

“人皆有母 緣何歧視？
Why discriminate?
We all have mothers.”

善待懷孕僱員

Eliminate pregnancy discrimination
in the workplace.

背景

香港現時有四條反歧視條例，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》。法例禁止性別歧視、性騷擾、懷孕歧視、婚姻狀況歧視；殘疾歧視、殘疾騷擾及中傷；家庭崗位歧視；和種族歧視、種族騷擾及中傷等違法行為。《種族歧視條例》已於2008年7月通過，並於2009年7月10日起全面生效。

條例中有關僱傭範疇的條文不單保障在職人士，亦為求職者和合約員工提供保障。條例亦涵蓋有關職業介紹所、業務合夥人、專業團體及職工會等活動。條例中有關非僱傭範疇的條文，則涵蓋教育、貨品或服務的提供、參加會社和體育活動、處所管理及政府活動等方面。

處理投訴程序

任何人士如認為自己在反歧視法例保障範圍內受到歧視，可親身或授權代表向平機會提出書面投訴。平機會調查投訴時，會研究每宗個案的實質理據，並提供足夠機會予雙方就有關指稱及其後作出的答辯提出意見及回應。如認為合適，平機會將會致力以調解方式協助雙方和解。假如未能和解，投訴人可考慮向平機會申請其他形式的協助。平機會將會個別研究每宗申請，考慮個案能否帶出原則性的問題，及評估投訴人在沒有平機會協助的情況下能否獨力處理個案。協助形式包括給予法律意見、法律協助、或任何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 behaviour such as sex discrimination, sexual harassment, pregnancy discrimination, marital status discrimination; disability discrimination, harassment and vilification; family status discrimination; and racial discrimination, harassment and vilification. The RDO, enacted in July 2008, came into full effect on 10 July 2009.

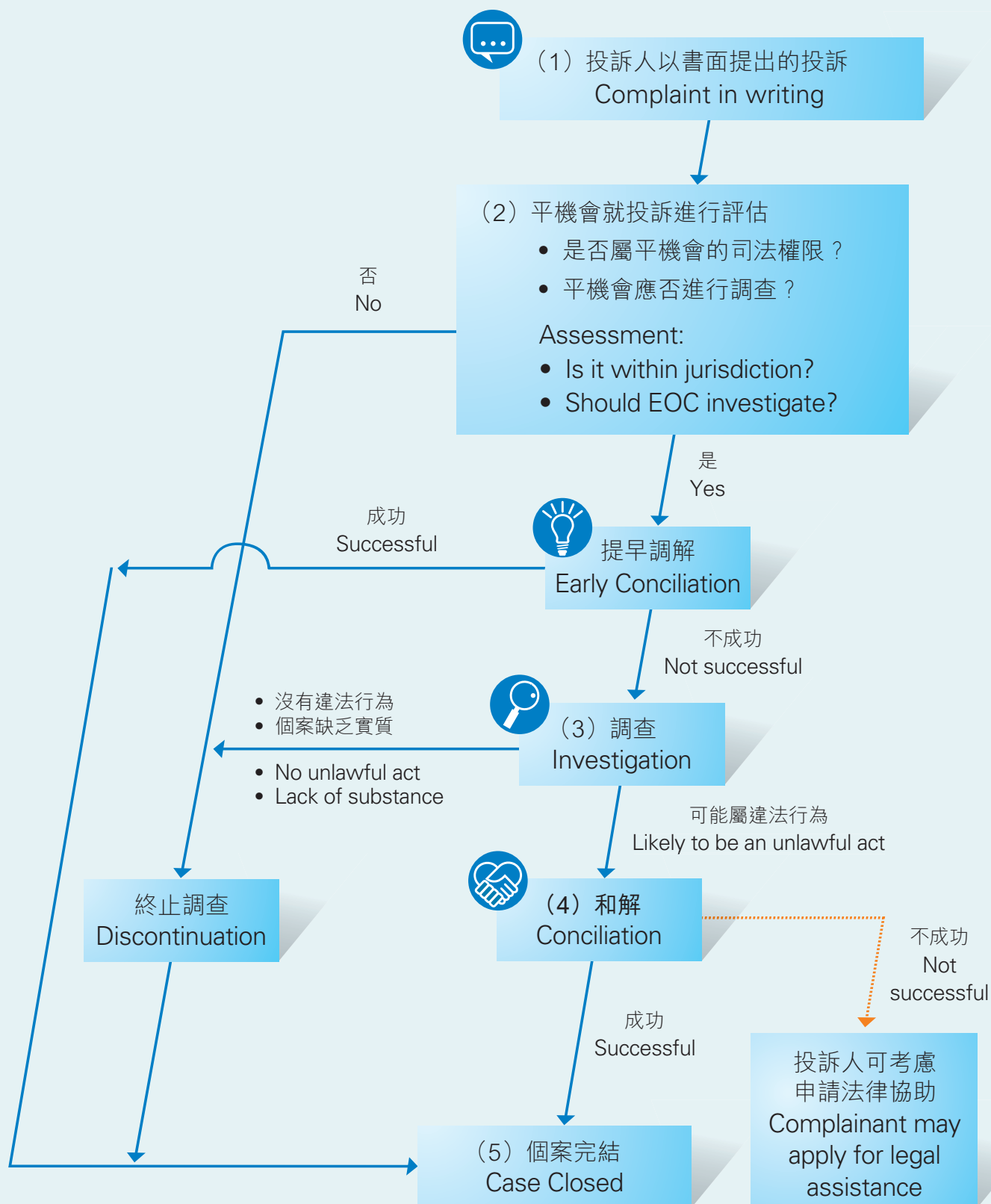
The employment-related provisions of the ordinances provide protection not only to employees but also to job applicants and contract workers. They also cover activities relating to employment agencies, and admission to partnerships, professional bodies and trade unions. The non-employment-related provisions 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 assistance deemed appropriate.

向平機會提出投訴

Taking a Complaint to the EOC



共處理 14,575 宗查詢

處理查詢是平機會其中一項重要工作。在 2009/10 年度，平機會共處理了 14,575 宗查詢，其中 7,745 宗為一般查詢，6,830 宗為涉及特定事項的具體查詢。電話查詢是最常用的途徑，其次為書面查詢及親臨平機會與職員面談。

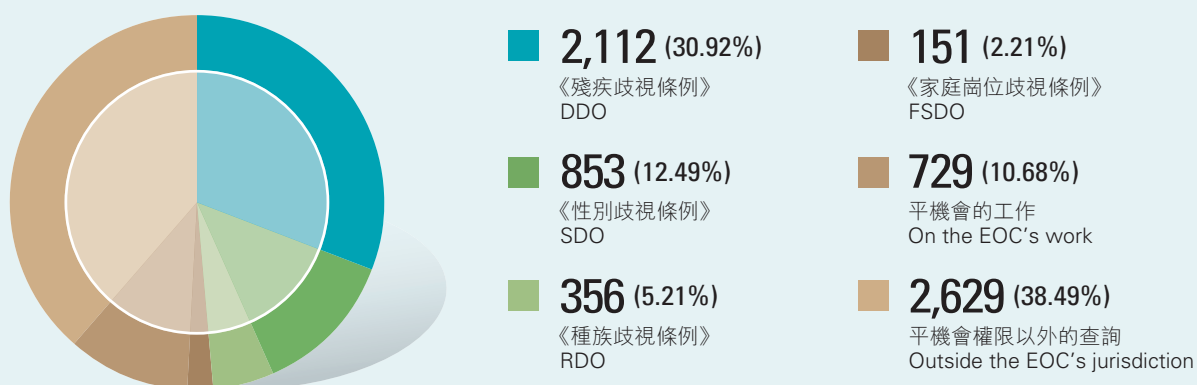
一般查詢主要與平機會的工作及反歧視條例有關，而具體事項查詢則包括其後有可能成為正式投訴的個別案件。本年度收到的 6,830 宗具體事項查詢中，有 2,112 宗與《殘疾歧視條例》有關，853 宗與《性別歧視條例》有關，356 宗與《種族歧視條例》有關，151 宗與《家庭崗位歧視條例》有關。另有 3,358 宗關乎其他範疇的查詢（詳情見表 1）。

14,575 Enquiries Handled

Our enquiry service is an important aspect of our work. In 2009/10, we handled 14,575 enquiries: 7,745 general enquiries, and 6,830 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 6,830 specific enquiries received, 2,112 were related to the DDO, 853 to the SDO, 356 to the RDO and 151 to the FSDO, while the remaining 3,358 were about other issues (Figure 1).

表 1 已處理的 6,830 宗具體事項查詢
Figure 1 6,830 Specific Enquiries Handled



共處理 1,114 宗投訴

於 2009/10 年度，平機會接獲 826 宗由個人提出、指稱遭受違法歧視的投訴個案（詳情見表 2），較上年度接獲的 778 宗上升 6%，投訴上升主要是因為《種族歧視條例》於 2009 年新生效。就《殘疾歧視條例》提出的投訴佔最多（458 宗），其次為《性別歧視條例》（309 宗）、《種族歧視條例》（39 宗）及《家庭崗位歧視條例》（20 宗）。

1,114 Complaints Handled

During the year, the EOC received 826 new complaints of allegedly unlawful acts lodged by individual complainants (Figure 2), a 6% rise from the previous year's figure of 778, which is largely attributable to the newly enforced RDO. The largest proportion was complaints under the DDO (458), followed by the SDO (309), RDO (39) and FSDO (20).

連同往年未完成的個案，平機會共處理了1,114宗投訴（詳情見表3），較上年度上升2.6%。另外平機會亦主動調查了68宗可能涉及違法歧視的事件。

本年度的成功調解率達61.6%，而之前12個月的成功調解率為67%。

Together with cases carried over from the previous year, the EOC handled a total of 1,114 complaints (Figure 3), a 2.6% increase over the previous year, as well as initiated 68 investigations into incidents of potential discrimination.

The successful conciliation rate was 61.6% during the year compared to 67% in the previous year.

表2 已收到的826宗新投訴

Figure 2 826 New Discrimination Complaints Received

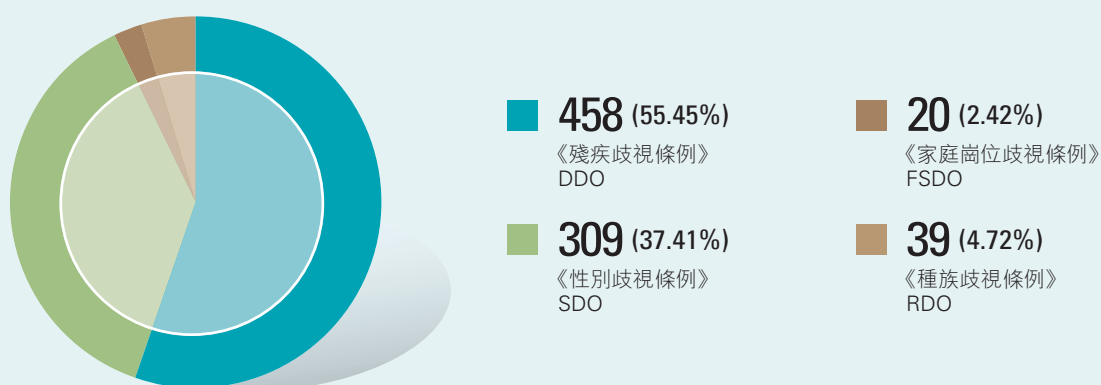
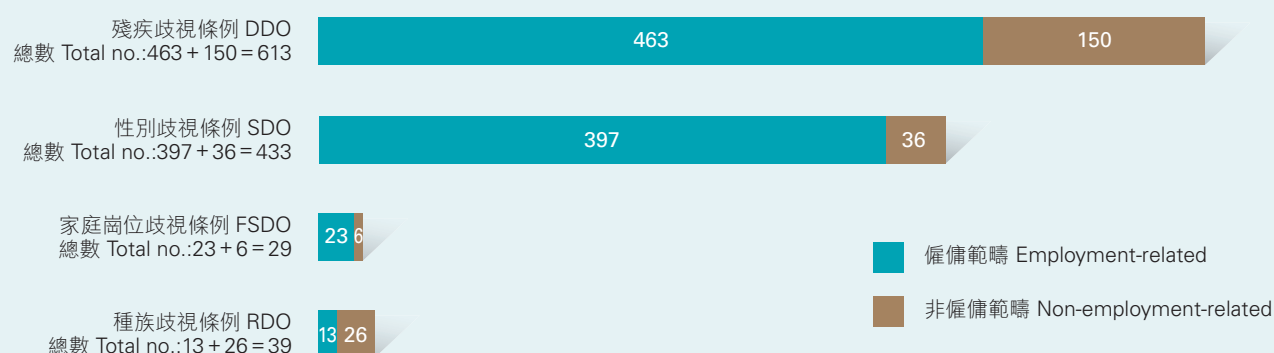


表3 已處理的1,114宗投訴

Figure 3 1,114 Complaints Handled



與《殘疾歧視條例》有關之投訴與案例

在2009/10年度，平機會共調查了613宗有關《殘疾歧視條例》的指稱，其中463宗屬僱傭範疇（佔75.5%），150宗屬非僱傭範疇（佔24.5%）。就僱傭範疇的殘疾歧視投訴，大部分與病假和工傷有關。具爭議的地方包括僱員能否執行工作的固有要求、僱主有否給予僱員遷就、或有關遷就會否對僱主構成不合情理的困難。而就非僱傭範疇的投訴，主要涉及在接受貨品、服務及設施的提供時、或在處所通道範疇遭受歧視。

有鑑於涉及以上範疇的投訴經常發生，我們列舉以下一些常見例子以作說明。

DDO-related Complaints and Sample Cases

A total of 613 complaints were investigated in 2009/10, of which 463 (75.5%) were employment-related and 150 (24.5%) 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.

Given the frequent occurrence of cases involving these categories of complaints, we have selected examples to illustrate some common incidents.

個案1 - 僱傭範疇的殘疾歧視個案-病假

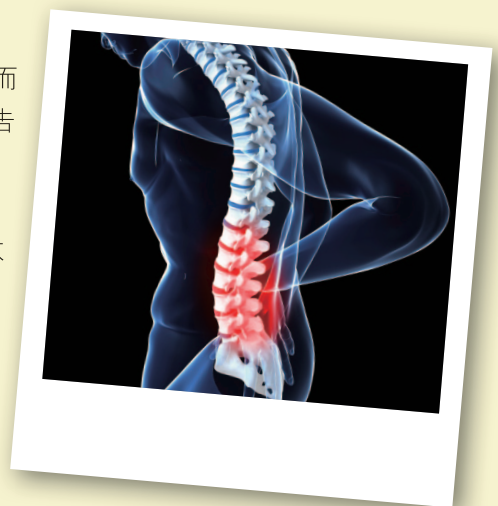
Case 1 – Employment-related Disability Discrimination – Sick Leave

投訴人在答辯機構任職包裝員。她因為背痛而放了兩個月病假。當她返回工作崗位後，她向上司出示了醫生紙，證明醫生建議她應從事較輕巧的工作。投訴人的上司在她多番要求下，在一個月後才讓她調職。但在過去10年一直從事日更工作的投訴人卻被調至夜更。她對安排感到不滿，其後她的上司認為她態度惡劣，向她發出了一封警告信。

該公司解釋，需要時間考慮投訴人的情況及為她尋找合適的崗位，而投訴人在夜更工作只需培訓新員工，工作量較日更少。公司發出警告信的原因是由於投訴人態度不合作。

縱然雙方就投訴人的表現、工作調遷的安排及警告事宜有所分歧，大家均同意以調解的方式解決紛爭。公司同意給予投訴人金錢賠償，個案亦得以和解。

The complainant worked for the respondent company as a packer. She had back pain, so she took leave for two months. When she returned to her job, she presented her supervisors with her doctor's recommendation for light duty. The supervisors took action only after a month and only upon the complainant's insistence. Instead of working in the day-shift which she had worked for the previous 10 years, she was assigned the night shift. She was not happy with the arrangement. Subsequently, a warning letter regarding her poor attitude to her supervisor was served to her.



The company explained that it took time to consider the situation and locate a suitable post to accommodate the complainant. The night shift duty entailed a lighter workload, since the complainant was required only to train new staff. The warning was issued allegedly due to her uncooperative attitude.

Despite the dispute between the parties over the complainant's performance, accommodation arrangements and warnings, they agreed to resolve their differences by way of conciliation. The case was settled after the company agreed to pay the complainant a monetary compensation.

個案2 - 僱傭範疇的殘疾歧視個案-病假

Case 2 – Employment-related Disability Discrimination – Sick Leave

投訴人任職跨境貨櫃車司機，患有心臟病和糖尿病，並因此請了數個月病假。在他放病假期間，答辯機構多次要求投訴人辭職，但他拒絕，終於他在放完病假上班當日遭解僱。

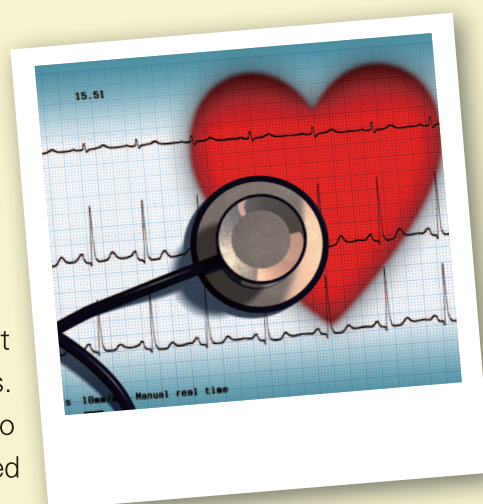
答辯機構以不合情理的困難作辯護，它解釋在投訴人放病假期間，他駕駛的貨櫃車閒置而使公司蒙受金錢損失。根據國內的牌照條例，每輛貨櫃車只能由指定司機駕駛，因此答辯機構嘗試遊說投訴人辭職，好讓其他員工能登記為貨櫃車的指定司機。公司亦辯稱，投訴人的健康問題可危及其個人和交通安全。然而，該公司卻未能提供證據支持其辯稱。

雙方進入調解階段，公司最終同意向投訴人作出金錢賠償以解決紛爭。

在判斷什麼遷就會為僱主構成不合情理的困難時，必須考慮所有相關的情況，包括遷就是否合理、對有關人士所帶來的利與弊、有關殘疾的影響、及所涉及的財政要求。

The complainant was a cross-border truck driver who had heart disease and diabetes, so he took sick leave for a few months. During his leave, the respondent company repeatedly urged him to resign but he refused. He was dismissed on the day he resumed work.

The company used unjustifiable hardship as its defence. It explained that it had suffered financial loss when the complainant took leave because the vehicle was left idle during his absence. According to licensing regulations imposed by the Mainland authorities, the truck could be driven only by the designated driver, so the respondent tried to persuade the complainant to resign so that some other person could be registered as the designated driver. The company also argued that the health problems of the complainant presented personal and road safety concerns. However, the company could not provide any proof on which to base its argument.



The two parties entered into conciliation and it was agreed that a monetary compensation be paid to the complainant to settle their dispute.

In determining what constitutes unjustifiable hardship, all relevant circumstances of the case are considered, including the reasonableness of any accommodation, the nature of the benefit or detriment affecting any persons concerned, the effect of the disability, and the financial implications.

有關處所通道之殘疾歧視個案

本年度處理的處所通道投訴個案涵蓋建築環境、交通設施、文娛設施、購買貨品及使用服務時遇到的障礙等。除非有不合理情的困難，或在建築上有難以克服的限制，否則大部分答辯人都願意糾正問題。常用的解決方法包括加建斜台、輪椅升降台及升降機，以消除因地台樓級高低差距而造成的障礙。其他解決方案包括為方便輪椅使用者及手部乏力的人士進出而裝設自動門，及巴士公司引入低地台巴士等。個案3是關於一家酒店缺乏調適設施的投訴。

Disability Discrimination Cases Related to Access to Premises

Accessibility cases handled in the period covered barriers in the built environment, transport means, leisure and cultural facilities, and in the access to goods and services. Unless faced with unjustifiable hardship and insurmountable physical limitations, most respondents were willing to rectify the situations. Common means to tackle the problems caused by level differences included the building of road drop kerbs, the use of stair lifts, and the installation or improvement of passenger lifts. Automatic doors were installed to facilitate those with feeble hands and wheelchair users. Low-platform buses were made available. Case 3 involves a complaint about hotel accommodations.

個案3 - 有關處所通道的殘疾歧視個案

Case 3 – Access-related Disability Discrimination

一位四肢癱瘓，需要使用輪椅的旅客在將要出發往香港前，才得悉他所預訂的酒店沒有配備殘疾人士設施的房間。酒店告訴他，他必需轉用一間較大的房間，並要求他額外付出比原本多65%的房租，該旅客後來透過電郵向平機會求助。在考慮該旅客的需要後，酒店後來決定以標準房間的價錢提供較大的房間。

個案中的酒店已落成一段時間，酒店在興建時，並無規定房間設施及通道必須適用於輪椅使用者。然而根據《設計手冊：暢通無阻的通道2008》規定，所有受該手冊限制的新落成酒店每100間房間中必須最少有兩間能供輪椅進出、並全面配備供殘疾人士使用的設施。

Close to his departure for Hong Kong, a visitor learned that the hotel he had booked had no room fitted with facilities for persons with disabilities. He is a quadriplegic and uses a wheelchair. He was informed that an extra 65% tariff would be charged as the



hotel had to accommodate him in a larger room. The visitor approached the EOC for assistance by e-mail. The hotel, after considering the visitor's needs, agreed to offer him a larger room at the standard rate.

The hotel concerned was built some time ago, when hotels were not required to have guest rooms accessible to wheelchair users, where they could manoeuvre properly and use the facilities in the room. It is stipulated in the *Design Manual: Barrier Free Access 2008* that in new hotels to which the manual applies, a minimum of two wheelchair-accessible guest rooms with full facilities for persons with physical disabilities must be provided for every 100 guest rooms.

正式調查

至本年度終，平機會將近完成《公眾可進出的處所無障礙通道及設施正式調查報告》。調查過程中所識別出不符合標準的設施已交予有關的物業擁有人或管理公司以作改善。（備註：調查報告已於2010年6月公佈，並已上載於平機會網站：<http://www.eoc.org.hk/EOC/GraphicsFolder/InforCenter/Investigation/default.aspx>）

有關《性別歧視條例》之投訴

根據《性別歧視條例》提出的投訴中，懷孕歧視及性騷擾繼續佔首兩位。在性騷擾個案中，常見的騷擾行為包括不受歡迎的身體接觸、令投訴人感到受冒犯和與性有關的言論及玩笑。

在2009/10年度，平機會調查了共433宗就《性別歧視條例》提出的投訴，其中397宗與僱傭範疇有關。52%的投訴（227宗）為懷孕歧視，另外26%的投訴（113宗）為性騷擾。平機會亦對36宗非僱傭範疇的指稱作出調查，61%的個案（22宗）與性騷擾有關。

懷孕歧視個案

懷孕歧視個案主要在僱傭範疇發生，個案經常涉及以下一些行徑：在懷孕期間遭到

Formal Investigation

At the end of the year under review, the EOC was in the course of finalising its *Report on the Formal Investigation on Accessibility in Publicly Accessible Premises*. Substandard features identified in the investigation were passed to property owners and managers for rectification. (Note: The Investigation Report was released in June 2010 and is now available at the EOC website – <http://www.eoc.org.hk/EOC/GraphicsFolder/InforCenter/Investigation/default.aspx>)

SDO-related Complaints

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

In the reporting period, the EOC investigated a total of 433 SDO cases, of which 397 concerned employment-related allegations. Just over 52% of them (227 cases) involved pregnancy discrimination, while 26% involved sexual harassment (113 cases). Investigations were also made into 36 non-employment related allegations, 61% (22 cases) of which were related to sexual harassment.

Pregnancy Discrimination Case

Pregnancy discrimination cases fall mainly in the employment field. They often take one of the following forms: criticism

批評、被施壓要求辭職、在計算花紅或調整薪金時遭受較差待遇、在產假完結復職時被解僱、或職位被放產假時聘請的臨時員工永久取代。投訴需有事實理據支持，平機會會深入調查事件的細節，如員工的工作表現、營商環境及機構的變動等，以確認僱主的作為是否有充分理據支持。

during the pregnancy period, 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 leave relief staff. Each complaint is fact-sensitive. Investigations probe into details such as performance issues, the business environment and organisational changes to see whether there are genuine reasons for the employer's action.

個案4 - 有關懷孕歧視之性別歧視個案

Case 4 – Pregnancy-related Sex Discrimination

一位採購員在向僱主遞交懷孕通知後，她在工作的不同範疇均遭受上司批評，並經常被指派外出跟進訂單，及被公司要求她採用年假作產前檢查。她年終的工作表現評核較去年低分，她獲發的花紅也因應減少。產假完結並在復工後不久，公司以工作表現差劣為理由把她解僱，但調查發現投訴人在懷孕期間的表現並無嚴重問題。雙方最終同意以金錢賠償來平息個案。



After giving pregnancy notice to her employer, a merchandiser found herself criticised by her supervisor about various aspects of her work, required to travel extensively to follow up on an order, and asked to take her annual leave in order to attend antenatal medical examination. Her annual performance appraisal rating was lower than that of previous years, resulting in a lower annual bonus. She was dismissed shortly after resumption of duty, with poor performance given as the reason for her dismissal. The investigation found there were no serious performance issues during her pregnancy. The two parties agreed to settle the complaint by way of monetary compensation.

性騷擾個案

性騷擾個案中常見的騷擾行為包括與性有關的不受歡迎身體接觸、令投訴人感到受冒犯、與性有關的言論及玩笑等。無論僱主是否知情或容許，僱主須為在職員工的性騷擾行為負上轉承責任。

Sexual Harassment Case

Common acts of sexual harassment include unwelcome physical contact of a sexual nature, sexual verbal comments, suggestions and jokes which the complainants find offensive. The employer is held vicariously liable for the act done by its employees in the course of employment, whether or not these were done with the employer's knowledge or approval.

個案5 - 有關性騷擾之性別歧視個案**Case 5 – Sexual Harassment-related Sex Discrimination**

投訴人發覺她的上司經常瀏覽色情網站，並伸手進褲袋搔摸自己的私處。她因而感到受冒犯，並認為該工作環境在性方面存有敵意。她曾要求上司當她在附近時不要瀏覽色情網站，但她的上司不予理會。她亦曾作出內部投訴，但情況沒有改善。其後她辭了職，並向平機會投訴前上司及該公司，並指稱公司須為其員工的行為負上轉承責任。雙方最終以調解解決個案，投訴人獲金錢賠償，公司亦就事件作出內部調查。

除非僱主能證明公司已採取切實可行的措施以防止性騷擾，否則僱主須為其僱員的違法行為，或就繼續容許在性方面存有敵意的工作環境而負上轉承責任。

The complainant found that her supervisor often browsed pornographic websites and put his hand into his trousers pocket to scratch his genitals. She felt offended by his acts and considered the working environment to be sexually hostile. She had asked the supervisor to stop browsing pornographic websites while she was around, but he paid no heed to her appeal. She lodged an internal complaint, but the situation did not improve. She resigned and lodged a complaint with the EOC against the supervisor for the sexual harassment act and also the company for vicarious liability for the actions of its staff member. The parties settled the complaint through conciliation. Monetary compensation was paid. The company also conducted an internal enquiry into the matter.

An employer is liable for the unlawful acts of its employees and for allowing a sexually hostile environment to continue, unless it can demonstrate that it took reasonably practicable steps to try to prevent such acts.

**有關《種族歧視條例》之投訴**

《種族歧視條例》已於2009年7月生效。自2009年7月至2010年3月，平機會調查了共39宗就《種族歧視條例》提出的投訴，三分之二是關於在接受貨品、服務及設施的提供時遭到種族歧視。

有關銀行開戶問題的投訴

在《種族歧視條例》生效後，平機會收到若干少數族裔人士在銀行開戶時遇到困難的投訴。個案6是有關的例子：

RDO-related Complaints

The RDO came into force in July 2009. From July 2009 to March 2010, we investigated a total of 39 RDO cases, two-thirds of which were in the provision of goods, facilities and services.

Complaints about opening bank accounts

After the RDO came into effect, the EOC received a number of complaints related to problems ethnic minorities have in opening bank accounts. Case 6 is an example of such cases:

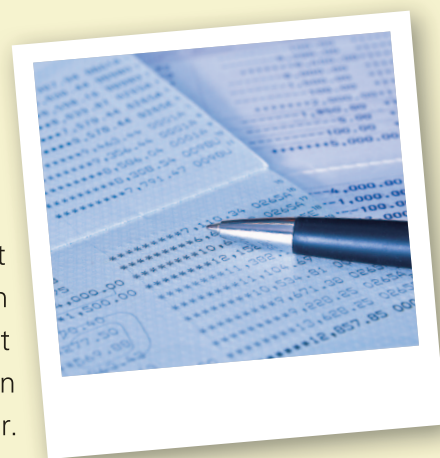
個案6 - 種族歧視個案

Case 6 – Race Discrimination

一名居港已久並持有香港身分證的巴基斯坦裔人士欲展開一盤小生意。於是，他前往銀行開戶。銀行職員留意到他的國籍為巴基斯坦，在沒有解釋原因的情況下要求他出示其巴基斯坦護照。該巴裔人士知道銀行沒有要求華裔客戶出示護照，認為銀行基於他的種族和膚色而歧視他。

平機會聯絡銀行時，銀行否認有關歧視，但承認檢查護照的要求是不必要的。銀行同意檢討其開戶程序，並向該名巴裔人士因處理手法所引致的混亂發出道歉信及送贈禮券以作補償。

A Pakistani man, who was a long-time resident of Hong Kong and a holder of a Hong Kong Identity Card, intended to start a small business. Consequently, he approached a bank to open an account. Noting that the potential customer was a Pakistani national, the bank staff member required him to produce his Pakistani passport for examination, giving no reason for the request. The Pakistani man knew that the bank did not require Chinese customers to present a passport to open an account, so he considered that he had been discriminated against on the ground of his ethnic origin and skin colour.



The EOC approached the bank, which denied any discriminatory act, but agreed that the requirement to inspect the passport was unnecessary. The bank agreed to review its handling procedures and issued a letter of apology and presented vouchers to the Pakistani man for the confusion caused.

我們明白，金融機構必須依據審慎的原則，並遵守國際打擊洗黑錢及反恐的規條。然而，銀行不應基於種族而對客戶施加額外的要求及阻礙。平機會已向有關規管當局及銀行業界提出關注。

It is understood that financial institutions have to comply with principle of prudence and adhere to international requirements on anti-terrorism and anti-money laundering. However, additional requirements and hurdles should not be imposed for racial reasons. The EOC raised its concerns with both the relevant regulatory agencies and the banking industry.

有關《家庭崗位歧視條例》之投訴

在2009/10年度，平機會調查了共29宗涉及《家庭崗位歧視條例》的投訴，其中23宗(79%)屬僱傭範疇，另外6宗(20.6%)屬非僱傭範疇。在僱傭範疇內的大部分投訴(86.9%)與基於某人的家庭崗位而將其解僱有關。

FSDO-related Complaints

During the year, a total of 29 FSDO allegations were investigated, 23 (79%) of which were employment-related and 6 (20.6%) non-employment related. The majority (86.9%) of the allegations in the employment field were related to dismissal on the ground of family status.

平機會的主動調查

我們會就一些觀察所得的情況，或對於一些不想直接參與調查或調解的受屈人、又或第三者所提出的違法行為，平機會亦會主動作出調查。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。在本年度，平機會處理了68宗這類個案，大部分個案是關於《殘疾歧視條例》，其次是《性別歧視條例》。另外，去年度有3宗平機會作出主動調查的未完成個案帶到本年繼續處理。

調解

在2009/10年度經調查的1,114宗個案中，830宗個案已於本年內完結。在已完結的個案中，就《殘疾歧視條例》提出的個案佔56.7% (471宗)，緊隨其後的《性別歧視條例》個案佔38.8% (322宗)，已完結的《家庭崗位歧視條例》個案及《種族歧視條例》個案分別佔2.2% (18宗) 和2.3% (19宗)。

EOC-initiated Investigations

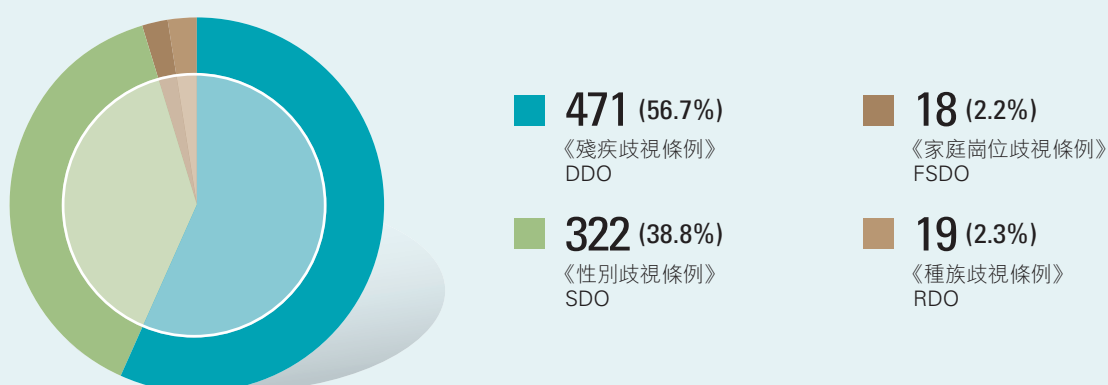
We also initiate investigations into incidents with regard to unlawful acts that we notice, or which are brought to our attention by third parties, or aggrieved individuals who do not wish to be involved in the investigation or conciliation process. Under these circumstances, the EOC approaches the concerned parties to inquire into the matter, explain the relevant provision, and advise them to rectify the situation. During the year under review, we handled 68 such cases, with the majority falling in the DDO category, followed by SDO. In addition three cases were carried over from the previous year.

Conciliation

Of the 1,114 cases under investigation in 2009/10, we concluded 830 cases during the year. DDO cases made up 56.7% (471) of concluded cases, followed closely by SDO cases at 38.8% (322). FSDO and RDO cases contributed 2.2% (18) and 2.3% (19) of concluded cases respectively.

表4 根據條例分類的已完成個案

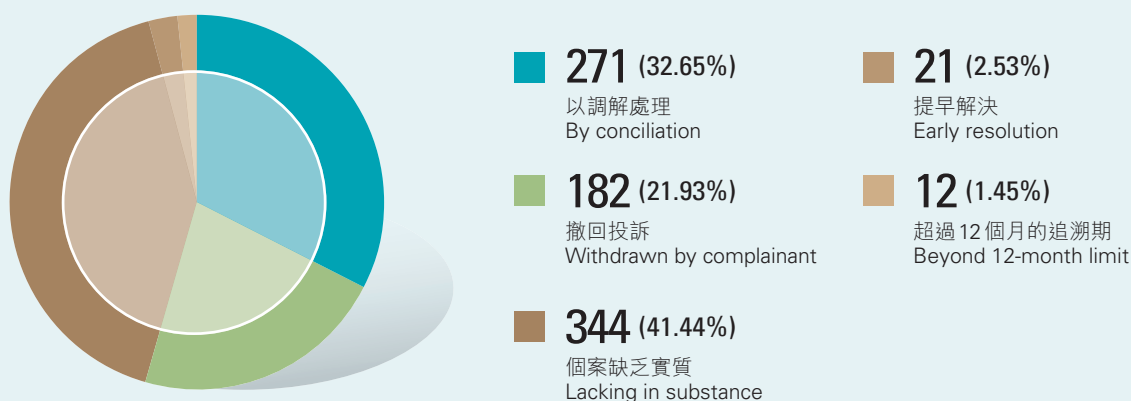
Figure 4 Concluded Cases – Breakdown by Ordinances



以調查處理的830宗已完結投訴個案中，271宗進行了調解，其中167宗調解成功，調解成功率為61.6%。21宗個案在完成調查之前，雙方已提早解決，182宗因投訴人不想繼續追究、或投訴人在收到答辯人的初期回覆後因進一步了解事情而撤回投訴，另外344宗經詳細調查後發現個案缺乏實質或不屬違法。最後，有12宗個案在提出投訴時已超過了12個月的追溯期限。

For the 830 cases concluded under Complaint Investigations, 271 proceeded to conciliation, with 167 being successfully conciliated. The successful conciliation rate was 61.6% during the year. Twenty-one cases were resolved early between the parties before the investigation was completed. A total of 182 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, while 344 cases were found, on close examination, to be lacking in substance or not to have been unlawful. Finally, 12 cases were lodged beyond 12-month time bar (Figure 5).

表5 根據採取的行動分類的已完成個案
Figure 5 Concluded Cases – Breakdown by Action Taken



法律協助

假若投訴未能達致和解，平機會有權為申請法律協助的投訴人提供協助，法律及投訴專責小組將會根據平機會法律服務科的建議，決定是否給予協助。法律及投訴專責小組召集人為平機會主席，並由不同界別的成員組成，包括僱主、律師、立法會議員及職工會代表，以平衡社會上不同持份者的意見。

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, our Legal and Complaints Committee decides whether or not to grant assistance in a case. Led by the Chairperson of the EOC, the Legal and Complaints Committee consists of a diverse combination of members, including employers, lawyers, legislators and trade union representatives, in order to present a balanced view of the various stakeholders in society.

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、協助申請人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。

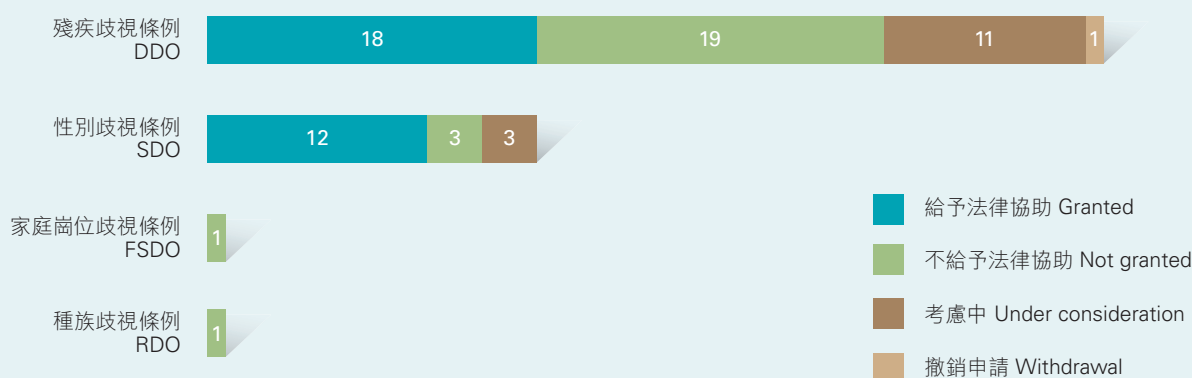
本年度，平機會共處理了69宗有關法律協助的申請，其中30宗獲得協助，24宗不獲給予法律協助，14宗仍在處理，1宗撤銷申請（有關申請的分類詳情，見表6）。

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, 30 were granted legal assistance, 24 were not granted, 14 were still being considered at the end of the period, and one was withdrawn. (See Figure 6 for the breakdown of applications by ordinance)

表6 申請法律協助的分類

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



給予或拒絕給予法律協助的原因

在決定是否給予法律協助時，平機會會考慮多項因素，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議題確立先例
- 可引起市民對香港常見的歧視問題的關注，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 application of these factors in individual cases is case-sensitive, 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

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

獲法律協助的個案

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

本年度，有 14 宗獲得法律協助的個案在展開法律程序前已解決（包括自往年延伸至本年度的個案），其中 9 宗與《殘疾歧視條例》的僱傭範疇有關，4 宗與《性別歧視條例》的僱傭範疇有關，1 宗與《家庭崗位歧視條例》的僱傭範疇有關。在這 14 宗個案中，9 宗在投訴人獲得法律意見或其目的已達後，毋需採取進一步行動。尚餘的個案已在雙方同意和解條款保密的情況下獲解決。另有 21 宗於本年度或之前已獲給予法律協助的個案仍在處理中，截至現階段，這些個案仍未有結果或未展開法律程序。

| | | |
|------------|----|----------------------------------|
| 《殘疾歧視條例》 | 9 | 13 宗屬僱傭範疇，1 宗涉及《殘疾歧視條例》的通道及設施問題。 |
| 《性別歧視條例》 | 4 | |
| 《家庭崗位歧視條例》 | 1 | |
| | 14 | |

以下是一些獲得法律協助及於展開法律行動前已在平機會協助下達成和解的典型個案，具參考價值。

- Encouraging institutional changes to eliminate discrimination

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 settlement through negotiation with assistance from our lawyers.

During the year, 14 cases in which legal assistance was granted before and during the year were resolved without the need to commence legal proceedings. Of these, nine were DDO cases, primarily employment-related, four were employment-related SDO cases, and one was an employment-related FSDO case. In nine of these 14 cases, no further action was taken after the complainants had received legal advice or after their objective had been met. The rest of the cases were settled on confidential terms. Twenty-one other cases where legal assistance was granted before and during the year were still in process, with no outcome having been reached and no court proceedings having commenced at the end of the period under review.

| | | |
|------|----|--|
| DDO | 9 | 13 employment related cases and 1 case on accessibility under the DDO. |
| SDO | 4 | |
| FSDO | 1 | |
| | 14 | |

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7 - 因病假遭解僱

Case 7 – Sick Leave-related Dismissal

背景

申請人於一間設計公司任職會計文員達六個月，並順利通過試用期。一天，她感到嚴重胃痛，於是致電上司告知病情。送院後，申請人被診斷為急性腎病，手術後一直昏迷，她的姊姊馬上將其狀況通知申請人的上司，但公司代表回覆為了讓申請人可以好好休息及於康復後尋找新工作，公司願意支付她解僱代通知金，但其姊表明不接受此安排。約十日後，仍然住院的申請人收到一個包裹，內有一封解僱信、公司支票，及其個人物品。公司於解僱信中解釋，因為她突然患病，所以決定解僱她，好讓她有充足的休息並康復過來。申請人感到受屈，遂向平機會投訴。

平機會的行動

接到投訴後，平機會展開調查。該公司解釋申請人是因為工作表現欠佳而被解僱，但該公司卻從沒有發警告信予申請人。由於調解不成功，平機會決定協助申請人就殘疾歧視採取法律行動。平機會律師為申請人提供了法律意見，並協助她與公司先進行談判，及後雙方決定於此階段解決糾紛，公司同意支付申請人超過六個月的薪金作為賠償。

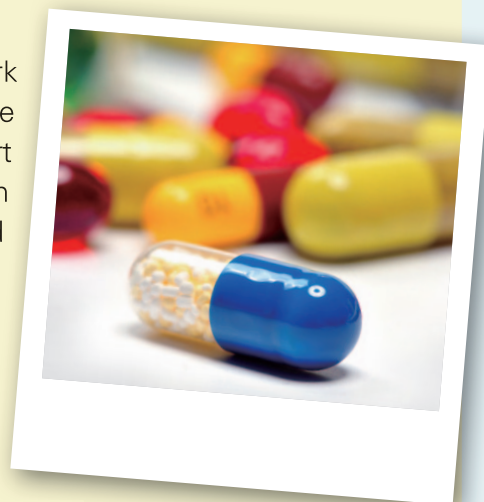
Background

The applicant worked for a design company as an accounts clerk for six months and successfully passed her probation. One day she experienced a serious stomach ache and called her supervisor to report her sickness. Upon admission to the hospital, she was diagnosed with an acute kidney condition. She underwent immediate surgery and remained unconscious afterwards. Her sister reported her condition to her supervisor immediately. However, she was told that the company would calculate the applicant's salary in lieu of notice so that she could take a good rest and look for another job after her recovery. The applicant's sister did not accept the arrangement. About ten days later, still hospitalised, the applicant received a parcel. Inside there was a dismissal letter and cheque issued by the company, along with some of her personal belongings. In the dismissal letter, the company explained that it had decided to dismiss her due to her sudden sickness to give her time for rest and recovery. The applicant was aggrieved and lodged a complaint with the EOC.

What the EOC did

Upon receiving the complaint, the EOC began an investigation. The company explained that the applicant had been dismissed because of unsatisfactory performance. However no warning had been given to the applicant.

After unsuccessful attempts to conciliate, the EOC decided to assist the applicant in legal action for disability discrimination. Our lawyer provided legal advice to the applicant and assisted in pre-action negotiations with the company. Both parties decided to resolve the matter at that stage. The case was settled with the company agreeing to pay the applicant monetary compensation exceeding six months' salary.



個案8 - 處所通道

Case 8 – Access to Residential Buildings

背景

申請人與家人居住於九龍一住宅大廈超過十年，他的女兒自出生起便不良於行，需要使用輪椅代步，她亦有視障。申請人居住的大廈由正門到平台有幾級樓梯，到達大堂後亦需再上兩級樓梯方可到達電梯大堂，由正門至電梯大堂沿途均沒設置斜道，因此申請人的女兒不能獨自進出大廈，而需要保安人員協助搬運輪椅。申請人代表其女兒，向平機會投訴大廈管理公司未能提供足夠的無障礙設施。

平機會的行動

平機會於接到投訴後展開調查。管理公司解釋，在正門及大堂加設斜道，涉及財政及技術上的困難，而安裝及維修輪椅升降台亦耗費不菲，大廈業主委員會認為調動保安人員協助申請人的女兒進出大廈已足夠。雙方意見不一以致調解失敗。平機會評估了個案後，決定協助申請人就殘疾歧視採取法律行動。我們的律師提供了法律意見，亦協助申請人與管理公司進行談判，雙方終能解決事件，並不需進行訴訟。在財政及技術限制的考慮下，管理公司同意為申請人的女兒於大廈正門安裝輪椅升降台。



Background

The applicant and his family had lived in a residential building in Kowloon for over a decade. He had a teenage daughter who had suffered from mobility and visual impairment since birth. She could not walk due to her illness and used a wheelchair. At the entrance of the building, there were several steps from the main entrance to the podium. After entering the foyer, one had to climb two more steps to reach the lift lobby. There was no ramp from the entrance to the lift lobby. As a result, the applicant's daughter could not enter or leave the building independently, and had to be carried by the security guards. The applicant, representing his daughter, lodged a complaint against the estate management company for failing to provide adequate means of access.

What the EOC did

The EOC commenced an investigation after receiving the complaint. The management company explained that there were financial and technical difficulties to build ramps at the entrance and the foyer, and to install a stair-lift would result in high installation and maintenance costs. The owners' committee of the building was of the view that it was sufficient to deploy security guards to assist the girl in accessing the building. Conciliation was unsuccessful due to the parties' disagreement.

The EOC assessed the merits of the case and decided to assist the applicant in legal action for disability discrimination. Legal advice was provided by our lawyer, who also assisted in pre-action negotiations with the management company. The parties succeeded in resolving the matter without litigation. The case was settled with the management company's agreement to install a staircase machine at the entrance of the building for the applicant's daughter, in light of the financial and technical constraints.

個案9 - 有關懷孕的性別歧視**Case 9 – Pregnancy-related Sex Discrimination****背景**

申請人懷孕前在一家工程公司擔任辦公室助理達十個月，及後她通知公司已懷孕，並遞交了懷孕通知。懷孕期間，她因產前檢查而請了數天病假。在放完產假復工後，她原本的職務被另一位辦公室助理取代，隔天，在沒有解釋的情況下，公司將她解僱。申請人認為她是因懷孕而遭解僱，所以向平機會提出投訴。

平機會的行動

平機會調查時，公司解釋稱，解僱申請人的真正原因是她的英語程度及電腦技能未達標準，可是申請人從未收過任何關於工作表現的口頭或書面警告。平機會嘗試進行調解，但未能成功。在評估了個案的法律依據後，平機會決定就懷孕歧視協助申請人展開法律行動。我們的律師提供法律意見予申請人，並協助雙方先進行談判。雙方最終在展開法律行動前達成共識，公司同意支付申請人超過四個月的薪金作為賠償。

Background

The applicant had worked for an engineering company as an office assistant for about ten months when she became pregnant. She notified the company of her pregnancy and submitted a pregnancy-related certificate. During her pregnancy, she took some sick days for pre-natal check-ups. When she returned to work after her maternity leave, she found that her original duties had been taken by another office assistant. The company terminated her employment the next day without giving any reason. The applicant believed that her employment had been terminated because of her pregnancy and lodged a complaint with the EOC.

**What the EOC did**

When the EOC investigated the case, the company explained that the true reason for dismissing the applicant had been her low standard of English and computer skills. However, the applicant had never received any verbal or written warning about her performance. Conciliation was attempted but was unsuccessful. After assessing the merits of the case, the EOC decided to assist the applicant in commencing legal action for pregnancy discrimination. Our lawyer provided legal advice to the applicant and assisted in pre-action negotiations between the parties. Eventually, the parties succeeded in reaching an agreement before legal action was commenced. The case was settled with the company paying compensation exceeding four months' salary.

法律訴訟

平機會於本年度共處理了15宗法律訴訟，其中六宗案件已在雙方同意和解條款保密的情況下獲解決，毋須法庭審理。截至本年度完結前，仍有9宗案件在訴訟程序中。15宗案件中，11宗是關於《殘疾歧視條例》，另外4宗是關於《性別歧視條例》。



Court Cases

During the year, the EOC handled 15 court proceedings. With assistance from our lawyers, six of these cases were successfully settled on confidential terms without proceeding to trial. The nine remaining cases were still ongoing as at the end of the year under review. Eleven of the cases fell under the DDO, and four under the SDO.

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法律意義的案件進行法律訴訟，另一方面也透過和解平息糾紛。

經調解方式及提供法律協助後和解的條件如下：

Settlement Terms after Conciliation and Legal Assistance

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

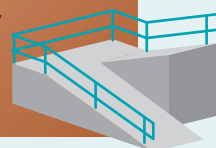
For those cases which were successfully conciliated or settled after legal assistance, the settlement terms included:

金錢賠償、聘用、復職、慈善捐贈
Monetary compensation, offers of employment, reinstatements or donations to charity



福利補償、提供教育課程／培訓、提供貨品、服務及設施、改善及提供無障礙設施

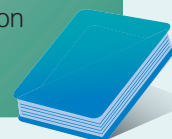
The provision of benefits, including education programmes/training; the provision of goods, services and facilities; or improvement in facilities and accessibility



推薦書、道歉、投訴人接受答辯人的解釋
Reference letters; apologies; complainants accepting respondents' explanation



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
Changes in policies/practices; undertaking to cease discriminatory practices; restrictions on future acts; disciplinary action



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\$12,000,000。

The total monetary compensation secured in the year under review through conciliation and legal assistance was approximately HK\$12,000,000.