疇的性騷擾

Case 1 – Sexual Harassment in Employment

背景

X女士是技術員。當她被調到新職位時，一位年資比她高的同事(騷擾者)在工作間向她講涉及性的言論，又觸碰她的身體。X女士認為這些行為不受歡迎、感到被冒犯及侮辱。騷擾者否認有作出性騷擾。X女士向平機會投訴騷擾者及她的僱主，因僱主要對僱員的行為負上轉承責任。

平機會的行動

平機會收到投訴後展開調查。投訴僱主的部份成功和解，僱主同意強化針對性騷擾的政策及培訓，亦會重新設計女員工的制服。騷擾者與X女士嘗試調解，但不成功。經評估本案後，平機會決定協助X女士就性騷擾展開法律行動。會方律師負責提供法律意見，也協助與騷擾者進行和解磋商。雙方最後達成和解，騷擾者同意給予X女士金錢賠償及道歉信。

Background

Ms X worked as a technician. When she was transferred to a new post, a more senior employee (the harasser) made remarks and physical contact of a sexual nature to her in the workplace, which Ms X found to be unwelcome, offensive and humiliating. The harasser denied he had committed sexual harassment. Ms X lodged a complaint with the EOC against the harasser as well as the employer for being vicariously liable for the acts of the harasser.

What the EOC did

The EOC commenced an investigation after receiving the complaint. The complaint against the employer was settled with the employer agreeing to strengthen its policy and training on sexual harassment as well as to re-design the female staff uniform. Conciliation between Ms X and the harasser was attempted but was unsuccessful. After assessing the merits of the case, the EOC decided to assist Ms X in commencing legal action for sexual harassment. Legal advice was provided by our lawyers, who also assisted in settlement negotiations with the harasser. The parties eventually reached a settlement and Ms X received a settlement sum and an apology letter from the harasser as compensation.



個案2：僱傭範疇內與懷孕有關的性別歧視 Case 2 – Pregnancy-related Sex Discrimination in Employment

背景

Z女士是一名文員。她試用期間懷孕，試用期完結後獲僱主聘用。後來她向僱主提交懷孕通知書。一星期後，她被僱主解僱。Z女士於是向平機會投訴僱主懷孕歧視。

平機會的行動

平機會收到投訴後展開調查。僱主解釋，解僱Z女士是因為她的工作表現差，和同事的關係又惡劣，但僱主未能提供足夠資料去證明自己的說法。雙方進行調解，但不成功。平機會對本案作出評估，又考慮到僱主指Z女士工作表現有問題，但又能通過試用期並被獲確定聘用相互矛盾，於是決定協助Z女士就懷孕歧視展開法律行動。會方律師負責提供法律意見，也協助與僱主進行和解磋商。最後雙方達成和解，僱主同意給Z女士金錢賠償。



Background

Ms Z was a clerk. She was pregnant during the probation period, and submitted the pregnancy notice to the employer after her employment was confirmed. She was then dismissed by the employer about a week after submission of the pregnancy notice. Ms Z lodged a complaint to the EOC against the employer for pregnancy discrimination.

What the EOC did

The EOC commenced an investigation after receiving the complaint. The employer explained that Ms Z was dismissed because of her poor performance and bad relationship with colleagues, but did not provide sufficient information to support these allegations. Conciliation between the parties was attempted but was unsuccessful. After assessing the merits of the case, and having taken into consideration the fact that the allegations relating to performance issues contradicted the confirmation of employment, the EOC decided to assist Ms Z in commencing legal action for pregnancy discrimination. Legal advice was provided by our lawyers, who also assisted in settlement negotiations with the employer. The parties eventually reached a settlement and the employer agreed to pay monetary compensation to Ms Z.

個案3：僱傭範疇的殘疾歧視 Case 3 – Disability Discrimination in Employment

背景

Y先生是貨車司機。他因工傷及其他病患要請五個月病假。第一天復工就被僱主解僱。Y先生於是向平機會投訴僱主殘疾歧視。

平機會的行動

平機會收到投訴後展開調查。僱主解釋，解僱Y先生與他的傷病無關，而是因為公司需要裁減員工及他的工作表現有問題。但僱主無法提供足夠資料去支持自己的說法。雙方嘗試調解，但最後不成功。經評估本案後，平機會決定協助Y先生就殘疾歧視展開法律行動。會方律師負責提供法律意見，也協助與僱主進行和解磋商。雙方最後達成和解，Y先生收到了相當於三個月薪金的金錢賠償。



Background

Mr Y was a truck driver. He suffered from work injury and other illness, and had to take sick leave for about five months. On the first day he returned to work, he was dismissed by his employer. Mr Y lodged a complaint with the EOC against the employer for disability discrimination.

What the EOC did

The EOC commenced an investigation after receiving the complaint. The employer explained that Mr Y was dismissed because of redundancy and performance issues instead of his injury or illness, but the employer was unable to produce sufficient information to support these claims. Conciliation between the parties was attempted but in the end was unsuccessful. After assessing the merits of the case, the EOC decided to assist Mr Y in commencing legal action for disability discrimination. Legal advice was provided by our lawyers, who also assisted in settlement negotiations with the employer. The parties eventually reached a settlement, and Mr Y received a settlement sum equivalent to about three months' salary as compensation.

法庭訴訟

本年度平機會處理了10宗法庭訴訟。在平機會律師的協助下，這些案件有2宗在條款保密下成功和解，毋須進行審訊。

Court Cases

During the year, the EOC handled 10 court proceedings. With assistance from our lawyers, two of these cases were successfully settled on confidential terms without proceeding

一宗性騷擾案件在法庭開審，事主獲判勝訴，獲金錢賠償及訴訟費用。至2012年3月31日為止，尚有7宗案件仍未了結。在這10宗獲法律協助的案件中，4宗涉及《性別歧視條例》，6宗涉及《殘疾歧視條例》。

經調解及提供法律協助後的和解條件

平機會一方面致力協助具重要性的案件進行法律訴訟，另一方面也透過和解平息糾紛。

經調解方式或在提供法律協助後和解的條件如下：

- 修改政策／處事程序、承諾停止歧視行為、限制某些行為、紀律處分
- 福利補償、提供教育課程／培訓、提供貨品、服務及設施、及提供無障礙設施
- 推薦書、道歉、投訴人接受答辯人的解釋
- 金錢賠償、聘用、復職、慈善捐獻

根據現行法例，各方須各自承擔訟費。因此，平機會一般不能向受法律協助個案的被告人追討訟費。此外，亦沒有法律依據，讓平機會可向獲法庭判給賠償的受助人取回訟費。

本年度，經調解方式及提供法律協助後所獲得的金錢賠償總額約為港幣280萬元。

to trial. One sexual harassment case was tried before the court which ruled in favour of the victim who was awarded monetary compensation and legal costs. Seven remaining cases were still ongoing as of 31 March 2012. Of these 10 court proceedings, four fell under the SDO while six were under the DDO.

Settlement Terms after Conciliation and Legal Assistance

While the EOC endeavours to assist warranted cases by way of commencing legal proceedings, we appreciate the value of resolving disputes through settlement.

For those cases which were successfully conciliated or settled after legal assistance, the settlement terms included:

- Changes in policies/practices; undertaking to cease discriminatory practices; restrictions on future acts; disciplinary action.
- The provision of benefits, including education programmes/training; the provision of goods, services and facilities; or improvement in facilities and accessibility.
- Reference letters; apologies; complainants accepting respondents' explanation.
- Monetary compensation, offers of employment, reinstatements or donations to charity.

Under the current legislation, each party bears its own legal costs. Therefore, legal costs incurred by the EOC in assisted cases generally cannot be recovered from the defendants. There is also no provision to enable the EOC to use any compensation awarded to assisted persons towards legal costs incurred by the Commission.

The total amount of monetary compensation in the year under review through conciliation and legal assistance was approximately HK\$2.8 million.