



通達無障礙 人人享平等

Everyone Deserves Equal Access
and Opportunities

背景

香港四條反歧視法例（即《性別歧視條例》、《殘疾歧視條例》、《家庭崗位歧視條例》和《種族歧視條例》）禁止基於性別、懷孕和婚姻狀況的歧視；性騷擾；殘疾歧視、殘疾騷擾和中傷；家庭崗位歧視；種族歧視、騷擾和中傷等違法行為。

各條例有關僱傭範疇的條文，不僅保障僱員，也保障求職人士和合約員工。條例又涵蓋職業介紹所、成為合夥人、加入專業團體和工會等活動。至於有關非僱傭範疇的條文，涵蓋的範疇包括教育、提供貨品或服務、參加會社和體育活動、處所的管理和政府活動等。

處理投訴程序

若有人認為自己在法例保障的範疇內受到歧視，可親自或透過代表向平機會作出書面投訴。平機會調查投訴時，會研究與個案相關的資料，雙方也有充分機會作出回應和反駁。在認為合適的情況下，平機會將致力透過調停解決問題，協助涉事雙方達成和解。若無法達成和解，投訴人可向平機會申請其他方式的協助。平機會將審視每宗申請，考慮有否涉及原則問題，和申請人在沒有協助下自行處理個案的能力。平機會提供的協助包括：法律意見、法律協助或其他平機會認為適當的協助。

Background

Hong Kong's four anti-discrimination ordinances, namely the Sex Discrimination Ordinance (SDO), the Disability Discrimination Ordinance (DDO), the Family Status Discrimination Ordinance (FSDO) and the Race Discrimination Ordinance (RDO), prohibit unlawful behaviours, such as discrimination on the grounds of sex, pregnancy and marital status; sexual harassment; disability discrimination, harassment and vilification; family status discrimination; and racial discrimination, harassment and vilification.

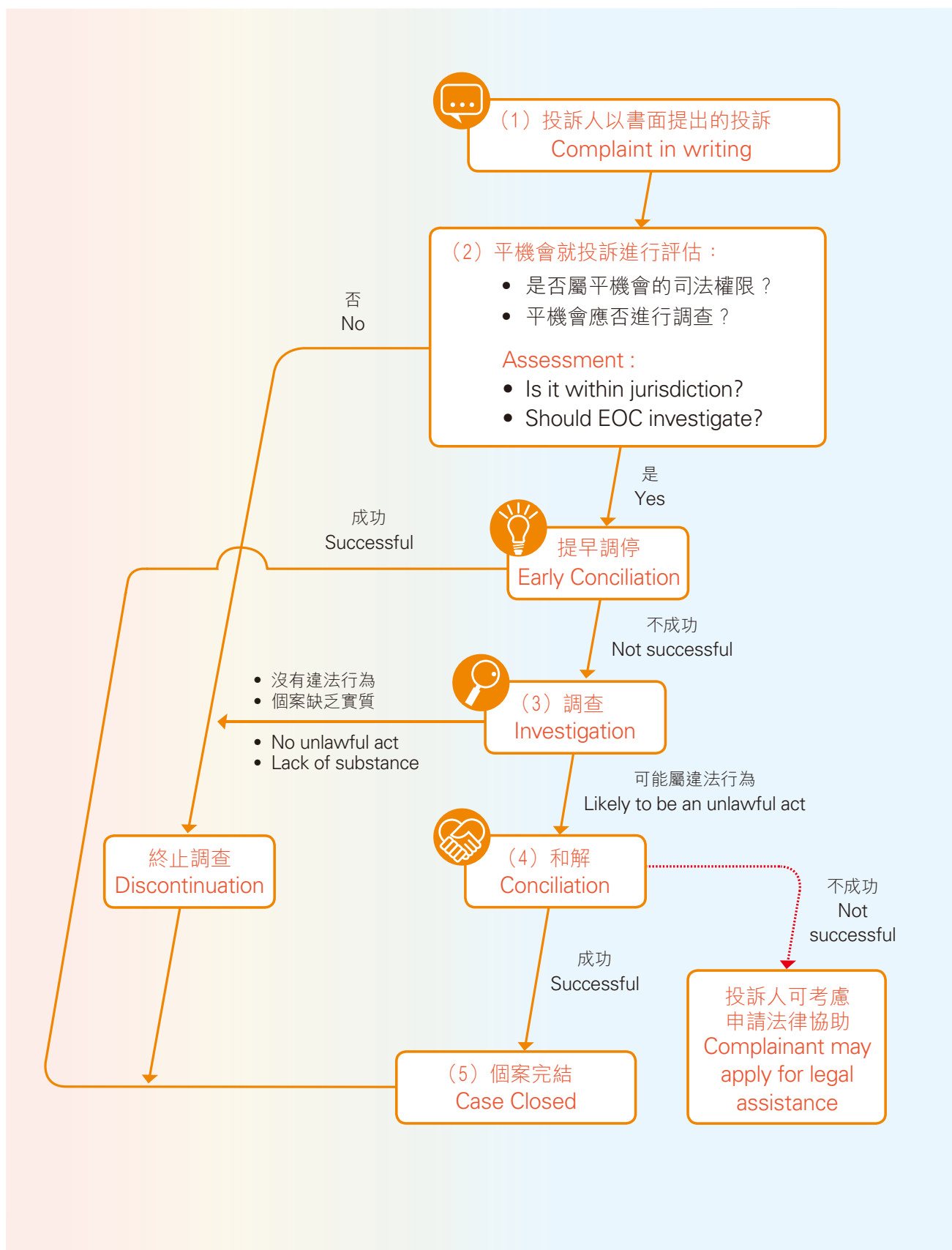
The employment-related provisions of the ordinances provide protection not only to employees, but also to job applicants and contract workers. They also cover activities relating to employment agencies and admission to partnerships, professional bodies and trade unions. The non-employment related provisions cover areas such as education, the provision of goods or services, participation in clubs and sporting activities, the management of premises, and government activities.

Complaint Handling Procedure

Those who feel that they have been discriminated against on protected grounds can lodge a complaint in writing, either personally or through a representative, with the EOC. When investigating the complaint, information relevant to the case will be examined and parties will be given adequate opportunities to respond and rebut. When it is considered appropriate, the EOC endeavours to resolve the matter through conciliation, helping the parties involved to reach a settlement. If a settlement cannot be reached, the complainant may apply to the EOC for other forms of assistance. The EOC looks at each application individually, considering issues of principle, as well as the ability of the applicant to deal with the case unaided. Assistance given can include advice, legal assistance, or any other forms of assistance deemed appropriate.



向平機會提出投訴 Taking a Complaint to the EOC



共處理16,672宗查詢

查詢服務是平機會的重要工作之一。2012/13年度，平機會處理了16,672宗查詢：其中8,850宗屬一般查詢，7,822宗屬具體事項查詢。大多數人透過電話熱線作出查詢，其次分別是書面查詢及親臨平機會與職員面談。

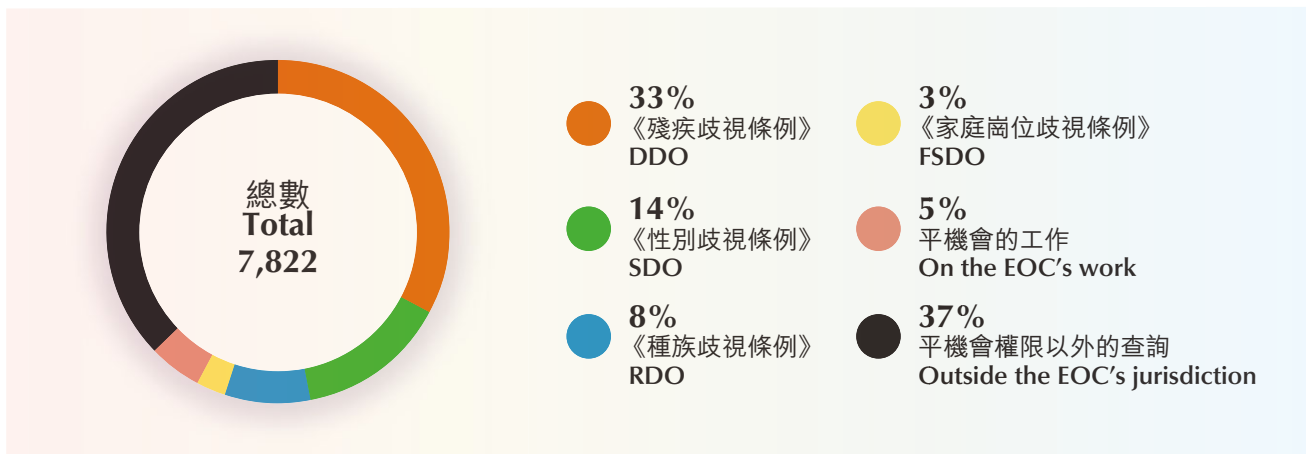
一般查詢是指問及有關平機會活動和反歧視法例的條文；而具體事項查詢是指查詢的情節或事件有可能變成投訴。在收到的7,822宗具體事項查詢中，2,619宗與《殘疾歧視條例》有關，1,063宗與《性別歧視條例》有關，621宗與《種族歧視條例》有關和240宗與《家庭崗位歧視條例》有關；其餘3,279宗則屬其他範疇的查詢(表一)。

16,672 Enquiries Handled

Enquiry service is an important aspect of the EOC's work. In 2012/13, the EOC handled 16,672 enquiries: 8,850 general enquiries and 7,822 on specific situations. The largest proportion of enquiries is made through the EOC telephone hotline, followed by writing and face-to-face interviews respectively.

General enquiries relate to questions on the EOC's activities and the provisions of the anti-discrimination laws, while specific enquiries cover questions on scenarios or incidents that may become complaints. Of the 7,822 specific enquiries received, 2,619 were related to the DDO, 1,063 to the SDO, 621 to the RDO and 240 to the FSDO, while the remaining 3,279 were about other issues (Figure 1).

表一：已處理7,822宗具體事項查詢
Figure 1: 7,822 Specific Enquiries Handled



共處理929宗投訴

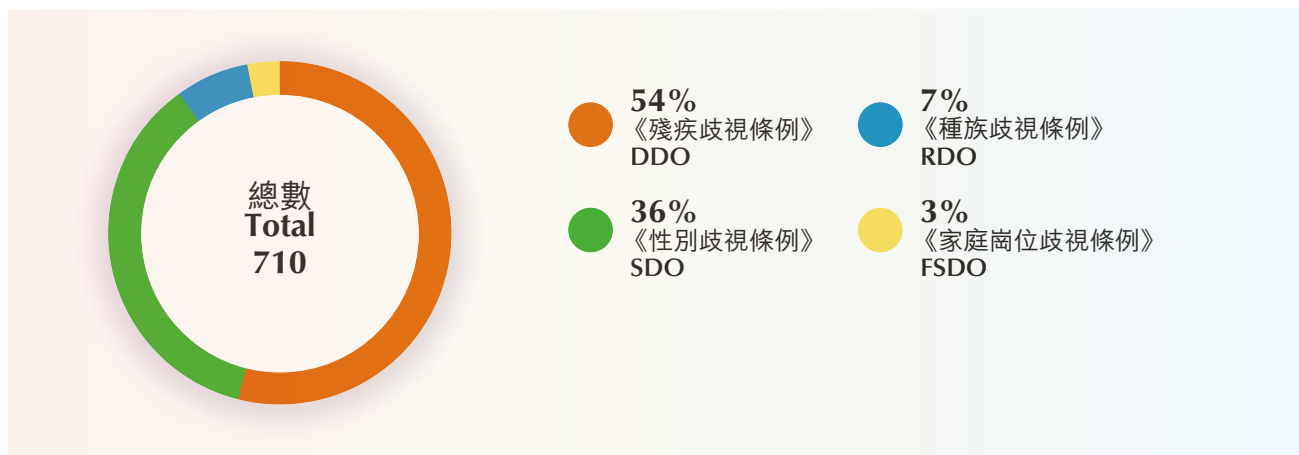
本年度平機會共收到710宗由個別投訴人提出涉及違法行為的新投訴(表二)，較2011/12年度的751宗減少了5%。最多投訴與《殘疾歧視條例》有關(388宗)，其次為《性別歧視條例》(255宗)、《種族歧視條例》(47宗)和《家庭崗位歧視條例》(20宗)。

929 Complaints Handled

During the year, the EOC received 710 new complaints of allegedly unlawful acts lodged by individual complainants (Figure 2), a 5% decrease from the previous year's figure of 751. The largest proportion was complaints under the DDO (388), followed by the SDO (255), RDO (47) and FSDO (20).

表二：共收到710宗新歧視投訴

Figure 2: 710 New Discrimination Complaints Received



連同2011/12年未完成的個案，平機會共處理了929宗投訴(表三)，較2011/12年度減少11%。此外，平機會亦主動調查了108宗潛在歧視的事件。

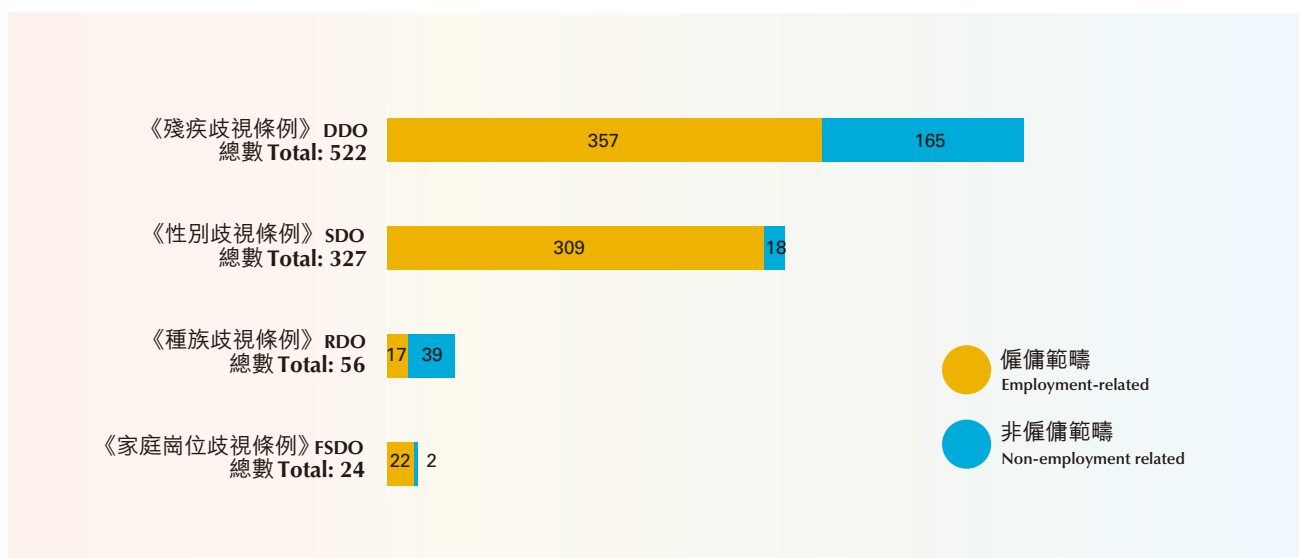
本年度的成功調停率為72%，2011/12年度則為64%。

Together with cases carried over from the previous year, the EOC handled a total of 929 complaints (Figure 3), an 11% decrease from the previous year. In addition, the EOC initiated 108 investigations into incidents of potential discrimination.

The successful conciliation rate was 72% during the year, compared to 64% in the previous year.

表三：已處理的929宗投訴

Figure 3: 929 Complaints Handled



有關《殘疾歧視條例》的投訴

2012/13年度共調查了522宗投訴，其中357宗(68%)屬僱傭範疇，而165宗(32%)屬非僱傭範疇。有關僱傭範疇的殘疾歧視個案，大多數與病假和工傷有關。主要爭論在於履行工作固有要求的能力、給予僱員的遷就或不合理困難。至於不屬僱傭範疇的個案，主要涉及提供貨品、設施及服務，或處所通道問題。

Complaints related to the Disability Discrimination Ordinance (DDO)

A total of 522 complaints were investigated in 2012/13, of which 357 (68%) were employment-related and 165 (32%) were non-employment related cases. For employment-related disability discrimination cases, the majority were in relation to sick leave and work injuries. The disputes were mainly over the ability to perform the inherent requirement of a job, accommodation given to an employee, or unjustifiable hardship. For those cases not related to employment, the majority involved the provision of goods, facilities and services or access to premises.

個案一：拒保有理？ Case 1 – Insurance Rejection



事件經過

德偉為他的兒子偉賢申請住院保障保險計劃，但遭保險公司拒保。德偉指稱保險公司是基於他的兒子偉賢患有學習障礙(專注力失調及過度活躍症)，對他作出殘疾歧視，拒絕偉賢的住院保障申請。

保險公司解釋，偉賢需住院的風險比一般客戶高，但卻未有提供精確的數據及可靠資料支持其說法及解釋。保險公司同意在調查完結前嘗試提早調停。

結果

個案在以下的條款下得到解決：(1)保險公司需要向偉賢及德偉撰寫道歉信；(2)保險公司同意接納投訴人原來的保險申請，及豁免一個月保費。

注意要點

根據《殘疾歧視條例》，服務提供者若基於顧客殘疾而拒絕提供貨品、服務或設施便屬違法。同樣地，除非保險公司能提供精確的數據或基於風險評估的原因，否則基於某人的殘疾而拒絕他的投保申請，即屬違法。平機會建議保險公司在拒保時要清楚解釋拒保的原因，避免不必要的誤會。



What happened?

Derek submitted on behalf of his son Ray an application for hospital benefit insurance, but the application was rejected by the insurance company. Derek alleged that the insurance company discriminated against Ray on the ground of his learning disability (Attention Deficit & Hyperactivity Disorders) in rejecting his hospital benefit insurance application.

The insurance company explained that the risk for Ray to be admitted to the hospital was higher than other clients, but did not provide actuarial data or other reliable data to support their claim. The insurance company agreed to attempt early conciliation before the conclusion of investigation.

Outcome

The matter was settled with the following terms. First, the insurance company consented to provide Ray and Derek with an apology letter. Second, the insurance company agreed to accept the original insurance application and waive one month's premium.

Points to note

Under the DDO, it is unlawful for a service provider to refuse the provision of goods, services or facilities on the ground of disability. Likewise, it is unlawful for an insurer to decline an insurance application on the ground of one's disability, unless it could be exempted by relying upon actuarial or other reliable data on or factors affecting the risk assessment. It is advisable for the insurer to explain clearly the reason for declining the insurance application so as to avoid misunderstanding.

有關《性別歧視條例》的投訴

根據《性別歧視條例》提出的投訴中，懷孕歧視及性騷擾個案繼續高踞首兩位。常見的性騷擾行為包括：涉及性而不受歡迎的身體接觸；與性有關的言論及玩笑，令投訴人感到受冒犯。

在作出報告期間，平機會調查了共327宗就《性別歧視條例》提出的投訴，其中309宗屬僱傭範疇。40%的投訴(124宗)屬懷孕歧視，另外43%的投訴(133宗)為性騷擾。平機會亦調查了18宗非僱傭範疇的投訴，39%的個案(七宗)與性別歧視有關，61%的個案(11宗)與性騷擾有關。

Complaints related to the Sex Discrimination Ordinance (SDO)

Pregnancy discrimination and sexual harassment continued to occupy the top two ranks of cases lodged under the SDO. Common acts of sexual harassment included unwelcome physical contact of a sexual nature, verbal sexual comments, and suggestions and jokes which the complainants found offensive.

In the reporting period, the EOC investigated a total of 327 SDO cases, of which 309 concerned employment-related allegations. Out of these, 40% (124 cases) involved pregnancy discrimination, while 43% involved sexual harassment (133 cases). Investigations were also made into 18 non-employment related allegations, 39% (7 cases) of which related to sex discrimination, and 61% (11 cases) related to sexual harassment.



個案二：工作間性騷擾 Case 2 – Sexual Harassment in the Workplace

事件經過

安琪大學畢業後加入一間市場策劃公司任職見習生。在她加入公司的首個月，她的直屬上司兼經理大衛要求她在他的房間進行會議。在這些單獨會面中，大衛觸碰安琪的臉和手，又拂掃她的指甲。安琪並感覺大衛目不轉睛地盯著她的胸部。

一天，大衛邀請安琪共晉午膳，但遭安琪拒絕。自此，大衛對安琪的態度大變。他無理批評安琪的工作表現，又指安琪可選擇辭職或申請轉到其他部門工作。安琪感到焦慮無助，因而失眠。她最終辭職，並向平機會投訴大衛性騷擾，及投訴其僱主需為大衛的性騷擾行為負上轉承責任。

結果

雙方最終願意以提早調停解決事件。大衛同意向安琪撰寫道歉信。另一方面，公司雖然聲稱對大衛的行為並不知情，但亦同意給予安琪道歉信和作出金錢賠償，並要求安琪撰寫感謝信作交換。此外，公司同意制定反性騷擾政策。

注意要點

在《性別歧視條例》下，性騷擾包括任何涉及性的不受歡迎行徑，在一名合理的人眼裡，會認為這些行徑令人感到受冒犯、侮辱或威嚇。性騷擾行為可分為直接、間接、身體上或口頭上等等，亦可包括猥褻或挑逗性的言論、或不恰當的身體接觸。性騷擾往往在沒有第三者在場或目擊證人的情況下發生。有時雖然沒有目擊證人，但平機會在進行調查時，會考慮所有情況和投訴人提供的資料。

不論僱主是否知悉或批准僱員的行為，都需要為僱員在職期間所作的違法性騷擾行為負上轉承責任。故此，僱主必需制定清晰的公司政策，制止一切性騷擾行為，並確保員工清楚認識性騷擾和具備敏感度。

What happened?

After graduating from university, Angel joined a marketing firm as a trainee. In her first month of service, Angel was asked by her supervisor David to meet him in his room. During these one-on-one meetings, David touched Angel's hand and face, and brushed her fingernails. Angel also felt that David kept staring at her breasts during the meetings.

One day David invited Angel for lunch and she declined. Thereafter, David changed his attitude towards Angel drastically. He made unjustified criticisms of her performance, and told Angel that she could either resign or apply for transfer to another department. Angel felt agitated and helpless, and suffered insomnia. She eventually resigned, and filed a complaint to the EOC against David for sexual harassment, and against her employer company for being vicariously liable for the unlawful acts of David.

Outcome

Both parties were willing to resolve the matter through early conciliation. David provided an apology letter to Angel. The company, while claiming no knowledge of David's behaviours, also agreed to provide an apology letter and monetary compensation to Angel, in return for a letter of appreciation from her. In addition, the company agreed to put in place an anti-sexual harassment policy.

Points to note

Under the SDO, sexual harassment includes any unwelcome behaviour of a sexual nature which a reasonable person regards as offensive, humiliating or intimidating. Acts of sexual harassment may be direct or indirect, physical or verbal, and can include indecent or suggestive remarks or inappropriate touching. While sexual harassment often happens in isolation, the EOC considers all circumstances and information provided by the complainant, even in the absence of witnesses, in its investigation.

An employer is vicariously liable for the unlawful sexual harassment acts committed by its employees in the course of their employment, whether with or without the employer's knowledge or approval of such behaviour. It is therefore crucial for employers to have clear company policies prohibiting any act of sexual harassment, and ensure that employees have good understanding and sensitivity about the issue.

有關《種族歧視條例》的投訴

平機會本年度共調查了56宗根據《種族歧視條例》提出的投訴，其中17宗(30%)屬僱傭範疇，39宗(70%)屬非僱傭範疇。67%非僱傭範疇的投訴涉及提供貨品、設施及服務方面的種族歧視。

Complaints related to the Race Discrimination Ordinance (RDO)

During the year, the EOC investigated a total of 56 RDO cases, 17 (30%) of which were employment-related and 39 (70%) non-employment related. Of the non-employment related cases, 67% were on the provision of goods, facilities and services.



個案三：歧視基於其種族 Case 3 – Discrimination on the Ground of Race

事件經過

阿金是來自巴基斯坦的伊斯蘭教徒。她喜歡到住所附近的泳池游泳。因為宗教習俗的緣故，阿金不想別人見到她的身段。於是，她在泳衣外罩上一件襯衫和一條長褲進泳池。一天，泳池職員不准她以這身打扮到池邊。阿金指出曾見到其他華裔婦女穿著類似衣服進入泳池，阿金覺得自己受到不公平對待，於是向平機會投訴泳池管理人員基於她的種族而歧視她。

結果

泳池經理稱事件可能是阿金與泳池職員有誤會，因為泳池職員不知阿金有否穿著泳衣。雙方同意透過調停去解決問題。

對於引起不愉快事件，有關職員同意向阿金道歉。泳池管理層亦確認，容許泳客在泳衣外加穿鬆身襯衫和鬆身及膝褲。

注意要點

根據《種族歧視條例》，若基於某人的種族，在提供貨品、設施及服務時作出歧視，即屬違法。雖然《種族歧視條例》不適用於宗教範疇的歧視，但一些與宗教有關的規定或條件，可能會對某種族群體構成間接歧視，在這情況下，《種族歧視條例》便可適用。

由於宗教習俗，很多女伊斯蘭教徒的衣著都較保守謹慎。因此，本個案中阿金在泳衣外再加穿襯衫和及膝褲。若泳池的政策不容許這樣穿著，便可能歧視伊斯蘭教徒，同時間接歧視了大部分信奉伊斯蘭教的巴基斯坦人，因而違反《種族歧視條例》。

What happened?

Kim is a Muslim originally from Pakistan. She enjoys swimming in her neighbourhood pool. Due to her religious customs, Kim prefers to dress modestly. Therefore, she wore a T-shirt and long pants on top of her swimsuit when entering the swimming pool. One day, she was stopped by a pool staff member for her attire. She alleged that she has seen other Chinese women in a very similar type of outfit using the facility. Kim felt she was unfairly treated and decided to lodge a complaint with the EOC against the facility management.

Outcome

The facility manager claimed the incident might have arisen from the misunderstanding between Kim and the swimming pool staff about whether Kim had worn a swimsuit underneath her T-shirt. Both parties agreed to settle the matter through conciliation.

The concerned staff agreed to apologise to Kim for creating unpleasant sentiments. Confirmation was also given by the swimming pool's management that persons wearing a loose T-shirt and loose pants over their swimsuit are permitted to use the swimming pool.

Points to note

Under the Race Discrimination Ordinance (RDO), it is unlawful to discriminate against a person on the ground of race in providing goods, facilities and services. While the RDO does not apply to discrimination on the ground of religion, some requirements or conditions relating to religion may result in indirect discrimination against certain racial groups, in which case the RDO may apply.

In this case, many female Muslims dress modestly according to their religious customs, which was the reason Kim wished to wear a T-shirt and pants over her swimsuit. If the swimming pool had a policy against wearing such attire, it may be discriminatory against Muslims and indirectly against Pakistanis, most of whom are Muslim, and the RDO would be applicable.

有關《家庭崗位歧視條例》的投訴

本年度平機會共調查了24宗家庭崗位歧視投訴，其中22宗(92%)屬僱傭範疇，兩宗(8%)屬非僱傭範疇。僱傭範疇的大多數指稱(64%)關乎因家庭崗位而被解僱。

Complaints related to the Family Status Discrimination Ordinance (FSDO)

During the year, a total of 24 FSDO allegations were investigated, 22 (92%) of which were employment-related and two (8%) non-employment related. The majority (64%) of the allegations in the employment field were related to dismissal on the ground of family status.

個案四：家庭、工作，孰先孰後？ Case 4 – Family before Work?

事件經過

阿月在她的公司工作超過十二年，向來表現良好。她於2011年首度懷孕。快將開始法定產假前，阿月與上司進行工作評核會議，期間她的工作表現再次獲得肯定。



在阿月放完產假重返工作崗位當日不足一小時，上司要求與她立即進行會議，再審閱她2011年的工作表現評核。會議上，她對上司給予她最低級數的評分感到十分驚訝。上司告訴她，若工作表現沒有改進，便會解僱她。

阿月就差劣的評分提出正式反對。但公司的高級經理對阿月說，應以家庭為先，工作其次，鼓勵她另覓新工作。阿月向平機會作出家庭崗位歧視投訴。

結果

平機會個案主任接到個案後，向阿月及她的公司解釋平機會處理投訴的程序以及《家庭崗位歧視條例》下僱傭範疇有關的法律條文。雙方願意透過提早調停處理事件，因為提早調停能為投訴人和答辯人提供更快捷的方式解決事件。和解條件包括金錢賠償和向阿月發出一份經雙方同意的在職證明書。

注意要點

根據《家庭崗位歧視條例》，如基於某人的家庭崗位而使他／她蒙受不利，即屬違法。僱主應該避免以僱員的家庭崗位而假定他／她對工作的承擔。另外，為避免產生誤會，僱主應就負面的工作評核報告作清晰詳盡的解釋。

What happened?

Moon had worked for her company for more than 12 years with consistently solid performance reviews. In 2011, she became pregnant with her first child. Shortly before going on statutory maternity leave, Moon had an appraisal meeting with her supervisor, during which she was again given a positive assessment.

Within the first hour of her return from maternity leave, she was immediately asked to join a conference call with her supervisor to go over her performance assessment for 2011. During this call, Moon was shocked to find that her supervisor gave her the lowest possible score in the company's performance ranking scale. Her supervisor told her that, without improvement, she was liable for dismissal.

Moon lodged a formal objection to her poor rating. Her senior manager told her that family should always come before work and encouraged her to look for a new job. Moon lodged a complaint to the EOC alleging family status discrimination.

Outcome

Upon receiving the complaint, the EOC case officer explained to Moon and her company the EOC's complaint handling procedures as well as the legal provisions of the FSDO in relation to the field of employment. Both parties were willing to resolve the matter through early conciliation, which offers an alternative means for the complainant and respondent to settle a case more promptly. The terms of settlement included financial compensation and the issuance of an employment certificate with agreed content.

Points to note

It is unlawful under the FSDO to subject a person to detriment because of his/her family status. Employers are encouraged to avoid making assumptions about an employee's commitment to their job based on his/her family status, and to clearly provide a clear explanation for any negative performance appraisal so as to avoid misunderstanding.

平機會的主動調查

平機會又根據觀察所得的情況，或一些不想直接參與調查或調停的受屈人或第三者所報告的違法行為，主動作出調查。在這些情況下，平機會會聯絡有關人士，查詢事件，解釋反歧視法例的條文，並建議他們加以糾正。在2012/13年度，平機會處理了108宗這類個案，它們大多數屬殘疾歧視類別（主要關於通道和提供服務的問題），其次是種族歧視方面（主要是招聘和提供服務的問題）。

調停

平機會於2012/13年度進行調查的929宗個案之中，有710宗已完結。已完結個案中，殘疾歧視個案佔56%(396宗)，其次為性別歧視個案，佔36%(254宗)；種族歧視個案佔6%(44宗)和家庭崗位歧視個案佔2%(16宗)(表四)。

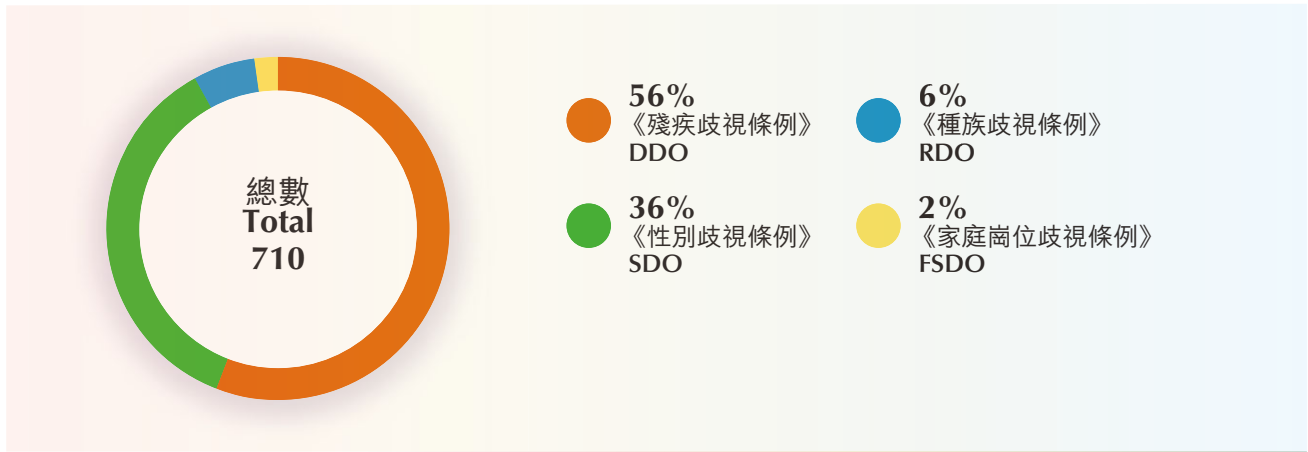
EOC-initiated Investigations

The EOC also initiates investigations into incidents involving unlawful acts that comes to the EOC's notice, or which are brought to the EOC's attention by third parties or aggrieved individuals who do not wish to be involved in the investigation or conciliation process. Under these circumstances, the EOC approaches the concerned parties to inquire into the matter, explain the relevant provision, and advise them to rectify the situation. During the year under review, the EOC handled 108 such cases, with the majority falling in the DDO category (mainly on accessibility and service provision), followed by the RDO (mainly on recruitment and service provision).

Conciliation

Of the 929 cases under investigation in 2012/13, the EOC concluded 710 cases. DDO cases made up 56% (396) of concluded cases, followed by SDO cases at 36% (254), RDO cases at 6% (44), and FSDO cases at 2% (16)(Figure 4).

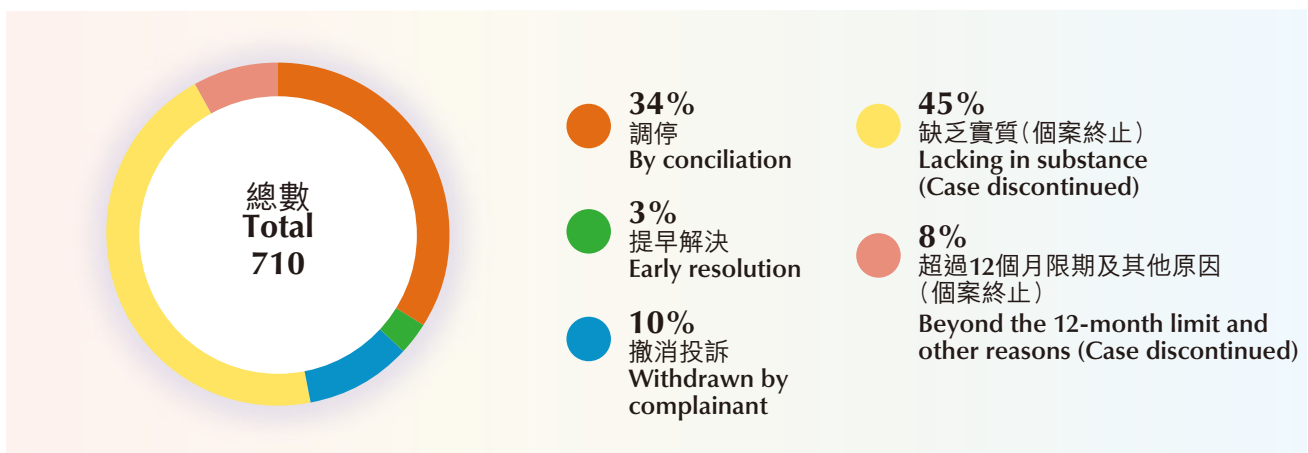
表四：已完結個案－據條例分類
Figure 4: Concluded Cases – Breakdown by Ordinances



在710宗已完結的個案中，平機會就238宗進行了調停，其中172宗成功調停，調停成功率為72%。有21宗個案是雙方在調查完成前已提早解決；有69宗投訴人不想繼續追究，或是收到答辯人初步回覆後因進一步理解情況，而撤回投訴。有382宗個案因各種原因(包括：缺乏實質、無發現違法行為、超過12個月追溯期才提出投訴等)而被終止。(表五)

Of the 710 cases concluded, 238 proceeded to conciliation, with 172 being successfully conciliated. The successful conciliation rate was 72% during the year. Twenty-one cases were resolved early between the parties before the investigation was completed. A total of 69 cases were withdrawn due to complainants having no desire to pursue the case further or understanding the situation better after receiving an initial response from the respondents. In addition, 382 cases were discontinued due to various reasons, including lacking in substance, no unlawful act found, and complaints lodged beyond the 12-month time bar. (Figure 5)

表五：已完結的個案－根據所採取的行動分類
Figure 5: Concluded Cases – Breakdown by Action Taken



法律協助

若投訴未能達致和解，平機會可向想採取法律行動的投訴人提供法律協助。平機會的法律及投訴專責小組會根據平機會律師的意見，決定是否給予協助。法律及投訴專責小組的成員來自不同界別，包括學者、僱主、律師、立法會議員、非政府組織及職工會代表，以便平衡社會不同持份者的意見。

平機會給予協助的形式包括：由平機會的律師向申請人提供法律意見、取得及評估更多的資料或證據、或由平機會的律師或平機會聘請的私人執業律師在訴訟中擔任申請人的法律代表。

本年度，平機會共處理了35宗法律協助申請，其中10宗獲得協助，15宗不獲給予法律協助，10宗仍在考慮中。（有關申請的分類詳情，見表六。）

Legal Assistance

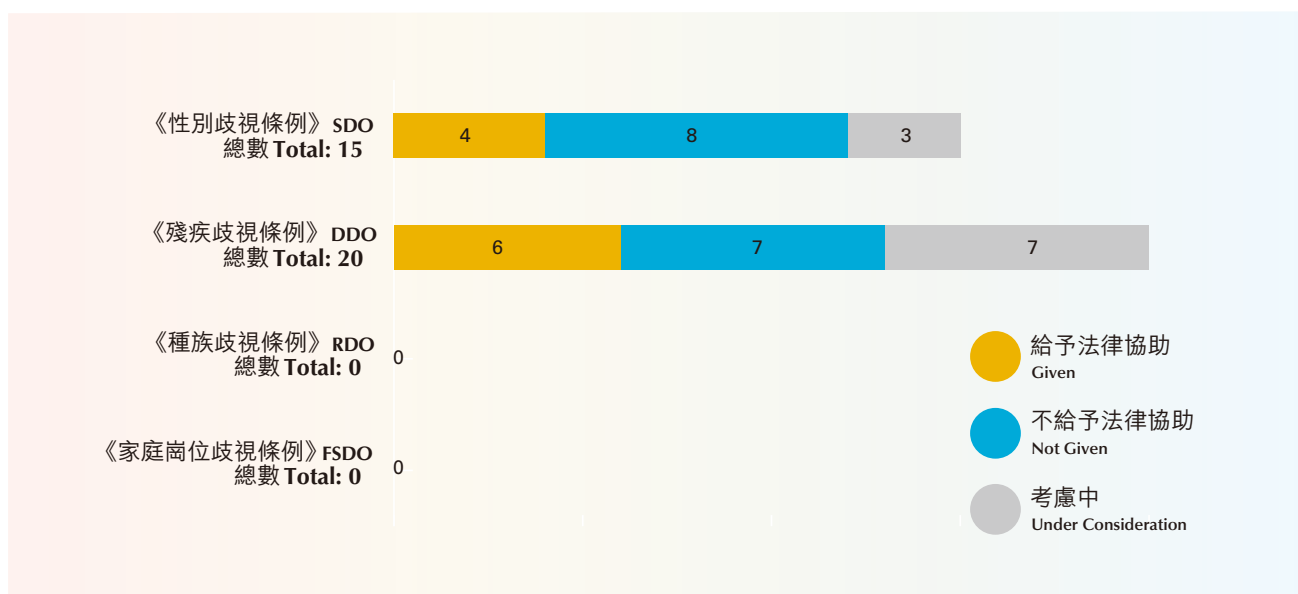
When a complaint has been lodged, but not settled, the EOC may give assistance to applicants who wish to take legal action with regard to the complaint. Upon receiving legal advice from the EOC's lawyers, the Legal and Complaints Committee under the EOC Board decides whether or not to give assistance in a case. The Legal and Complaints Committee consists of a diverse combination of members, including academics, employers, lawyers, legislators, and NGO and trade union representatives, in order to present a balanced view of the various stakeholders in society.

The assistance given by the EOC may include legal advice to the applicant by EOC lawyers, legal services relating to the gathering and assessment of further information or evidence, or representation in legal proceedings by EOC lawyers or by lawyers in private practice engaged by the EOC.

During the year, the EOC handled 35 applications for assistance. Of these, 10 were given legal assistance, 15 were declined, and 10 were still being considered at the end of the fiscal year. (See Figure 6 for the breakdown of applications by ordinance.)

表六：按照條例分類的法律協助申請

Figure 6: Breakdown of Applications for Legal Assistance (by Ordinance)



2012/13年度沒有種族歧視及家庭崗位歧視個案申請法律協助。

There was no application for legal assistance under FSDO and RDO in 2012/13.

給予或不予法律協助的原因

在決定是否給予法律協助時，平機會考慮多方面因素，包括個案是否涉及原則問題、個案的複雜程度及證據的強弱。每宗個案的情況不同，平機會很多時候會綜合考慮各因素，才作出決定。

以下是給予法律協助的主要原因：

- 個案能就某些重要法律問題確立先例；
- 可引起市民對香港常見歧視問題的關注，如懷孕歧視及通道設施等問題；及
- 可推動制度改變，消除歧視。

以下是不給予法律協助的主要原因：

- 證據不足，個案難以在法庭上獲勝訴；及
- 運用法律程序處理也無法達致有意義的結果。

法律協助個案

獲平機會提供法律協助的個案，在平機會律師的協助下，雙方往往能經過協商達成和解。

在2012/13年度，有12宗獲法律協助的個案在展開法律程序前已解決，毋需對簿公堂。當中有五宗與《性別歧視條例》的僱傭範疇有關；六宗與《殘疾歧視條例》的僱傭範疇有關；一宗與《家庭崗位歧視條例》的僱傭範疇有關。在這12宗個案中，平機會因應個案發展及衡量證據後，撤回四宗投訴的法律協助，餘下的八宗個案在和解條款保密的情況下已獲解決。

另有13宗於本年度或之前已獲法律協助的個案仍在處理中，截至現階段為止，這些個案仍未有結果或未展開法律程序。

沒有展開法律程序便已解決的個案

Assisted cases concluded without commencing legal proceedings

《性別歧視條例》SDO:	5
《殘疾歧視條例》DDO:	6
《種族歧視條例》FSDO:	1

12

Reasons for Giving or Declining Legal Assistance

In deciding whether or not to give legal assistance, the EOC considers a wide range of factors, such as whether a question of principle is involved, the complexity of the case, and the strength of evidence. The applicability of these factors can vary from case to case, and often a combination of reasons is involved in reaching a decision.

The main reasons for giving legal assistance may include the following:

- Establishing a precedent on important legal issues;
- Raising public awareness in areas of discrimination which are still prevalent in Hong Kong, such as pregnancy discrimination and accessibility to premises; and
- Encouraging institutional changes to eliminate discrimination.

The main reasons for declining legal assistance may include the following:

- The evidence is insufficient to support a good prospect for success in court; and
- No meaningful result can be achieved by way of legal proceedings.

Legally Assisted Cases

For cases in which legal assistance is given, parties can often successfully reach a settlement through negotiations with assistance from the EOC's lawyers.

In 2012/13, 12 cases in which legal assistance was given before and during the year were resolved without the need to commence legal proceedings. Of these, five were employment-related SDO cases; six were employment-related DDO cases; and one was FSDO employment-related case. In four of these 12 cases, the EOC withdrew assistance upon further case development and assessment of evidence. The remaining eight cases were settled on confidential terms.

A total of 13 other cases, where legal assistance was given before and during the year, are still in process, with no outcome having been reached and no court proceedings having commenced at the end of the period under review.

獲得法律協助，並達成和解的個案 Selected Cases of Legal Assistance Concluded by Settlement

以下是獲得法律協助並於展開法律行動前已在平機會協助下達成和解的一些典型個案，具參考價值。

The following cases provide a useful look at some of the typical legal assistance cases settled by the EOC before legal action had commenced.

個案一：僱傭範疇的殘疾騷擾 Case 1 – Disability Harassment in Employment

背景

A小姐是一名保安員，基於小兒麻痺症，她走路時會一瘸一拐。一天，A小姐需要在控制室使用電話系統，故要求上司降低說話聲浪。上司基於她殘疾，向A小姐說出「斷埋另外一隻腳」或類似令她反感的話。A小姐深感受傷，出現失眠和食慾不振的情況。她其後向平機會投訴上司對她作出殘疾騷擾。

平機會的行動

平機會收到投訴後作出調查，上司否認說過有關言論。A小姐與上司進行調停，但不成功。經評估本案後，平機會決定協助A小姐就殘疾騷擾展開法律行動。平機會的律師負責提供法律意見，也協助A小姐與上司進行和解磋商。最後，雙方成功和解，A小姐收到一筆金錢和上司的道歉信作為賠償。

Background

Ms A worked as a security guard. She walked with a limp because of her disability (poliomyelitis). One day, when Ms A asked the supervisor to lower her voice because she needed to use the telephone system in the control room, her supervisor made an unwelcome remark, “go break the other leg” or something to a similar effect, on the ground of her disability. Ms A felt deeply hurt, and lost sleep as well as her appetite. Ms A lodged a complaint with the EOC against the supervisor for disability harassment.

What the EOC did

The EOC commenced an investigation after receiving the complaint. The supervisor denied making such a remark. Conciliation between Ms A and the supervisor was attempted but was unsuccessful. After assessing the merits of the case, the EOC decided to assist Ms A in commencing legal action for disability harassment. Legal advice was provided by the EOC’s lawyers, who also assisted in settlement negotiation with the supervisor. The parties eventually reached a settlement and Ms A received a settlement sum and an apology letter from the supervisor as compensation.





個案二：僱傭範疇的殘疾歧視 Case 2 – Disability Discrimination in Employment

背景

B先生應徵當保安員。他面試合格，只要完成身體檢查就會得到聘用。其後有關公司根據驗身報告結果顯示B先生患有色弱視，撤回原來的聘用決定。B先生認為他的殘疾不會影響他執行保安員工作的能力，因此向平機會投訴該公司對他殘疾歧視。

平機會的行動

平機會收到投訴後展開調查。該公司解釋，撤銷聘用B先生是由於他的殘疾令他不能勝任有關職位，但公司提供的醫學證據卻未能肯定B先生的身體狀況不能勝任。雙方嘗試調停，但不成功。經評估本案後，平機會決定協助B先生就殘疾歧視展開法律行動，以找出他的殘疾對他執行工作要求的影響。平機會的律師負責提供法律意見，也協助B先生與僱主進行和解磋商。雙方最後和解，該公司願意向B先生作出金錢賠償。

Background

Mr B applied for a position of security guard. Mr B passed the interview and received a job offer subject to passing a medical examination. The company subsequently withdrew the job offer based on the results of medical examination, which showed that Mr B suffered from colour deficiency. Considering that his disability did not hinder his ability to perform the job requirements, Mr B lodged a complaint to the EOC against the company for disability discrimination.

What the EOC did

The EOC commenced an investigation after receiving the complaint. The company explained that Mr B's job offer was withdrawn because his disability rendered him unfit for employment, but medical evidence provided by the company could not point to a definite conclusion about his fitness for employment. Conciliation between the parties was attempted but was unsuccessful. After assessing the merits of the case, the EOC decided to assist Mr B to pursue this case, in order to find out the impact of his disability on his ability to perform the job requirements. Legal advice was provided by the EOC's lawyers, who also assisted in settlement negotiations with the company. The parties eventually reached a settlement and the company agreed to pay monetary compensation to Mr B.



個案三：僱傭範疇的家庭崗位歧視 Case 3 – Family Status Discrimination in Employment

背景

C女士是位母親，負責照顧家中子女。她向某出版社求職，面試時，主考用了不少時間查問她照顧子女的問題，又指若她因為子女不適而請假照顧他們，可能會令其他同事不快。當時，C女士感到無助而哭泣，最終她不獲聘請。C女士認為是因為她需要照顧子女的家庭崗位，所以面試時受刁難，不獲聘用。C女士向平機會投訴出版社對她作出家庭崗位歧視。

平機會的行動

平機會收到投訴後展開調查。僱主否認歧視，又解釋C女士面試表現不理想，故不獲聘用。雙方嘗試調停，但不成功。經評估本案後，平機會決定協助C女士就家庭崗位歧視展開法律行動。平機會的律師負責提供法律意見，也協助她與僱主進行和解磋商。雙方最後達成協議，C女士得到一筆金錢賠償。

Background

Ms C is a mother who is responsible for taking care of her child. She applied for a position offered by a publishing company. When she attended the job interview, the interviewer spent a great deal of time on the issue of motherhood, and told her that other colleagues might be unhappy if Ms C took leave to take care of her child when the child was sick. At that point, she felt helpless and cried. Ms C was not given an offer in the end. Ms C considered that she was being picked on in the interview and was not given a job offer because of her family status being a mother who needed to take care of her child. Ms C lodged a complaint with the EOC against the company for family status discrimination.

What the EOC did

The EOC commenced an investigation after receiving the complaint. The employer denied discrimination and explained that Ms C was not employed because her performance in the job interview was not satisfactory. Conciliation between the parties was attempted but in the end was unsuccessful. After assessing the merits of the case, the EOC decided to assist Ms C in commencing legal action for family status discrimination. Legal advice was provided by the EOC's lawyers, who also assisted in settlement negotiations with the employer. The parties eventually reached a settlement, and Ms C received a settlement sum as compensation.

法庭訴訟

本年度平機會處理了13宗法庭訴訟。在平機會律師的協助下，有五宗案件在條款保密下成功和解，毋須進行審訊。一宗性騷擾案件在法庭開審，事主獲判勝訴，獲金錢賠償及訴訟費用。截至2013年3月31日為止，尚有七宗案件仍未了結。在這13宗獲法律協助的案件中，六宗涉及《性別歧視條例》，六宗涉及《殘疾歧視條例》，一宗同時涉及《性別歧視條例》和《殘疾歧視條例》。

經調停及提供法律協助後的和解條件

平機會一方面致力協助具重要性的案件進行法律訴訟，另一方面也透過和解平息糾紛。

經調停方式或在提供法律協助後和解的條件如下：

- 修改政策／處事程序；承諾停止歧視行為；限制日後再做出某些行為；紀律處分；
- 提供福利，包括教育課程／培訓；提供貨品、服務及設施；或改善設施和提供無障礙設施；
- 發出推薦書；作出道歉；投訴人接受答辯人的解釋；及
- 金錢賠償；聘用；復職或慈善捐獻。

本年度，經調停方式及提供法律協助後所獲得的金錢賠償總額約為港幣998萬元。

Court Cases

During the year, the EOC handled 13 court proceedings. With assistance from the EOC's lawyers, five of these cases were successfully settled on confidential terms without proceeding to trial. One sexual harassment case was tried before the court which ruled in favour of the victim, who was awarded monetary compensation and legal costs. Seven remaining cases were still ongoing as of 31 March 2013. Of these 13 court proceedings, six fell under the SDO; six were under the DDO; and one fell under both the SDO and the DDO.

Settlement Terms after Conciliation and Legal Assistance

While the EOC endeavours to assist warranted cases by way of commencing legal proceedings, the EOC appreciates the value of resolving disputes through settlement.

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

- Changes in policies/practices; undertaking to cease discriminatory practices; restrictions on future acts; disciplinary action;
- The provision of benefits, including education programmes/training; the provision of goods, services and facilities; or improvement in facilities and accessibility;
- Reference letters; apologies; complainants accepting respondents' explanation; and
- Monetary compensation; offers of employment; reinstatements or donations to charity.

The total amount of monetary compensation in the year under review through conciliation and legal assistance was approximately HK\$9.98 million.