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Creating an Age-friendly and Inclusive Workplace 跨代共融 人盡其才 建造長者友善工作間



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新的一年，新里程 — 2015 年伊始，我們將繼續竭盡所能，致力在反歧視工作上取得更大進展。今期各篇章載有平機會 2014 年下半年的工作詳情，我很高興在此匯報未來數月一些主要工作的發展。

首先，歧視條例檢討的工作進展良好，去年我們就檢討進行公眾諮詢，有關諮詢已於 2014 年 10 月底完成，我們共收到逾 122,000 份個人及機構提交的意見書，平機會實在非常感謝公眾踴躍參與這項極為重要的活動。我們整理數據後，期望在 2015 年年中發表報告，當中包括意見書的定量及定質分析。其後我們會於下半年向政府提交建議。我們必須承認，公眾就如何改革歧視條例意見紛紜，但我們相信，有關檢討日後終必有助加強對每個人的保障，使大家免受歧視和不平等的待遇。

此外，我們委託香港中文大學香港亞太研究所性別研究中心進行的「有關立法禁止性傾向、性別認同及雙性人身份歧視的可行性研究」，擬於今年下半年前發布結果。研究團隊有系統地收集了性小眾在各方面受到歧視的數據，並就如何消除有關歧視徵詢市民意見。我們深信，這項獨立研究切合社會的需要，讓大家掌握有關情況，為社會在處理性小眾歧視問題上奠定基礎，繼續向前推進。

一如過去兩年，我們今年將舉辦一場大型公開活動慶祝國際消除種族歧視日，我們會與香港電台及明愛青少年及社區服務合作，於 2015 年 3 月 14 日在荷里活廣場舉行這項活動，藉此促進種族共融，讓不同族裔人士可融入這多元社會。我希望大家都能一起參與。

展望未來數月，我與平機會的同事期望與大家更緊密合作，達致人人共享平等的目標。我藉此機會祝大家 2015 年歡欣滿載、身體健康、羊年興旺。

平等機會委員會主席
周一嶽



Another year, another chapter – already, 2015 is shaping up to be another productive and busy one for us. In the pages ahead, you will find more details about the EOC's accomplishments over the last six months of 2014. I am delighted to report here on the progress of some of our key initiatives in the coming months.

We are making good progress in the next stage of the Discrimination Law Review, for which we concluded the public consultation at the end of October 2014. Over 122,000 submissions from both individuals and organisations were received in total, and the EOC is grateful for the lively public interest in this very important exercise. After collating the data, we aim to publish a report, including quantitative and qualitative analyses, of the submissions by mid-2015. We will then make our recommendations to the Government in the second half of the year. Recognising that there is a variety of viewpoints, we believe that the Review will ultimately help to strengthen everyone's protection from discrimination and injustice in the coming years.

Additionally, we plan to release the results of "The Feasibility Study on Legislating against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status," which we have commissioned to

the Gender Research Centre of the Hong Kong Institute of Asia Pacific Studies at The Chinese University of Hong Kong, before the latter half of this year. By systematically collecting data on discrimination encountered by sexual minorities in a variety of field, as well as seeking public views on how such discrimination may be redressed, we strongly believe that this independent study will provide a much-needed and informed foundation for our society to move forward on this issue.

For the third year running, we will hold a major public event in celebration of the International Day on the Elimination of Racial Discrimination, this time in partnership with RTHK and Caritas Youth and Community Service. Scheduled for 14 March 2015 at Plaza Hollywood, this initiative is aimed at fostering racial integration in our diverse city. I do hope you will be able to join us at the event.

Thinking about the months ahead, we look forward to working ever closer with you towards the goal of equality for all. May I take this opportunity to wish you a wonderful 2015 full of joy and good cheer, as well as a healthy and prosperous Year of the Goat.

York Y. N. CHOW

Chairperson

Equal Opportunities Commission

平機會論壇 2014



平機會於2014年11月13日舉辦了公開論壇，讓持份者聚首一堂，討論重要的平等機會議題。今年已是平機會第三年舉辦公開論壇，我們藉著這個寶貴的平台與市民對話和瞭解社會的關注。當日接近400位來自非政府組織、關注團體、政府部門、工會、以及其他相關機構，還有教育界的代表出席論壇。

平機會主席周一嶽醫生為論壇揭開序幕，重點講述平機會2013/14年度在處理投訴、為歧視個案提供法律協助、研究及倡導和公眾教育及培訓等方面的工作表現和主要成果。周醫生亦介紹了2013/14年度平機會進行的主要工作項目，包括反性騷擾運動；在本地大專院校推廣平等機會；並透過無障礙網頁嘉許計劃，致力推展無障礙設計及資訊。

今年論壇的主題圍繞平機會2014/15年度其中兩大策略性優先項目：(i)爭取加強少數族裔學生學習中文作為第二語言的措施，和(ii)倡導為有特殊教育需要學生提供有效的融合教育。

為提高持份者對議題的認識，並讓大家更瞭解政府的現有服務和未來計劃，平機會邀請了教育局副秘書長（課程及質素保證科）陳嘉琪博士和首席助理秘書長（特殊教育及幼稚園教育）覃翠芝女士出席論壇，分別就上述兩個範疇發言。

支援少數族裔學生

陳博士首先講述非華語學生在本港教育制度下的概況。現時有320間小學和267間中學收取非華語學生，人數分別是8,290人和7,576人。陳博士指現時政府有專為非華語學生而設的支援，尤其是在第二語言學習方面。她還強調政府已在2014/15學年推出一些新措施，包括中國語文課程第二語言學習架構。陳博士表示，新的學習架構旨在有系統地列出學習目標和預期成果，以反映非華語學生在不同學習階段的進度，教師可按此訂定循序漸進的學習目標，透過小步子的學習方式，幫助學生提高學習成效。

除了講述課程發展等校本計劃和鼓勵少數族裔兒童入讀幼稚園，在學前教育階段學習中文，陳博士亦重點介紹多項教師專業發展措施，包括專業進修津貼計劃及相關研討會，目的是在當局推行新計劃前為教師好好裝備。2014年7月至8月期間，便有來自173間學校的698名教師參與了以上專業發展計劃，而在2014/15學年將有更多計劃推出。陳博士亦指出，由於教師還需時熟習新的學習架構，要有效推行新架構仍會遇到不少挑戰。她期望在三至五年間，非華語學生在中小學各主要階段的整體表現都有所改善，並希望本地幼稚園的非華語學生數目有所增加。

支援有特殊教育需要的學生

覃翠芝女士介紹政府各項支援有特殊教育需要學生的計劃。現時，透過雙軌模式，有較嚴重殘疾或多重殘疾的學生可在特殊/資助學校得到適切的教育；至於其他有特殊教育需要的學生可入讀普通學校，接受融合教育。她闡述政府政策秉持的五個基本原則，即「及早識別」、「及早支援」、「全校參與」、「家校合作」和「跨界別協作」。覃女士特別提到「及早識別」和「及早支援」的重要性。她指出，被診斷有特殊教育需要的學生數目由2009/10年度的21,720人，持續增加至2013/14年度的33,830人。

政府亦推出其他措施，包括提供額外資源、專業支援和教師培訓等。覃女士舉出不少例子，如鼓勵家長參與學生的學習過程、推廣家校合作、與非政府組織和其他服務提供者等不同界別協作，當中包括「親子共融滿校園」嘉許計劃，以協助有特殊教育需要的學生在教育制度下踏出成功之路。

另外，論壇亦特別分享了社會各界關注的年齡歧視議題。平機會邀請了前委員兼香港浸會大學人力資源策略及發展研究中心主任趙其琨教授作主講，並介紹他進行的「管理睿智精英」研究。

在論壇上，平機會政策及研究專責小組召集人謝永齡博士和行政及財務專責小組召集人趙麗娟女士主持討論環節，參加者熱烈參與討論，交換意見。這些意見有助平機會思考如何持續提升工作表現及向公眾負責，並進一步推廣共享平等機會的訊息。同時，平機會將繼續密切監察政府的措施，包括施政報告所提出的要點，以確保非華語學生和有特殊教育需要學生享有平等教育機會。



EOC Forum 2014



On 13 November 2014, the EOC held a public forum to bring together stakeholders to participate in discussions on important equal opportunity issues. For the third year running, the EOC Forum has been a valuable platform for the Commission to engage the public and hear the concerns of the community. Almost 400 representatives from non-governmental organisations, concern groups, Government departments, labour unions, and other related organisations, as well as from the education sector, attended the event.

The forum kicked off with a presentation from Dr. York CHOW, the EOC Chairperson, to highlight the EOC's performance and key achievements for the year 2013/14, including in the areas of complaint-handling, providing legal assistance to discrimination cases, research and advocacy, as well as public education and training. Dr. Chow also noted the major work projects undertaken in 2013/14, including the Anti-Sexual Harassment Campaign, the promotion of equal opportunities in local tertiary institutions, and the effort to advance accessibility in design and information via the Web Accessibility Recognition Scheme.

The focus of this year's forum was on two of the Commission's major strategic work priorities in 2014/15: (i) appealing for measures to enhance learning Chinese as a second language by the ethnic minority (EM) students, and (ii) advocating for the effective implementation of Integrated Education for students with special educational needs (SEN).

To increase stakeholders' understanding, as well as to facilitate the flow of useful information on the Government's existing services and upcoming plans, the EOC invited Dr. Catherine KK CHAN, Deputy Secretary for Education (Curriculum & Quality Assurance Branch), and Miss Hera CHUM, Principal Assistant Secretary (Special Education & Kindergarten Education), to the forum to give presentations on the respective areas.

Support for Ethnic Minority Students



Dr. Chan began her remarks by giving an overview of the situation for non-Chinese speaking (NCS) students in Hong Kong's educational system.

Noting that there are currently 320 primary schools and 267 secondary schools serving 8,290 primary and 7,576 secondary students respectively, Dr. Chan outlined the support currently available to NCS students, particularly in second-language learning. She reiterated the new initiatives introduced for the school year 2014/15, including the Chinese Language Curriculum Second Language Learning Framework. The new Learning Framework aims to provide a systematic set of objectives that describes the learning progress of NCS students at different learning stages. Teachers may set progressive learning targets using a small-step learning approach to enhance the learning effectiveness of NCS students.

Aside from school-based programmes, including in curriculum development and promoting early integration for ethnic minority children at the pre-primary level, Dr. Chan underscored a number of professional development initiatives to equip teachers before the implementation of the new programmes. These include the Professional Enhancement Grant Scheme and related seminars. Between July to August 2014, 698 teachers from 173 schools had taken part in the programmes, with more planned for the 2014/15 school year. Dr. Chan also

pointed out anticipated challenges as teachers still need to familiarise themselves with the new framework in order to implement it effectively. In three to five years, she expects an overall improvement in the performance of NCS students at each key stage of both primary and secondary education, as well as a higher number of NCS students in local kindergartens.

Support for Students with Special Educational Needs



Miss Chum gave a detailed presentation of the Government's various activities to support students with SEN. Through the dual-track mode, students with more

severe or multiple disabilities can receive appropriate education in special/aided schools, while other students with SEN can attend regular schools with support for integrated education. She elaborated on the five basic principles behind the Government's policy, namely early identification, early intervention, whole school approach, home-school cooperation, and cross-sector collaboration. In particular, Miss Chum remarked on the importance of early identification and intervention, pointing out that the number of students with SEN who have been diagnosed through early identification has been steadily increasing from 21,720 in 2009/10 to 33,830 in 2013/14.



The Government also offers other measures to facilitate students with SEN to succeed in the education system, including the provision of additional resources, professional support and training for teachers. Miss Chum gave examples of initiatives to engage parents and promote home-school cooperation, as well as collaboration across different sectors, including NGOs and other service providers, such as the "Home-school Cooperation in Building an Inclusive School Culture" Award Scheme.

In addition, the forum also featured sharing on the issue of age discrimination, which has been of particular community interest. Professor Randy CHIU, Director of the Centre for Human Resources Strategy and Development of Hong Kong Baptist University and a former EOC Member, provided an insightful presentation on his research on 'Managing Age Smart Employees' at the forum.

The forum saw a lively exchange of views, with discussion sessions moderated by Dr. John TSE, Convenor of the EOC's Policy and Research



Committee, and Ms Susanna CHIU, Convenor of the Administration and Finance Committee. The insights shared are helpful for the Commission as we consider how to continuously enhance our performance and accountability to the public, and further our work to promote equal opportunities for all. Meanwhile, the EOC will continue to closely monitor the measures by the Government, including those in the Policy Address, to ensure equal educational opportunities for both NCS students and those with SEN.

對顧客的性騷擾說「不」

俗語有云：「顧客永遠是對的」，但這句話對性騷擾來說恐怕並不適用。

立法會於2014年12月3日通過《2014年性別歧視(修訂)條例草案》，把《性別歧視條例》的適用範圍延伸至顧客向服務提供者作出性騷擾。修訂法例於2014年12月12日刊憲當日已正式生效。

條例修訂後，顧客若向提供或可能提供貨品、設施或服務的人作出性騷擾，即屬違法；有關條文亦適用於在香港境外的本地註冊船舶或飛機上發生的性騷擾。

法例規定：

根據第40(1A)條，任何人如

- (a) 在謀求一名女性¹向該人提供貨品、設施或服務的過程中；或
- (b) 在一名女性向該人提供貨品、設施或服務的過程中對她作出性騷擾，即屬違法。

第41(7)條列明，第40(1A)條適用於在香港註冊的船舶、飛機或動力承托的航行器上發生的性騷擾，即使事發時有關交通工具在香港境外。

¹ 根據《性別歧視條例》第2(8)條，條例中有關性騷擾的條文，須視為同樣地適用於男性及女性所受的待遇。因此，條例也保障男性僱員免受顧客性騷擾。

何謂性騷擾？

根據《性別歧視條例》，「性騷擾」是指：

(1) 任何人

- 對另一人提出不受歡迎的性要求，或提出不受歡迎的獲取性方面的好處的要求；或
- 就另一人作出其他不受歡迎並涉及性的行徑；

而在有關情況下，一名合理的人在顧及所有情況後，應會預期該另一人會感到受冒犯、侮辱或威嚇；或

(2) 任何人如自行或聯同其他人作出涉及性的行徑，而該行徑對另一人造成有敵意或具威嚇性的環境。

如果你被性騷擾，可以怎樣做？

- 向平等機會委員會投訴以討回公道
- 在區域法院提出法律訴訟

性騷擾一直是職場的常見問題，尤其是服務業。是次法例修訂標誌著打擊性騷擾的工作向前邁進一大步。

事實上，平機會於2014年5月公布了《職場性騷擾及歧視－服務業員工的問卷調查》結果。調查顯示，接近五分之一或19%受訪服務業員工表示曾於工作時受性騷擾。從事社區／社會／個人服務業及健康護理界的員工受性騷擾的百分率更高，分別達25%及22%，而受害人大多是經常接觸顧客或同事的前線僱員。

平機會於2014年2月公布的《職場性騷擾及歧視－空中服務員的問卷調查》也反映出服務提供者受性騷擾的趨勢。回應的空中服務員中，27%曾在之前12個月內於航機當值時受到性騷擾；另外，約有47%回應者表示，曾目睹或聽聞同事在航班上受到性騷擾。最常見的性騷擾者是顧客(59%)，其次是同事(41%)，如資深空中服務員及機師。



性騷擾的確是服務業的嚴重問題。服務業不單有很多直接面對顧客的前線員工，更有大量以兼職或短期合約方式聘用的員工，如侍應和銷售員。由於商業環境競爭激烈、工作不穩定及過去沒有對被顧客性騷擾的法律保障，大多數服務業員工認為性騷擾是工作的一部分而不加理會，尤其是銷售員，因為坊間普遍認為「顧客永遠是對的」，銷售員必須迎合他們的要求。

正如上述平機會調查所示，僱員在服務業工作的時間愈長，愈會被行業的獨特文化潛移默化，接受性騷擾是工作的一部份。例如，一些服務業員工不覺得不受歡迎的黃色笑話是性騷擾。

去年，香港婦女勞工協會獲得平機會「平等機會研究項目資助計劃」資助進行有關性騷擾的研究調查，協會近日公布研究結果，顯示89.4%受訪超市推廣員在工作時受顧客性騷擾，而接近80%受訪者被同事性騷擾。最常見的性騷擾方式為「說黃色笑話」、「對推廣員外表或身材加以評論」和「被故意碰撞身體部位」。

即使如此，只有很少人（少於0.1%）向僱主投訴，主要是超市推廣員多為散工及外派員工，時不時亦會到其他地方或超市工作。

平機會主席周一嶽醫生於2014年12月11日於《明報》撰文，重申打擊性騷擾的重要性。周醫生在文中提到，人人有權免受性騷擾。解決性騷擾必須正本清源，消除兩性的權力不平衡和角色定型，至為重要。

經修訂的《性別歧視條例》無疑有助建立安全共融的工作環境，讓每個人，特別是佔香港服務業和零售業員工大多數的女性，以及曾向平機會投訴受性騷擾的人士提供新的保障。

展望未來，我們仍需繼續努力消除工作間的性騷擾，特別是僱主應制定政策，明言對性騷擾零容忍，並且向所有職員公布有關政策。

法例方面，現行《性別歧視條例》保障僱員免受與自己相同僱主的員工性騷擾；但若員工與騷擾者只在地點工作，卻非受僱於相同僱主，員工即使受騷擾，也得不到保障。若騷擾者和被騷擾者沒有僱傭關係（如：彼此都是義工），即使受騷擾，也得不到保障。平機會早前趁進行歧視條例檢討時便提出建議修訂條例，以堵塞相關漏洞。平機會現正整理從歧視條例檢討公眾諮詢期間所收到的意見，並會於2015年下半年向政府提交委員會的報告及建議。

與此同時，提升公眾對性騷擾的認識也很重要。至今仍有不少人怪責性騷擾受害者，指他們的衣著或行為舉止引致被人性騷擾。這種定型觀念和錯誤的態度需要透過教育糾正。

平機會提供一系列有關性騷擾的資料，包括公司制定性騷擾政策大綱。公眾可以瀏覽平機會網站(www.eoc.org.hk)獲取資料或參與平機會舉辦的培訓課程。

防止工作間性騷擾，人人有責，不論男女、僱主或僱員，都應一起合力創造平等就業機會、安全與尊嚴的社會。

問與答：

問：經修訂後的條例只保障香港註冊的船舶或飛機上發生的性騷擾行為。如果有僱員在香港境內的非本地註冊船舶或飛機上受到性騷擾，那位僱員會受到條例保障嗎？如果有僱員在香港境外的非本地註冊船舶或飛機上受到性騷擾，那位僱員如何作出投訴？

答：如相關船舶或飛機在香港境內，即香港的管轄範圍內，在該船舶或飛機上工作的人會受到條例保障。但是，當該船舶或飛機離開香港，性騷擾行為會根據船舶或飛機的註冊地的相關條例保障。受害者可以尋求當地的執法機構協助和作出投訴。

問：為何經修訂後的條例不包括香港境外運行的本地註冊陸上交通工具（如火車或旅遊巴）？

答：關於船舶或飛機方面，若在國際水域上的船舶或在國際空域上的飛機發生性騷擾，受害者未必受到任何條例保障。因此，條例修訂旨在讓受害者回港後有機會向平機會作出投訴並採取法律行動。若在陸上交通工具發生性騷擾，並不會出現司法真空問題。如性騷擾行為在中國內地發生，個案會交由中國相關司法機關處理。

Saying “No” to Sexual Harassment by Customers

The adage that “The customer is always right” does not extend to sexual harassment

There is the old adage that “The customer is always right”. But when it comes to sexual harassment, this saying may prove wrong.

On 3 December 2014, the Legislative Council passed the Sex Discrimination (Amendment) Bill 2014, which seeks to extend the protection under the Sex Discrimination Ordinance (SDO) to cover sexual harassment against service providers by customers. The Bill was subsequently published in the gazette on 12 December 2014, and came into effect on the same day.



Under the amended Ordinance, sexual harassment against providers or prospective providers of goods, facilities or services by customers is unlawful. The provisions also apply to sexual harassment occurring on board Hong Kong-registered ships or aircraft, even if the vessels are travelling outside the SAR territory.

What the law says:

Under section 40(1A), it is unlawful for a person to sexually harass a woman¹ in the course of —

- (a) seeking to be provided with goods, facilities or services by her; or
- (b) being provided with goods, facilities or services by her.

Section 41(7) states that section 40(1A) applies to sexual harassment that occurs on a ship, aircraft or dynamically supported craft registered in Hong Kong, even if it is outside Hong Kong.

What is sexual harassment?

According to the legal definitions under the Sex Discrimination Ordinance, “sexual harassment” occurs when:

- (1) Any person
 - makes unwelcome sexual advances, or unwelcome request for sexual favours, to another person; or
 - engages in other unwelcome conduct of a sexual nature in relation to that other person;
 in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that that other person would be offended, humiliated or intimidated; or
- (2) Any person, either alone or together with other persons, engages in conduct of a sexual nature which creates a hostile or intimidating environment for another person.

What Can You Do About Sexual Harassment?

- Lodge a complaint with the EOC and seek redress
- Bring a lawsuit in the District Court

¹ Under section 2(8) of the SDO, a provision with reference to sexual harassment of women shall be treated as applying equally to the treatment of men, meaning male employees are also protected from sexual harassment.

The legislative amendments represent a major step forward to combat sexual harassment, which remains prevalent in the workplace, especially in the service industries.

In May 2014, the EOC released the findings of the “Sexual Harassment and Discrimination in Employment – Questionnaire Survey for Workers of Service Industries”, which showed that almost one-fifth or 19 percent of the responding service industry workers had allegedly experienced sexual harassment while at work. The percentage was even higher for workers in the industries of community/social/personal services (25%) and caring services (22%), with most victims being frontline workers who have frequent contacts with customers and co-workers.

The trend for sexual harassment against service providers was also reflected in the findings of the “Sexual Harassment and Discrimination in Employment – Questionnaire Survey for Flight Attendants” published by the EOC in February 2014. Among the responding flight attendants, 27 percent had been sexually harassed while they were on duty in-flight in the 12 months preceding the study, while about 47 percent indicated that they had either witnessed or heard about their colleagues being sexually harassed in-flight. It was also found that the most common harassers were the customers (59%), followed by fellow staff (41%), such as senior cabin crew and cockpit crew members.

Sexual harassment is indeed a serious issue in the service industries. Not only are many in customer-facing roles at the front-end, but there are also a large number in part-time or temporary positions, such as waiting staff and sales personnel. With the competitive business environment, job insecurity and in the past, the lack of legislative provisions on sexual harassment by customers, many workers in the industries tend to brush off sexual harassment and accept it as part of their job. This is especially so for salespersons, who are expected to act in the best interests of the customers, and cater to the latter’s demands and needs.

As shown in the afore-mentioned surveys by the EOC, the longer the employees are in the service industries, the more they are adapted to the industries’ unique setting and accept sexual harassment as part and parcel of their jobs. For example, some service workers do not treat telling unwelcome and sex jokes as sexual harassment.



In a more recent study by the Hong Kong Women Workers’ Association, which was funded by the EOC’s Funding Programme of Research Projects on Equal Opportunities, as many as 89.4 percent of the responding supermarket promoters alleged that they had been sexually harassed by customers, while almost 80 percent experienced sexual harassment by fellow staff of the supermarket stores. Among the most common forms of sexual harassment acts were “saying sexual jokes”, “making comments on the appearance and figure of the promoters”, and “bumping into the promoters on purpose”.

However, only a meagre few (less than 0.1%) followed up with their employers, as many of them were employed on a part-time basis by promoting companies rather than the supermarkets, and worked in different locations or stores from time to time.

The importance of combating sexual harassment was reiterated by the Chairperson of the EOC, Dr. York CHOW. In his article published in the *South China Morning Post* on 11 December, Dr. Chow said that everyone deserves the right to a life free from the threat of sexual harassment. It is vital to address the root causes of sexual harassment, which are often related to the power differential between the sexes and fuelled by gender stereotyping.

The new protection under the amended SDO will help foster a safe and inclusive work environment for all, particularly women, who make up the majority of Hong Kong’s service and sales workers, as well as complainants of sexual harassment received by the EOC.

Yet more work needs to be done. To stamp out sexual harassment in the workplace, employers should put in place policies that spell out zero tolerance of sexual harassment. These policies should also be promulgated and communicated to staff at all levels.

In terms of legislation, under the existing SDO, a person is protected from sexual harassment by his/her fellow employees, but not by workers employed by different employers, even if they work in a common workplace. There is also no common workplace liability on the person carrying out the sexual harassment when there is no employment relationship, such as between volunteers. The EOC has put forward suggestions to address these as well as other loopholes as part of the Discrimination Law Review. The Commission is now collating the views and submissions received during the public consultation period, and targets to submit a report along with the recommendations to the Government in the second half of 2015.

Meanwhile, it is also important to enhance the knowledge and understanding of sexual harassment among community members. Far too often still, people blame the victims of sexual harassment, saying that they invite such acts because of the way they dress or behave. More education is needed to correct such mischaracterisations and wrongful attitudes.

The EOC offers a range of information and resources relating to combating sexual harassment, including framework for corporate policy on sexual harassment. The public can access the information via the EOC website (www.eoc.org.hk) or contact the EOC for further training for staff.

All of us – men or women, employers or employees – have a role to play in preventing sexual harassment in the workplace. Let's work together to ensure equal employment opportunities, safety and dignity for everyone!

Questions & Answers

Q: The amended Ordinance only covers the sexual harassment acts committed on the ships and aircraft registered in Hong Kong. If an employee who works on a ship or aircraft not registered in Hong Kong is sexually harassed during the stay in the Hong Kong territory, will that employee be protected by the Ordinance? If an employee who works on a ship or aircraft, which is neither registered in Hong Kong nor staying in the Hong Kong territory, is harassed, how can that employee make his/her claim?

A: If the ship or aircraft concerned is stationed within the territory of Hong Kong, that is, within the jurisdiction of Hong Kong, then people working on the ship or aircraft would still be protected from sexual harassment by the Ordinance. However, when the ship/aircraft has left Hong Kong, the act of harassment could only be dealt with in accordance with the relevant laws of the jurisdiction which the ship/aircraft is registered. The victim can seek assistance from and make claims with the law enforcement bodies of the relevant jurisdiction.

Q: Why does the Amendment Ordinance not cover sexual harassment by customers on Hong Kong registered land-based transportation vehicles (e.g., train/coach) operating outside Hong Kong?

A: For ships and aircraft, a victim of sexual harassment may not be protected by any law when the ship is in the international waters or the aircraft is in the international airspace. Therefore, the amendment aims to offer the victim an opportunity to lodge a complaint with the EOC and to take legal action accordingly after returning to Hong Kong. In respect of sexual harassment on land-based transportation vehicles, there is no issue of jurisdiction vacuum. If the sexual harassment acts occurs in mainland China, the case will be dealt with under the relevant law in China.



歧視條例檢討 – 最新進展

Discrimination Law Review – Latest Progress

平機會於2014年7月開展歧視條例檢討公眾諮詢，就如何改善性別、殘疾、家庭崗位與種族四條反歧視條例，和四條例應否合而為一，徵詢公眾的意見。

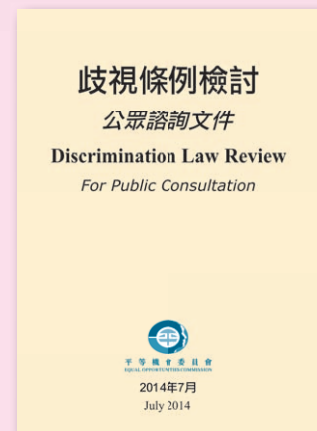
平機會於2014年7月至10月期間舉辦了四場公眾諮詢會，另外又為不同的少數族裔社群舉辦了六場諮詢會，以收集市民的意見。此外，平機會與超過140個持份者團體的代表，包括復康機構、婦女團體、僱員及僱主團體、其他關注組織和公共機構等舉行會議。

公眾諮詢期已於2014年10月31日正式結束。平機會共收到超過12萬2千份由個別人士和機構提交的意見書。自10月底起，平機會一直仔細檢視和分析意見書的內容和見解，並計劃於2015年下半年向政府提交詳細報告及建議。

In July 2014, the EOC launched a public consultation on the review of the discrimination law. The consultation exercise aimed to seek public views on how the four anti-discrimination ordinances, covering sex, family status, disability and race, should be enhanced and whether they should be combined.

Between July and October 2014, the EOC held four public sessions and another six sessions for different ethnic minority communities to collect views from members of the public. Additionally, meetings were held with over 140 stakeholder group representatives, including rehabilitation organisations, women's groups, employees' and employers' groups, other concern groups and public organisations.

The public consultation exercise officially ended on 31 October 2014. Altogether the EOC received over 122,000 written submissions from individuals and organisations. Since then, the Commission has been reviewing and analysing the opinions carefully. The EOC is aiming to submit a detailed report with recommendations to the Government in the latter half of 2015.



香港工作間的歧視

平機會的研究顯示五分一僱員曾在工作時受歧視或騷擾

在香港，工作間的歧視是一個實在並備受談論的問題。平等機會委員會（平機會）於2014年9月公布《香港工作間的歧視之研究》調查結果。這項調查從定量和定質兩方面評估了職場歧視的種類和程度，並探討解決問題的方法。

調查以隨機抽樣方式成功訪問了2,008個住戶，另又與18名曾受不同形式歧視或騷擾的在職人士進行了單對單深入訪談，並且與不同規模企業的僱主及人力資源從業員進行焦點小組討論。

香港的情況

令人擔憂的是，調查顯示工作間的歧視十分普遍：近五分之一受訪者(18%)曾在求職或在職時受到歧視或騷擾。其中最常見的為年齡歧視(64%)，隨後為性別歧視(21%)、性騷擾(17%)、家庭崗位歧視(14%)和懷孕歧視(10%)。

更甚的是，曾受歧視的受訪者中，有94%事後沒有採取行動，近半數人(51%)沒有向其他人提及事件。根據受訪者在深入訪談時表示，這是因為他們害怕被標籤為麻煩製造者。

他們保持沉默也可能是由於擔心失去工作：四分三受訪者表示，上司就是歧視他們的人。

調查亦發現歧視問題在中小企較為普遍：40%受害者稱，受歧視時正在中小企任職。

現時香港共有四條法例禁止不同範疇（包括僱傭範疇）中的性別、懷孕、婚姻狀況、殘疾、家庭崗位和種族歧視。法例亦保障所有人免受性騷擾，種族騷擾和殘疾騷擾。平機會於2014年便根據現行歧視條例處理了828宗投訴，當中70%屬於僱傭範疇。

值得注意的是，根據研究，年齡歧視是工作間最常見的歧視，卻未受現行法例保障。除此，現時的法例亦

存在不少漏洞。例如，法例雖保障所有人免受性騷擾（不受歡迎並涉及性的行為），卻無法禁止基於性別的騷擾行為（因為某人的性別而作出不受歡迎的行為）；也不能禁止在同一地點工作但受聘於不同僱主的人作出性騷擾行為。平機會一直積極倡議加強立法，包括進行歧視條例檢討，以堵塞法例漏洞。

理解工作間歧視的成因

這些法律漏洞影響相當多的在職者，令他們不能尋求申訴。但除了堵塞漏洞外，我們亦需瞭解造成歧視的成因。

歧視源於誤解、偏見，以及定型觀念。定型觀念影響思想，進而影響政策和慣常措施。這些想法更會牢固生根，往往窒礙個人事業發展空間。

例如，婦女事務委員會於2010年進行的調查便指出，四分一受訪女性表示，她們基於家庭責任而不希望工作表現太出色。事實上，女性往往被定型為家庭照顧者，除了工作還需兼顧家中大小事務，令她們難以平衡事業和家庭生活。

定型觀念亦會在工作層面上為員工帶來負面觀感和評價。例如不少人認為女性在生兒育女後會減低對事業的承擔。事實上，懷孕歧視仍是平機會最常接到的投訴之一。平機會在進行《香港工作間的歧視之研究》焦點小組和深入訪談時，許多中小企與大企業僱主和人力資源從業員都表示，不論求職者學歷和經驗如何，只要是孕婦都不會聘請。

另外，殘疾人士的工作能力仍備受定型觀念的質疑。平機會於2010年進行的調查結果顯示，過半數受訪者認為殘疾僱員（包括愛滋病毒感染者和長期病患者）只適合從事簡單、重複性質的工作。

僱主缺乏政策

另一造成歧視的因素是僱主未有制定政策，也沒有採取行動正視問題。由於許多受害人受歧視後都不會舉報或採取行動，以致僱主未能察覺問題，因而不認為歧視問題迫切。

根據平機會在2013年進行的一項調查，在198份收回的問卷中，發現43%受訪公司並無制訂任何反性騷擾政策。當中46%認為沒有迫切制訂性騷擾政策聲明的需要，而37%更指從未打算制訂相關政策。平機會在2014年進行工作間歧視的研究時，在焦點小組討論和深入訪談的結果都顯示，中小企甚至大企業沒有制定正式反歧視政策的情況非常普遍。

打造多元共融工作間

歧視問題對企業整體效率、員工生產力，以至公司盈利都有負面影響。平機會相信預防勝於一切，透過制定預防措施和設立清晰的投訴處理機制，僱主能有效應對歧視問題，締造高生產力的共融工作間。事實上，多項研究亦指出，沒有歧視的工作環境能夠鼓勵員工發揮淋漓盡致，工作盡展所長。

另一點值得注意的是根據反歧視法例，除非僱主能證明已採取合理可行的預防措施，否則即使他們沒有批准或在其不知情的情況下，僱主亦可能須為僱員工作期間所作的歧視行為承擔法律責任。因此，制訂合適政策有助公司避免費用高昂的法律訴訟，以及損害員工士氣。

給中小企的支援

不少中小企可能認為，解決工作間歧視需要花費額外資源或作出他們難以負擔的調整。事實上，公司可從「小」處著手，減少歧視情況。微小如安排彈性上班時間的措施，已可為有特別需要的員工提供遷就。

此外，僱主及主管亦可利用外間的資源處理公司內的歧視投訴。例如：僱主可利用平機會提供的各種資訊和培訓資源建設平等工作間。當中包括：僱傭指引和守則、培訓和顧問服務、以及為商界和人力資源從業員而設的「平等機會之友會」。「平等機會之友會」提供一個方便平台，讓會員交流良好管理常規和深入認識反歧視法例。另外，平機會亦不時舉辦講座及研討會，例如於2015年2月7日舉行的「中小企——建構平等工作間」分享會。除了介紹反歧視法例和研究案例外，平機會亦邀請了不同嘉賓進行演講，分享建構平等工作間的經驗和建議，例如聘用殘疾人士等。

平機會亦制定了《公司性騷擾政策大綱》供商界參考，以便公司能主動制定性騷擾政策。其他機構，包括政府決策局和部門，也提供不少額外資源協助商界打造多元共融工作間，當中包括政制及內地事務局轄下的性別認同及性傾向小組、婦女事務委員會以及勞工處等。

平機會相信，僱主所制定的防止和處理歧視及騷擾政策，應高於法律的基本要求。有關政策的關鍵在於推動工作間的共融文化，和傳達管理層嚴肅處理歧視問題的訊息。政策亦應顧及個別員工的需要和狀況，包括年齡、性傾向或性別認同、宗教信仰、家庭狀況及責任。此外，企業須定時向各級職員工講解政策，以及讓員工便捷地取得相關資訊。

只要僱主及人力資源從業員能主動處理工作間的歧視問題，防微杜漸，就可保障自己免於法律責任，同時提升僱員士氣和生產力。小小的投資和彈性，可帶來大大回報，令公司成為員工的首選僱主。



反歧視政策可因應每間公司及其工作性質而作出調整，但應涵蓋以下元素：

- 目標；
- 處理投訴的主要聯絡人；
- 處理投訴的程序，包括保證絕對保密；
- 各方的責任；
- 相關定義；及
- 如何把政策告知員工，以及如何使規定切合實況。

Discrimination in the Hong Kong Workplace

Study by EOC shows that one in five employees has experienced discrimination or harassment at work

Discrimination at work is a real, and under-discussed, issue in Hong Kong. In September 2014, the Equal Opportunities Commission (EOC) announced the findings of the “Study on Discrimination in the Hong Kong Workplace”, which looked at the types and extent of workplace discrimination both quantitatively and qualitatively, as well as ways to redress the problems.

The study included a random sampling of 2,008 successful household interviews, 18 one-on-one in-depth interviews with employees who had encountered various forms of discrimination or harassment, as well as focus group discussions with employers and human resource practitioners from companies of various sizes.

Situation in Hong Kong

Alarming, the study found that discrimination in the workplace was common: nearly one in five respondents (18%) has experienced some form of discrimination or harassment while seeking a job or at work, the most common form being age discrimination (64%), followed by gender (21%), sexual harassment (17%), family status (14%), and pregnancy (10%).

Even more worryingly, 94 percent of the respondents who had experienced discrimination did not take any action after the incident. About half (51%) also did not speak to anyone about the discrimination they faced. According to respondents of the in-depth interviews, they did not want to be labelled as trouble-makers.

The quiescent approach may also be due to fears of losing their job: three-quarters of respondents said that the people who discriminated against them were their superiors.

Discrimination was also found to be more common in small- and medium-sized enterprises (SMEs): 40 percent of victims reported they were engaged in SMEs at the time of the discriminatory act.

Currently, Hong Kong has four specific ordinances to prohibit discrimination on the grounds of sex, pregnancy, marital status, disability, family status and race in a variety of fields, including in employment. The laws also protect everyone against sexual harassment, as well as harassment due to race and disability, among other provisions. In 2014, the EOC handled 828 complaints under the current anti-discrimination ordinances, of which around 70 percent were employment-related.

It is worth noting that age discrimination, which is the most common form of workplace discrimination according to the study, is not covered under current laws. Other gaps remain in the existing legislation. For instance, although there is protection against sexual harassment (unwelcome conduct of a sexual nature), there is currently no protection against harassment on the basis of one's sex (unwelcome conduct because one is a woman or a man), or against sexual harassment by worker(s) in the same workplace but employed by different employers. The EOC has advocated for strengthening legal protection from discrimination, including through the Discrimination Law Review, so as to close these gaps.

Understanding the Causes of Workplace Discrimination

Aside from recognising the loopholes in the law which allow discrimination to take place without possibility for redress, affecting a sizeable proportion of the city's workforce, it is also important to understand why discrimination occurs.

Discrimination stems from misunderstanding, prejudices and stereotyping. Stereotyping works its way into thoughts, upon which policies and practices are based. Such thoughts are also internalised, which may cause people to hold themselves back from career advancement opportunities.

For example, in a 2010 survey by the Women's Commission, a quarter of female respondents said they do not want to be too successful at work due to family responsibilities. Stereotyped as the family's caretaker, women end up shouldering more household duties in addition to their job, making it difficult for them to balance work and home life.

Stereotyping also negatively impacts the way workers are perceived, and assessed, at work. For instance, women tend to get stereotyped, once they have children, as being less committed to their career. Indeed, pregnancy discrimination remains one of the most common complaints received by the EOC. Many employers and human resource practitioners from SMEs and larger companies in the focus group and in-depth interviews during the 2014 study also revealed that they would not hire pregnant women, irrespective of their qualifications and experiences.

Meanwhile, people with disability continue to frequently face stereotypes about their capabilities. In a 2010 survey by the EOC, over half of the respondents agreed that only simple repetitive work was appropriate for workers with disabilities, including people with HIV/AIDS and chronic illness.

Lack of Policies by Employers

Another contributing factor to discrimination is the lack of policies and actions by employers to address the situation. Since many victims of discrimination may be hesitant to report the incident or take action afterwards, employers may not be sufficiently aware of the issue. Subsequently, they may not feel that discrimination is an urgent problem.

In a 2013 survey based on 198 returned questionnaires, the EOC found that 43 percent of respondent companies had no anti-sexual harassment policy of any kind. Of these, 46 percent indicated that there was no urgency to formulate a policy statement on sexual harassment and 37 percent never thought of developing such a policy. In the EOC's 2014 study on discrimination in the workplace, the focus group and in-depth interviews also revealed that the absence of formal anti-discrimination policies was particularly common among SMEs and even larger companies.



Promoting an Inclusive Workplace

Discrimination negatively impacts organisational effectiveness, staff productivity and bottom line. The EOC believes that it would be more desirable to proactively adopt preventive measures rather than to redress the wrongs afterwards. By proactively establishing policies, while also setting up clear complaint-handling mechanisms, employers can effectively address any arising issues as well as foster an inclusive and productive workplace. Various pieces of research have shown that a discrimination-free workplace can help employees be their best selves, which facilitate them to work at an optimal level.

It is also important to note that, under the anti-discrimination law, employers may be liable for the discriminatory acts of their employees, done in the course of work, even if they do not approve or have no knowledge of such acts, unless they can prove that they have taken reasonably practicable steps to prevent them. So the establishment of such policies may help companies to avoid costly legal entanglements, not to mention lowered staff morale.

Support for SMEs

Many SMEs may feel that tackling workplace discrimination requires resources they do not have or adjustments they cannot afford. But there is much that smaller companies can do to reduce discrimination that would not require a great deal of financial or human resources. Sometimes it could be as small as flexible work hours to accommodate the special needs of employees.

In addition, external resources are also available to employers and managers to take action in their own company.

For instance, the EOC provides a wide range of information and training resources to assist employers in building an equal opportunity workplace. These include employment guidelines and codes, training and consultancy services, as well as “The EO Club”, which provides a platform for businesses and HR practitioners to share good management practices and gain a deeper understanding of the anti-discrimination ordinances. The EOC also organises seminars and workshops regularly, such as a sharing session on “SMEs – An Equal Workplace for All” on 7 February 2015. On top of introducing the anti-discrimination ordinances and conducting case study, guest speakers were invited to share their experiences and tips on creating an inclusive workplace, such as the employment of people with disabilities.

Furthermore, the EOC has produced a corporate policy framework on sexual harassment to facilitate companies to adopt proactive policies to deal with sexual harassment. Other organisations, including government bureaux and departments, also provide additional resources to facilitate businesses to enhance inclusion in the workplace. These include the Gender Identity and Sexual Orientation Unit under the Constitutional and Mainland Affairs Bureau, the Women’s Commission, and the Labour Department.



The EOC believes that it is important that employers put in place policies to prevent and deal with discrimination and harassment beyond compliance with the legal minimum. Crucially, appropriate policies will also help to set the tone for creating an inclusive corporate culture, and convey the management's seriousness in dealing with discrimination issues in the workplace. These policies should take into consideration the different needs of individual employees, including age, sexual orientation or gender identity, religious beliefs, or family circumstances and responsibilities. They should also be communicated and promulgated to the staff regularly, and be readily accessible to all employees at all levels.

By proactively and pre-emptively addressing potential discriminatory issues in the workplace, employers and human resource practitioners can protect themselves from legal liabilities, while also enjoy the positive business impact of high staff morale and productivity. A small amount of investment and flexibility can indeed pay out big rewards by setting a company apart as an employer of choice.

The anti-discrimination policies may vary between each company and the nature of its work. However, the policies should include elements such as:

- The objectives of the policies;
- The key contact person(s) for complaints handling;
- The procedures for handling complaints, including an assurance of confidentiality;
- The responsibilities of various parties;
- Relevant definitions; and
- Methods to communicate policies to staff and how to keep the policies relevant.

 平等機會委員會
EQUAL OPPORTUNITIES COMMISSION

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平等機會委員會負責執行《性別歧視條例》、《殘疾歧視條例》、《家庭崗位歧視條例》及《種族歧視條例》，並為僱主及僱員提供相關資訊及培訓課程。

The EOC is responsible for implementing the Sex Discrimination Ordinance (SDO), the Disability Discrimination Ordinance (DDO), the Family Status Discrimination Ordinance (FSDO) and the Race Discrimination Ordinance (RDO). We provide both employers and employees with information and training on the anti-discrimination ordinances.



 平等機會委員會
EQUAL OPPORTUNITIES COMMISSION

平等機會工作間 僱主僱員均有責
An equal opportunity workplace relies on the joint efforts of employers and employees

作為僱主或僱員，你是否有：
As an employer or employee, do you:

你的公司是否有：
Does your company have:

- 明白每個人皆有獨特之處和潛能？
Understand that everyone has his/her unique attributes and talents?
- 理解和尊重他人的情況，並作出合理可行的安排？
Understand and respect each other's situation, and make reasonably practicable arrangements?
- 加強對反歧視法例的認識？
Enhance your understanding on the anti-discrimination ordinances?
- 避免歧視性的行為和言語？
Avoid discriminatory conduct and expression?
- 平等機會政策？
Equal opportunity policies?
- 平等機會培訓？
Equal opportunity training?
- 處理投訴機制？
Complaint-handling mechanism/procedures?
- 任命處理平等機會事宜的職員？
Staff appointed to handle equal opportunity issues?



促進性小眾平權

平機會堅信任何人都不能因為其性取向或性別認同而受歧視



過去年，如何為同性戀、雙性戀、跨性別和雙性人士（統稱性小眾）爭取平等權利繼續得到社會廣泛討論。平機會承認市民在這個議題上意見紛紜，我們會對各種意見持開放態度，細心聆聽。無論如何，我們堅信任何人都不能因為其性取向或性別認同而受歧視。現時社會欠缺禁止歧視性小眾的法例，使性小眾容易受到歧視和騷擾，尤其在公共生活範圍（例如僱傭和教育範疇）。我們必須正視有關問題。

為了促進理性對話和令公眾認識這個議題，平機會在過去半年舉辦了不同活動，希望這些舉措有助消除現有的障礙，令性小眾人士能夠享有平等權益。

其中一個主要活動是於2014年8月28日至29日舉行、香港有史以來的首個「性見共融國際研討會」。這個活動乃由平機會、歐盟駐香港及澳門辦事處和香港中文大學香港亞太研究所性別研究中心合辦，並得到英國駐香港總領事館、英國文化協會及荷蘭駐香港及澳門總領事館的支持。

是次會議獲得本地和海外學術界、法律界專業人士、立法會議員、政府官員、性小眾關注團體、非政府組織和人權專家參與，各代表聚首一堂，共同探討香港和歐盟有關性小眾平權的議題和經驗。

平機會主席周一嶽醫生開幕致辭時表示：「平機會是一個法定機構，負責消除香港的歧視情況。我們正不斷尋找各種有效的方法，以提高公眾的認識，並鼓勵社會討論如何改善本港平等機會。我們有強烈信念，有需要代表弱勢群體和為公義發聲；也有責任鼓勵社會大眾討論，並令他們明白所有人，不論其性傾向或性別認同，均享有平等權利的保障。」

本地及海外的講者在兩天會議上分享他們的見解和專業知識。第一天是高層次圓桌會議，提供一個非正式的平台，讓本地及海外權威人士與主要決策者及持份者進行交流。第二天的全日會議，共舉行四個專家小組會議，內容涵蓋性小眾權利的不同層面，包括立法保障性小眾權利的原因及方法；跨性別人士的權利及重要法例的發展；處理社會上對於性小眾法例的憂慮和法例帶來的社會影響；及持份者，包括公民社會、商界、國會議員及宗教團體等在爭取立法和推廣性小眾權利方面的角色。

是次研討會的反饋非常正面，77%回應者表示他們「非常同意」或「同意」會議有助促進各方進行有建設性的對話。總體而言，87%回應者把研討會評價為「非常好」或「好」。



幾個月後，香港性小眾平權情況又有另一項正面發展。經過主要持份者（包括平機會）的倡議及大眾多個月以來的辯論後，立法會於10月22日否決了《2014年婚姻（修訂）條例草案》。假如草案獲通過，變性人便必須完成導致絕育的整項性別重置手術，才能獲許以他或她自認的（新）性別來結婚。

就立法會否決草案一事，平機會發出了聲明，重申不贊成通過草案。草案是政府為落實終審法院在W訴婚姻登記官一案所下達的命令而提交的，平機會過往在多個場合中均表示反對。平機會在2014年4月向立法會提交意見書表明立場，並在以後幾個月發表多篇專欄文章向大眾解釋我們的看法。

我們認為草案可能違背了香港及國際人權標準，特別是聯合國已把完成整項性別重置手術的要求及其可導致永久絕育的後果視作不人道及具羞辱性。通過草案只會逼使現時香港的跨性別社群，在選擇以自認性別身份生活時面對更大困難，特別是很多跨性別人士不能或不選擇進行整項性別重置手術。

此外，草案亦未履行終審法院在W案判決中向香港政府提出的建議，確立一套全面的性別承認程序。因此，平機會促請政府及由律政司司長擔任主席的研究性別承認跨部門工作小組盡快回應終審法院的全部建議，提出性別承認法案，給予所有跨性別人士應有的各種權利，並且不規定跨性別人士必須完成整項性別重置手術。

事實上，社會仍需要展開更多工作促進性小眾的權益。平機會再次呼籲所有持份者，包括政府部門、私營機構以至市民大眾，共同努力保護這一群被負面標籤和誤解的小眾；確保所有人（不論其性取向和性別認同）都應享有平等權利和機會，過有尊嚴的生活。

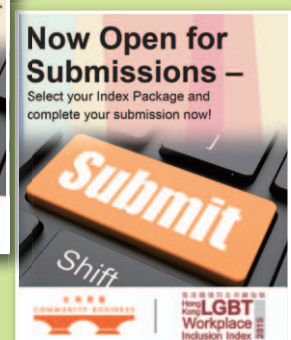
繼續留意「性見共融國際研討會」的會後報告

為了令大眾獲得研討會上的信息及知識，我們正撰寫報告，摘錄會上的討論內容；記錄各小組會議的啟發性討論重點；並闡述會議後的跟進工作。如欲瞭解更多研討會的資訊，包括講者的發言內容和相關媒體報導，請瀏覽研討會的專設網頁：
<http://www.eoc.org.hk/eoc/lgbtissymposium2014.html>

平機會支持商界推廣性小眾平權的舉措

第二屆Out on the Street: 亞洲高峰會於2014年12月9日在香港舉行，高峰會聚集了金融界及其他界別的代表，從商界角度討論性小眾平權的議題，以及探討企業如何帶來法律和文化上的轉變。平機會主席周一嶽醫生在活動開幕禮致辭時，讚揚金融界作為先鋒，在工作間落實平等機會政策。周醫生亦促請商界領袖與各界合作，公開表明支持立法保障和認同性小眾。

另外，平機會是「香港職場同志共融指數」的支持機構，指數由社商賢匯編制，用以評估各公司為同／雙性戀及跨性別僱員而推行及實踐的政策，推動企業創造共融工作間。如果想了解更多資訊，請瀏覽：
<http://www.communitybusiness.org/hklgbtindex/>



Advancing Equality for Hong Kong's LGBTI Community

The EOC firmly believes that no one should be discriminated due to their sexual orientation and gender identity

Ensuring equal rights for the lesbian, gay, bisexual, transgender and intersex (LGBTI) community has continued to be a topic of lively interest and debate in our city over the past six months. The Commission recognises that there are diverse views among the public, and is open to listening to different perspectives. Nevertheless, we firmly believe that no one should be discriminated due to their sexual orientation or gender identity. The absence of specific anti-discrimination legislation on these grounds continues to make sexual minorities more vulnerable to discrimination and harassment, particularly in areas of public life such as employment and education. This must be addressed.

To foster rational dialogue and public understanding on this issue, the EOC had organised a number of related activities in the past six months. It is our hope that these initiatives can contribute to dismantling current barriers to equality for the LGBTI community.

On 28-29 August 2014, the first-ever "Working Together for an Inclusive Society: LGBTI Rights in Comparative Perspective" was held in Hong Kong. This international symposium was a joint initiative between the EOC, the European Union Office to Hong Kong and Macao, and the Gender Research Centre of the Hong Kong Institute of Asia Pacific Studies at The Chinese University of Hong Kong. The event was supported by the British Consulate-General Hong Kong, the British Council, and the Netherlands Consulate General in Hong Kong SAR and Macao SAR.

The symposium aimed to bring together local and overseas representatives from the academia and legal profession, legislators, government officials, LGBTI concern groups, non-governmental organisations and human rights experts to examine the issues and experiences relating to equality of rights for LGBTI persons in Hong Kong and the European Union.

"As the statutory body tasked to eliminate discrimination in Hong Kong, the EOC is constantly looking for ways to

productively enhance public knowledge and encourage discussions about issues affecting equal opportunities in this city," said Dr. York CHOW, EOC Chairperson, in his opening remarks. "We strongly believe that it is our responsibility to speak out for justice on behalf of those who are vulnerable. It is also our responsibility to initiate public discussions and advance understanding to ensure that everyone can enjoy equal right protection irrespective of factors such as sexual orientation or gender identity."

Local and overseas speakers shared their insights and expertise over two days of events. The first day featured a high-level roundtable meeting in order to provide an informal platform to connect local and overseas leading authorities on this issue with key decision-makers and stakeholders. The following day's conference saw four panels of experts who covered various aspects of LGBTI rights, including why and how to legislate for LGBTI rights; transgender people's rights and the development of key legislation; addressing community concerns and social impact of LGBTI legislation; and the roles of different stakeholders, including civil society, business, parliamentarians and religious groups, in securing legislation and promoting LGBTI rights.

The symposium saw very positive feedback, with 77 percent of the respondents saying they strongly agreed or agreed that the event can help promote constructive dialogue between different parties. Overall, 87 percent of the respondents rated the event as excellent or good.



A few months later, the equality landscape for Hong Kong's LGBTI community saw another positive development when, on 22 October, after months of public debate and advocacy from major stakeholders including the EOC, the Marriage (Amendment) Bill 2014 was vetoed by Hong Kong's Legislative Council. The Bill, if enacted, would require a transsexual person to undergo full sex reassignment surgery (SRS), resulting in sterilisation, in order to be able to marry in his or her affirmed gender.

In response to the veto, the EOC issued a public statement to reiterate our agreement that the Bill should not be passed. We have spoken out on a number of occasions regarding our objections to the Bill, which was tabled by the Government to implement the order of the Court of Final Appeal in the case of *W v the Registrar of Marriages*. We made a submission to the Legislative Council to state our stance in April 2014, and published a number of op-ed articles to explain our views to the wider public in the following months.

The EOC's position is that the Bill would have likely breached Hong Kong's and international human rights standards, specifically those of the United Nations which regards the requirement for full SRS and the resultant sterilisation as inhuman and degrading. The Bill's passage would have forced the transgender community in Hong Kong to face even greater hardships in making their choices to fulfil their affirmed gender identity, especially since many transgender persons cannot or choose not to undergo full surgery.

Moreover, the Bill failed to implement the Court of Final Appeal's recommendation in the *W* case judgement for the SAR Government to establish a comprehensive gender recognition process. The EOC urges the Government and the Inter-departmental Working Group on Gender Recognition chaired by the Secretary for Justice to address the full recommendations of the Court as soon as possible, and to recommend a gender recognition bill that affords the transgender individuals full recognition of their rights, including by not requiring full SRS to change gender.

Indeed, more work is needed to advance the rights of LGBTI people. The EOC calls again on all stakeholders, from the Government to the private sector and the wider public, to work together to protect this stigmatised and misunderstood group, and ensure that everyone, irrespective of their sexual orientation and gender identity, can equally access rights and opportunities to live a life of dignity.

Stay tuned for the post-conference report of "Working Together for an Inclusive Society: LGBTI Rights in Comparative Perspective"

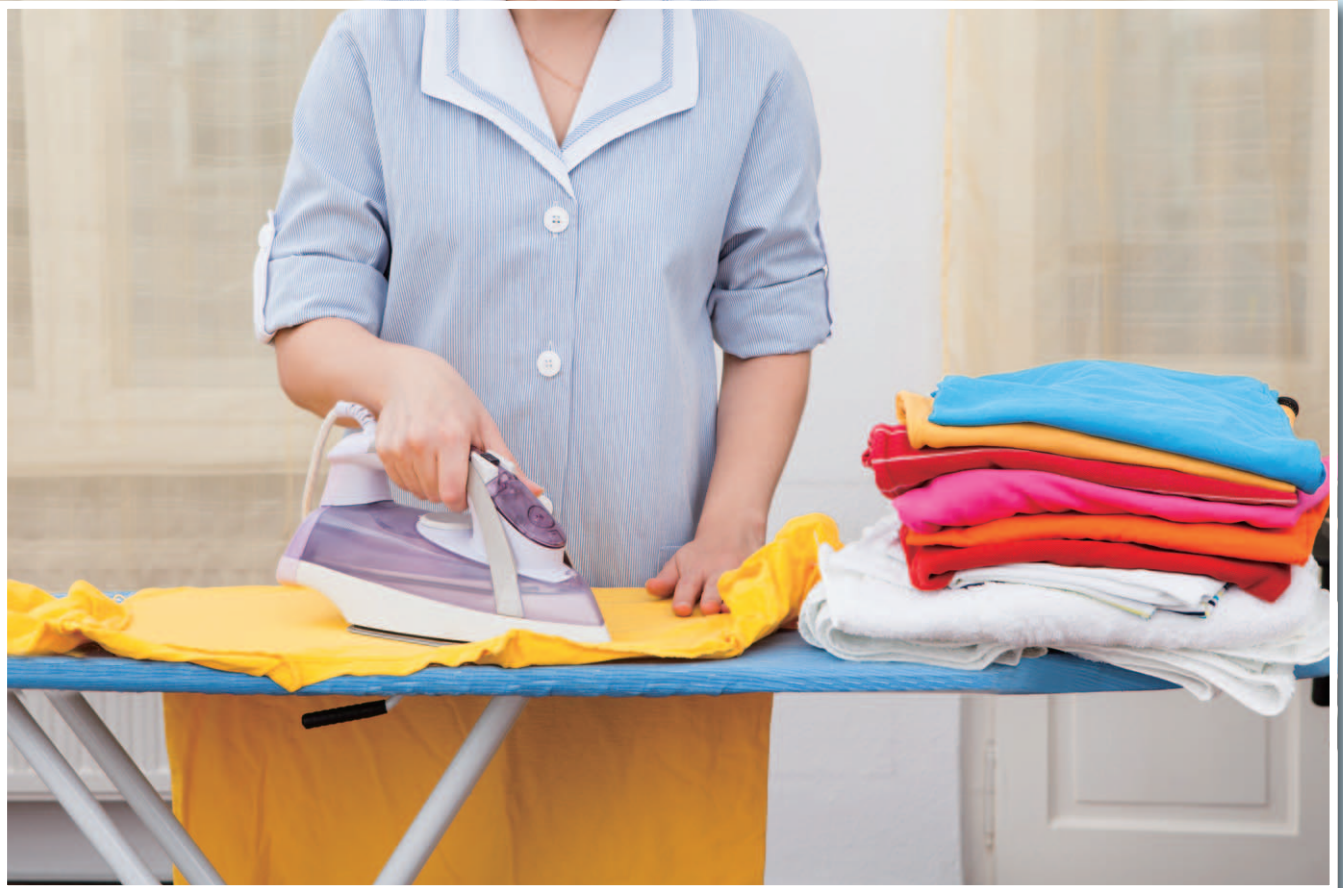
To widen the reach of the knowledge gained during the symposium, a report is being produced which will provide a detailed summary of the discussions and key learning points of each panel, as well as to set forth some potential next steps for action. For more information on the symposium, including the speakers' presentations and related media coverage, please visit the event's dedicated webpage at: <http://www.eoc.org.hk/eoc/lgbtisympodium2014.html>

The EOC Supports Business Initiatives to Promote LGBTI Equality

For the second year running, the Out on the Street: Asia summit was held on 9 December in Hong Kong to gather representatives of the financial and other sectors to discuss aspects of LGBTI equality from the business perspective, and how corporations can bring about legal and cultural shifts. Dr. York CHOW, the EOC Chairperson, was a speaker at the event's opening. In his remarks, he applauded the financial sector for being at the forefront of implementing inclusive workplace policies, and urged business leaders to work across different sectors to vocally show support towards ensuring legal protection and recognition of LGBTI people.

The EOC is also a supporting organisation of the Hong Kong LGBT Workplace Inclusion Index, launched by Community Business as a tool to enable companies in the city to assess performance, drive progress and promote their efforts to create inclusive workplaces for their LGBT employees. For more information, please visit: <http://www.communitybusiness.org/hklgbtindex/>

跨越種族職業界線 人人共享平等



對於外籍家庭傭工在港面對的形形式式的歧視，平等機會一直十分關注。我們認為無論任何種族、甚麼職業，都應獲得尊重，享有平等機會與權利。

每年的12月18日是國際移工日(International Migrants' Day)，是聯合國於1990年訂定，藉此肯定全球移工的努力付出、貢獻及權益，並呼籲各國及相關組織關注移工的權利和自由。

所謂「移工」，即是移徙工人，他們都是漂洋過海，寄居他鄉工作的人。隨著全球一體化，移工的數目日益增長。根據聯合國數字，現時全球的移徙人數達2億3,200萬，而近一半為女性。

香港自1970年代輸入外籍家庭傭工，在過去數十年，香港經濟迅速發展，外籍家庭傭工的數目亦不斷增加。截至2013年底，香港有近33萬名外籍家庭傭工，當中51%為菲律賓裔，46%為印尼裔，其餘少數來自

南亞及東南亞國家如泰國、孟加拉等。有說法指，香港每8個家庭中便有一個聘用外傭。這些傭工為了改善生計而離鄉別井，來到香港工作。他們為僱主料理家務，照顧長幼，釋放了家庭照顧者特別是婦女的勞動力，讓他們可在職場上發揮專長，外籍家庭傭工對香港的社會以及經濟可說有着重要的貢獻。

事實上，外籍家庭傭工照顧僱主及其家人起居，關係密切，雖不至於唇齒相依，但雙方理應互相尊重和諒解。但是外籍家庭傭工遭到剝削及不公平待遇的事還是常有聽聞，例如工時過長，不准放假又或剋扣工資。

最近平等機會公布「職場性騷擾及歧視—外籍家庭傭工的問卷調查」結果，顯示6.5%的受訪外籍家庭傭工在調查進行前的12個月內，指稱曾在工作時或與工作相關的情況下受到性騷擾。而被指稱的騷擾者當中，最常見的是男僱主(33%)和女僱主(29%)，其次是「居於同一居所的人士」(20%)。

根據現行條列，外傭須於合約內訂明的僱主地址中工作和居住，基於香港普遍狹窄的家居環境，很多時外傭的居住環境都缺乏私隱，亦因此他們難以逃避性騷擾，有些甚至長期被侵犯。雖然《性別歧視條例》保障外籍家庭傭工免受僱主性騷擾，亦保障他們免受居於同一居所的僱主家庭成員和親屬性騷擾，但由於害怕失去工作，受性騷擾的外傭往往不會作出舉報。調查的結果便顯示，面對性騷擾，23%的受害者沒有作出任何行動。

外籍家庭傭工害怕失去工作，除了是因家庭及經濟負擔外，亦因為他們當中不少是欠下中介公司龐大費用，甚至被逼借貸或遭違法扣糧。根據現行條例，一旦外傭被終止合約，他們必須在兩個星期內離開香港，除非他們能在這段期間找到新僱主，但在這麼短的時間覓得新僱主是近乎不可能的，亦即變相他們別無選擇要離開，因而無法償還中介公司的債務。

政府僱主相關組織皆有責

較早前立法會便曾討論中介公司的角色及作用，對於中介公司的剝削行為，有議員認為當局應收緊發牌，加強監管。平機會認為無論政府、僱主又或相關組織，皆有責任保障外籍家庭傭工的勞工權益，並為他們提供一個安全的工作環境。至於普羅市民，亦應對外籍家庭傭工予以尊重及平等對待。根據平機會的調查，除了性騷擾以外，12%的受訪外籍家庭傭工曾在工作場所遇到其他種類的歧視和騷擾，當中最常見的是種族歧視。過往便曾有報道，有大廈向周日到訪的外傭收取數元「搭枱」費才讓他們使用電梯、有商戶對外傭態度差劣，甚至不准他們進入店鋪。

另外，女性外傭亦經常面對懷孕歧視，例如在回鄉探親時被僱主要求簽訂不會懷孕的承諾書，又或懷孕後被僱主終止合約。平機會在2013年便曾為1名女外傭提供協助，入稟區域法院，指控僱主及僱傭公司因懷孕而不合法解僱她，違反《性別歧視條例》，要求僱主及僱傭公司作書面道歉及賠償。

對於外籍家庭傭工在港面對的這些形形式式的歧視，平機會一直十分關注。我們認為無論任何種族、甚麼職業，都應獲得尊重，享有平等機會與權利。透過外展工作以及講座等活動，平機會希望能讓本港外籍家庭傭工了解他們的權益，避免遭到不平等對待。

對外籍傭工表達一份感激

其實，香港本就是移民的城市，憑着移民的努力及拼搏，建設今天繁榮的都市。外籍家庭傭工在本港生活工作，與我們在同一屋簷下，我們理應盡力協助他們適應、融入本港的文化及生活，多加諒解及關顧。我家過往曾聘用的一位外籍家庭傭工，替我和太太照顧兩名女兒，從她們細小到長大，工作多年直至她患病離世。我和太太常常懷著感恩，仗賴她的幫忙，我們可無顧慮地在外工作，我們早已視她為家中一份子。

在國際移工日這天，就讓我們對一群為香港作出貢獻的外籍傭工表達一份感激，協力建構一個真正多元、尊重平等權利的國際大都會。

平等機會委員會主席
周一嶽

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Equality Respect Galang
Persamaan ความเคารพ
ความเท่าเทียม
平等 尊重 Hormat
Pantay
平等 आदर
समानता Equality Respect
尊重

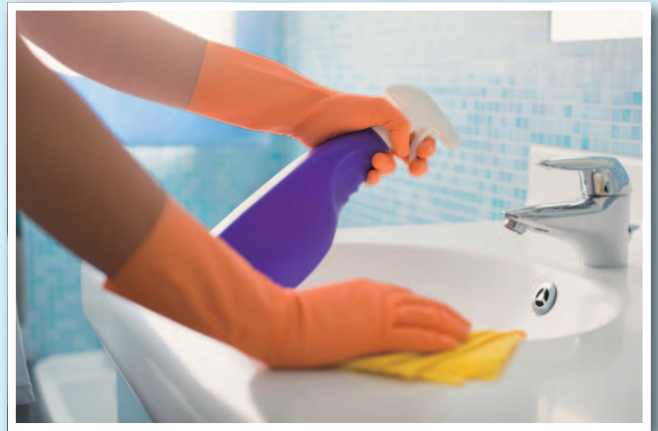
Don't let foreign domestic workers suffer abuse in silence

Many foreign domestic workers in Hong Kong face significant barriers and injustice in their daily life. As Dr. York Chow, Chairperson of the EOC wrote: "As a modern, cosmopolitan city, Hong Kong must do better to safeguard the rights of all, including foreign domestic workers, and ensure that they can also enjoy fair treatment."

The 18th of December has been designated by the United Nations as the International Migrants Day – an opportune moment for us to celebrate the positive role played around the world by different types of migrants. In Hong Kong, the most visible example of this is the very valuable contributions made by foreign domestic workers, particularly in alleviating family care responsibilities and enabling many to, in turn, return to their careers.

Despite this important role, many foreign domestic workers face significant barriers and injustice in their daily life. In November 2014, the Equal Opportunities Commission released the findings of the first questionnaire survey for foreign domestic workers on the sexual harassment and discrimination they face at work. The results are sobering: Of the nearly 1,000 workers surveyed, 6.5 percent said they had been sexually harassed at the workplace or at a work-related event in the preceding 12 months. According to the Immigration Department, there are currently over 330,000 foreign domestic workers in Hong Kong. Extrapolating from these figures means that tens of thousands of foreign domestic workers may be at risk of sexual harassment each year.

The survey findings confirm that foreign domestic workers are among the most vulnerable groups in our society to potential mistreatment. Their situation is exacerbated by a number of factors. First, the policy requiring workers to live with their employer, sometimes in accommodation without privacy, means that those who face harassment are put at high risk of prolonged abuse. According to the



Commission's survey, employers and others residing in the household were the most common perpetrators of sexual harassment, together making up 82 percent of the alleged harassers.

We have also been told that the "two-week rule" deters victims from stepping forward, as they worry that they would then be dismissed and forced to find a new employer, or leave Hong Kong, within two weeks. Some may be new arrivals who are not sufficiently aware of their protection under Hong Kong's laws, in addition to facing cultural and linguistic barriers, making them fearful of asking for help.

According to a 2013 report by Amnesty International, a number of Indonesian domestic workers face debt-bondage, where they are required to pre-pay agency fees higher than what are legally permissible, sometimes up to an equivalent of seven months of salary, which they have to work off. The prospect of having to pay the agency fee again discourages them from leaving their current employment.

Not surprisingly, almost one in four said they did not take action after facing sexual harassment, with the most common reason being fear of losing their job. Many may still be suffering in silence.

Sexual harassment is already an issue that disproportionately affects women and is a manifestation of a power imbalance between men and women. Sexual harassment against foreign domestic workers brings to the fore the intersection between issues of gender, socio-economic status and race. Such acts reflect how far we must still go to foster an inclusive society for all.

In fact, foreign domestic workers in Hong Kong do face much discrimination beyond sexual harassment. According to the Commission's survey, 12 percent of the respondents have faced some form of discrimination or harassment over the past year, with over half of respondents pointing to racial harassment. This demonstrates the need for greater public education to eliminate stereotypes and biases, including about racial origin.

Through our outreach, the Commission has also been informed that foreign domestic workers frequently face pregnancy discrimination, including being compelled to sign a contract stating that they would not become pregnant during home leave. Under the existing law, such a case would not be protected. This is one of the reasons why the Commission has proposed, as part of

our review of the existing anti-discrimination ordinances, that the Sex Discrimination Ordinance should also provide protection against potential pregnancy.

Indeed, the EOC strives to offer assistance to foreign domestic workers, such as by providing redress for sexual harassment complaints. There are also non-governmental organisations and consulates-general providing much-needed support to those who face abuses including sexual harassment.

Everyone has a right to be safe and free from harassment in their work environment. As a modern, cosmopolitan city, Hong Kong must do better to safeguard the rights of all, including foreign domestic workers, and ensure that they can also enjoy fair treatment. All of us – from employers to employees' groups, from employment agencies to the consulates-general to the government – must work together towards this aim.

York Y. N. CHOW

Chairperson, Equal Opportunities Commission

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年齡歧視和管理睿智精英

趙其琨教授分享如何實行切合時宜僱傭模式管理



平：平機會 趙：趙其琨教授

平：預期香港的人口結構會怎樣變化，以致僱主需考慮在工作間進行「睿智精英管理」？

趙：香港人口日趨老化。到2040年，人口的平均年齡將超過50歲，約三分一人口將超過65歲，一百萬人(或八人中有一人)將超過80歲。受供養人口比率會被推高至1.8:1，較2013年的4.9:1差別很大，而勞動力將較今天的數字下降5%。

然而，最近的趨勢亦顯示，愈來愈多人在50歲後繼續工作，把傳統退休年齡推遲。即使人口持續老化，勞動力參與率仍保持不變。事實上，長者樂享長壽，仍然健康良好，精力充沛，社交活躍。僱主也愈來愈瞭解年長僱員的價值，繼而制定良好常規延攬他們。

平：有些人對年長僱員有定型觀念，假設他們學習速度慢和工作能力低。到底聘用年長僱員有甚麼好處？

趙：聘用年長僱員有很多好處。年長僱員流失率較低，也較少缺勤。與定型觀念相反，他們有能力學習新技能、富幹勁和靈活性，且樂於面對改變。他們經常願意接受有挑戰性的工作，亦能展現忠誠、有承擔、可靠和創意等理想特質。

基於以上因素，聘用及挽留年長僱員的機構會因流失率降低、生產力提高而得益。這些機構亦可從長遠規劃栽培接班人、增加機構積存的經驗以及知識管理的效能等方面受惠。此外，需要面對顧客的行業，亦因為留得住老主顧而得益。

平：改變思維是杜絕工作間年齡歧視的重要元素。如何做到年齡友善，長幼共融的思維？

趙：這方面可參考一些指導原則。首先，機構的政策措施應與尊重人才又或用人唯才的文化和使命一致。當然，專為支援某類員工而訂立的措施，其他員工也應可以一同享有。

香港的老齡人口在未來幾十年將持續迅速增加，對本地勞動力和競爭力有廣泛影響。今年1月14日，行政長官發表《施政報告》，當中提到文職職系及紀律部隊職系公務員的退休年齡將分別提高至65歲及60歲。政府亦會鼓勵其他僱主視乎情況採取措施，延長員工的工作年期，以提升勞動力與長者人口的比例。與此同時，根據平機會於2014年發表的《香港工作間的歧視之研究》結果，年齡歧視是本港僱傭範疇最普遍的歧視，當中64%受訪者指曾受到年齡歧視。

為了探討職場年齡歧視這議題，平機會邀得前平機會委員兼香港浸會大學人力資源策略及發展研究中心主任趙其琨教授於2014年11月13日舉行的平機會周年論壇上，分享他進行的《管理睿智精英》研究。論壇後，我們與趙教授繼續細談，探討這項重要議題，以下為訪問節錄。

其次，最重要是在制定僱員計劃和方案時，摒除對年長僱員的成見。例如，有些人認為留住年長僱員，便會拖慢年輕僱員的晉升機會，實際並非一定如此。事實上，透過有效的表現評核計劃和雙向監測便能提高僱員的工作表現、提升工作滿意度和事業發展。

最後，不要以為同一類僱員便有完全一樣的特質或需要。最佳做法是瞭解每個員工的個別情況，保持開放的態度。

平：你建議僱主應採取甚麼措施，確保他們以睿智方法招聘和管理僱員？

趙：首先，僱主需制定和實施年齡友善僱用政策，清晰界定公司的目標。同時為工作和事業發展機會等多方面(包括參與僱員計劃與相關資格要求、預計時限和審批過程)制訂公平劃一的準則。僱主可以為全公司制定較靈活的退休政策、家庭友善僱傭政策、表現評核和獎勵制度。任何彈性工作安排應配合相關時間表和期限，確保僱員能成功完成工作。

僱主可考慮透過跨代培訓學習，向僱員清楚宣揚經驗和年齡的價值，從而建立年齡友善和長幼共融的思維。實際工作環境方面，僱主可透過修訂工作流程、提供輔助工具和設備如坐立式工作台、大字體屏幕、或揚聲系統，主動解決潛在的問題。

平：僱主與經理階層可如何有效地推行年齡友善措施？

趙：僱主應主動積極監察和調整公司的年齡友善措施。第一步是先瞭解僱員的退休打算，估計公司未來5至10年退休員工的百分比和分析退休規律，以預測退休的趨勢和潛在風險。僱主也可以分析自家僱員的人口結構，以至整個行業和社會的人口結構。

其他措施也有助推行年齡友善政策。除了彈性退休計劃和創新福利策略外，僱主可考慮透過事業發展前景和工作設計等，建立企業文化和管理常規，以激勵包括年長員工在內的僱員。僱主又可以採取措施，促進知識轉移、栽培接班人、積極處理跨代矛盾。例如：讓不同年紀的僱員結為師友，讓年長僱員和年輕僱員互相學習，發揮正面影響。

切合時宜僱傭模式管理

平：你在平等機會委員會論壇2014提到「切合時宜僱傭模式管理」措施。可否解釋甚麼是「切合時宜僱傭模式管理」，為何重要呢？

趙：「切合時宜僱傭模式管理」並非著眼於工作屬全職或兼職，也不計較工作地點和上班時間，而是一種完全具彈性和可商議的僱用方式。勞資雙方事先協定，僱員在指定時間地點完成工作和職務。

由於年長／年輕僱員的工作模式不同，包括全職、兼職、合約形式、甚至在家工作，僱主宜考慮採用「切合時宜僱傭模式管理」。「切合時宜僱傭模式管理」需要工作間的支援和上司的理解，才算真正有效；並有助僱員應付工作和家庭責任，改善僱員對工作和工作間的態度，提升不同年紀員工之間的工作關係。這種管理模式為僱員提供技能、動力和機會，可視為一種投資；而僱員也認為僱主關心他們的福祉。「切合時宜僱傭模式管理」有助於制定理想的醫療保健計劃，對健康欠佳的年長僱員或健康的年輕僱員同樣有正面影響。

為了推行「切合時宜僱傭模式管理」，僱主先要制定靈活的公司政策，培養有默契的工作間文化。僱主要讓經理和主管瞭解「切合時宜僱傭模式管理」的概念、價值和軟技巧，以及主動識別出不同性別、年紀和事業階段的僱員面對的主要問題和困難。第一步可讓僱員對何時、何地和如何完成工作有更多選擇和決定權。推行「切合時宜僱傭模式管理」技術支援不可少，例如制定可優化工作設計和過程的高性能作業系統，以及引入完善知識管理系統，採集統計數據和資料。



歧視年輕一代

平：一些年青人也指稱，僱主認為他們缺乏經驗或假設年輕人沒有耐性、不夠主動而拒絕聘用，他們同樣受年齡歧視。你對這說法有什麼意見？

趙：年齡／經驗與良好工作表現沒有明確的因果關係，重點是看工作表現。事實上，僱主應根據僱員的表現，他／她過去、現在對公司的貢獻和未來潛力，來作出招聘、晉升、薪酬釐定和其他人事決定。僱員的年齡或經驗不應是考慮因素。這做法貫徹同工同酬和同值同酬兩個核心原則。建議僱主可讓年長和年輕

僱員共同分擔一職；進行職位輪調；賦予更多責任、自主權和控制權；和雙向師友制，以消除對年輕僱員的定型觀念，促進跨代瞭解。

平機會現正進行「職場年齡歧視的探索性研究」，目的是識別出本地持份者面對年齡歧視的類別和嚴重程度。研究對象是青年人、20出頭年輕人及40至60歲中年人。研究也會檢視相關的本地和海外政策、預防措施和緩解方法及評估立法禁止年齡歧視的可行性。除了電話訪問外，研究小組會深入訪問主要持份者，包括僱主／人力資源經理、中小企僱員代表及立法會議員。

Age Discrimination and Managing Age Smart Employees

Professor Randy Chiu explains how corporations can implement Time & Place Management Policy

The ageing population of Hong Kong will continue to increase rapidly over the next few decades, with wide-ranging impact on the city's workforce and competitiveness. On 14 January, the Chief Executive announced in his Policy Address that the retirement age of civil servants would be extended to 65 for civilian grades and to 60 for disciplined services grades. The Government will also encourage other employers to implement measures according to the circumstances to extend the working life of their employees, with a view to improving the ratio of the labour force to the elderly population.

Meanwhile, according to the EOC's Survey on Discrimination in the Workplace, released in 2014, age discrimination is the most prevalent form of employment-related discrimination in our city, affecting 64% of respondents who had faced some form of discrimination.

At the EOC Forum 2014 on 13 November, the Commission invited Prof. Randy CHIU, Director of the Centre for Human Resources Strategy and Development of Hong Kong Baptist University and a former EOC Member, to give a presentation on his research on "Managing Age Smart Employees". We caught up with Prof. Chiu after the forum to further discuss his insights on this important subject. Excerpted below is the interview.



E: EOC

C: Prof. Randy CHIU

E: What demographic shifts are we anticipating in Hong Kong that will require employers to give consideration to “age-smart management” in the workplace?

C: Hong Kong is an ageing society. By 2040, the average age of the population will be over 50 years old, and around one third of the population will be over the age of 65. One million people, or one in eight persons, will be over the age of 80. This will push up the dependency ratio to 1.8:1, a huge shift from 4.9:1 in 2013, and reduce the labour force by 5% from today’s figure.

Nevertheless, recent trends suggest that, there is a growing tendency of continuing the worklife beyond 50 and the traditional retirement age, and that the labour force participation remains the same even as the population increasingly ages. Indeed, older people are enjoying greater longevity and continued good health and vitality, and many stay physically and mentally active as well as socially connected. In turn, employers are increasingly realising the value of mature workers, and are subsequently developing best practices for engaging them.

E: Some people may have stereotypical views on older employees, assuming that they may be slow learners and performers. What are some of the advantages of engaging older workers?

C: There are many advantages to engaging mature workers. Older employees tend to have less turnover and absenteeism. Contrary to stereotypes, they display as much ability to acquire new skills and are motivated as well as flexible and open to change. They often are willing to take on challenging tasks and display desirable qualities such as loyalty, commitment, reliability, and creativity.

As a result, organisations that hire and retain older employees tend to benefit from decreased turnover and increased productivity. They can also gain from having in place long-term succession planning and enhanced institutional memory as well as increased knowledge

management effectiveness. Plus, for client-facing businesses, they can benefit from maintaining long-term customer loyalty.

E: Changing mindset is a key component in ensuring a work environment that is not age-discriminatory. What do you think can be done to facilitate an age-friendly and supportive mindset at work?

C: A few general guiding principles can be helpful. First, an organisation’s practices should be consistent with its culture and mission of valuing human resources and talent. Certainly, measures to support certain groups should also be accessible by other groups of employees.

Second, it is important to dispel myths about older workers in the development of any employee programmes and initiatives. For instance, some believe that retaining older workers would slow down the career progression of younger workers. But this should not necessarily be the case. In fact, an effective performance management scheme and two-way monitoring would enable all workers to have higher performance, job satisfaction and career development.

Finally, do not assume that employees belonging to a particular group all share identical characteristics or needs. It is best to look at individual circumstances of each worker, and keep an open mind.



E: What are some practical steps that you can advise employers to take to ensure they are recruiting and managing their employees in an age-smart way?

C: First, employers should devise and implement an age-friendly employment policy. The policy should clearly define business goals. There should also be fair and consistent criteria for different aspects of work and career opportunities, including participation in employee programmes and related eligibility requirements, potential time limits and approval processes. On a company-wide basis, they can consider to develop flexible retirement policies, family-friendly employment measures, and performance-based appraisal and reward system. Any flexible work arrangements should be compatible with relevant schedules and deadlines, and ensure successful completion of set tasks.

To create an age-friendly and supportive mindset, employers can consider to facilitate a culture of continuous career development through providing multi-generational training and education as well as clearly promoting the value of experience and age to employees. For the physical environment, they can revise workplace processes and proactively address potential ergonomic issues by making available assistive tools and equipment such as sit-stand work stations, large screen/print monitors, or amplified audio systems.

E: What can employers and managers do to enhance the success of their age-friendly initiatives?

C: Employers should be proactive in monitoring and adapting their age-friendly initiatives. The first step is to forecast retirement trends and the potential risks by surveying workers of their retirement intentions, estimating the percentage of the workforce who will retire in the next 5-10 years and analysing the retirement patterns. They can also analyse the demographic mix in their own employee population as well as the wider talent pool and community.

Other measures can help enhance the success of age-friendly initiatives. In addition to flexible retirement programmes and innovative benefits strategies, employers can consider building corporate culture and management practices to motivate workers, including mature employees, through aspects such as career development prospects and job design. Employers can initiate steps to facilitate knowledge transfer, succession planning and proactively manage inter-generational conflicts. For instance, establishing a two-way mentoring mechanisms between workers of different ages allow older and younger employees to exert positive influences on each other.



Time and Place Management Policy

E: In your presentation at the EOC Forum 2014, you mentioned an initiative called “Time and Place Management Policy”. Can you elaborate more on what this means and why it is important?

C: Time and Place Management (TPM) is defined as an employment mode that is not based on full-time or part-time calculation; work place and hours are not restricted in a given time and space across the board, but are fully flexible and negotiable. Job-holders are required to complete work tasks and duties by a designated time and place through mutual agreement by both parties in advance.

Time and Place Management should be considered as older/younger workers respond to various employment modes differently, including full-time, part-time, sub-contract, or home-based. TPM, which requires workplace support and understanding from supervisors to be truly effective, can help employees to manage work and family responsibilities and improve employees’ attitude toward their work, workplace and working relationship with different age groups. It can also be considered an investment in providing workers with the skills, motivation and opportunities to do their jobs, and workers often see these policies as evidence that their employer cares about their well-being. TPM arrangements can also facilitate desirable health and ageing programmes, which have positive impact on both younger workers in good health and older workers in poor health.

In order to implement TPM, employers need to first offer flexible administration of company policy and nurture an enabling workplace culture. Managers and supervisors should be educated about the concept and value of TPM as well as on soft skills, and key issues and problems for each particular gender, age group and career stage should be proactively identified. A first step might be to arrange for workers to have more choices and control over when, where and how their work gets done. Technological support should also be built to implement TPM, such as devising high-performance work systems that optimise the flexibility in job design and processes and introducing a comprehensive knowledge management system to capture relevant statistics and information.

Discrimination against the Younger Generation

E: Some young people allege that they also suffer age discrimination, where employers refuse to hire them because of lack of experience or the assumption that young people lack patience and initiative. What are your thoughts on this claim?

C: There is no established cause-and-effect relationship between age/experience to high work performance, which should be the main point of reference. Indeed, recruitment and advancement opportunities, remuneration considerations, and other personnel decisions should be based on what the worker does in order to achieve results and how he/she contributes to the organisation, both in the past and in the present, as well as his/her future potential for a given job. His/her age or experience should not be a factor. This is in line with two core principles: equal pay for equal job and pay for performance. To eliminate such stereotypes about younger workers and facilitate inter-generational understanding, it is highly recommended that employers initiate platforms for job sharing, job rotation, job enrichment and two-way mentoring programmes between younger and older employees on a company-wide basis.

Exploratory Study on Age Discrimination in Employment

The EOC is currently conducting the “*Exploratory Study on Age Discrimination in Employment*”, with the aim of identifying the types of age discrimination encountered by stakeholders and how serious the situation is in Hong Kong. The target groups of the study are teenagers, those in their early twenties, and people who are between 40 to 60 years of age. The study will also look at related local and overseas policies, preventive measures and mitigation practices, as well as examine the feasibility of legislating to prohibit age discrimination. In addition to a telephone survey, the study team will hold in-depth interviews with key stakeholders, including employers/human resource managers, employee representatives from small-and-medium enterprises, and Legislative Councillors.

香港性別不平等現象

《消除對婦女一切形式歧視公約》在1996年延伸至香港。同年平機會成立，以執行《性別歧視條例》，消除本港歧視問題。過去差不多二十年，香港女性的地位顯著提升，可是在不同生活層面仍存在性別不平等的現象。

2014年10月，聯合國消除對婦女歧視委員會(委員會)於瑞士日內瓦舉行第59次會議，期間審議了香港特區就聯合國《消除對婦女一切形式歧視公約》提交的第三次報告。平機會委員周素媚女士和總監(規劃及行政)陳奕民先生代表平機會出席了會議。

在正式會議前，委員會和人權組織於10月20日進行了非正式會議。會上，周素媚女士提出平機會關注的議題，包括：有關香港婦女的安全問題、妨礙女性經濟自立及在職場晉升的障礙、以及香港邊沿婦女社群所遇到的歧視問題，包括少數族裔學生學習中文時缺乏支援和外籍家庭傭工受虐待等問題。

性騷擾和暴力

在香港婦女安全方面，性騷擾是一個重要的問題。根據平機會多項調查結果顯示，工作間性騷擾依然盛行，尤其是在服務行業。由於服務行業的員工需要面對顧客，所以特別容易遭受顧客性騷擾。又因為他們多是基層或兼職僱員，為怕失去工作，大都不會採取任何行動。

立法會於2014年12月通過《2014年性別歧視(修訂)條例草案》，顧客若騷擾服務提供者，即屬違法。然而，條例仍然存有法律漏洞，例如義工之間或同一工作間由不同僱主聘用的員工之間的性騷擾並未受到法例涵蓋。平機會去年在《歧視條例檢討》提出建議堵塞現時的法律漏洞，並諮詢公眾，平機會計劃在2015年下半年向政府提交建議。

工作間的制度性障礙

平機會又關注到香港婦女承受的經濟困難，除了性別偏見外，缺乏方便實惠的兒童托管和長者照顧服務，亦令婦女的經濟情況更為惡劣。

由於女性經常被定型為照顧者，令她們受到不成比例的家庭崗位歧視。根據政府統計處2013的資料顯示，為了照顧患病或有殘疾的家庭成員而辭職的女性比男性多三倍。再者，女性為方便照顧家庭，往往擔任較低薪酬的職位或辭職。

事實上，因為歧視的態度和偏見，香港婦女在職場持續面對制度上的限制。周素媚女士在會上提及：「不論藍領還是白領工作，女性的收入仍然低於男性同業。此外，婦女從事四大基層工種(即餐飲、護理、收銀及清潔工作)的人數較多，加上缺乏全民退休保障，導致貧困婦女比貧困男性為多。」



政府資料顯示，男女薪酬的差距仍然很大。在2013年，在職女性的月薪中位數是10,500港元，而男性則是15,000港元。此外，擁有大學學位的女性的薪酬平均較擁有大學學位的男性少三分之一。

女性不但工資較男性低，低薪基層職位亦以女性員工為主。至於高層的無形障礙亦牢不可破。社商賢匯的《渣打銀行2014年度香港企業女性董事概況》披露，2014年恒生指數上市公司的董事會中，只有9.6%是女性，與2013年的9.4%相若。香港在這方面遠遠落後於其他主要經濟體系如英國和美國。另外，政治體制的高層亦以男性為主。

聯合國消除對婦女歧視委員會於2014年11月就香港特區政府的報告作出審議結論，當中委員會對婦女的低政治參與度表示關注。委員會又關注，香港的十個星期產假不符合國際勞工組織所制定的國際準則，建議政府延長產假，推廣彈性上班安排。

平機會認為政府應採取積極措施改善狀況，例如延長現時十個星期有薪產假福利、檢討幼兒護理服務的開支，並因應香港人口急速老化，幫助市民解決因照顧年長親屬而帶來隱性負擔的問題，因為照顧長者的責任往往落在婦女身上。

外籍家庭傭工的受虐情況

撇開以上的僱傭範疇歧視，委員會亦對外籍家庭傭工因性別及／或性別與種族背景而持續受到苛待的情況表示關注。苛待包括：惡劣的工作環境；被僱主、職業中介公司不合理對待；強制於僱主家中留宿和在合

約期滿兩個星期內必須離港等要求。委員會促請政府加強保障外籍家庭傭工。

事實上，平機會一直致力爭取外籍家庭傭工享有平等權利。平機會主席周一嶽醫生於2014年12月18日在《明報》發表文章，他指：「無論任何種族、什麼職業，都應獲得尊重，享有平等機會與權利。外籍家庭傭工在本港生活工作，與我們在同一屋簷下，我們理應盡力協助他們適應、融入本港的文化及生活，多加諒解及關顧，協力建構一個真正多元、尊重平等權利的國際大都會。」

性小眾女性受歧視的狀況

香港另一需要更大保障的邊沿化社群，就是同性戀、雙性戀和跨性別女性和雙性人士。她們一直遭受歧視，尤其在僱傭範疇、教育範疇及享用醫療服務方面。委員會促請政府加大力度，消除性小眾女性在不同範疇受歧視的情況。

現時，香港沒有法例禁止性傾向及性別認同歧視。平機會於2014年5月展開一項研究，探討同性戀者、雙性戀者、跨性別人士和雙性人受到的歧視，並就如何透過法律或其他途徑解決此問題徵集意見，預期研究報告將於2015年下半年完成。

結論

香港著實應改善性別不平等的現象。政府與公私營機構在設計政策和策略性計劃時，應把平等機會原則列入主要考量，從而使性別平等的價值主流化。另外，不同行業的機構都應認同女性的貢獻與重要性，在制定政策和計劃時，顧及不同性別的需要，協力創造性別平等，人人受惠。



Gender Inequality in Hong Kong

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was extended to Hong Kong in 1996, the same year the EOC was established to combat discrimination through the enactment of the Sex Discrimination Ordinance. Over the last two decades or so, the status of women in Hong Kong has improved considerably. Yet gender inequality still persists in different aspects of life.



In October 2014, the United Nations Committee on the Elimination of All Forms of Discrimination against Women (the "Committee")

conducted a hearing on the Third Report of the HKSAR under the CEDAW at its 59th session in Geneva. Representing the EOC at the session were the Commission's Board Member Ms Su-Mei THOMPSON and Director (Planning and Administration) Mr. Michael CHAN.

During an informal meeting between the Committee and human rights institutions on 20 October, Ms THOMPSON raised the concerns of the EOC – about the safety of women in Hong Kong, the barriers that prevent women from being economically self-reliant and from advancing in the workplace, and the discrimination encountered by marginalised communities of women in the city, including inadequate support for ethnic minority students in learning Chinese and the abuse faced by foreign domestic workers.

Sexual Harassment and Violence

An important issue on the safety of women in Hong Kong is sexual harassment, which remains prevalent in the workplace according to the findings of the EOC's various surveys, especially in the service industries. Owing to their customer-facing roles, workers in the service industries

are more vulnerable to sexual harassment by customers. And given that many of them are in elementary and part-time positions, there is a tendency to take no action against sexual harassment for fear of losing their jobs.

In December 2014, the Legislative Council passed the Sex Discrimination (Amendment) Bill 2014, which makes sexual harassment against service providers by customers unlawful. Nevertheless, legal loopholes remain, such as for volunteers or for people who work in common workplaces for different employers. The EOC has made proposals for plugging these loopholes under the Discrimination Law Review, and will submit its recommendations to the Government in the latter part of 2015.

Institutional Barriers at Work

Another major concern of the EOC is the economic hardship endured by many women in Hong Kong, which has been exacerbated by gender biases, and the lack of accessible and affordable childcare and elderly care support services.

Women are disproportionately affected by family status discrimination, given stereotypes about their role as carers. According to data by the Census and Statistics Department in 2013, women outnumber men 3 times in the number of those who have quit work in order to take care of a family member with illness or disability. Also, women often take on less paid jobs or resign for more flexibility for family care.

Indeed, owing to discriminatory attitudes and biases, women in Hong Kong continue to face institutional barriers at work. As Ms THOMPSON put it at the meeting, "Many women still earn less than their male counterparts in both menial and white-collar jobs. This, in addition to the fact that women make up the bulk of the workforce in the low-paying catering, caring, cashiering and cleaning sectors, as well as the lack of a universal pension plan, explains why there are many more women than men living in poverty."

According to Government data, the gender pay gap remains widespread. For instance, the median monthly employment earning of female employed persons was \$10,500 in 2013, while that for males was \$15,000. Also, female university degree holders earn, on average, one-third less than male degree holders.

Not only do women receive lower pay, but they also dominate low-paying, elementary positions. And the glass ceiling remains firmly in place. According to the Standard Chartered Bank Women on Boards Hong Kong 2014 report by Community Business, women made up only 9.6 percent of board directors of Hang Seng-listed companies in 2014, which has barely moved from the figure of 9.4 percent in 2013. This puts Hong Kong behind other major economies, such as the UK and US. Meanwhile, the top echelons of political institutions are also dominated by men.

In its Concluding Observations on the HKSAR report in November 2014, the UN Committee expressed concern about the low level of representation of women in politics. The Committee was also concerned that the 10-week maternity leave in Hong Kong does not comply with international standards established by the International Labour Organisation, and recommended the SAR Government to increase the maternity leave period and promote the use of flexible working arrangements.

The EOC believes that the Government should take active steps to improve the situation, such as extending the maternity leave entitlement, reviewing spending on childcare services and addressing the hidden burden of care for elderly dependents, which often fall onto women, especially in light of Hong Kong's rapidly ageing population.

Abuse of Foreign Domestic Workers

Putting aside employment-related discrimination, the Committee also expressed concern about reports that foreign domestic workers continue to be more vulnerable to mistreatment on the basis of their sex and/or gender and ethnic backgrounds, specifically unfavourable working conditions, abuse by employers, recruitment and placement agencies, the live-in requirement and the two-week rule, which requires the workers to leave Hong Kong within two weeks upon termination of

their contract. The Committee called on the HKSAR to strengthen protection for foreign domestic workers.

Indeed, the EOC has been advocating for equal rights of foreign domestic workers. In an article published in the *South China Morning Post* on 18 December 2014, Dr. York CHOW, Chairperson of the EOC said, "Everyone has a right to be safe and free from harassment in their work environment. As a modern, cosmopolitan city, Hong Kong must do better to safeguard the rights of all, including foreign domestic workers, and ensure that they can also enjoy fair treatment."

Discrimination against Sexual Minority Women

Another marginalised group that needs greater protection are the lesbian, bisexual and transgender women and girls in Hong Kong, who have been reported to suffer discrimination, particularly in employment and education, as well as in accessing health care services. The Committee urged the HKSAR to intensify efforts to combat discrimination against these women in various aspects.

Currently, there is no legislation to guard against discrimination on the grounds of sexual orientation and gender identity in Hong Kong. In May 2014, the EOC commenced a study to identify the discrimination encountered by the lesbian, gay, bisexual, transgender and intersex (LGBTI) community and to solicit views on how this can be addressed through legislation or other means. The study report is expected to be ready by the second half of 2015.

Conclusion

Certainly, Hong Kong ought to fare better in terms of gender equality. To mainstream the values of gender equality, the Government, as well as the public and private sectors, need to make equal opportunities a key consideration in designing their policies and strategic plans. Gender-sensitive perspectives should be brought in at all levels of business and operations, in recognition of the important roles and contribution by women. And each one of us should know that it is not only women, but men too, who would benefit from a more gender-equitable Hong Kong.

平機會處理的投訴

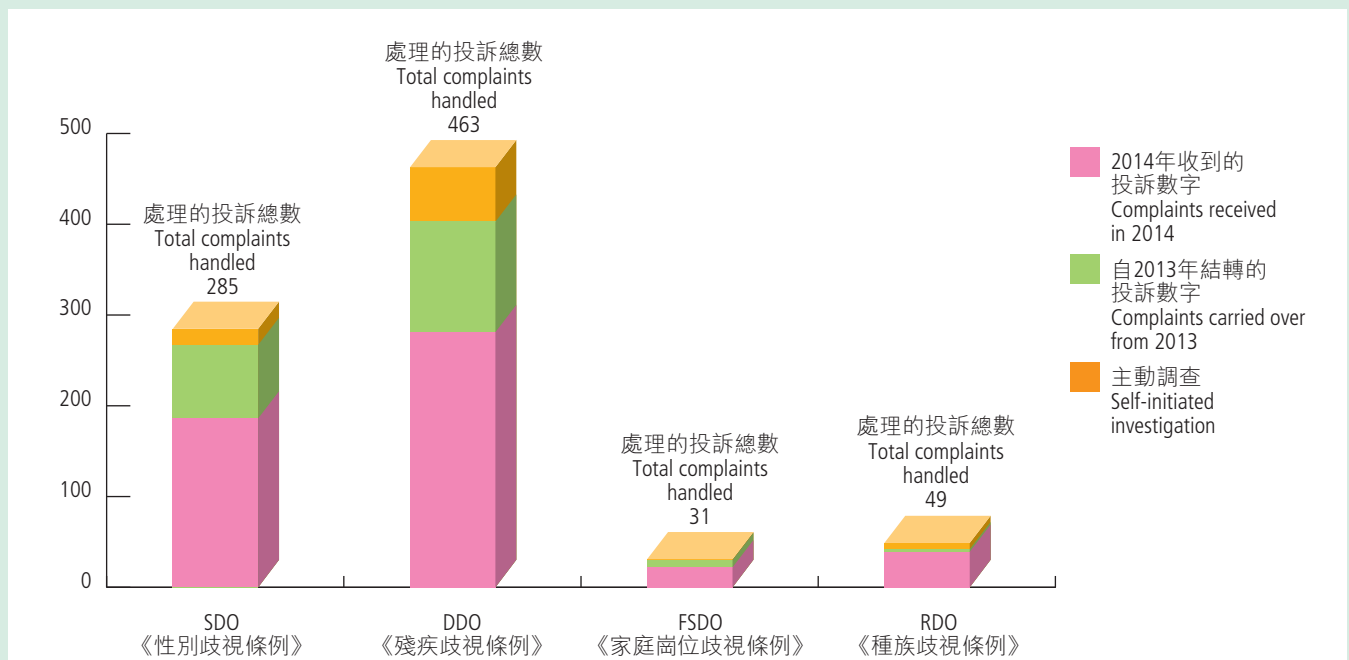
Complaints Handled by the EOC

平機會的其中一項主要職能是處理公眾根據《性別歧視條例》、《殘疾歧視條例》、《家庭崗位歧視條例》及《種族歧視條例》所作出的投訴。

平機會於2014年1月至12月期間共收到606宗投訴，而2013年同期收到的投訴個案數目則為666宗。連同2013年未完成的個案，平機會於2014年1月至12月期間共處理了828宗投訴，較2013年減少12%。

殘疾歧視投訴

平機會處理的投訴大部分關乎殘疾歧視，共有463宗，佔全部投訴的56%。平機會調查了403宗殘疾歧視投訴，其中300宗與僱傭範疇有關。此外，平機會在2014年亦主動調查了60宗《殘疾歧視條例》下有關處所通道和貨品及服務提供的個案。



One of the key functions of the EOC is to handle the complaints made by members of the public under the 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).

Between January and December 2014, the EOC received a total of 606 complaints, as compared to 666 during 2013. Together with the complaints carried forward from 2013, the EOC handled a total of 828 complaints from

January to December 2014, 12% lower than the number in 2013.

Disability Discrimination Complaints

Among the complaints handled by the EOC, the majority or 56% of the complaints were lodged under the DDO, which totalled 463. The EOC conducted investigations into 403 of these complaints, with 300 of them related to employment. The EOC also initiated investigations into 60 cases concerning access to premises and the provision of goods and services under the DDO.

個案一：僱傭範疇的懷孕歧視



背景

B小姐受聘於一間公司並簽訂了一年合約。在合約期間，她被借調到公司的承判商工作。當一年合約將要屆滿時，公司安排她簽署了第二份合約，將聘用期延續九個月，沒有間斷。

B小姐簽署了第二份合約後，隨即向公司遞交懷孕通知書。公司在收到通知書翌日取消了第二份合約，但於隨後提供了第三份合約。第三份合約與已被取消的第二份合約內容相同，除了合約的開始日期被推遲一天，即是為期一年的第一份合約和為期9個月的第三份合約之間中斷了一天。公司基於B小姐的合約中斷了一天，並非連續受僱於公司，拒絕給予B小姐有薪產假。

B小姐就產假向勞資審裁處提出申索，但不獲受理，原因是兩份合約之間中斷了一天，令她在產假開始前未曾連續受僱滿40星期。B小姐於是向平機會投訴公司對她作出懷孕歧視。

平機會的行動

平機會收到投訴後作出調查，公司否認作出歧視。平機會嘗試為雙方進行調停，但不成功。經評估本案後，平機會決定協助B小姐就懷孕歧視展開法律行動。

法庭判B小姐勝訴，原因是如非B小姐懷孕，兩份合約便不會出現中斷一天的安排，而B小姐便應可享有有薪產假。法院命令公司須向B小姐支付產假薪金、感情損害賠償、懲罰性賠償及其他損害賠償。

注意要點

根據《性別歧視條例》，如因某人懷孕而給予她較差的待遇，可構成直接懷孕歧視，即屬違法。條例保障懷孕女性在僱傭，提供貨品、設施或服務等範疇免受懷孕歧視。

在僱傭方面，根據《性別歧視條例》，僱主如因僱員懷孕而使她蒙受不利或解僱她，也屬違法。一切形式的僱用(包括合約工作)都受法例保障。

較差待遇有多種形式，例如：解僱，剝奪培訓或升級機會，或加薪幅度較少。

《性別歧視條例》的保障不只限於懷孕期，而是從招聘階段直至產假後。主要考慮點不是員工「何時」(即懷孕和放產假期間)被解僱，而是「為甚麼」被解僱。若懷孕是受到較差待遇的其中一個原因，有關行為便可能屬違法。

Case 1 – Pregnancy Discrimination in Employment

Background

Ms B was first employed by a company under a one-year contract, during which she was seconded to work for the company's contractor. Near the end of her one-year contract, she signed a second contract which extended her employment period under the one-year contract continuously for another 9 months.

Immediately after signing the second contract, Ms B gave notice of pregnancy to the company. The next day, the company cancelled the second contract, but later offered a third contract. The third contract was the same as the second/cancelled contract, except that the start of the 9-month period was postponed by one day, meaning that there was a one-day-break between the first one-year contract and the third 9-month contract. The company refused to give Ms B paid maternity leave because of the one-day-break.

Ms B's claim for maternity leave at the Labour Tribunal was disallowed because it was held that the one-day-break rendered her not being employed under a continuous contract for no less than 40 weeks immediately before the date of her commencement of maternity leave. Ms B then lodged a complaint with the EOC against the company for pregnancy discrimination.

What the EOC did

The EOC commenced an investigation after receiving the complaint. The company denied discrimination. Conciliation between the parties was attempted but was unsuccessful. After assessing the merits of the case, the EOC decided to assist Ms B in commencing legal action for pregnancy discrimination.

The Court ruled in favour of Ms B because there would not have been a one-day-break (and Ms B would have been entitled to paid maternity leave) but for her pregnancy. The Court ordered the company to pay Ms B the value of her maternity leave pay, injury to feelings, exemplary and other damages.



Points to Note

Under the Sex Discrimination Ordinance (SDO), it is unlawful to treat a woman less favourably because of her pregnancy, and this could amount to direct pregnancy discrimination. A woman is protected from pregnancy discrimination in areas such as employment, and the provision of goods, facilities or services.

It is also unlawful under the SDO for an employer to subject a woman to a disadvantage or dismiss her on the ground of her pregnancy. All types of employment (including contract work) are covered under the law.

Less favourable treatment may take on many forms, such as dismissal, refusal to grant training or promotion opportunities, or less salary increase.

The protection of the SDO extends beyond the period of pregnancy and covers both the recruitment stage as well as after maternity leave. The main consideration is not "when" the employee is dismissed (i.e. during the period of pregnancy and maternity leave), but "why". If pregnancy was a reason for the less favourable treatment, the act may be unlawful.

Note: The above information is intended for reference only and should not be taken as legal advice.

個案二：僱傭範疇的殘疾歧視及使人受害歧視

背景

A小姐在一家牙科診所工作。她因工受傷，不時要請病假。在她向診所提出人身傷害申索後，被強制放病假。一年後，她被解僱了。A小姐就被強制放病假一事向平機會投訴牙科診所殘疾歧視，又就最終被解僱一事，投訴診所作出使人受害歧視。

平機會的行動

平機會收到投訴後作出調查，牙科診所否認歧視A小姐或對她作出使人受害歧視。診所聲稱，由於公司進行重組而解僱她，但是公司卻沒有書面證據支持有關聲稱。雙方嘗試進行調停，但不成功。

經評估本案後，平機會決定協助A小姐就殘疾歧視展開法律行動。平機會律師負責提供法律意見，並協助A小姐與牙科診所進行和解磋商。雙方最後達成和解，A小姐收到一筆和解款項作為賠償，牙科診所也同意就此事進行內部調查。

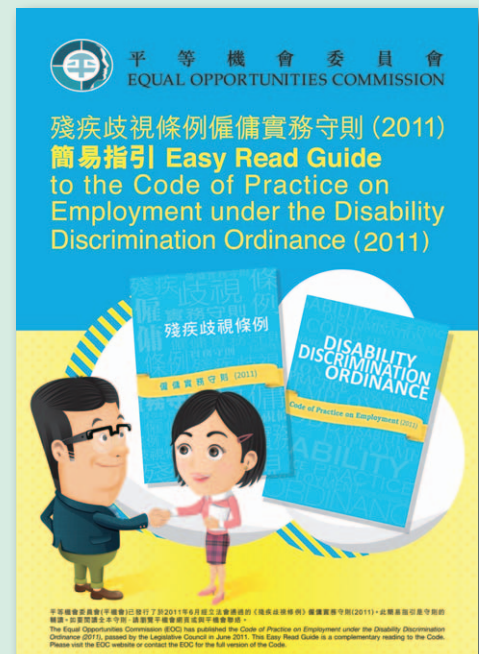
注意要點

僱員經常會因生病和殘疾而缺勤，需要請病假以康復過來。僱主應在應付公司的運作與遷就員工的需要方面作出平衡。

根據《殘疾歧視條例》，僱主如因一個員工有殘疾或生病而歧視及解僱該僱員，即屬違法。如果僱員的殘疾妨礙他／她執行工作職務的能力，僱主應考慮提供合理遷就，除非有關僱員獲得遷就也無法執行工作的固有能力；或向該僱員提供遷就會對僱主造成不合情理的困難，僱主才可不作出遷就。在決定甚麼構成不合情理的困難時，需考慮有關個案的所有情況，包括所要求的遷就的合理程度，比較僱主的財政情況及遷就所需付出的估計開支。如僱主以不合情理的困難作為抗辯理由，僱主需承擔舉證責任。

若僱主對僱員作出使人受害歧視(即在僱員已提出或計劃提出殘疾歧視投訴或法律程序後給予該僱員較差的待遇)，也屬違法。

註：以上資料僅供參考，並非法律意見。



Case 2 – Disability Discrimination and Victimisation in Employment

Background

Ms A worked for a dental clinic. She suffered from work injury and as a result, she had to take sick leave from time to time. After commencing a personal injury action against the dental clinic, she was forced to go on sick leave because of her work injury. One year later, she was dismissed. Ms A lodged a disability discrimination complaint (in respect of the forced sick leave) and a victimisation complaint (in respect of the eventual dismissal) against the dental clinic with the EOC.

What the EOC did

The EOC commenced an investigation after receiving the complaint. The dental clinic denied that it discriminated against or victimised Ms A, and claimed that her dismissal was due to a restructuring exercise. However, there was no documentary evidence supporting the claim. Conciliation between the parties was attempted but unsuccessful.

After assessing the merits of the case, the EOC decided to assist Ms A in commencing legal action against the clinic for disability discrimination. Legal advice was provided by the EOC's lawyers, who also assisted in the settlement negotiations with the dental clinic. The parties eventually reached a settlement. Ms A received a settlement sum as compensation and the dental clinic agreed to conduct an internal investigation into the matter.

Points to note

Disability-related absence is often required by employees in order to recuperate from illnesses and disabilities. Employers should balance between the accommodation of such needs and their operational requirements.

Under the Disability Discrimination Ordinance (DDO), it is unlawful for an employer to discriminate against a person



with a disability or sickness by dismissing that person. Where an employee's disability hinders his/her capacity to perform the job duties, consideration of providing reasonable accommodation by the employer should be given, unless the employee is unable to carry out the inherent requirements of the job even when provided with such accommodation, or if such accommodation would cause the employer unjustifiable hardship. In determining what constitutes "unjustifiable hardship", all relevant circumstances of the case will be taken into account, such as the reasonableness of the accommodation sought and the financial resources of the employer vis-à-vis the estimated expenditure of the accommodation. The burden of proof is on the employer to make out this defence of unjustifiable hardship if so claimed.

It is also unlawful for an employer to victimise an employee i.e. to give the employee even worse treatment, after the latter has lodged or made plan to lodge a complaint or take legal action against disability discrimination.

Note: The above information is intended for reference only and should not be taken as legal advice.

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