

Information Notes on Legal Assistance from the EOC

This leaflet is intended to provide a brief introduction. For detailed provisions of the law, please refer to the relevant ordinances.

The Equal Opportunities Commission (EOC) may provide legal assistance to people who want to take legal action under the Sex Discrimination Ordinance (SDO), the Disability Discrimination Ordinance (DDO), the Family Status Discrimination Ordinance (FSDO) or the Race Discrimination Ordinance (RDO).

1. How to apply?

Before applying for legal assistance, a complaint has to be lodged with the EOC under the SDO, DDO, FSDO or RDO. If there is no settlement of the complaint, then an application may be made to the EOC for legal assistance. All applications for legal assistance must be made on the EOC's Application Form.

Notes:

Information you submit to the EOC during the complaint-handling process (which should have taken place before your application), as well as information submitted by other parties, will be considered by the EOC in deciding whether legal assistance should be given.

You should therefore provide all relevant information to the EOC during the complaint-handling process. It is your responsibility to provide information to support your claims. Incomplete information may result in your application being declined.

For information on the EOC's complaint-handling procedures, please refer to the following leaflets published by the EOC : SDO and I, DDO and I, FSDO and I, RDO and I.

2. What type of legal assistance can the EOC provide?

Legal assistance by the EOC may include initial legal advice through to legal representation for the Assisted Person in court. It may be rendered through the EOC's legal staff or external lawyers engaged by the EOC on behalf of the Assisted Person.

External Lawyers

External lawyers will be selected for engagement based on relevant factors including the following:-

- (a) Expertise in the relevant legal issues or forensic skills required in the case;
- (b) Familiarity with discrimination law and the EOC's procedures, practices and strategic concerns;
- (c) Availability of time to give advice or conduct the case;
- (d) Level of court where the case is heard.

Notes:

If legal assistance is granted to you, the EOC will normally pay the costs incurred by the EOC for you. But in the event costs order is awarded against you by the court, you may have to bear the same as the EOC's assistance may not cover you for liability to pay other parties' costs.

3. Who decides?

Applications for legal assistance are decided by the EOC's Legal and Complaints Committee (LCC). The LCC is made up of EOC's Chairperson and other EOC Members. They consider each application independently to reach a fair and objective decision.

In making decisions on legal assistance applications, the LCC will consider information obtained by the EOC's investigators during the complaint-handling process, and legal advice given by the EOC's Legal Service Division. The applicant will normally be informed of the result of the application within 3 months.

4. Factors considered

The EOC through the LCC exercises discretion under the law in deciding whether or not to grant legal assistance. In doing so, the EOC considers a wide range of factors, including:

- (a) Whether the case raises a question of principle;
- (b) Whether the complexity of the case or parties' relative positions makes it too difficult for the applicant;
- (c) Strength of the evidence and likelihood of success;
- (d) Whether the case can set important legal precedent;

- (e) Whether litigation can lead to effective remedy for the applicant, and whether the case can be effectively used to enhance public awareness and promote equal opportunities;
- (f) The attitude and behavior of the parties (for instance, the EOC is more likely to give assistance if the respondent did not cooperate); and
- (g) The EOC may consider any other matters which may be relevant on a case by case basis.

Notes:

Matters said and done in the conciliation process are not admissible in court. However, in deciding whether legal assistance should be given, the EOC may take into account matters such as whether the respondents were co-operative during the investigation and conciliation processes or whether the Applicant has unreasonably refused a reasonable offer of settlement.

5. Possible outcomes

If the EOC decides to offer assistance, the Applicant will be asked to sign an Agreement. This contains the terms and conditions of the EOC's assistance. If the Applicant does not understand any of the terms or has any question, the EOC's staff are ready to help.

After signing the Agreement, the EOC will arrange lawyers to advise or represent the Assisted Person. Usually, there will be further assessment of the case and negotiation with the opposing parties before legal action is formally taken. Depending on the continuing assessment and development of the case, the EOC may discontinue the assistance, for example, if the Assisted Person refuses a reasonable settlement or if the EOC's on-going assessment of the evidence is not in favour of the Assisted Person. If the EOC declines to give assistance, the Applicant will be informed in writing.

Notes:

The EOC may take a view different from yours about your case. For example, even though you may think that you have a strong case and should be given legal assistance, the EOC may take the view that your case does not have good prospects of success. So, even though you may believe that you have a strong case, the EOC may nevertheless decline to give you legal assistance because it has a different assessment of your case.

6. Can legal assistance granted be terminated?

The EOC may at any time by notice terminate the Agreement to provide legal assistance at its discretion on reasonable grounds. The EOC will meet the costs before termination unless the termination is due to non-disclosure of relevant information or submission of false or misleading information on the part of the Assisted Person.

The information in this leaflet is for reference only. The rights and obligations between the Assisted Person and the EOC will be set out in the relevant Agreement if and after legal assistance is offered.

7. Unsuccessful applications

In the event that an application is unsuccessful, the Applicant does not have a legal right to appeal or ask for a review. But if the EOC is asked to consider the case again, the LCC will consider the request.

Notes:

The EOC is unlikely to alter the original decision unless there is new material of a substantive nature or change of circumstances leading to the conclusion that legal assistance should be given.

If you ask the EOC to reconsider, you should put forward all relevant new material or information about the change of circumstances. If you have new documents, you should provide copies. If you have new witnesses, you should provide their contact details and their signed statements and confirm that they are willing to attend court.

8. Alternatives to the EOC's assistance

If an application for legal assistance is not successful, the Applicant can still consider taking legal action in person or by engaging private lawyers, or applying for legal aid from the Legal Aid Department.

9. Time limit for claims

There is a 2-year time limit on taking legal proceedings under anti-discrimination ordinances. This 2-year period starts to count from when the alleged unlawful act

was done. If a complaint had been lodged with the EOC, the time spent by the EOC in complaint-handling until conciliation broke down will be discounted from this period.

10. For enquiries, please contact the EOC at 2511-8211

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