

法律服務：執行反歧視條例

Legal Service: Enforcing the Anti-discrimination Ordinances

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。

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。

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：

- 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？
- 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。

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.

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.

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:

- 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?
- 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。

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。

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。

法律協助申請

在2023-24年度，平機會共處理了19宗法律協助申請，當中九宗獲得協助，八宗不獲協助。截至2024年3月31日，其餘兩宗仍在考慮。

按條例劃分的法律協助申請數字

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

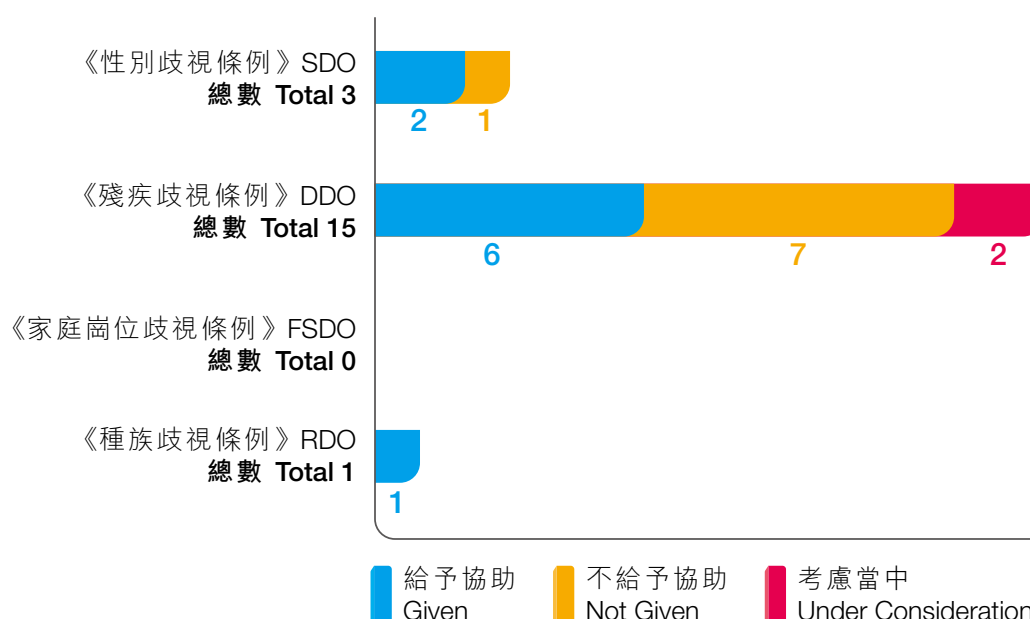
If Members of the LCC decide to grant legal assistance to a particular case, the responsible EOC lawyer will take all necessary follow-up actions to assist the assisted person. The assistance may include legal advice to the assisted person by the EOC lawyer(s), legal services related to the gathering 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.

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.

Applications for Assistance

In 2023-24, the EOC handled 19 applications for assistance. Of these, nine cases were given legal assistance, eight cases were rejected, and the remaining two cases were still under consideration as of 31 March 2024.

Breakdown on Applications for Legal Assistance by Ordinance





法律協助的案例
Examples of Legally Assisted Cases

2023年6月27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。申索人曾於一間餅店工作，擔任店務員。申索人指稱，第一答辯人（餅店店主）、第二答辯人（第一答辯人的董事）和第三答辯人（申索人的直屬上司），基於她的殘疾（急性下腰痛）而歧視她，在她放完病假復工後對她作出一連串歧視性待遇（包括騷擾），繼而把她解僱。

申索人為第一答辯人工作超過一年，工作表現良好。她在工作時因搬運餅盒而扭傷了背部，被診斷為急性下腰痛。在她放完六天病假復工後，第三答辯人要求她承擔額外的的工作，而這些工作並不適合背部剛剛受傷的人。隨後，第一答辯人在沒有給予任何解釋下，把申索人解僱。

2023年11月14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。答辯人是一間在香港經營多間餐廳的餐廳集團屬下的一間公司，申索人在該公司任職總廚。申索人聲稱答辯人基於他的殘疾（發燒和上呼吸道感染，以及感染2019冠狀病毒病的病徵），而對他作出殘疾歧視，將他解僱。

27 June 2023

The EOC issued legal proceedings under the DDO in the District Court, on behalf of a person (the Claimant) who previously worked for a cake shop as a Shop Assistant. The Claimant claimed that the 1st Respondent (the shop owner), together with the 2nd Respondent (director of the 1st Respondent) and the 3rd Respondent (direct supervisor of the Claimant), discriminated against her on the ground of her disability (i.e. acute lower back pain) by subjecting her to a series of discriminatory treatments, including harassment, after she returned to work from sick leave, before terminating her employment.

The Claimant worked for the 1st Respondent for more than one year with satisfactory job performance. She sprained her back after moving stocks of cake boxes at work and was diagnosed with acute lower back pain. After she resumed work from six days of sick leave, she was asked by the 3rd Respondent to take up additional tasks, which were unsuitable for people who had just sustained back injuries. She was subsequently terminated by the 1st Respondent shortly after her sick leave without any explanation.

14 November 2023

The EOC issued legal proceedings under the DDO in the District Court, on behalf of a person (the Claimant) who worked as a head chef for a company within a Restaurant Group (Group) which operates multiple restaurants in Hong Kong (the Respondent). The Claimant alleged that the Respondent discriminated against him by terminating his employment on the ground of his disability (i.e. fever and upper respiratory tract infection “URTI”, and manifestation of the COVID-19 infection).

申索人與感染2019冠狀病毒病的同事一起工作後，感到身體不適，前往醫院進行核酸檢測，並因患上上呼吸道感染獲發兩天病假。申索人通知答辯人他身體不適，並通過即時通訊應用程式將其病假證明書發送給答辯人。申索人在兩天病假之後，再兩度前往醫院求診，並由於發燒和上呼吸道感染，再獲發病假。在這兩次求醫後，他都透過即時通訊應用程式將其病假證明書發送給答辯人。答辯人在申索人放完八天病假返回工作崗位時，通知申索人他已被解僱。

2024年1月30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。答辯人是一間經營鋼琴教室業務的公司，申索人曾在該公司任職。

申索人在試用期間，因為感到呼吸困難而向醫生求診，被診斷患上甲狀腺機能亢進症，獲給予六天病假，申索人隨即透過即時通訊應用程式向直屬上司申請病假，並獲得批准。由於申索人在病假期間仍然有心跳快的症狀，於是再次求診，並獲給予額外11天病假，申索人同樣透過即時通訊應用程式把醫生證明書傳給直屬上司，並獲得批准。在申索人放病假的第八天，直屬上司致電她，指答辯人決定提出七天通知期解僱申索人，即剛好在她預定復工前一天終止她的僱傭合約。因此，申索人相信答辯人是基於她的殘疾（即甲狀腺機能亢進症）及相關病假而把她解僱，對她作出殘疾歧視。

After working with co-workers infected with COVID-19, the Claimant subsequently became unwell and went to the hospital, where he took the PCR test and was given two days of sick leave due to URTI. The Claimant informed the Respondent and sent his sick leave certificate to the Respondent through an instant messaging application. Following the two-day sick leave, the Claimant attended the hospital again twice and was given further sick leave due to fever and URTI. In both instances, he sent his sick leave certificates to the Respondent through an instant messaging application. Yet upon returning to work after eight days of sick leave, the Claimant was informed that his employment was terminated.

30 January 2024

The EOC issued legal proceedings under the DDO in the District Court on behalf of a person (the Claimant) who previously worked for a company (the Respondent) that operates piano learning centres.

During the probationary period, the Claimant attended a medical consultation after having breathing difficulties and was subsequently diagnosed with hyperthyroidism. She was given six days of sick leave. She then applied for sick leave from her immediate supervisor through an instant messaging application and obtained approval. While on sick leave, the Claimant continued to experience rapid heart rate and sought medical consultation again. She was granted an additional 11 days of sick leave. She again submitted her medical certificate to her immediate supervisor via instant messaging application and obtained approval. However, on the eighth day of her sick leave, the immediate supervisor called and informed her that the Respondent had decided to terminate her employment with seven days' notice, which would take effect just one day before her scheduled return to work. As such, the Claimant believed that the Respondent discriminated against her by terminating her employment on the ground of her disability (i.e. hyperthyroidism) and related sick leave.

法律服務 Legal Service

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。

在2023-24年度，有三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。七宗個案仍在處理，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2023-24年度共處理了八宗法庭訴訟，其中四宗有關《性別歧視條例》，四宗有關《殘疾歧視條例》。

在平機會律師的協助下，三宗個案不是獲判勝訴，便是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2024年3月31日，其餘五宗個案的法庭訴訟仍未完結。

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 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.

In 2023-24, three cases, to which legal assistance was given before and during the year, were resolved without the need to commence legal proceedings. Seven 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 2023-24, the EOC handled eight court cases – four under the SDO, and another four under the DDO.

With assistance from the EOC lawyers, three cases either 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 2024.

2023年8月17日，區域法院就一宗懷孕歧視案(DCEO 16/2019)裁定一名女士(申索人)基於懷孕受到僱主的違法歧視，判申索人勝訴。

申索人於2007年9月開始受僱於答辯公司(一間物流公司)，並於2017年3月獲晉升為部門主管。申索人不久後懷孕，答辯人托詞申索人表現欠佳和為了節省公司成本／營運目的，拒絕向申索人發放年終花紅，並在她放產假前決定不予她續約。但申索人認為，真正的原因是答辯公司對其懷孕感到不滿。

平機會給予申索人法律協助，委派內部律師代表申索人處理案件，並在審訊時作為訴訟律師代表申索人出庭。

區域法院判定申索人可獲得港幣306,680元收入損失賠償和港幣489,500元年終花紅損失賠償，並附加利息。此外，法院暫時判定假如答辯公司同意向申索人作出道歉和發出推薦信，申索人可獲得港幣130,000元感情損害賠償。法院還命令答辯公司需支付申索人法律費用。

法院透過裁決發出了重要的信息，提醒所有僱主絕對不可在僱傭範疇內對僱員作出違法懷孕歧視。根據《性別歧視條例》，如僱主因女性僱員懷孕及／或相關產假而給予較差的待遇，便構成懷孕歧視，屬於違法行為。

On 17 August 2023, the District Court handed down the ruling of a case (DCEO 16/2019) in favour of a woman (the Claimant) unlawfully discriminated against by her employer because of her pregnancy.

The Claimant began working for the Respondent, a logistics company, in September 2007 and was promoted to department head in March 2017. Shortly after, she was pregnant. The Respondent then refused to provide the Claimant with an end-of-year bonus and did not renew her employment contract right before her maternity leave on the pretext that she had bad performance and for cost-saving/operational purposes. However, the Claimant understood that the real reason is that the Respondent was not happy about her pregnancy.

The EOC provided legal assistance to the Claimant, with the EOC's in-house lawyers representing the Claimant to conduct the case and attend court as trial Counsel on her behalf.

The Court awarded loss of income in the sum of HK\$306,680 and year-end bonus in the sum of HK\$489,500, both with interest, to the Claimant. Further, the Court provisionally awarded a sum of HK\$130,000 for injury to feelings on the basis that the Respondent will issue to the Claimant an apology and a reference letter. The Court also ordered the Respondent to pay the Claimant's legal costs.

The judgment sends a strong reminder to all employers that there is no place for pregnancy discrimination in the field of employment. Treating a female employee less favourably because of her pregnancy and/or related maternity leave constitutes pregnancy discrimination and is unlawful under the SDO.

法律服務 Legal Service

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。

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690萬元。

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。

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。年內平機會繼續就檢討反歧視法例諮詢持份者，與政府保持緊密溝通，並監察社會的實際情況。

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.

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\$6.9 million.

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.

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. The EOC continued to consult stakeholders, maintain close communication with the Government, and monitor the actual situation in society in relation to reviewing the anti-discrimination legislation during the year in review.