

### A Sudden Firing

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*Many people in Hong Kong hire a foreign domestic worker to share the burden of doing household chores and looking after family members. Currently, there are nearly 400,000 foreign domestic workers in the city. They, too, are entitled to the protections of the anti-discrimination ordinances.*

#### The Complaint

Nia had been working in Hong Kong as a domestic worker for many years. Having worked for four families and completed her contract with the fourth, she signed a contract with a new employer through an agency. On her first day, when Nia reported duty at the agency office, she was asked to do a medical check-up. A few days later, her agent texted her, asking her if she had had breast surgery before and whether she needed medication. Nia replied with a call, saying she was diagnosed with breast cancer and had surgery two years ago. After recovering, she only had to take medicine once a day. Her doctor had advised that she could keep on working, and so she continued to work for her former employer for a year until the contract was completed.

Upon hearing this, the agency asked Nia to write a letter declaring that she would resign if her breast cancer recurred. They added that they would inform her employer of her situation and let them decide if the employment should continue. Two days afterwards, Nia received an update from the agency. They said the employer had decided to terminate the contract.

## ★ What the EOC did

Nia lodged a complaint with the EOC, alleging that the new employer (the Respondent) had discriminated against her on the ground of her disability. The Respondent claimed that they terminated the contract because they had found a day care centre for their child and no longer needed Nia's assistance. Through conciliation by the EOC, the parties settled their dispute with the Respondent agreeing to make a monetary payment to Nia.

## 📌 Points to Note:

- Under the Disability Discrimination Ordinance (DDO), disability is defined to include not only disabilities which presently exist, but also those which previously existed, may exist in the future, or are imputed to a person.
- While Nia has had surgery and recovered, her previous breast cancer and its possible recurrence in the future both fall within the definition of disability under the DDO.
- It is generally unlawful for an employer to discriminate against an employee on the ground of his/her disability, such as by dismissing him/her. However, under section 12 of the DDO, if the employee, due to his/her disability, is unable to fulfil the inherent requirements of the job in question or requires services or facilities in order to fulfil those requirements (and providing such accommodation would impose an unjustifiable hardship on the employer), then the discriminatory act may not be unlawful – the factors to take into account include the employee's performance, qualifications, experience and past training, as well as other relevant circumstances of the case.
- Here, after her surgery, Nia continued to work for her former employer for a year until the contract was completed. Further, her doctor had advised that she only had to take medication once a day, and it would not be a problem for her to work like she used to. This sufficiently indicates that she would be able to carry out the inherent requirements of her employment as a domestic worker.