

# Transgender Customer Denied Access to Fitting Room

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*A transgender person relates to a gender identity that does not correspond to the sex assigned at birth. Notably, the latest edition of the International Classification of Diseases (ICD-11) published by the World Health Organization no longer classifies being transgender under the section “Mental or Behavioural Disorders”, but rather as one of various “Conditions Related to Sexual Health”. The official name has also been revised from “gender identity disorder” to “gender incongruence”, echoing international calls for depathologisation and destigmatisation.*

*While there is currently no express protection against discrimination on the ground of gender identity under Hong Kong’s anti-discrimination ordinances, gender incongruence may fall within the definition of disability under the Disability Discrimination Ordinance (DDO). Therefore, transgender people may consider seeking redress under the DDO when subject to discrimination.*

### The Complaint

Jo is a transwoman, meaning that she identifies as female although she was assigned male at birth. Having undergone sex reassignment surgery, she has applied successfully for her identity card to indicate that she is female.

One day, while shopping at a woman’s clothing store, Jo asked the store manager if she could try on a sports bra in the fitting room. The manager told her that she would have to purchase it and try it on at home, and if it didn’t fit, she could return it and get a different

size at the store. As Jo walked towards the cashier, she saw another customer leaving the fitting room and holding the exact same product as the one she was about to buy.

Questioned by Jo, the manager said that only female customers could access the fitting room. Jo immediately presented her identity card, which says she is female. Still, the manager insisted that she was not allowed to use the room. Jo then explained that she is a transwoman, showing the manager her Registration Card for People with Disabilities issued by the Government. The manager did not budge. This led Jo to lodge a complaint with the EOC, alleging that the store had discriminated against her on the ground of her disability.

### ★ What the EOC did

After the EOC contacted the company which owned the store (“the Respondent”), both parties agreed to attempt early conciliation to resolve the dispute. A settlement was reached, with the Respondent undertaking to issue a letter of apology to Jo and provide their employees with gender awareness training in order to enhance their sensitivity towards the LGBT community. To further demonstrate sincerity, the Respondent took the initiative to offer complimentary gifts to Jo.

### ✦ Points to Note:

- Under the DDO, disability discrimination occurs when a person, on the ground of her/his disability, is treated less favourably than a person without a disability.
- It is unlawful for a provider of goods, services or facilities to discriminate against a customer on the ground of her/his disability by refusing to provide those goods, services or facilities to her/him (unless the exemptions under section 26(2) of the DDO apply).
- It is not uncommon for transgender people to regard being transgender as simply an identity rather than a disease, hence their reluctance to be defined as people with a “disability”. Nonetheless, as gender identity is not an expressly protected characteristic under Hong Kong’s anti-discrimination ordinances, the DDO serves as the only available basis for transgender people to lodge a complaint with the EOC when they are discriminated against by employers, educational establishments and service providers alike. The EOC recognises that the current legislation is not ideal, and therefore has conducted research and advocacy over the years in relation to legislating against discrimination on grounds of gender identity (and sexual orientation). For details, please visit the EOC website.