

投 訴 個 案 實 例

Case Illustrations

成 功 調 解 個 案

成功調解個案一：婚姻狀況歧視 (服務及設施的提供)

在一次遷拆行動中，六名攤檔女東主投訴由於本身的婚姻狀況而受到歧視。按有關政府部門奉行的「一戶一檔」政策，每戶只可以享有一個優先投標權的申請。雖然這些女東主自己擁有攤檔，但由於有關政策把她們視作個別家庭的一份子，故此不容許她們申請，然而，假若她們是獨身人士，則並不受限制，可以提出申請。

按性別歧視條例，任何人以他人的婚姻狀況為理由，在提供服務、設施或在處置、管理處所等方面給予較差待遇，均屬違法。而政府亦受該條例規管。

經平等機會委員會調查之後，有關政府部門撤回「一戶一檔」投標政策，結果令六名投訴人中，有五人得以享有與他們丈夫等同的權利，其餘一人則由於商販身份有疑問，其申請被拒絕。

Conciliated Case #1: Marital Status Discrimination (in the provision of service/facilities)

Six married female stall owners felt that they were facing discrimination due to their marital status in a relocation exercise. The government department responsible for the exercise applied the "one-family-one-stall" policy which allows only one submission per family for priority bidding rights. Though these female stall-holders held separate stalls from their husbands, they were not allowed to apply because, under the policy, they were considered as part of one family. If they had been single however, they would have had no problems making an application.

Under the SDO, it is unlawful to treat an individual less favourably on the grounds of his or her marital status in the provision of services/facilities or in relation to the disposal/management of premises. The ordinance is also binding on the government.

Upon the EOC's investigation, the government department subsequently withdrew its "one-family-one-stall" bidding policy, resulting in five of the six stall owners being given priority bidding rights in the same way as their husbands. The remaining stall-holder was refused an application due to her questionable status as a genuine trader.

Conciliated Cases



成功調解個案二：性別歧視 (教育範疇)

投訴人計劃開設花店，遂報讀某機構開辦的插花課程。不過，該機構的章程指明，插花、縫紉以及手工藝等課程，只收女性學員。該男士感到遭受性別歧視對待，及後向平等機會委員會投訴。

根據性別歧視條例，任何提供訓練或教授服務的人仕，若以性別為理由歧視申請入學者，則屬違法。

平等機會委員會經調查後，証實有關機構的做法有歧視成份。某些課程只收女性學員，是基於傳統觀念的假設，以為只有女性對該等課程有興趣。該機構在得悉法例要求之後，承諾以後所有課程將開放予男女性報讀。投訴人對機構的建議措施表示歡迎。

Conciliated Case #2: Sex Discrimination (in education)

The complainant, planning to run a flower shop, attempted to enrol in a floral arrangement course offered by an institute. However, the institute's prospectus clearly stated that this course, together with several other courses such as sewing and handicrafts, were open to females only. Feeling that he was being discriminated against on the grounds of his sex in his application for enrolment as a student, he lodged a complaint with the EOC.

Under the SDO, it is unlawful for any training service provider to discriminate against an application for enrolment on the grounds of the applicant's sex.

Our investigation confirmed the institute's practices. The arrangements restricting the courses in question to females only were based on the traditional assumption that the courses would only be of interest to women. The institute, when advised of the requirements of the legislation, pledged that all courses would be open to both sexes in the future. The complainant welcomed the action proposed.

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成功調解個案三: 性騷擾
(僱傭範疇)

當事人在辭去經理助理一職後，向平等機會委員會投訴，指經理多月以來向她作出性騷擾，她先後兩次向總經理投訴，但總經理卻著令她跟經理合作，若不然便離開公司。當事人其後向平等機會委員會同時投訴該經理及總經理。

按性別歧視條例，僱主在工作地點性騷擾僱員，屬於違法行為。而倘若僱員作出性騷擾行為，即使此等行徑僱主並不知情或同意，有關僱主亦可能要負上責任。僱主必須證明已經採取合理及實際措施，以防止僱員作出性騷擾，方可能避免負上有關法律責任。

在此個案中被指性騷擾他人者聲稱，投訴人辭職，是因為工作上犯錯。該公司代表承認公司方面收到當事人兩次投訴，之後曾口頭警告被投訴的經理。不過，公司代表強調投訴人離職是出於工作表現的原因。

該公司最終接受有責任確保工作環境中不會出現性騷擾行為，並且同意制訂及執行一項防止辦公室性騷擾行為政策，以及向投訴人書面道歉。

在調查過程中，一名該公司前僱員作証指投訴中的事件確實曾經發生，而當調查逐漸披露更多事實真相之後，該經理同意和解，投訴人亦接受一筆現金賠償。

**Conciliated Case #3 : Sexual Harassment
(in employment)**

The complainant lodged a complaint with the EOC after resigning from her position as an assistant to the manager. She alleged that the manager had been sexually harassing her over several months. Although she had complained about the situation twice to the General Manager, she had been told to co-operate with her manager or to leave the company. Her subsequent complaint to the EOC was lodged against both the manager and the company.

Under the SDO, it is unlawful for an employee to sexually harass another employee in the workplace. Employers can also be liable for acts of sexual harassment committed by their employees, regardless of whether these acts were committed with the employer's knowledge or consent. In defence, employers must show that they have taken reasonable and practical steps to prevent employees from carrying out such behaviour.

The harasser denied all the allegations, claiming that the complainant had resigned because of her mistakes at work. The company representative admitted that the company had received two complaints from the complainant, leading to a verbal warning to the manager. However, he emphasized that the complainant had left the company due to performance-related reasons.

The company eventually accepted its responsibility to ensure a "sexual harassment" free working environment and agreed to develop and implement a sexual harassment prevention policy in the office and to apologize to the complainant in writing.

During the investigation, the investigator located a former colleague who witnessed the alleged incidents. As more facts emerged during the investigation, the manager agreed to conciliation and the complainant accepted a settlement in the form of monetary compensation.

成功調解個案四：懷孕歧視
(僱傭範疇)

投訴人申請一家安老院的社會工作者職位空缺，在安老院提出聘用之後，院方要求投訴人進行體格檢驗，包括X光檢查。投訴人以懷有身孕為理由，拒絕接受X光檢驗。院方隨後停止提出聘用，理由是投訴人沒有完成入職前的體格檢查。

按性別歧視條例，僱主在甄選求職者時，以懷孕為理由歧視女性，則屬違法。另外，僱主亦有可能間接歧視孕婦。當僱主向懷孕求職者施加沒有充份理由的要求或條件，以致她們無法獲得聘用，又或懷孕者能符合該等要求或條件的比例，遠較非懷孕者為低時，則屬間接歧視行為。

被投訴一方解釋稱，停止提出聘用的決定，用意並非出於歧視，而是根據有關政府部門訂下的指引，要求求職人士接受體格及X光檢查。雖然如此，被投訴一方仍然同意接受投訴人提出的和解條件，即道歉加上金錢賠償，而投訴人在收到賠款後，將款項捐贈予安老院。

此外，被投訴一方所提及有關體檢及X光檢查的政府部門指引，平等機會委員會正著手研究。

**Conciliated Case #4 : Pregnancy Discrimination
(in employment)**

The complainant applied for the post of social worker in a home for the elderly. After she was offered the appointment, she was requested to undergo a medical examination that included an x-ray. As the complainant was pregnant, she declined to have the x-ray. The prospective employer then withdrew the offer of employment on the basis that the complainant had failed to complete her pre-appointment medical examination.

Under the SDO, it is unlawful for an employer to discriminate against a woman on the grounds of pregnancy in its arrangements to determine who should be offered employment. Indirect discrimination occurs when employers impose unjustifiable requirement or conditions that are detrimental to pregnant job applicants or when the proportion of pregnant job applicants who can comply with these requirements is lower.

The respondent explained that the withdrawal of employment was not intended as discrimination. Rather, the requirements for a x-ray and medical examination were in line with guidelines laid down by the relevant government department. Despite the explanation, the respondent agreed to accept the conciliation terms proposed by the complainant - an apology from the respondent together with monetary compensation for the complainant. The complainant in turn, donated the compensation received to the home.

In addition, the EOC is looking at the guidelines referred to by the respondent with regard to the x-ray test in the pre-appointment medical examination.

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成功調解個案五：殘疾歧視
(僱傭範疇)

甲先生受聘於一家警衛公司，在他上班的第一天，只工作了數小時便給上司解僱，該名上司知道甲先生曾經患上精神病，甲先生其後向平等機會委員會投訴。

按殘疾歧視條例，以殘疾為理由開除僱員，乃屬違法行為，除非沒有殘疾是真正的職業資格，又或者僱員未能履行職位的固有要求。條例對殘疾的定義，涵括了以前存在但現已不存在的殘疾。故此，甲先生的投訴，是屬於曾經患精神病而遭受歧視的投訴。

警衛公司解釋，以前甲先生曾經為該公司服務，但由於操守問題而遭解僱。而最近公司再聘用甲先生，是因為負責的主管不知道他的僱用紀錄。不過，該公司同意聘用甲先生擔任另一個類似崗位，謀求雙方和解，而甲先生亦接納受聘。在雙方簽署協議後，糾紛亦告解決。

**Conciliated Case #5: Disability Discrimination
(in employment)**

Mr. Y was recruited as a security guard by a security company. After working only a few hours on his first day, he was dismissed by his supervisor, who knew of his history of mental illness. Mr. Y subsequently lodged a complaint with the EOC.

Under the DDO, dismissing an employee on the grounds of his or her disability is unlawful, unless the absence of the disability is a genuine qualification of employment or where the employee cannot perform the inherent requirements of the job. The ordinance also defines disability to include a disability that previously existed but no longer exists. Mr. Y's complaint therefore amounted to an allegation of unlawful discrimination on the grounds of ex-mental illness.

The security company responded with the explanation that Mr. Y had previously worked for them but was dismissed on the grounds of misconduct. His recent appointment was due to the fact that the supervisor who recruited him was unaware of his past employment record. However, to settle the case the company indicated that it was prepared to offer a similar job to Mr. Y. The offer was accepted and the matter was settled after a conciliation agreement was signed by both parties.

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成功調解個案六：殘疾歧視
(進入處所)

乙先生是輪椅使用者，但他每天進出居所時，都遇上極大困難，原因是乙先生所住大廈的電梯大堂，離地面有13厘米之高。雖然兩年來乙先生多次向大廈管理方面投訴，但所得到的回覆是由於缺乏經費，所以不能進行改善工程，乙先生的投訴亦不了了之。

在乙先生向平等機會委員會投訴之後，委員會派人到大廈作實地視察，並知會管理處有關乙先生的投訴。委員會的人員亦向管理人員解釋，任何人歧視殘疾人士，不提供適當途徑予他們出入，有可能會觸犯法例。有見及此，管理處向大廈業主立案法團提議，修建一條方便殘疾人士出入的通道，提議獲法團接受，而通道亦在兩個月內建成，其後在該屋苑先後修建了多條類似通道，方便使用輪椅人士。乙先生對於投訴後所取得的結果，感到十分欣慰。

**Conciliated Case #6: Disability Discrimination
(access to premises)**

Wheelchair user, Mr. X had tremendous problems getting in and out of his home every day because the lift lobby of his building was five inches above ground level. Despite his complaints to the building management over two years, his complaints were ignored with the response that there was no budget for the job.

After his complaint to the EOC, the Commission carried out a site visit informing the building management of Mr. X's complaint. It was also explained that it may be unlawful to discriminate against an individual with a disability by not providing suitable means of access. In view of the situation, the management office took the matter up with the Owner's Incorporation with the suggestion to build an access ramp. The proposal was accepted and the ramp was completed in the next two months. Subsequently, more ramps were built in other areas of the residential estate facilitating access for wheelchair users. Mr. X is extremely pleased with the outcome of his complaint.

終 止 調 查 個 案

Discontinued Cases



終止調查個案一：殘疾歧視 (教育範疇)

在九六年十一月，視力受損的投訴人，向一家訓練中心申請入讀一項課程，但申請遭拒，所得到的理由是投訴人出入中心所在樓宇時將會出現問題，原因是通往中心的通道，只設有樓梯，對投訴人會構成危險。此外，課程教材亦沒有凸字版本。他其後向平等機會委員會投訴，指該訓練中心拒絕接受其申請，乃出於對他殘疾的歧視。

按殘疾歧視條例，拒絕讓殘疾人士得到職業訓練，屬違法行為。不過，條例在九六年十二月二十日才開始生效，而投訴中的事件，是在該例生效前發生，委員會並無法定權力調查事件。委員會將情況向投訴人作交代後，建議未來再發生同樣事件時，再向委員會求助。

同年十二月，投訴人與訓練中心一名高級職員接觸之後，成功報讀該中心一項課程，但在等候了兩個月仍未收到任何回覆。經查詢後，中心表示要再過六個月，才肯定會有學位。投訴人聲稱，早前當他未透露本身有殘疾時，中心曾表示等候期只消三個月，他對此感到不滿，並向平等機會委員會作第二次投訴。

按殘疾歧視條例，任何人或機構在提供職業訓練時，若以申請者殘疾為理由而給予較差對待，即屬違法。投訴人故此指訓練中心非法歧視他視力受損。

在平等機會委員會去信訓練中心要求瞭解情況之後不久，中心通知投訴人可就讀所申請的課程。平等機會委員會亦收到中心回覆，表示該中心的課程由九六年十月開始接受報名，而投訴人的等候時間，並不比其他申請人為長，中心又表示，投訴個案純屬誤會。

投訴人對獲得取錄感到滿意，並相信平等機會委員會的介入對解決事情起了正面作用，投訴人亦因此而決定不再繼續跟進其投訴。按法律，當投訴人不願意繼續投訴時，有關調查可以依例終止。

**Discontinued Case #1 : Disability Discrimination
(in education)**

In November 1996, Mr. C, who is visually impaired, applied to a training agency for a training course that would further his career. His application for enrolment was rejected. He was told that accessibility was a problem as the centre was only accessible by stairs which would be hazardous for him. Additionally, no Braille version of the course material was available. He subsequently made a complaint to the EOC alleging disability discrimination in view of the agency's refusal to accept his application.

Under the DDO it is unlawful to refuse access to vocational training to a person with a disability. However, this particular provision of the law did not come into effect until 20 December 1996. Since the incident took place before this date, we did not have a statutory basis for conducting an investigation. The situation was explained to Mr. C, who was advised to seek assistance from the EOC as and when necessary in the future.

In late December the same year, Mr. C succeeded in submitting an application to the same agency after speaking to a senior officer. After waiting two months and upon checking the outcome of his application, he was advised that it would take another five to six months for a confirmed place. Unhappy with this reply, as he

claimed that he had previously been informed that the waiting period was only three months when he had not identified himself or his disability, he lodged a second complaint with the EOC.

Under the DDO, it is unlawful to treat an individual with a disability less favourably when offering vocational training. The complainant therefore alleged unlawful discrimination on the grounds of his visual impairment.

Shortly after we wrote to the training agency seeking its comments on the allegation, Mr. C received a notification confirming his place on the training course. The waiting period was only three months. The EOC also received a reply from the organization indicating that the course in question was open for enrolment from October 1996. They maintained that Mr. C waited no longer than any other applicant and that the case had arisen out of a misunderstanding.

As Mr. C had been offered a place on the course, he was satisfied with the situation, believing that the EOC's involvement had a positive effect on the outcome. In view of the situation he had no wish to pursue his complaint. Accordingly, the investigation into the case was discontinued in line with provisions in the ordinance which stipulate that a case may be discontinued if the complainant does not wish to continue with his complaint.



終止調查個案二：性別歧視
(僱傭範疇)

兩名酒保被酒樓解僱。兩人稱原因是酒樓方面欲全面聘請女性擔任酒保，認為女酒保較善長於預備飲料。

按性別歧視條件，任何僱主以性別為理解僱員工，均屬違法。

調查發現，兩人被解僱原因，是由於工作表現差勁。事實上，在兩人被辭退之後，酒樓所登的招聘廣告上，同時邀請男女性申請。與此同時，酒樓方面安排了一男一女暫時填補兩人的空缺。

平等機會委員會曾經進行兩次突擊探訪，酒樓員工與調查人員面談時，均表示兩名投訴人行為態度惡劣，表現差勁。兩次探訪亦証實，酒樓員工之中，包括了一男兩女。鑑於調查發現投訴理據不充分，委員會決定終止調查。

**Discontinued Case #2 : Sex Discrimination
(in employment)**

Two barmen complained against the same restaurant alleging that they were dismissed because of their sex. They claimed that the restaurant wanted to replace all barmen with barmaids, as the restaurant considered that women did a better job in the preparation of beverages.

It is unlawful under the SDO for an employer to dismiss an employee on the grounds of his or her sex.

The investigation revealed that the dismissal was due to the poor performance of the two complainants. In fact, after their dismissal a recruitment advertisement appeared inviting both male and female applicants for the posts vacated. In the meantime, one male and one female employee were deployed to fill the vacancies.

Employees of the restaurants interviewed in two surprise site visits, all confirmed the bad behaviour and poor performance of the complainants. The visits also established that two males and one female worked in the establishment. Based on these facts, the investigation was discontinued as the complaints were lacking in substance.