

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，以及擬備詳盡的意見書提交予平機會管治委員會轄下的法律及投訴專責小組，決定應否給予法律協助。

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議題確立先例？
- 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？
- 證據是否足以令個案在法庭有較高的勝訴機會？
- 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？
- 平機會可按個別個案的情況，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 legal analysis for 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 of success in court?
- Is legal proceeding the best or most effective way to eliminate discrimination insofar as the particular case is concerned?
- 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。

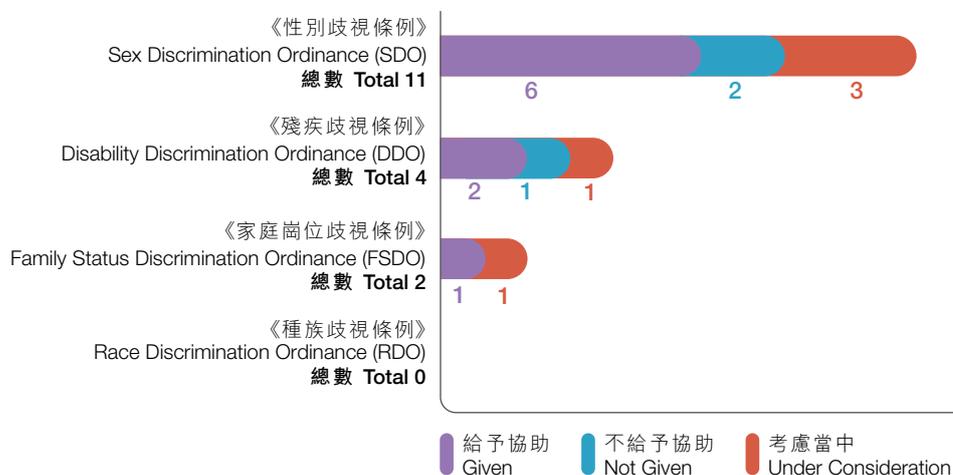
若專責小組成員決定給予某個案法律協助，負責的平機會律師會採取一切所需跟進行動協助受助人。有關協助包括由平機會律師向受助人提供法律意見、收集或評估進一步資料或證據，或由平機會律師或平機會聘任的私人執業律師在法律訴訟中代表受助人。

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，為受助人提出法律訴訟。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2024-25年度，平機會共處理了17宗法律協助申請，當中九宗獲得協助，三宗不獲協助。截至2025年3月31日，其餘五宗仍在考慮當中。

按條例劃分的法律協助申請數字 (2024年4月 – 2025年3月)



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 giving 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 documents 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 interlocutory hearings/trials or engage an external counsel to do so, depending on the complexity and magnitude of the case.

Applications for Legal Assistance

In 2024-25, the EOC handled 17 applications for legal assistance. Of these, legal assistance was granted in nine cases and rejected in three cases. As of 31 March 2025, five applications were under consideration.

Breakdown of Applications for Legal Assistance (by Ordinance) (April 2024 – March 2025)



法律協助的案例
An Example of a Legally Assisted Case

2024年12月6日

平機會根據《性別歧視條例》和《種族歧視條例》，代表一名孟加拉裔女性(申索人)在區域法院提出法律訴訟。申索人指稱，在她於一家律師行任職兼職法律文員期間，她的前僱主(第一答辦人)經常用與性有關和鄙視其種族的用語來稱呼她，令她蒙受性騷擾和種族騷擾。

申索人亦指稱，她的前直屬上司(第二答辦人)多次對她進行性騷擾，包括透過即時通訊軟件，向申索人發送具性含意圖片的超連結，以及在申索人已向他表示不安的情況下，仍反覆向申索人談及他的性生活等。

申索人指稱她因而受到嚴重的情緒困擾，這些違法的騷擾行為最終迫使她自動離職。

6 December 2024

The EOC issued legal proceedings under the SDO and the RDO in the District Court, on behalf of a Bangladeshi female (the Claimant) who alleged that she was subjected to sexual harassment and racial harassment by her former employer (the 1st Respondent) who frequently addressed her with sexual and derogatory racial terms during her employment as a part-time law clerk at his law firm.

The Claimant also alleged that her former direct supervisor (the 2nd Respondent) had sexually harassed her on many occasions. The incidents included sending a hyperlink to a photo of sexual connotation to the Claimant via instant messaging application, and repeatedly describing his sexual activities to the Claimant despite her expressed discomfort.

The Claimant alleged that she suffered severe emotional distress and was constructively dismissed as a result of the unlawful harassment acts.

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2024-25年度，有四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。10宗個案仍在處理當中，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2024-25年度共處理了六宗法庭訴訟，其中兩宗有關《性別歧視條例》，三宗有關《殘疾歧視條例》，一宗個案同時有關《性別歧視條例》和《種族歧視條例》。

在平機會律師的協助下，兩宗個案獲判勝訴，一宗個案因應個案最新發展而無需進一步協助。截至2025年3月31日，其餘三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 the need to go through time-consuming and costly court proceedings. To this end, the designated lawyer(s) of the EOC would assist the Claimant(s) in settlement negotiations with the Respondent(s), besides providing legal advice and representation.

In 2024-25, among the legal assistance cases granted both before and during the year, four cases were resolved or concluded without the need to commence legal proceedings. Ten cases remained in progress, with no outcome having been reached and no court proceedings having commenced yet at the end of the period under review.

Court Cases

In 2024-25, the EOC handled six court cases – two brought under the SDO, three brought under the DDO and one brought under both the SDO and the RDO.

With the assistance from the EOC lawyers, a favourable judgment was obtained in two cases. No further assistance was needed in one case upon further development of the case. For the remaining three cases, court proceedings were still ongoing as of 31 March 2025.



2024年11月28日
DCEO 3/2024

這是一宗僱傭範疇的殘疾歧視個案。在此案件中，一名在鋼琴教室擔任客戶服務主任的女士(申索人)，在試用期間因放病假，被她的僱主(答辯人)基於她的殘疾和放取相關病假而解僱，構成《殘疾歧視條例》下的違法殘疾歧視行為。

平機會向申索人提供法律協助，其內部律師代表申索人按《殘疾歧視條例》提出法律訴訟，以及代表申索人出庭應訊。

區域法院在2024年4月18日作出非正審判決，之後在2024年11月28日作出評估損害賠償的最終判決。

區域法院考慮到平機會的陳詞後，判定答辯人須向申索人支付143,000港元的賠償，當中包括95,000港元的情感損害賠償和48,000港元的收入損失賠償，即相等於申索人三個月薪金。此外，答辯人須支付申索人在是次賠償評估的訟費。

在這個案中，區域法院因應通脹調整了不同級別感情損害賠償的金額，為香港法庭在日後衡量歧視案件申索的感情損害賠償更新了指引，平機會表示歡迎。

法庭在這判決發出重要的訊息，提醒所有僱主，如基於僱員的殘疾及放病假而把他／她解僱，包括在試用期間，是違法的行為。

28 November 2024
DCEO 3/2024

This is a disability discrimination case in the field of employment. In this case, a Customer Service Officer of a piano learning centre (the Claimant) was dismissed by her employer (the Respondent) on the ground of her disability and related sick leave during her probationary period, which amounted to unlawful disability discrimination under the DDO.

In providing legal assistance to the Claimant, the EOC's in-house lawyers represented the Claimant in issuing legal proceedings under the DDO, conducted the case and attended court hearings on her behalf.

The District Court entered an interlocutory judgment on liability on 18 April 2024 and delivered a final judgment on the assessment of damages on 28 November 2024.

Having heard the submissions of the EOC, the District Court ordered the Respondent to pay to the Claimant a sum of HK\$143,000, of which HK\$95,000 was for injury to feelings, and HK\$48,000 was for loss of income, which was equivalent to the Claimant's salary of three months. The Respondent was also ordered to pay the Claimant's legal costs for the assessment of damages.

In this case, the District Court also adjusted the amounts of different levels of damages for injury to feelings according to inflation. This provides an updated guideline for the Courts in Hong Kong in assessing damages for injury to feelings in discrimination cases in the future, which the EOC welcomes.

The judgment sends a strong reminder to all employers that it is unlawful to dismiss an employee on the ground of his/her disability and sick leave irrespective of whether the employee is on probation or not.



法庭案件例子
Examples of Court Cases

2025年2月14日
DCEO 4/2023

這是一宗僱傭範疇的性騷擾個案。在此案件中，一名外籍家庭傭工(申索人)指稱在受僱期間，多次被前僱主(答辯人)性騷擾，包括答辯人在申索人沐浴後靠近她嗅聞她的頭髮和身體的香味，以及不斷要求申索人與他發生性行為。

平機會向申索人提供法律協助，其內部律師代表申索人按《性別歧視條例》提出法律訴訟，以及代表申索人出庭應訊。

案件於2024年8月13至14日審訊。區域法院於2025年2月14日判申索人勝訴，指答辯人作出的行為構成《性別歧視條例》所指的性騷擾。

區域法院判定答辯人須支付申索人合共182,387.30港元的賠償，包括60,000港元的感情損害賠償、10,000港元的懲戒性損害賠償，以及112,387.30港元的收入損失賠償，並附加利息。區域法院還命令答辯人須支付申索人此案的訟費。

今次法庭的裁決提醒所有僱主，在工作期間對僱員，包括外籍家庭傭工，作出性騷擾是違法行為，並會帶來嚴重的法律後果。

14 February 2025
DCEO 4/2023

This is a sexual harassment case in the field of employment. In this case, a foreign domestic worker (the Claimant) alleged that during her employment, her former employer (the Respondent) sexually harassed her on a number of occasions, including coming up close to sniff the fragrance of her hair and body after she had taken a shower and persistently requesting to have sex with her.

In providing legal assistance to the Claimant, the EOC's in-house lawyers represented the Claimant in issuing legal proceedings under the SDO, conducted the case and attended court hearings on her behalf.

The trial took place on 13-14 August 2024. On 14 February 2025, the District Court handed down the judgment in favour of the Claimant, holding that the Respondent had engaged in conduct constituting sexual harassment as defined under the SDO.

The District Court further ordered that the Respondent to pay the Claimant a total compensation of HK\$182,387.30, which includes HK\$60,000 for injury to feelings, HK\$10,000 for exemplary damages and HK\$112,387.30 for loss of income, along with interest. The Court also ordered the Respondent to pay the Claimant's legal costs.

This court ruling sends a strong reminder to all employers that sexual harassment against employees, including foreign domestic workers, during their employment is unlawful and will lead to serious legal consequences.

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／改善措施，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；
- 紀律處分；作出道歉；或投訴人接受答辯人的解釋；以及
- 給予推薦信；支付和解金；提供聘用機會；或復職。

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640萬港元。

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;
- Disciplinary action; apologies; or complainants accepting the respondents' explanation; and
- Provision of reference letters; monetary payment; offers of employment; or reinstatements.

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\$6.4 million.

Other Legal Work

Legal assistance is only one of the various branches of legal work at the EOC. The LSD also advises the Complaint Services Division 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.