

# Case illustrations

# 成功調解個案

## Conciliated Cases

### 成功調解個案一： 懷孕歧視(僱傭範疇)

投訴人在某公司任職船務經理六年。她在流產後放了短時間的病假，其後她公司的行政經理告訴她，公司已聘得新人擔任她的職位。行政經理解釋，這樣做是因為她患病後工作表現欠佳。該經理指出，投訴人可以選擇辭職，或接納一個薪金較低的船務主管職位。

投訴人接納安排，以較低薪金擔任船務主管一職。一個月後，她被解僱，雖然她任職船務經理已六年，但只得到以船務主管職位計算的遣散費。她於是向委員會投訴。

該公司的行政經理否認懷孕歧視的指稱，並表示投訴人被解僱是由於她工作表現欠佳。但他們並無檔案文件支持這說法。另一方面，投訴人表示，在她工作的六年來，她從未犯過如延誤付運等的嚴重錯誤。她並經常加班來完成工作。委員會聯絡了一名證人，證實了投訴人的說法。

在委員會的調解下，投訴人獲得一筆相當於船務經理職位的遣散費和船務主管遣散費差額的金錢賠償。

《性別歧視條例》規定，任何人如基於另一人懷孕而歧視她，即屬違法。歧視的方式包括基於求職者或僱員懷孕，而給予她較其他沒有懷孕的人為差的待遇。

### Conciliated Case #1 : Pregnancy Discrimination (in employment)

The complainant had worked as a shipping manager in the company for six years. After taking a short period of sick leave due to a miscarriage, she was informed by the company's administration manager that a new person had been hired to take up her position. The administration manager explained that it was because she had not performed satisfactorily due to her illness. The manager said that the complainant could either resign or accept the position of a shipping supervisor with a lower pay.

The complainant accepted the arrangement and took up the position of a shipping supervisor with reduced pay. A month later, she was dismissed and was given the severance payment of a shipping supervisor although she had been a shipping manager for six years. She then lodged a complaint with the Commission.

The administration manager denied the allegation of pregnancy discrimination and said that the complainant was fired for her poor performance. However, no supporting documents for the claim were available. On the other hand, the complainant said that throughout her six years of service, she had never made any serious mistakes such as causing a shipment delay. She often worked late in the evenings to finish her tasks. The Commission approached a witness who supported the complainant's account.

As a result of the Commission's conciliation effort, the complainant received monetary compensation equivalent to the difference between the severance payment she should have been entitled to as a shipping manager and that which she was paid as a shipping supervisor.

*Under the Sex Discrimination Ordinance, it is unlawful to discriminate against a person on the ground of pregnancy. This includes treating an applicant or an employee less favourably on the ground of pregnancy than treating a person who is not pregnant.*

## 成功調解個案二： 殘疾歧視(教育範疇)

一名女童因為殘疾而被學校歧視，在委員會調解下，個案成功和解。

該女童患有某種疾病，在接受矯正手術後，需要以輪椅代步 18 個月。她就讀的小學的校長決定，她在需要使用輪椅期間應該停學。校長指稱，輪椅會阻礙走廊通道，對校內其他人造成不便。

結果女童沒有上學整整一個學期。在她的父母不斷要求下，校長最後同意讓她上學。她的父母每天早上駕車送女兒上學，但他們需要在離學校約 50 米放下女兒，因為他們不獲准使用學校的停車場。女童亦不可使用毗鄰課室的職員洗手間。她需要由同學協助下才可勉強前往上一層的洗手間。

她的父母向委員會提出投訴，我們立即展開行動，與該校校長會面，並前往學校瞭解情況。

校長聲稱，為了安全理由，不能在學校停車場卸下輪椅，而且走廊太窄，輪椅會對其他使用者造成不便。他更表示，如讓女童使用職員洗手間，可能會對教師造成不便。

委員會的調查員發現，學校的走廊闊度足以讓輪椅和學生一起通過，不會造成阻礙。至於職員洗手間，教師(部份曾與委員會職員談話)都表示不反對讓該女童使用職員洗手間。

校長與女童家長同意對話以解決分歧。委員會為他們安排了一個調解會議，並由調解員協助雙方找出雙方均能接受的方案，達成和解。該校現在已提供設施，協助女童及其他有殘疾的學生。女童的父母對安排表示滿意。這次調解對所有人來說都是雙贏的結果。

《殘疾歧視條例》規定，任何人如基於另一人的殘疾而歧視他/她，即屬違法。教育機構不應該拒絕或限制學生獲得或享用該學校提供的任何利益、服務或設施，除非這樣做會對學校造成不合情理的困難。

## Conciliation Case #2 : Disability Discrimination (in education)

The Commission successfully conciliated a case where a young girl was discriminated against on the ground of disability by her school.

The young girl suffered from a disorder which, after corrective surgery, compelled her to use a wheelchair for 18 months. Her primary school principal decided to suspend her from school for as long as she needed to use her wheelchair. The principal claimed that the wheelchair would block the corridors and cause inconvenience to other school members.

As a result, the young girl had lost one full term's attendance at school. After repeated requests from her parents, the principal finally agreed to let her return to school. Her parents drove her to school every morning but they had to drop her off some 50 metres away from the school because they were not allowed to use the school car park. The young girl was not allowed to use the staff toilet which was next to her classroom. She had to struggle with the help of her classmates to the girl's toilets on the upper floor.

When the parents brought their complaint to the Commission, we took immediate action. The school principal was interviewed and a visit was made to the school.

The school principal claimed that it was for safety reasons that the wheelchair should not be unloaded in the school car park and that the corridors were too narrow for a wheelchair without causing obstruction to others. He also said that for the young girl to use the staff toilet, it might cause inconvenience to the teachers.

Commission investigators found that the corridors in the school were wide enough for both a wheelchair and students and there was no question of obstruction. As to the use of the staff toilet, the teachers (some of them were interviewed) expressed that they had no objection at all to the young girl using it.

The school principal and the parents agreed to sit down and resolve their differences. A conciliation meeting was arranged and our conciliator helped the parties to find common grounds and reach settlement. The school now provides facilities to assist the young girl and other students who have a disability. The parents are happy with the arrangements. The conciliation has given a win-win solution to all concerned.

Under the Disability Discrimination Ordinance, it is unlawful to discriminate against a person on the ground of disability. An educational establishment should not discriminate against a student with a disability by denying or limiting the student's access to any benefit, service or facility provided by the school, unless the provision would impose unjustifiable hardship on the school.

# 成功調解個案 Conciliated Cases

## 成功調解個案三： 殘疾歧視(僱傭範疇)

投訴人是一間採購公司的部門主管，負責處理落貨單。她在該公司工作已有七年，為了接受治療，她請了三個月病假，但在恢復上班後被公司解僱。投訴人於是向委員會投訴該公司總裁和該公司殘疾歧視。

委員會聯絡兩名答辯人時，他們表示投訴人被解僱是由於她工作表現欠佳。他們指她的書寫和管理技巧未能應付工作需要，而過去三年她的工作表現評估報告中亦有提及她的弱點。委員會在調查期間發現，雖然在評估報告中提及投訴人的弱點，但投訴人的整體表現仍被評為滿意。

最後，兩名答辯人願意出席調解會議。在會議上雙方達成協議，該公司(第二答辯人)答應向投訴人支付一筆相當於三個月薪金的賠償，而投訴人亦同意事件已得到圓滿解決。投訴人同意撤銷她對公司總裁所作的投訴。

《殘疾歧視條例》規定，任何人如基於僱員的殘疾而歧視他/她，把他/她解僱或置於其他不利情況，均屬違法。

## 成功調解個案四： 殘疾歧視(處所通道)

投訴人有膝傷，走路相當緩慢。他上下班全靠的士為他唯一的代步工具。但他居住的屋邨由於正在維修，管理公司禁止的士和訪客車輛駛入。結果，投訴人需要從大閘步行返回他住的大廈，路途甚遠。他曾要求業主委員會發給他一張許可證，讓他可以乘坐的士進入屋邨，但這要求被拒絕。

他向委員會提出投訴後，我們進行了一次實地視察，發現從大閘至他居住的大廈，距離約200米，由於他行動不便，要他每日徒步往返這路途兩次十分吃力。

調查期間，業主委員會解釋，他們是因安全理由才禁止的士和訪客車輛駛入屋邨。在考慮過投訴

後，業主委員會同意向有需要的住客發出許可證，容許他們乘坐的士進入屋邨；他們並特地發給投訴人一張許可證。本個案遂成功和解。

《殘疾歧視條例》規定，任何人在處所通道方面歧視殘疾人士均屬違法。雖然業主委員會的禁令適用於所有住客和訪客，但這措施對於如投訴人一般難以長途步行的殘疾人士而言則構成間接歧視。

## 成功調解個案五： 性別及婚姻狀況歧視(僱傭範疇)

投訴人根據一則招聘廣告，致電答辯人公司要求就高級聯絡員一職獲得面試機會。在電話交談中，投訴人從一名公司職員口中得知，已婚的女性申請該職位是不會被考慮的。投訴人感到受屈，向委員會投訴，指稱她在性別及婚姻狀況上受歧視。

委員會調查員聯絡答辯人時，一名公司職員說她記不起與投訴人的電話談話內容。然而，她指出在電話裡除了詢問求職者的個人資料外，還會問他們的學歷和經驗，以決定是否給予面試。公司聲稱他們不會歧視已婚的女性求職者，在公司的七名僱員中，五名是女性，當中三名已婚。有關的招聘工作，公司最終聘請了一名在工作經驗和語言能力方面均能勝任的女性。

雖然公司否認性別歧視的指稱，但為引起投訴人誤會而致歉，並且同意支付她小量金錢來解決事件。

根據《性別歧視條例》，僱主基於求職者或僱員的性別或婚姻狀況而歧視該人，即屬違法。



### Conciliated Case #3 : Disability Discrimination (in employment)

The complainant was a supervisor of a merchandising company responsible for shipping orders. After working in the company for several years she took three months of sick leave as she had to undergo medical treatment. When she returned to work, she was dismissed by the company. The complainant then filed a complaint with the Commission against the president of the company and the company itself for disability discrimination.

When the Commission contacted the two respondents, they said that the complainant was dismissed on the ground of poor performance. They said that her writing ability and management skills could not cope with the job requirements and that such weaknesses had been reflected in her performance appraisal reports for the past three years. During the Commission's investigation, it was found that although some weaknesses were identified in the said reports, the overall performance of the complainant had been rated as satisfactory.

In the end the respondents were willing to attend a meeting for conciliation. During the meeting, the two sides reached a settlement whereby the company (the second respondent) would pay the complainant a sum of money of about three months' wages while the complainant agreed to treat this as a full and final settlement of the matter. The complainant agreed to drop her complaint against the president of the company.

*Under the Disability Discrimination Ordinance, it is unlawful to discriminate against an employee on the ground of disability by dismissing the employee or subjecting him or her to any other detriment.*

### Conciliated Case #4 : Disability Discrimination (access to premises)

The Complainant had a knee injury and had to walk very slowly. He relied on taxis as the only means of transport between home and office. The management company of the housing estate where he lived, however, banned taxis and visitors' cars from entering the estate owing to renovation work. As a result, he had to walk a long distance from the main gate to the block where he lived. He had requested the Owners' Committee to issue a permit to him so that he could enter the estate by taxi but his request was turned down.

After he had lodged a complaint, the Commission carried out a site visit and found that the distance from the main gate to the block where he lived was about 200 metres and that it was difficult for him to make the trip twice a day given his mobility impairment.

During our investigation, the Owners' Committee explained that they had banned taxis and visitors' cars from entering the estate because of safety considerations. Having considered the complaint, however, the Owner's Committee agreed to issue permits to residents in need so that they could enter the estate by taxis as a general policy; and specifically they issued a permit to the complainant. The case was successfully conciliated.

*Under the Disability Discrimination Ordinance, it is unlawful to discriminate against persons with a disability in relation to access to premises. Although the ban imposed by the Owners' Committee was applied equally to all residents and visitors, people with a mobility impairment such as the complainant were indirectly discriminated against as they had difficulty in walking a long distance.*

### Conciliated Case #5 : Sex and Marital Status Discrimination (in employment)

Based on a recruitment advertisement, the complainant telephoned the respondent company for an interview regarding a post of senior co-ordinator. In the course of the telephone conversation, she learned from a staff member of the company that married female candidates would not be considered for the post. She felt aggrieved and lodged a complaint with the Commission alleging that she was discriminated against on the grounds of sex and marital status.

When the Commission investigator contacted the respondent, the staff member of the company said that she could not recall the details of her telephone conversation with the complainant. Nevertheless, she said that apart from asking questions about applicants' personal particulars, she also asked about their qualifications and experience before she decided to offer an interview. The company stated that it did not discriminate against married female candidates for there were five females out of its seven employees, three of whom were married. As for the recruitment exercise in question, they had selected a female for the job because of her experience and language ability.

Though the company refuted the allegation of sex discrimination, it apologized for the misunderstanding caused to the complainant and agreed to pay her a small sum of money to settle the matter.

*Under the Sex Discrimination Ordinance, it is unlawful for an employer to discriminate against a job applicant or an employee on the basis of sex or marital status.*

# 成功調解個案 Conciliated Cases

## 成功調解個案六： 性騷擾及使人受害(僱傭範疇)

投訴人指稱她的上司曾經性騷擾她，她說性騷擾事件在她於酒店餐廳任侍應的六個月內多次發生。她曾向酒店管理層投訴，但他們沒有任何行動。後來她被轉派到西餅店工作，薪酬遠不及之前當侍應時多。她指稱是由於較早時作出性騷擾投訴而受到報復。

委員會職員接觸投訴人的上司時，他反稱投訴人惡意誣陷他，因他曾拒絕增加她的小費分帳份額。投訴人否認此反指控，要求重返酒店餐廳工作，並堅持她的上司應以書面向她道歉。

調查期間，委員會調查員向答辯人及酒店管理層解釋他們各自的法律責任。在委員會的努力調解下，酒店同意讓投訴人復職，做回侍應工作，而她的上司亦同意以書面形式向她致歉來解決此個案。

根據《性別歧視條例》，僱主有責任防止工作場所的性騷擾行為，而僱員本身亦應對其受僱期間的行為負責。性騷擾是指任何不受歡迎的涉及性的行徑，而該行為會使受害人感到受冒犯、侮辱或威嚇，而一名合理的人會預期受害人會有此類負面感受。

根據《性別歧視條例》，僱主由於某人指稱另一人違反《性別歧視條例》而給予他或她更差的待遇，即屬違法。根據《性別歧視條例》，這種做法稱為「使人受害」。

## Conciliated Case #6 : Sexual harassment and Victimization (in employment)

The complainant alleged that her supervisor had sexually harassed her. She said that incidents happened over a period of six months while she was working as a waitress in a hotel restaurant. She had complained to the hotel management but they did not act on her complaint. She was subsequently transferred to work in the cake shop where she earned much less than working as a waitress previously. She alleged that she was victimized as a result of her earlier complaint of sexual harassment.

When the Commission contacted the complainant's supervisor, he made a counter claim that the complainant had made a malicious complaint against him because he had refused to raise her share of customers' tips. The complainant denied the counter claim. She requested a transfer back to the hotel restaurant and insisted that the supervisor should apologize to her in writing.

During the investigation, the Commission investigator explained to the respondent and to the hotel management their respective liabilities under the law. As a result of the Commission's conciliation efforts, the hotel agreed to reinstate the complainant to her former position as a waitress. Her supervisor also agreed to settle the case by providing an apology letter.

Under the Sex Discrimination Ordinance (SDO), employers are responsible for preventing sexual harassment in the workplace while employees may be personally liable for their conduct in the course of their employment. Sexual harassment is any unwelcome sexual behaviour in which the victim will feel offended, humiliated or intimidated and a reasonable person should anticipate that the victim will have such negative feelings.

Under the SDO, it is also unlawful for an employer to treat a person less favourably because he or she has made an allegation that another person has acted unlawfully under the SDO. This treatment is defined as "victimization" in the SDO.

# 終止調查個案

## Discontinued Cases

### 終止調查個案： 性別歧視(僱傭範疇)

委員會收到一宗投訴，受屈人士指稱，他申請英文教師一職時，因其性別而不獲錄用。他相信這是由於學校秘書誤以為他是女性。他的面試時間只有 12 分鐘，但是另一名女性求職者的面試時間則達 20 分鐘之久。除此之外，他從該校的班照中發覺全校的小學教師都是女性。

答辯人否認指稱，雖然秘書大意地在信中稱了他為女士，但事實上學校從求職信隨附的照片已知悉求職者性別，至於面試時間長短方面，學校聲稱這是很取決於申請者的表現。校方亦指出他們的教師並非全是女性，全校 41 名教師當中，七名是男性，而是次招聘有 17 名求職者獲面試，當中便有四名男性。

委員會調查員後到訪該校審查招聘工作的紀錄。調查發現，答辯人依照劃一的甄選準則，包括學歷資格、工作經驗及教學法來作出甄選。紀錄顯示，獲聘請的求職者比投訴人有更好的條件。根據所得的資料，由於投訴缺乏事實根據，委員會決定終止調查工作。

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

A complaint was lodged alleging that the aggrieved person's application for the post of an English teacher was declined on the ground of his sex. He believed this was because the school secretary wrongly addressed him as a female and he was given a 12-minute interview while another female candidate was interviewed for almost 20 minutes. Moreover, he noticed that the school class photographs showed that all the primary school teachers were female.

The respondent denied the allegation and said that while the secretary had inadvertently addressed the complainant in a letter as a woman, the school in fact knew the sex of the applicants because photographs were provided with their applications. As for the length of the interview, the school said it very much depended on the responses of each applicant. The school also said that it was not true that all their teachers were female as seven of the 41 teachers were male. In the particular recruitment exercise, 17 applicants were chosen for interview and four of them were male.

The Commission investigator paid a visit to the respondent school to examine the records in relation to the recruitment exercise. The investigation found that the respondent had adopted consistent selection criteria which included the academic qualification, experience and knowledge of educational pedagogy. The records indicated that the successful applicants were better qualified than the complainant. Based on the facts gathered, the Commission decided that the investigation should be discontinued as the complaint was lacking in substance.

# 其他調查個案

## Other Cases

家庭崗位歧視(僱傭範疇)：  
未能成功調解的個案

投訴人為一名市務推廣主任，投訴其總經理及公司基於她的家庭崗位而解僱她。她指稱，每當她向總經理請假帶女兒看醫生時，總經理往往表示不滿。因此她相信答辯人解僱她，是因為她在辦公時間內花時間照顧女兒。

根據《家庭崗位歧視條例》，僱主基於僱員的家庭崗位而解僱他／她，即屬違法。家庭崗位指負有照顧直系家庭成員的責任。直系家庭成員是指因血緣、婚姻、領養或姻親而與該人有關的任何人。

答辯人否認基於投訴人的家庭崗位而解僱她。他們聲稱，解僱投訴人是由於她持續及故意不服從上級的合法合理指令，習慣性不守時和無故曠工，且執行任務時處理不當。但他們無法提供任何證明文件以支持他們的指稱。

委員會的調查員會見了公司三名僱員，但他們的陳述不能支持任何一方的指稱。

委員會盡力拉近雙方，謀求和解的方法，以調解糾紛。由於調解乃自願的過程，因此需要雙方均有意願達致和解。在此案中，答辯人不願透過調解來解決糾紛。另一方面，投訴人亦不希望向委員會申請法律協助，而將事件帶上法庭。個案最終未以和解作結。

Family Status Discrimination (in employment):  
conciliation not successful

The complainant, a Marketing Executive, lodged a complaint against her general manager and her company for dismissing her on the ground of her family status. She alleged that the general manager had shown dissatisfaction whenever she asked for leave to take her daughter to see a doctor. Hence, she believed that the respondents had dismissed her because she had to spend time taking care of her daughter during office hours.

Under the Family Status Discrimination Ordinance, it is unlawful for an employer to dismiss an employee on the ground of his or her family status. Family status means the status of having responsibility for the care of someone who is related to the person concerned by blood, marriage, adoption or affinity.

The respondents denied that the complainant had been dismissed on the ground of her family status. They claimed that they had terminated the complainant's employment contract because of her persistent and wilful disobedience of lawful and reasonable orders from her seniors, habitual impunctuality and absenteeism, and misconduct in discharging her duties. Yet, they could not produce documentary evidence to support their allegations.

The Commission investigator interviewed three employees of the company but their statements could not support the allegations of either party.

The Commission endeavoured to conciliate the dispute by bringing the two parties together to look for ways of settlement. As conciliation is a voluntary process, it requires the willingness of both parties to reach a settlement. In this particular case, the respondents were reluctant to settle the dispute by conciliation. On the other hand, the complainant did not wish to apply for legal assistance from the Commission to take the matter to court. The case was eventually closed.