

Job Lost with Disclosure of Mental Illness (Disability Discrimination)

For many mental disorders, there are effective treatments that allow the affected persons to lead a productive life. Yet, stigma and discrimination often prevent these people from seeking and receiving the necessary treatment, making it impossible for them to engage in gainful employment and become self-reliant. The EOC advocates equal rights and opportunities for people with mental disabilities to participate and integrate in society, which are protected by the Disability Discrimination Ordinance (DDO).

◆ The Complaint

Mr Cheung was offered a job as a security guard at a company. He was instructed to undergo a medical examination, after which he would be given uniforms and arranged to attend training courses.

Upon completing the medical examination, Mr Cheung called the company and told the staff member who answered the phone that he had mental illness. Mr Cheung was told by that staff member to wait for further notice. However, he had not heard from the company since. He believed that the company withdrew the job offer because of his mental illness.

✓ What the EOC Did

Represented by a social worker, Mr Cheung lodged a complaint of disability discrimination with the EOC against the company.

Under the DDO, it is unlawful to discriminate against a job applicant on the ground of his/her disability. The employer can be held liable

for refusing or withdrawing a job offer due to the applicant's disability, unless the employer can prove that the applicant is unable to perform the inherent requirements of the job, or that providing services or facilities to help the applicant perform the job duties would impose unjustifiable hardship on the employer.

The two parties conciliated after the company agreed to apologise for having caused Mr Cheung displeasure due to misunderstanding in the communication process.

Points to Note:

- Mental illness is covered by the DDO, and defined as a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgement or that results in disturbed behaviour, that presently exists, previously existed but no longer exists, may exist in the future, or is imputed to a person*.
- Not only employees, but also job applicants are protected under the DDO, which states that it is unlawful for an employer, in relation to employment by him/her at an establishment in Hong Kong, to discriminate against another person with a disability by refusing or deliberately omitting to offer that other person the employment.

* A disability that has simply been imputed to a person who does not have the particular disability.