

捍衛法治——法律服務

Upholding the Law — Legal Service



投訴人作出投訴後，若未能達成和解，可向平機會申請協助，包括法律協助。平機會的法律服務科負責處理法律協助的申請，還會就反歧視條例的成效進行檢討，以及向平機會提供內部法律意見和支援。

When a complaint has been lodged, but not settled, the complainant may apply to the EOC for assistance, including legal assistance. The Legal Service Division (LSD) of the EOC is responsible for handling applications for legal assistance, in addition to reviewing the effectiveness of the anti-discrimination laws and providing internal legal advice and support to the EOC.

向投訴人提供的協助

每當收到法律協助申請，法律服務科會指派部門內一名律師處理。該律師會細閱與個案有關的所有文件和資料，進行法律研究，就應否給予法律協助擬備詳盡的意見書，提交平機會管治委員會轄下的法律及投訴專責小組。

Assistance to Complainants

Whenever an application for legal assistance is received, a lawyer of the LSD will be assigned to deal with the application. The lawyer will peruse all documents and information in relation to the case, conduct legal research, and prepare a detailed submission to the Legal and Complaints Committee (LCC) of the EOC Board, advising whether legal assistance should be granted.

提供法律協助與否的考慮因素

法律及投訴專責小組會考慮多項因素以決定是否提供法律協助，包括：

Considerations for Giving or Not Giving Legal Assistance

In deciding whether or not to give legal assistance, the LCC considers a wide range of factors, including:

- 案件能否就重要法律問題確立先例？
- 案件會否喚起公眾關注香港仍然常見的歧視問題(如懷孕歧視和處所的無障礙事宜)？
- 案件會否鼓勵有關方面在制度上作出改革以消除歧視？
- Could the case establish a precedent on important legal issues?
- Would the case raise public awareness in areas of discrimination which are still prevalent in Hong Kong, such as pregnancy discrimination and accessibility to premises?
- Would the case encourage institutional changes to eliminate discrimination?

- 個案是否過於複雜，或雙方的相對位置過於懸殊(如權力不平衡)，以致申請人難以處理？
 - 證據是否足以在法庭獲得可觀的勝算？
 - 就某特定個案而言，法律訴訟是否消除歧視的最佳或最有效方法？
 - 平機會可按個別案件的情況，考慮任何其他相關事宜。
- Would it be difficult for the applicant to handle the case given its complexity and/or the relevant position of the parties (e.g. imbalance of power)?
 - Is the evidence sufficient to support a good prospect for success in court?
 - Is legal proceeding the best or most effective way to eliminate discrimination insofar as the particular case is concerned?
 - The EOC may consider any other matters which may be relevant on a case-by-case basis.

這些因素在每一宗個案的適用程度不一，專責小組通常會綜合考慮各個原因才作出決定。

The applicability of these factors varies from case to case, and often a combination of reasons is involved in reaching a decision.

若專責小組成員決定給予某個案法律協助，負責的平機會律師會採取一切所需跟進行動協助受助人。有關協助包括由平機會律師向受助人提供法律意見、收集或評估進一步資料或證據，或由平機會律師或平機會聘任的私人執業律師在法律訴訟中代表受助人。

If Members of the LCC decide to grant legal assistance to a particular case, the responsible EOC lawyer will take all necessary follow-up actions to assist the assisted person. The assistance may include legal advice to the assisted person by the EOC lawyer(s), legal services related to the gathering and assessment of further information or evidence, or representation in legal proceedings by the EOC lawyer(s) or by lawyer(s) in private practice engaged by the EOC.

平機會的指定律師會擔任受助人的法律代表，擬備所需法律文件，為受助人提起法律訴訟。有關律師會在各非正審聆訊／審訊中代表受助人出庭，或視乎案件的複雜和影響程度，延聘外間的獨立大律師代表受助人出庭。

The designated lawyer(s) of the EOC will act as the assisted person's legal representative and prepare the necessary legal documentation with a view to issuing legal proceedings on behalf of the assisted person. The lawyer(s) will appear in court on behalf of the assisted person in various interlocutory hearings/trials or engage an independent counsel to do so, depending on the complexity and magnitude of the case.

法律協助申請

在2022-23年度，平機會共處理了12宗法律協助申請，當中六宗獲得協助，三宗不獲協助。截至2023年3月31日，其餘三宗仍在考慮。

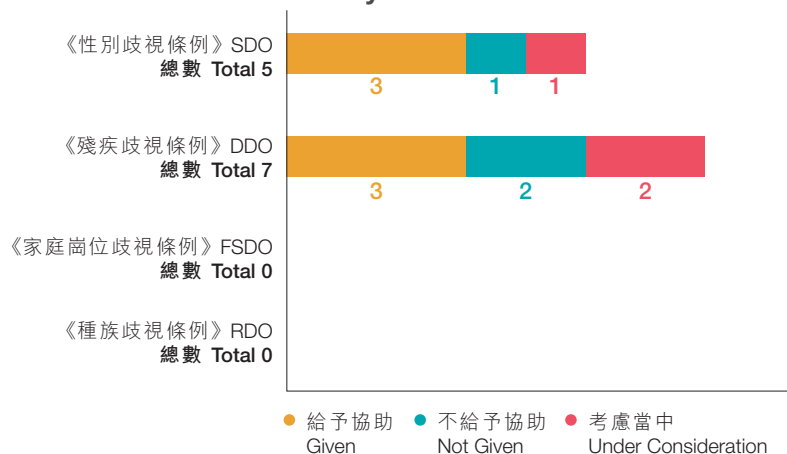
Applications for Assistance

In 2022-23, the EOC handled 12 applications for assistance. Of these, six cases were given legal assistance, three cases were rejected, and the remaining three cases were still under consideration as of 31 March 2023.

法律服務 Legal Service

按條例劃分的法律協助申請數字

Breakdown on Applications for Legal Assistance by Ordinance



法律協助的案例

Examples of Legally Assisted Cases

2022年4月21日 — 平機會根據《殘疾歧視條例》，代表一名申索人在區域法院提出法律訴訟。申索人曾向答辯人的公司申請業務發展經理的職位，並成功獲取錄。然而，申索人正式上班前確診2019冠狀病毒病。他留院兩星期後，為他診治的醫生確定他已經康復。申索人通知答辯人他可以上班，卻獲告知已另覓人選出任業務發展經理的職位，無法再錄用他。申索人聲稱，答辯人基於他的殘疾（即感染2019冠狀病毒病）而拒絕向他提供或故意不向他提供職位，屬違法歧視行為。

2022年5月23日 — 平機會根據《殘疾歧視條例》，代表一名申索人在區域法院提出法律訴訟。申索人聲稱他的前僱主（答辯人）基於他感染2019冠狀病毒病而對他作出殘疾歧視，將他解僱。申索人受僱為答辯人的項目經理，上班數天後確診感染2019冠狀病毒病，並需要住院治療。住院期間，申索人收到答辯人的WhatsApp訊息，指因他感染2019冠狀病毒病而解僱他。

21 April 2022 — The EOC issued legal proceedings under the DDO in the District Court, on behalf of a person (the Claimant), who made a job application for the position of Business Development Manager (BDM) in the Respondent company. The Claimant's job application was successful. However, before he commenced work, he was diagnosed with a COVID-19 infection. After being hospitalised for about two weeks, his treating doctor confirmed that he had recovered. When the Claimant informed the Respondent that he was ready to report for duty, he was told that the BDM position had been filled up by others and was no longer available to him. The Claimant alleged that the Respondent unlawfully discriminated against him by refusing or deliberately omitting to offer him the employment on the ground of his disability, i.e. COVID-19 infection.

23 May 2022 — The EOC issued legal proceedings under the DDO in the District Court, on behalf of a person (the Claimant) who alleged that his former employer (the Respondent) discriminated against him by terminating his employment on the ground of his disability (i.e. being infected with COVID-19). The Claimant was employed by the Respondent as Project Manager. A few days after he had reported for duty, the Claimant was diagnosed with COVID-19 infection and was hospitalised. During his hospitalisation, the Claimant received a termination message sent by the Respondent via WhatsApp, which stated that he was dismissed because of his infection with COVID-19.

2022年11月16日 — 平機會根據《殘疾歧視條例》，代表一名申索人在區域法院提出法律訴訟。申索人指稱他的前僱主(答辯人)基於他的殘疾(左下肢蜂窩性組織炎)而將他解僱，屬歧視行為。

申索人受僱於一間中式酒樓(答辯人)任職侍應。入職後一個多星期，申索人左腳感到痛楚，經醫生診斷為患上「左下肢蜂窩性組織炎」。醫生給予申索人四天病假。在病假期間，答辯人通知申索人他的職位暫時由替工頂替，他可以在痊癒後復工。幾天後，申索人告知答辯人可以恢復工作，答辯人卻表示已經解僱了申索人，原因是擔心他的腿患將來會復發。

2023年3月1日 — 平機會根據《性別歧視條例》，代表一名外籍家庭傭工(申索人)在區域法院提出法律訴訟。申索人指稱她多次被前僱主(答辯人)性騷擾，包括答辯人在申索人洗澡後靠近嗅她頭髮和身體的氣味。

16 November 2022 — The EOC issued legal proceedings under the DDO in the District Court, on behalf of a person (the Claimant) who alleged that his former employer (the Respondent) discriminated against him by terminating his employment on the ground of his disability (i.e. Left Lower Limb Cellulitis).

The Claimant was employed by a Chinese restaurant (the Respondent) as a waiter. A couple of days after he had reported for duty, the Claimant suffered from leg pain and was diagnosed with Left Lower Limb Cellulitis. He was granted sick leave for four days. During his sick leave, the Respondent informed the Claimant that his position had temporarily been filled up by another person and he could resume duty after he had recovered. A few days later, the Claimant told the Respondent that he was ready to resume duty but the Respondent replied that he was dismissed for the fear that his leg pain would reoccur in the future.

1 March 2023 — The EOC instituted legal proceedings under the SDO in the District Court, on behalf of a foreign domestic helper (the Claimant) who said that her former employer (the Respondent) sexually harassed her on a number of occasions during her employment with him, including coming up close to sniff the fragrance of her hair and body after she had taken a shower.

無需展開訴訟便已完結的受助個案

雖然平機會致力協助有需要的個案展開法律訴訟，但平機會亦重視和解，讓雙方無需耗費大量時間和金錢經法庭程序便得以解決爭議。為此，平機會的指定律師除了向申索人提供法律意見和擔任法律代表，也會協助申索人與答辯人進行和解商議。

Legally Assisted Cases Concluded without Commencing Legal Proceedings

While the EOC endeavours to assist warranted cases by way of commencing legal proceedings, the EOC appreciates the value of settlement, which allows the parties concerned to resolve the dispute without having to undergo the time-consuming and costly court proceedings. To this end, the designated lawyer(s) of the EOC would assist the Claimant(s) in settlement negotiation with the Defendant(s), besides providing legal advice and representation.

法律服務 Legal Service

在2022-23年度，有五宗在該年度及之前已獲法律協助的個案，無需展開法律訴訟便已解決，或因為個案的進一步發展及評估證據後未獲進一步協助。另有四宗個案仍在處理，至報告期完結時尚未有結果或未展開法律訴訟。

法庭案件

平機會在2022-23年度共處理了11宗法庭訴訟，其中四宗有關《性別歧視條例》，六宗有關《殘疾歧視條例》，餘下一宗同時有關《性別歧視條例》和《殘疾歧視條例》。

在平機會律師的協助下，六宗個案獲判勝訴，在保密條款下成功和解而無需進行審訊，或因為個案的進一步發展及評估證據後未獲進一步協助。截至2023年3月31日，其餘五宗個案的法庭訴訟仍未完結。

和解條款

經成功調停或獲法律協助後和解的個案，和解條款包括：

- 更改政策／慣例；承諾停止歧視性的做法；
- 提供福利，包括教育課程／培訓；提供貨品、服務及設施；或改善設施和無障礙通道；
- 限制日後再犯同樣行為；紀律處分；作出道歉；或投訴人接受答辯人／機構的解釋；
- 發出推薦信；支付金錢；提供聘用機會；或復職；以及
- 向慈善機構作出捐款。

In 2022-23, five cases, to which legal assistance was given before and during the year, were either resolved without the need to commence legal proceedings, or were given no further assistance upon further development and assessment of evidence. Another four cases remained in process, with no outcome having been reached and no court proceedings having commenced yet at the end of the period under review.

Court Cases

In 2022-23, the EOC handled 11 court cases — four under the SDO, six under the DDO, and one under both SDO and DDO.

With assistance from the EOC lawyers, six cases successfully obtained a favourable judgment, were settled on confidential terms without proceeding to trial, or were given no further assistance upon further development and assessment of evidence. For the remaining five cases, the court proceedings were still ongoing as of 31 March 2023.

Settlement Terms

For those cases which were successfully conciliated or settled after legal assistance was given, the settlement terms included:

- Changes in policies/practices; undertaking to cease discriminatory practices;
- Provision of benefits, including education programmes/training; provision of goods, services and facilities; or improvement in facilities and accessibility;
- Restrictions on future acts; disciplinary action; apologies; or complainants accepting the respondents' explanation;
- Provision of reference letters; monetary payment; offers of employment; or reinstatements; and
- Donations to charity.



投訴／申訴人取得金額
Monetary Payment for Complainants/Claimants

超過港幣 **8,400,000** 元
Over HK\$

支付金錢

在報告期內，平機會透過調停、法律協助和庭外和解方式，為受歧視的投訴人及申索人取得的金錢總額超過港幣840萬元。

Monetary Payment

The total monetary payment secured by the EOC for complainants and claimants through conciliation, legal assistance and settlement out of court during the period under review exceeded HK\$8.4 million.

其他法律工作

平機會處理的法律工作涵蓋不同範疇，法律協助只屬其中一項。法律服務科還會就查詢及投訴向投訴事務科提供意見；草擬實務守則及其他指引；檢討反歧視條例及提出法例修訂建議；就相關的諮詢或立法建議向政府提交意見書；審校合約及協議；以及提供其他形式的內部法律支援。

Other Legal Work

Legal assistance is only one of the various branches of legal work at the EOC. The LSD also advises the CSD on the handling of enquiries and complaints; drafts codes of practice and guidance; reviews the anti-discrimination ordinances and proposes legislative amendments to them; drafts submissions to the Government on relevant consultations or legislative proposals; vets contracts and agreements; and provides other forms of internal legal support.

檢討條例的保障

平機會其中一項主要職能，是檢討反歧視條例的實施情況，並且視乎需要提出修例建議。例如，平機會進行了兩項條例檢討，第一項是有關《性別歧視條例》對性騷擾方面的保障，第二項是探討如何透過法例修訂解決香港人與內地人之間的歧視、騷擾和中傷問題。平機會已於2021年向政府提交兩項檢討的結果，供政府進一步考慮。

Review of Protections under the Ordinances

One of the main functions of the EOC is to keep under review the workings of the anti-discrimination ordinances and when necessary, draw up proposals for amendments. For example, the EOC conducted a review of the protections from sexual harassment under the SDO, and another on the possibility of tackling the discrimination, harassment and vilification between people from Hong Kong and those from the Mainland through legislative amendments. The findings of both reviews had been submitted to the Government in 2021 for further consideration.

此外，平機會一直進行法律研究，探討如何在現行反歧視法例的框架下保障性小眾免受歧視。截至報告期完結時，內部研究仍在進行。

In addition, the EOC has been working on a legal study to explore the possible options for providing legal protections for sexual minorities from discrimination based on the existing framework of the anti-discrimination law. As at the end of the review period, the internal study remained in progress.