

Race Discrimination Ordinance and I



平等機會委員會
EQUAL OPPORTUNITIES COMMISSION



(English)

Definition & Examples

1. What is Race Discrimination Ordinance (RDO)?

The RDO is an anti-discrimination law enacted in July 2008 to protect people against discrimination, harassment and vilification on the ground of their race. Under the RDO, it is unlawful to discriminate, harass or vilify a person on the ground of his/her race. The RDO has come into operation since 10 July 2009.

2. Why do we need the RDO?

Currently, ethnic minorities constitute about 5% of Hong Kong's population. Unfamiliarity with other people's customs, culture and language may give rise to prejudices and stereotypes against people of other racial groups. At times, these prejudices lead to discrimination, harassment and vilification.

Hong Kong has an obligation under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) to prohibit and eliminate racial discrimination. Hong Kong also has an obligation under the International Covenant on Economic, Social and Cultural Rights (ICESCR) to guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind as to race or other status.¹ The RDO makes it unlawful to engage in less favourable treatments based on race, racial harassment and vilification. With the RDO in place, people of different races can live and work as one community, which in turn will enrich Hong Kong's culture and enhance its competitiveness in the international arena.

1. ICESCR applies to HKSAR by virtue of Article 39 of the Basic law

2. Please refer to RDO Section 8 and Chapter 2 of the Code of Practice on Employment under the RDO for more details

3. Please refer to RDO Section 8 and Chapter 2 of the Code of Practice on Employment under the RDO

3. What is Race?

According to RDO, race in relation to a person means the race, colour, descent, national or ethnic origin of the person. Racial group means a group of persons identified by reference to race, colour, descent, national or ethnic origin. References to a person's racial group refer to any racial group into which the person falls.²

4. What does not constitute "race" under the RDO?

Religion itself is not race. A group of people defined by reference to religion is not a racial group under the RDO. RDO does not apply to discrimination on the ground of religion. However, some requirements or conditions relating to religion may indirectly discriminate against certain racial groups, and when this is so the RDO may apply.³



5. What is racial discrimination?

In general terms, racial discrimination is about treating people less favorably on the basis of their race.

There are two forms of racial discrimination: direct and indirect.⁴

Direct discrimination

Direct discrimination occurs when a person is treated less favourably than another under comparable circumstances because of his/her or his/her near relative's race. It is also direct discrimination to segregate a person on the basis of his/her race. Example: A person of Pakistani origin who speaks fluent Cantonese and has adopted a Chinese name applies by telephone for the job of salesperson and is invited for an interview. But, because his appearance indicates that he is of Pakistani origin, when he turns up for the interview he is falsely told that someone else has already been hired and the interview is declined. This is less favourable treatment on the ground of race if another job seeker, not of Pakistani origin, was not declined. This is an unlawful act under the RDO.

Indirect discrimination

Indirect discrimination occurs when a same requirement (rule, policy, practice, criterion or procedure) or condition, which cannot be justified on non-racial grounds, is applied equally on people of different races but which has an unfair effect on a particular group because (i) only a small proportion of people from that racial group can meet that requirement compared to the proportion of people of other racial groups, and/or (ii) the condition is to the detriment to the persons of that particular group because they cannot meet it. Example: A blanket ban on beards for health and safety reasons in a food packaging factory is a requirement or condition that indirectly discriminates against ethnic groups such as Sikhs (who, by their custom, have to keep a beard), when compared to other racial groups, if information shows that the blanket ban is not justifiable, for example, because face masks could be used satisfactorily to meet health and safety standards.

4. Please refer to RDO Section 4 and Chapter 6 of the Code of Practice on Employment under the RDO

5. Please refer to RDO Section 6 and Chapter 6 of the Code of Practice on Employment under the RDO

6. Please refer to RDO Section 7 and Chapter 6 of the Code of Practice on Employment under the RDO

Discrimination by way of victimization

Racial discrimination also occurs by way of victimization if a person treats another person less favourably than other people because that person or a third person has done an act protected under the RDO, such as making or planning to make a race discrimination complaint, taking legal action, acting as witness against race discrimination or helping somebody else to do so. Example: A manager of Nepalese origin is discriminated against by way of victimization if he complains that he was paid less annual bonus than another manager of Chinese origin on the ground of race, and the company decides to dismiss him by reason that he makes this complaint.⁵

6. What is racial harassment?

If a person engages in an unwelcome, abusive, insulting or offensive behaviour because of another person's or his/her near relative's race, which makes him feel threatened, humiliated or embarrassed then it is racial harassment. Racial harassment can be in any form — physical, visual, verbal or non-verbal — and even a single incident may constitute racial harassment. It also occurs if a person creates a racially hostile environment for another person because of his/her or his/her near relative's race. Racial harassment is unlawful under the law. Example: Engaging in name calling, which people of certain racial groups may find offensive or impolite, or using a disparaging or offensive tone when communicating with people on the ground of their race could be racial harassment.⁶



7. What is a racially hostile environment?

It refers to an intimidating work environment created by a racially prejudiced unwelcome conduct or behaviour towards a person that interferes with his/her work performance. The behaviour does not need to be directly or consciously targeted at the particular person. Example: Display of graffiti or slogans or other objects offensive to certain racial groups could constitute a racially hostile environment.⁷

8. What is racial vilification?

It is an activity in public which incites hatred, serious contempt for, or severe ridicule of a person because of his/her race. Any racist incitement involving threat of physical harm to persons or their property or premises is considered serious vilification and is liable for fine to a maximum of \$100,000 and imprisonment for a maximum of two years.⁸

Scope

9. What are the areas covered under the RDO?

The RDO offers protection in several areas, including the following:⁹

- Employment
- Education
- Provision of goods, facilities or services
- Disposal or management of premises
- Eligibility to vote for and to stand for election to public bodies, etc.
- Offering of a pupillage or tenancy in a barrister's chambers
- Participation in clubs

7. Please refer to RDO Section 7 and Chapter 6 of the Code of Practice on Employment under the RDO

8. Please refer to RDO Sections 45 and 46 and Chapter 6 of the Code of Practice on Employment under the RDO

9. Please refer to RDO Sections 10, 15, 17-22, 24-29, 34-36, 38-39 and Chapter 3 of the Code of Practice on Employment under the RDO

10. Please refer to RDO Section 10 and Chapter 3 of the Code of Practice on Employment under the RDO

11. Please refer to RDO Sections 11-14, 23, 30-33, 37, 40 and Chapter 6 of the Code of Practice on Employment under the RDO

10. Does the RDO cover all employers in Hong Kong?

Yes, the RDO applies to all employers in Hong Kong except where their employees work wholly or mainly outside Hong Kong. However, there is a grace period during which RDO sections 10(1) and 10(2) (provisions which make discrimination under the RDO in employment unlawful) do not apply to employers who employ no more than five employees during the grace period. Please refer to the Code of Practice on Employment under the RDO for details of the grace period.¹⁰

11. What are the exceptions under the RDO?

The RDO provides the following exceptions under which the decisions made because of, or having an impact on, race would not be unlawful.¹¹

- Genuine occupational qualification
- Training for skills to be used outside Hong Kong
- Employment of persons with special skills, knowledge or experience
- Existing local and overseas employment terms
- Cemetery, crematorium or columbarium
- Special measures



Specific Examples

12. Can an employer refuse to offer me a job interview or position in his/her organisation because I am a Filipino and cannot read Chinese?

An employer cannot deny somebody a job interview or position just because of his/her race. The employer would have to prove that proficiency in reading Chinese language is a justifiable job requirement if he/she rejects a candidate on this ground. Otherwise, it could constitute discrimination.

13. Can a service provider or an educational establishment refuse to provide me with services or facilities because of my race?

It is unlawful for a service provider to refuse to provide goods, services or facilities on the ground of a person's race. It is also unlawful for an educational establishment to deny admission to, or expel a student, because of his/her race.¹²

14. Can I request service providers or my employer to provide information materials in my own language?

There is no requirement under the law to translate information materials into ethnic minority languages. However, in the interest of promoting racial harmony, service providers and employers should put in place an effective method of communication and apply equal treatment to all, if their clients/employees come from the non-Chinese speaking communities and may need to translate certain essential information (such as health and safety).



15. Can I put a requirement of "no turban" to my employees or students?

A requirement that all employees or students cannot wear a turban may be indirectly discriminatory against Sikhs, who cannot in practice comply with it, because they believe they would be losing their identity if they are not allowed to wear their turbans. However, if the condition is placed because the employees/students will have to wear a protective headgear in repair workshops, construction sites or vocational training class for safety reasons to protect them from the risk of injury then it may not constitute discrimination.¹³

16. I want to be a good employer; what kind of arrangements could I offer to my employees to ensure racial equality?

You are encouraged to adopt the practices recommended for promoting racial equality in the Code of Practice on Employment under the RDO.¹⁴

12. Please refer to RDO section 26-27

13. Please refer to illustration 12 of Chapter 6 of the Code of Practice on Employment under the RDO

14. Please refer to Chapter 5 of the of the Code of Practice on Employment under the RDO



Lodging a Complaint

17. What can I do if I am racially discriminated, harassed or vilified?

You can take one or more of the following options:

- Lodge a complaint to the educational establishments or service providers if it is related to education or the provision of goods, services and facilities
- Lodge a complaint to the management, if it is employment related
- Lodge a complaint to the Equal Opportunities Commission (EOC)
- Take your case to court by yourself or through your own lawyer

It is important to record the incident immediately and as fully as possible after it has happened to ensure accuracy and strength of your case if you decide to lodge a complaint or take legal action.

18. How can I lodge a complaint with the EOC?

A complaint must be submitted in writing and addressed to the EOC. Complaints can be submitted online, or through mail, facsimile, electronic mail or in person. For the purpose of verifying identity, aggrieved person and/or a representative of aggrieved person must provide a copy of his/her valid identity document to the EOC.

If you need assistance in filling the form, you can call the EOC hotline on **2511 8211** or e-mail to EOC at **complaint@eoc.org.hk**.

19. Who can lodge a complaint?

You can either lodge it yourself or appoint a representative to do it on your behalf. You can either do it individually or in a group.

20. What is the deadline for lodging a complaint?

You should do it within 12 months of the occurrence of the incident if you wish to lodge a complaint with the EOC and 2 years if you decide to take legal proceedings in the District Court.

21. What should be included in the complaint?

Complaints must include:

- Details and date of the incident
- Personal information such as name, contact information, Identity Card number, etc.
- Name and contact details of the respondent(s)
- Evidence supporting your claims of discrimination, harassment or vilification on the ground of race
- Details of any detriment or emotional disturbance you have suffered because of the discriminatory actions
- Information on witness(es)



Investigation & Conciliation

22. How does the EOC investigate into the complaint?

Upon receipt of the complaint the EOC will first notify the respondent(s) about the complaint. Responses are then made available to the complainant. Witness statements are taken and pertinent materials gathered to determine if the case should proceed to conciliation or be discontinued. All information gathered during the investigation stage is kept confidential from third parties but may be used in court proceedings.

23. What is conciliation?

Conciliation is the process through which different parties are brought together to look for ways to resolve the dispute. Conciliation looks for common ground to help resolve the matter to the satisfaction of both parties so that both can move beyond the dispute. As the conciliation process allows for both parties in the dispute to have their say, it is possible for each side to come to a better understanding of the other's position. This can help to eliminate misunderstandings based on incorrect assumptions or information and to achieve a real change in attitude. All information gathered in the conciliation process is kept confidential and is not made available to court proceedings. Conciliation is a voluntary process.



24. How does the EOC conciliate the complaint?

Generally, an officer of the EOC will act as the conciliator, who will assist both parties to examine the issues that led to the complaint, identify points of agreement and negotiate a settlement to the dispute. The settlement agreement is equivalent to a contract and is legally binding. Conciliation is a completely voluntary process and the EOC does not act as an advocate for either side. It maintains impartiality throughout the process to help the parties resolve their problems. The terms of settlement depends on the nature of the dispute. It could be in the form of reappointment to the job, promotion, transfer, letter of apology, enactment of equal opportunities policies or financial settlement. Please read the EOC brochure "What is Conciliation" for additional information.

25. Will the EOC conciliate all complaints?

The EOC is required by the law to investigate into complaints. The decision to conciliate any cases is based on the findings of the investigation. The EOC will decide not to conduct or discontinue investigation if:

- the act complained is not unlawful under the RDO
- the aggrieved person does not wish to continue with the investigation
- more than 12 months have elapsed since the incident, or
- the complaint cannot be appropriately pursued as a representative complaint



26. What are my options if the conciliation fails?

If the conciliation fails, the complainant can apply to the EOC for legal assistance to take the matter to court. Legal assistance could include legal advice, representation by the EOC's lawyers, legal representation by outside lawyers or another form of assistance the EOC considers appropriate. The decision to provide assistance or not is taken by a committee of the EOC. Alternatively, the complainants can also take the matter to the Court themselves and initiate legal proceedings.





For further information or training on this issue, please contact:

Equal Opportunities Commission

**16/F., 41 Heung Yip Road,
Wong Chuk Hang, Hong Kong**

Tel: 2511 8211 (General Enquiries)

2106 2155 (Training)

Website: <http://www.eoc.org.hk>



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Enquiries & Complaints Hotline : (852)2511 8211