

非「禮」勿擾

Stand up against sexual harrassment.



舉報性騷擾者

Report sexual harasser.

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

若有人感到自己在法例保障的範疇受歧視，都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 13,807 宗查詢

查詢服務是平機會的重要工作之一。2010/11 年度，我們處理了 13,807 宗查詢：其中 7,244 宗屬一般查詢；6,563 宗屬具體查詢。最多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的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 6,563 宗具體事項查詢中，1,975 宗與《殘疾歧視條例》有關，831 宗與《性別歧視條例》有關，353 宗與《種族歧視條例》有關和 154 宗與《家庭崗位歧視條例》有關；其餘 3,250 宗則關乎其他範疇的查詢（表 1）。

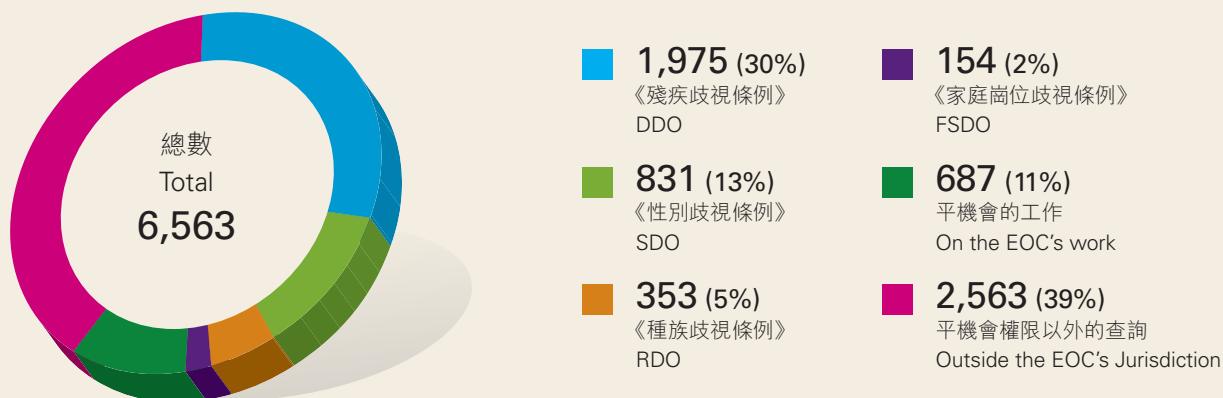
13,807 Enquiries Handled

Our enquiry service is an important aspect of our work. In 2010/11, we handled 13,807 enquiries: 7,244 general enquiries and 6,563 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 6,563 specific enquiries received, 1,975 were related to the DDO, 831 to the SDO, 353 to the RDO and 154 to the FSDO, while the remaining 3,250 were about other issues (Figure 1).

表 1：已處理 6,563 宗具體事項查詢

Figure 1: 6,563 Specific Enquiries Handled



共處理 1,119 宗投訴

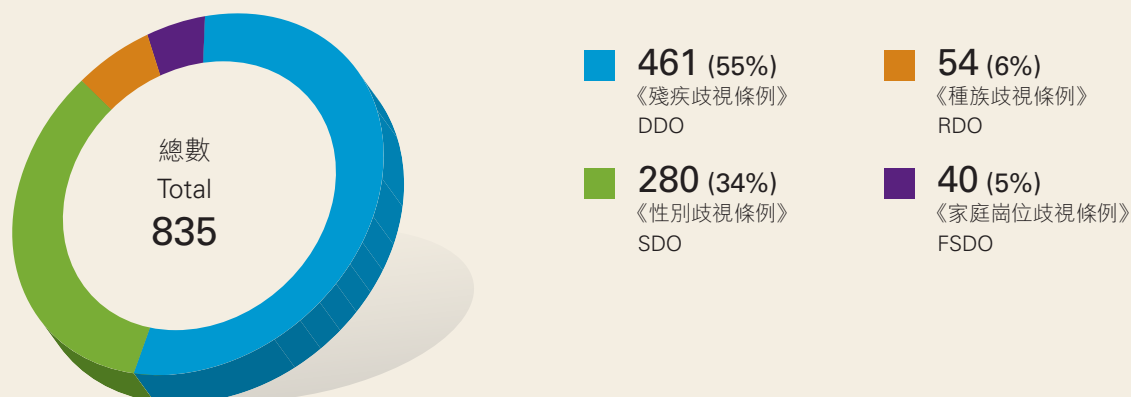
本年度平機會共收到 835 宗由個別人士提出涉及違法行為的新投訴（表 2），較去年度的 826 宗增加了 1%。最多投訴與《殘疾歧視條例》有關（461 宗），其次為《性別歧視條例》（280 宗）、《種族歧視條例》（54 宗）和《家庭崗位歧視條例》（40 宗）。

1,119 Complaints Handled

During the year, the EOC received 835 new complaints of allegedly unlawful acts lodged by individual complainants (Figure 2), a 1% rise from the previous year's figure of 826. The largest proportion was complaints under the DDO (461), followed by the SDO (280), RDO (54) and FSDO (40).

表 2：共收到 835 宗新歧視投訴

Figure 2: 835 New Discrimination Complaints Received



連同去年未完成的個案，平機會共處理了 1,119 宗投訴（表 3），較上年度增加 0.4%。此外，平機會亦主動調查了 112 宗潛在歧視的事件。

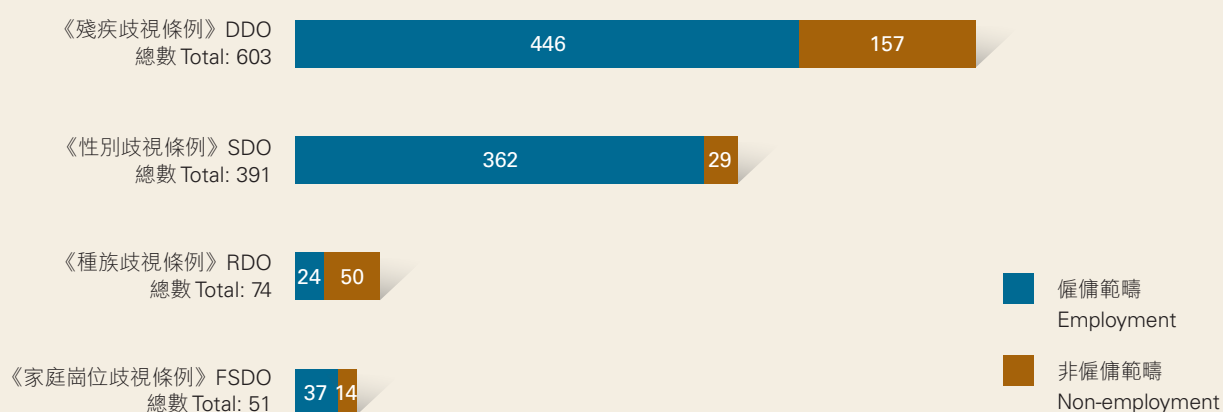
本年度的成功調解率為 68%，上年度為 62%。

Together with cases carried over from the previous year, the EOC handled a total of 1,119 complaints (Figure 3), a 0.4% increase over the previous year. In addition, the EOC initiated 112 investigations into incidents of potential discrimination.

The successful conciliation rate was 68% during the year, compared to 62% in the previous year.

表 3：已處理的 1,119 宗投訴

Figure 3: 1,119 Complaints Handled



有關《殘疾歧視條例》 的投訴

2010/11 年度共調查了 603 宗投訴，其中 446 宗 (74%) 屬僱傭範疇，而 157 宗 (26%) 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。爭論主要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 603 complaints were investigated in 2010/11, of which 446 (74%) were employment-related and 157 (26%) 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 — 使用銀行設施 Case 1 – Access to banking facilities

事件經過

阿朗和五位朋友都是輪椅使用人士。最近，他們家附近的多層商業大廈完成翻新，特別是銀行和自動櫃員機等設施遷到新位置，令輪椅使用人士要在戶外多走一段長路才能到達。這段路沿途沒有任何遮蓋，每當下雨或天氣惡劣時，輪椅使用者去銀行就會困難重重。阿朗和他的朋友都認為，這次搬遷嚴重影響他們的日常生活和獨立處理銀行事宜。

通過專為殘疾人士服務的非政府組織協助和代表下，阿朗和他的朋友向平機會投訴管理公司在提供貨品、服務或設施方面歧視他們。

結果

經調查投訴後，平機會建議雙方進行調解。阿朗和他的朋友最關注的問題是他們能否在不受惡劣天氣影響下在合理的距離通往銀行及銀行設施。在代表受屈一方的非政府組織、該商業大廈的管理公司（一間主要交通運輸公司）及平機會齊心努力下，個案終於得到解決。管理公司同意建一條新路，將通往銀行的通道與大廈不同樓層連接起來。但由於新路線的設計、審批和施工需時，整個過程耗時超過兩年。

注意要點

無障礙設計是殘疾人士能獨立自主地生活的核心。在設計階段已考慮及照顧到殘疾人士的需要，就可以免去日後許多不必要的改動工程。平機會較早時完成的報告顯示，建築設施符合《設計手冊：暢通無阻的通道 2008》標準的情況仍未能令人滿意。（想瞭解更多有關香港的無障礙情況，請參看《公眾可進出的處所 — 無障礙通道及設施正式調查報告》）



這個案例亦說明，不同持份者齊心合作下，可造就全民通達的環境。案中的商業大廈位於繁忙的交通樞紐，備有區內的主要社區設施。改善該商業大廈的通達程度，可令區內其他人士（例如：長者及使用嬰兒手推車的人）受惠。這次因著輪椅使用人士、非政府組織、物業管理公司和主要交通運輸公司的努力，令問題得以解決。

What happened?

Ron and five of his friends are all wheelchair users. The multi-storey commercial complex near their homes has recently been renovated. Specifically, the banks and ATM banking facilities have been relocated to an area where wheelchair users need to take a much longer outdoor route in order to go to the banks. The route was without cover, and wheelchair users encountered difficulties especially on rainy days or in harsh weather conditions. Ron and his friends all found that this relocation of services seriously affected their daily lives and independence.

Through the coordination and representation of a non-government organisation (NGO) serving people with disabilities, Ron and his friends filed a complaint to the EOC against the management company for discrimination in the provision of goods, facilities, and services. They felt that they were being discriminated.

The Outcome

After investigation into the complaint, conciliation was recommended by the EOC. The key concerns of Ron and his friends were whether the route to the banks and banking facilities could be within a reasonable length and whether the route could shield the users from harsh weather. With a well coordinated effort from the NGO representing the aggrieved parties, the management company of the commercial complex, a major transportation company, and the EOC, the parties were able to reach a settlement. A new route has been constructed which connects different floors of the premise to the banks. The whole process took more than two years as time was needed for the design, approval, and construction of the new route.

Points to note

Barrier free design is central to the independence of persons with disabilities. By taking into consideration the needs of persons with disabilities at the design stage, many of the undesirable retrofitting works at a later stage can be avoided. In an earlier report done by the EOC, it was revealed that compliance with *the Design Manual: Barrier Free Access 2008* is still far from satisfactory (For more details of the accessibility situation in Hong Kong, please refer to the section on Formal Investigation on Accessibility in Publicly Accessible Premises).

This case also illustrates the significance of a concerted effort by different stakeholders in achieving barrier-free access for all. The commercial complex involved is located in a mass transport hub with major community facilities in the district. Improving access for the complex would also benefit many other people in the community, such as senior citizens and people with baby strollers. With the effort of wheelchair users, the NGO, the premise management, and a major transportation company, the restructuring was made possible.

個案2 — 因病而遭解僱

Case 2 – Dismissal due to sickness

事件經過

阿蓮多年前被診斷患上鼻咽癌。雖然已經痊癒，阿蓮仍需定期做檢查，監察身體的情況。她向一間旅行社應徵工作，面試時她把自己的醫療需要告訴僱主。不幸，最近她癌症復發，需要放兩個月病假接受手術。阿蓮復工後，就被調到另一個崗位。隨後幾個月，她再被調到另一崗位，最後更被裁退。阿蓮認為自己受到不公平對待，因為她過往幾年的工作表現一直令人滿意。她認為是因為她的病才會被解僱，所以決定向平機會提出投訴。



結果

平機會嘗試透過提早調解解決糾紛。阿蓮提議僱主給她一封工作介紹信和金錢賠償作和解條件。雖然旅行社否認有意歧視，但很快便答應條件，雙方達成和解。

注意要點

平機會接獲的殘疾歧視投訴，很大部分與病假，和病假後解僱或辭職有關。根據《殘疾歧視條例》，凡基於員工的殘疾或疾病而給予該員工較差待遇，即屬違法。雖然僱主有權防止員工濫用病假，但制定有關病假的清晰指引，避免發生誤會亦非常重要。平機會鼓勵僱主向因殘疾或病患而有特別需要的員工作出適當遷就。

What happened?

Many years ago, Linda was diagnosed with nasopharyngeal carcinoma. Although the cancer has been cured, Linda is required to attend regular medical check-up to monitor her situation. When she applied for a new job at a travel agency, she informed the employer of her medical need during the recruitment interview. Unfortunately, the cancer reappeared recently, and she had to take a two-month sick leave for surgery. When Linda resumed work, she was transferred to a different post. In the next few months, she was transferred to yet another post and later made redundant. Linda felt she was treated unfairly, given that her performance had been satisfactory throughout the years. She believed the dismissal was due to her sickness, and decided to complain to the EOC.

Outcome

The EOC attempted to resolve this dispute through early conciliation. Linda proposed to settle with an employment reference letter and monetary compensation. Although it denied having any intent to discriminate, the travel agency quickly agreed to the proposed terms, and a settlement was reached.

Point to note

A significant portion of disability discrimination complaints to the EOC are related to sick leave



and the resultant dismissal or resignation. Under the DDO, it is unlawful to treat an employee less favourably on the ground of his/her disability or illness. Though it is legitimate for employers to forestall sick leave abuse, establishing clear employment policies regarding sick leave is important to avoid misunderstandings. The EOC also encourages employers to provide appropriate accommodations to employees with special needs due to their disability or illness.

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391宗就《性別歧視條例》提出的投訴，其中362宗與僱傭範疇有關。55%的投訴（198宗）屬懷孕歧視，另外30%的投訴（110宗）為性騷擾。平機會亦對29宗非僱傭範疇的指稱作出調查，48%的個案（14宗）與性別歧視有關，38%的個案（11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 391 SDO cases, of which 362 concerned employment-related allegations. 55% of them (198 cases) involved pregnancy discrimination, while 30% involved sexual harassment (110 cases). Investigations were also made into 29 non-employment related allegations, 48% (14 cases) of which were related to sex discrimination, and 38% (11 cases) were related to sexual harassment.

個案3 — 因懷孕而導致減薪 Case 3 – Pregnancy leads to lower salary

事件經過

素珊在一間幼稚園任職助教，她得悉自己懷孕。在通知校長後，校長對她懷孕作了多次評論。有幾次，她隨意地說，或許素珊應考慮辭掉工作，好好保重身體。有一次，校長表示，下學年對助教的需求減少，她建議素珊轉做兼職。素珊其後答應轉做兼職，薪金按比例減低。但是，校長沒有按她減少的工時而按比例減薪。素珊不接受這樣的減薪。她指稱校長是基於她懷孕才這樣做。校長否認指稱，聲稱有其他原因（包括素珊的工作表現，年資及幼稚園現有的資源）影響到薪金的調整。



經調查後，平機會發現素珊有可能是因懷孕而受不公平對待。校長提供的資料亦不足以充分證明素珊的薪金調整完全與懷孕無關。及後，平機會建議雙方進行調解。

結果

經多次電話溝通後，個案終於達成和解。幼稚園向素珊發出僱用確認書，校長亦就之前有關素珊懷孕的言論向她口頭道歉。素珊對結果感到滿意。

注意要點

平機會的大部分懷孕歧視投訴個案都在僱傭範疇發生。個案經常涉及以下一些行徑：在懷孕期間遭到口頭批評、被施壓要求辭職、在計算花紅或調整薪金時遭受較差待遇、放完產假復職時被解僱，或放假時職位被替假員工永久取代。平機會處理投訴時，會逐一投訴個別考慮。假若僱主決定給予該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》，該決定可被視為基於員工的懷孕而作出。平機會將深入調查事件，如：員工的工作表現、營商環境及架構變動等，以確認僱主的行為是否有充分理據支持。機構制定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?

Susan learned of her pregnancy while working as a kindergarten support teacher. After she informed the kindergarten's principal of her pregnancy, the principal made a number of comments about her pregnancy and, on a few occasions, casually stated that perhaps she should consider quitting her job to take care of the pregnancy. On one occasion, the principal suggested Susan to work part time in the coming school year because the demand for support teachers would lessen. Subsequently, Susan agreed to the suggestion of working part time and a pro-rata cut of her salary. However, the principal lowered her salary disproportionately to the reduced work hours. Susan could not agree on the salary cut and alleged that the principal's act was done on the ground of her pregnancy. The principal disagreed with the allegation and claimed that there were other reasons, including Susan's performance, seniority and the kindergarten's existing resources, which contributed to the salary adjustment.

After investigation, the EOC found that there was a possibility of Susan being treated unfairly due to her pregnancy. The information the principal provided was also insufficient to fully explain that Susan's salary adjustment was completely unrelated to her pregnancy. Thus, conciliation was recommended for the case.

Outcome:

After numerous phone-call communications, a settlement was reached. To settle the case, the kindergarten issued an employment confirmation letter to Susan and the principal apologized to Susan verbally regarding the remarks that the principal has made to her about her pregnancy. Susan was satisfied with the outcome.



Points to note

Most of the pregnancy discrimination complaint cases to the EOC are in the employment field. They often take one of the following forms: verbal criticism during the pregnancy period, applying pressure to resign, less favorable 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 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, but if one of these factors is related to the employee's pregnancy, the decision is deemed to be done on the ground of the employee's pregnancy under the Sex Discrimination Ordinance. Investigations probe into details such as performance issues, the business environment, and organizational changes to see whether there are genuine reasons for the employer's action. Good human resource practice can certainly help to minimize these types of dispute.

個案4 — 性騷擾

Case 4 – Sexual Harassment

事件經過

莎莉六年前加入公司任職產品設計師。由去年起，莎莉覺得上司（公司東主）常盯著她的胸部，令她感到很不自在。某天，莎莉需爬上閣樓拿一些公司產品。在閣樓時，她發現上司正用攝錄機拍攝她下半身。她從閣樓下來後趁機外出報警。上司當場被捕，警方亦從該攝錄機中找到莎莉的片段。上司因此事被判緩刑一年。在發生事件的同一天莎莉亦向公司請辭。莎莉感到受冒犯，於是向平機會投訴。



結果

雙方選擇透過提早調解解決糾紛。上司向莎莉作出金錢賠償及發出介紹信。莎莉對和解的條件亦感到滿意。

注意要點

性騷擾行為可包括涉及性而不受歡迎的身體接觸，與性有關的言論、暗示及笑話，這些行徑都令投訴人感到受冒犯。不論僱主是否知情或容許這些事情的發生，僱主須為職員在受僱期間作出的性騷擾行為負上轉承責任。因此，僱主應為公司制定清晰的政策，禁止一切性騷擾行為，同時亦要確保員工認識何謂性騷擾，提高對這議題的敏感度。

What happened?

Sally, a product designer, joined the company 6 years ago. Since last year, Sally found that her supervisor, who was also the owner of the company, often stared at her breasts, causing Sally to feel



uncomfortable. One day, Sally was asked to climb up to the attic to retrieve some company products. While on the attic, she discovered that her supervisor was using a cam-recorder to video-record the lower part of her body. She waited for a chance to go outside of the office after she climbed down from the attic and reported the incident to the police. The supervisor was caught on the spot, and video clips of Sally were found in the cam-recorder by the Police. The supervisor was put on a one-year probation for the incident. Sally tendered her resignation to the company on the same day after the incident happened. Feeling offended, Sally also lodged a complaint to the EOC.

Outcome

The parties to the complaint chose to settle the matter through early conciliation, and a settlement was reached. Sally received monetary compensation and a reference letter from the supervisor. Sally was satisfied with the terms of the settlement.

Points to note

Acts of sexual harassment may include unwelcome physical contact of a sexual nature, sexual verbal comments, suggestions, and jokes which the complainants find offensive. An employer is vicariously liable for the acts done by its employees in the course of employment, whether or not these were done with the employer's knowledge or approval. Thus, it is crucial for employers to have clear company policies prohibiting any act of sexual harassment and ensure that employees have an understanding and sensitivity about the issue.

有關《種族歧視條例》 的投訴

平機會本年度共調查了 74 宗根據《種族歧視條例》提出的投訴，其中 24 宗 (32%) 與僱傭範疇有關，50 宗 (68%) 屬非僱傭範疇。51% 非僱傭範疇的投訴中涉及提供貨品、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 74 RDO cases, 24 (32%) of which were employment-related and 50 (68%) non-employment related. 51% of non-employment related cases were in the provision of goods, facilities, and services.

個案5 — 膚色有關係嗎？ Case 5 – Does colour matter?

事件經過

阿莊是土生土長的巴基斯坦裔香港人，會聽會說流利廣東話。他想向一間保安公司求職，於是打電話查詢，公司代表告訴他，需要一個能長時間站崗的人。之後，便安排他面試。但是，當阿莊上到公司面試



時，員工告訴阿莊，他們其實想要一個「本地人」。阿莊以往在香港經常受歧視，今次他決定向平機會投訴，阿莊認為該公司是因為他的種族而不考慮聘請他。

結果

雖然公司否認種族歧視阿莊，並聲稱他們亦聘有不同種族背景的人士當保安員，但他們答應透過提早調解，來解決糾紛。公司同意在一個月內捐款給一間本地福利機構，個案很快得以解決。阿莊對結果感到滿意。

注意要點

在招聘、晉升和其他甄選過程中，使用劃一的甄選準則乃屬良好管理常規。僱主雖已聘用不同背景的僱員，但這並不能足以證明僱主在招聘過程中沒有基於種族而對某個人作出歧視。

*注意：為保密理由，本報告中提及的所有名字均已使用化名。

What happened?

John, a Pakistani, was born and raised in Hong Kong. He understands and speaks Cantonese fluently. Attempting to apply for a job at a security company, John enquired about the opening over the phone and was told that by a representative of the company that it was looking for someone who can stand for long hours. The company arranged for John to have an interview. However, when John arrived at the office, the staff told John that they wanted a "local." John had had many experiences of being discriminated in Hong Kong before, and this time, he decided to lodge a complaint to the EOC. John believed the company refused to consider his job application because of his race.

Outcome

Although the company denied discrimination against John because of his race and claimed that they had hired security guards of different racial background in the past, they agreed to settle the case through early conciliation. A settlement agreement was quickly reached with the company making a charity donation to a local welfare organization within one month. John was satisfied with the outcome.

Points to note

It is good management practice to adopt consistent selection criteria in recruitment, promotion, and other selection processes. Having a diversified human resources profile would not automatically prove that the employer had not discriminated against any particular individual on the ground of race in the recruitment process.

*Note: pseudonyms are used to protect confidentiality of all complaint cases in this report.

有關《家庭崗位歧視條例》的投訴

本年度平機會共調查了51宗家庭崗位歧視投訴，其中37宗(73%)屬僱傭範疇，14宗(27%)屬非僱傭範疇。僱傭範疇的大多數指稱(73%)關乎因家庭崗位而被解僱。

公眾可進出的處所無障礙通道／設施正式調查

「公眾可進出的處所無障礙通道／設施正式調查」檢查了60處由房屋委員會、香港房屋協會、領匯管理有限公司和各政府部門擁有或管理，公眾可進出的處所(目標處所)，其結果於2010年6月公布。

正式調查是個聚焦的研究，透過多種方法(包括文件研究、巡查審核、焦點小組討論、個案研究、邀請持份者提出看法和意見書、以及目標處所的業主和管理人作出的回應等)，以收集定質和定量數據。

為殘疾人士創建無障礙環境方面，平機會特別關注三項重要因素：(i)所提供的無障礙設施符合設計標準；(ii)與周圍環境連接的無障礙程度；及(iii)設施的可用程度。

調查報告為政府、業主和物業管理人作出建議。這些建議包括政策和執行兩方面。結果，香港政府已承諾撥出港幣13億元進行提升計劃，令公共處所和設施通達無阻，而領匯也承諾在未來五年內投資港幣2億元進行全面改善計劃。

Complaints related to the Family Status Discrimination Ordinance (FSDO)

During the year, a total of 51 FSDO allegations were investigated, 37 (73%) of which were employment-related and 14 (27%) non-employment related. The majority (73%) of the allegations in the employment field were related to dismissal on the ground of family status.

Formal Investigation on Accessibility in Publicly Accessible Premises

The findings of the “Formal Investigation on Accessibility in Publicly Accessible Premises” which examined 60 publicly accessible premises owned or managed by the Housing Authority, Hong Kong Housing Society, The Link Management Ltd. and various Government departments (Target Premises) were announced in June 2010.

The Formal Investigation is a focus study which involved collection of quantitative and qualitative data through a combination of methods, including document review, access audit, focus groups discussion, case study, invitation of views and submission from stakeholders, and responses from owners and management of the Target Premises.

In creating a barrier-free environment for people with disabilities, the EOC is particularly concerned with three important factors: (i) provision of accessible facilities in compliance with the design standards; (ii) connectivity or seamless interface with the surrounding environment; and (iii) usability of the facilities.

The report made recommendations with respect to the Government as well as property owners and managers. These recommendations include both the policy and operational aspects. As a result, the Hong Kong Government has committed to a HK\$1.3 billion retrofitting programme to make public premises and facilities accessible, and The Link has committed to investing HK\$200 million on its Total Improvement Plan towards the same goal in the next five years.

調查報告全文可於平機會網站索閱
<http://www.eoc.org.hk/EOC/GraphicsFolder/InforCenter/Investigation/default.aspx>.

平機會的主動調查

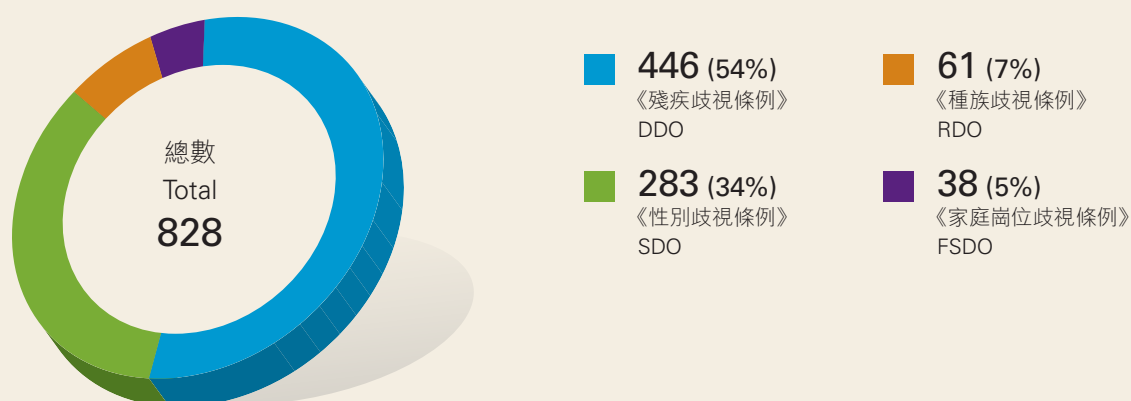
我們會就一些觀察所得的情況，或對於一些不想直接參與調查或調解的受屈人、又或第三者所提出的違法行為，平機會亦會主動作出調查。在這些情況下，平機會會聯絡有關人士，查詢事件，解釋反歧視法例的條文，並建議他們加以糾正。在2010/11年度，我們處理了112宗這類個案，它們大多數屬殘疾歧視類別（主要關於通道和提供服務的問題），其次是性別歧視方面（主要是招聘和提供服務的問題）。

調解

2010/11年度在1,119宗進行調查的個案之中，有828宗已完結。已完結個案中，殘疾歧視個案佔54%（446宗），其次為性別歧視個案，佔34%（283宗）；種族歧視個案佔7%（61宗）和家庭崗位歧視個案佔5%（38宗）。

表4：已完結個案 — 據條例分類

Figure 4: Concluded Cases – Breakdown by Ordinances



The full investigation report is available at the EOC website – <http://www.eoc.org.hk/EOC/GraphicsFolder/InforCenter/Investigation/default.aspx>.

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 112 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).

Conciliation

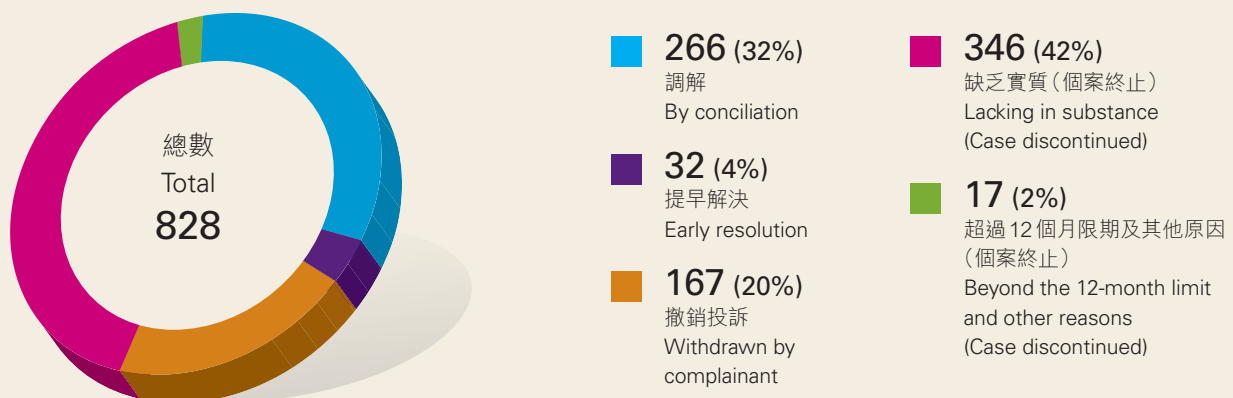
Of the 1,119 cases under investigation in 2010/11, we concluded 828 cases. DDO cases made up 54% (446) of concluded cases, followed by SDO cases at 34% (283), RDO cases at 7% (61), and FSDO cases at 5% (38).

這828宗經過投訴調查後完結的個案，有266宗進行了調解，其中182宗成功調解，調解成功率為68%。有32宗個案是雙方在調查完成前已提早解決；有167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。超過360宗個案經詳細的調查後因各種原因（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）

For the 828 cases concluded under Complaint Investigations, 266 proceeded to conciliation, with 182 being successfully conciliated. The successful conciliation rate was 68% during the year. 32 cases were resolved early between the parties before the investigation was completed. A total of 167 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. Over 360 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 — 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法律意見，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。

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. The Legal and Complaints Committee consists of a diverse combination of members, including employers, lawyers, legislators, NGOs, and trade union representatives, in order to present a balanced view of the various stakeholders in society.

投訴處理及法律協助 Complaints Handling and Legal Assistance

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。

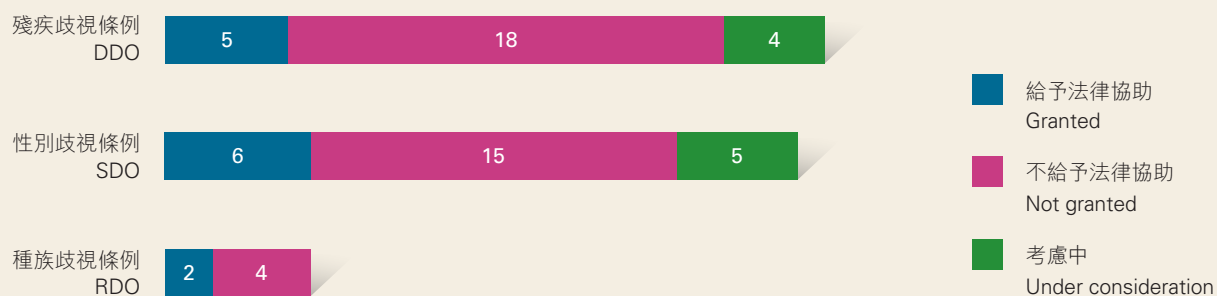
本年度，平機會共處理了59宗有關法律協助的申請，其中13宗獲得協助，37宗不獲給予法律協助，9宗仍在處理。（有關申請的分類詳情，見表6）。

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 59 applications for assistance. Of these, 13 were granted legal assistance, 37 were not granted, and 9 were 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)



2010/11 年度沒有家庭崗位歧視個案申請法律協助。

There was no FSDO case application for legal assistance in 2010/11.

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

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

- 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

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中，在我們律師的協助下，雙方往往能以調解方式達成和解。

在2010/11年度，有11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），當中有7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。在這11宗個案中，5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。尚餘的個案在和解條款保密的情況下已獲解決。

另有18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》	7
《性別歧視條例》	4
	<hr/> 11

殘疾歧視案件中有9宗屬僱傭範疇，2宗屬提供服務範疇。

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。

- 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

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 2010/11, 11 cases in which legal assistance was granted before and during the year were resolved without the need to commence legal proceedings. Of these, seven were DDO cases, primarily employment-related, and four were employment-related SDO cases. In five of these 11 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.

Eighteen 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.

DDO	7
SDO	4
	<hr/> 11

9 employment related cases and 2 cases related to provision of services under the DDO.

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: 在僱傭範疇方面有關懷孕的性別歧視 Case 1: Pregnancy-related sex discrimination in employment

背景

X女士在一間設計公司任職會計師。她通知公司已懷孕並放產假。任職期間並無收過任何關於工作表現不理想的警告。放完產假恢復上班後，她旋即被公司解僱。公司解釋，由於財政狀況欠佳，公司要裁員，以致X女士被解僱。

平機會的行動

平機會收到投訴後展開調查。雙方曾進行調解，但不成功。公司提交了進一步資料，但仍未能有力地證明公司是因財政狀況欠佳而裁員。經評估本案後，平機會決定協助X女士就懷孕歧視展開法律行動。我們的律師負責提供法律意見，也協助X女士與公司進行和解磋商。最後雙方達成和解，X女士收到超過10個月薪金和一封道歉信作為賠償。

Background

Ms X had worked for a design company as an accountant. She notified the company of her pregnancy and took maternity leave. No warning in relation to her work performance was received during her employment with the company. Right after resumption of work from her maternity leave, she was dismissed by the company. The company explained that Ms X was dismissed because the company needed to downsize due to its poor financial situation.

What the EOC did

The EOC commenced an investigation after receiving the complaint. Conciliation between the two parties was attempted but was unsuccessful. The company provided further information but it could not show conclusively that the company was in a poor financial situation for the downsizing exercise. After assessing the merits of the case, the EOC decided to assist Ms X in commencing legal action for pregnancy discrimination. Legal advice was provided by our lawyers, who also assisted in settlement negotiations with the company. The parties reached a settlement and Ms X received a settlement sum exceeding 10 month's salary and an apology letter from the company as compensation.



個案2：僱傭範疇的性騷擾

Case 2: Sexual harassment in employment

背景

Y女士是個外籍家庭傭工。她多次受到僱主兒子性騷擾，包括非禮。僱主兒子觸犯的違法行為包括：在Y女士面前看色情片，和與女友進行性活動，又摸Y女士的乳房和私處。僱主的兒子已因非禮罪被判監禁兩星期。Y女士向平機會投訴僱主及僱主的兒子。

平機會的行動

平機會收到投訴後展開調查。僱主及其兒子都沒有對Y的指稱作出回應。

平機會經評估個案後，決定協助Y女士就其僱主兒子的性騷擾行為採取法律行動。

我們的律師協助雙方進行磋商。最後，雙方在法律行動開始前成功達成協議。Y女士得到超過15個月薪金的金錢賠償。



Background

Ms Y was a foreign domestic helper. She was sexually harassed, including being indecently assaulted, by her employer's son on various occasions. Unlawful acts committed by the employer's son included watching pornographic movies and engaging in sexual activities with his girlfriend in the presence of Ms Y, as well as touching Ms Y's breast and private parts of Ms Y's body. The employer's son had been convicted of indecent assault and was sentenced to 2 weeks imprisonment. Ms Y also lodged a complaint to the EOC against both her employer's son and the employer.

What the EOC did

The EOC commenced an investigation after receiving the complaint. Both the son and the employer did not respond to the Ms Y's allegations.

The EOC assessed the merits of the case and decided to assist Ms Y in legal action for the act of sexual harassment by the employer's son. Our lawyers also assisted in negotiations between the parties. Eventually, the parties succeeded in reaching an agreement before legal action was commenced. Ms Y received monetary compensation exceeding 15 months' salary.

個案3：有關服務提供的殘疾歧視

Case 3: Disability discrimination in the provision of services

背景

Z先生是輪椅使用者，某航空公司不准他登上航機。儘管Z先生有朋友同行，可提供即時協助，但航空公司認為，他的殘疾使他在無人協助下，無法步上或步下航機的梯級，也無法到達和離開座位。Z先生是因殘疾而被拒絕登機。

平機會的行動

平機會收到投訴後展開調查。航空公司解釋，乘客必須能在沒有人協助下自行步上或步下航機梯級和到達或離開座位，這是基本安全問題。平機會設法透過調解，令事件和解，但由於雙方無法就賠償金額和道歉方式達成共識，調解失敗。Z先生其後向平機會申請法律協助。平機會評估個案後，又考慮到Z先生有四位朋友陪同，可隨時向Z先生提供協助（他們全都不是輪椅使用者）。這情況下，理應不會對Z先生及其他乘客構成危險。在聽取平機會的法律意見後，雙方就問題達成和解，毋須進行訴訟。Z先生收到航空公司的金錢賠償和道歉。



Background

Mr. Z was a wheelchair user and was not permitted by an airline company to board an aircraft. The reason for the refusal was due to Mr. Z's disability, which inhibits his ability to walk up or down the stairs to the aircraft and to and from his seat without assistance. This reason was given despite the fact that Mr. Z was accompanied by his friends who were prepared to provide him with prompt assistance.

What the EOC did

The EOC conducted investigation upon receiving the complaint. The airline company explained that the requirement for a passenger to be able to walk up or down the stairs to the aircraft and to and from his/her seat without assistance was primarily a safety issue. The EOC tried to settle the matter through conciliation, but was unsuccessful as both parties did not reach a consensus on the amount of monetary compensation and the extent of the apology. Mr. Z later applied for legal assistance from the EOC. The EOC assessed the merits of the case and took into account the fact that Mr. Z was accompanied by four of his friends, all non-wheelchair users, who were prepared to provide him with assistance. Given the situation, there should not have been any danger posed to the safety of Mr. Z and other passengers. Upon receiving legal advice from the EOC, both parties succeeded in resolving the matter without litigation. Mr. Z received monetary compensation and an apology from the airline company.

法庭訴訟

本年度平機會處理了14宗法庭訴訟。在平機會律師的協助下，這些案件有5宗在條款保密下成功和解，毋須進行審訊。平機會取消向其中2宗申請提供進一步

Court Cases

During the year, the EOC handled 14 court proceedings. With assistance from our lawyers, five of these cases were successfully settled on confidential terms without proceeding to trial. No further assistance was given for two of the 14 cases in light of the winding up of the defendant's

協助，其一是被告人公司清盤；至於另1宗案件，是原告人拒絕合理的和解建議。另有2宗案件在法庭開審，其中一宗是性騷擾案，法庭裁定性騷擾後解僱可算為性別歧視行為，判受害人得到金錢賠償。在另一宗已審理的案件，雖然法庭判原告人敗訴，卻澄清了甚麼構成中傷，並反對使用貶譏標籤和令人反感的字眼形容殘疾人士。其餘5宗案件至2011年3月31日仍未了結。在這14宗獲法律協助的案件中，半數涉及《殘疾歧視條例》而另一半涉及《性別歧視條例》。

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：

- 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、改善及提供無障礙設施
- 推薦書、道歉、投訴人接受答辯人的解釋
- 金錢賠償、聘用、復職、慈善捐贈

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5,500,000元。

company in one case, and the refusal of a reasonable settlement offer by the plaintiff in the other. Two cases were tried before court. In one, a case of sexual harassment, the Court held that dismissal after sexual harassment could be an act of sex discrimination, and awarded monetary damages to the victim in the other tried case, although the Court did not hold in favour of the plaintiff, it clarified what constitutes vilification and disapproves the use of derogatory labels and distasteful words to describe persons with disabilities. Five remaining cases were still ongoing as of 31 March 2011. Of these 14 legally assisted cases, half fell under the DDO while the other half was under the SDO.

Settlement Terms after Conciliation and Legal Assistance

While the EOC 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:

- 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 must bear 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 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\$5.5 million.