

# Lau Hoi Man Kathy v Emaster Consultants Ltd

DCEO 11/2012

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### Background

The Plaintiff was first employed by the Defendant under a one-year contract, during which she was seconded to work for the Defendant's contractor. Near the end of her one-year contract, she signed a second contract which extended her employment period under the one-year contract continuously for another nine months.

Immediately after signing the second contract, the Plaintiff gave notice of pregnancy to the Defendant. The next day, the Defendant cancelled the second contract, but later offered a third contract. The third contract was the same as the second (cancelled) contract, except that the start of the nine-month period was postponed by one day, meaning that there would be a one-day-break between the first one-year contract and the third nine-month contract. The Defendant refused to give the Plaintiff paid maternity leave because of the one-day-break.

The Plaintiff's claim for maternity leave at the Labour Tribunal was disallowed, because it was held that the one-day-break meant she was not employed under a continuous contract for no less than 40 weeks immediately before the date of her commencement of maternity leave. The Plaintiff then lodged a complaint with the EOC against the Defendant for pregnancy discrimination.

The EOC commenced an investigation after receiving the complaint. The Defendant denied discrimination. Conciliation between the parties was attempted but was unsuccessful. After assessing the merits of the case, the EOC decided to assist the Plaintiff in commencing legal action under the Sex Discrimination Ordinance for pregnancy discrimination.

## The Court's decision

The Court ruled in favour of the Plaintiff, because there would not have been a one-day break (and the Plaintiff would have been entitled to paid maternity leave) but for her pregnancy. The "cancellation" of the second employment contract and the one-day break between the two fixed-term employment contracts shall be regarded as "less favourable treatment" under the SDO.

As a result, the Plaintiff was awarded a total of HK\$90,769.71, and the breakdown of the damages was as follows:

Maternity leave pay	HK\$ 20,072.74
Exemplary damages	HK\$ 20,000.00
Injury to feelings	HK\$ 50,000.00
Loss of income	HK\$ 696.97
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	<b>HK\$ 90,769.71</b>
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