



平 等 機 會 委 員 會  
EQUAL OPPORTUNITIES COMMISSION

# 殘疾歧視條例僱傭實務守則 (2011) 簡易指引 Easy Read Guide to the Code of Practice on Employment under the Disability Discrimination Ordinance (2011)



平等機會委員會(平機會)已發行了於2011年6月經立法會通過的《殘疾歧視條例》僱傭實務守則(2011)。此簡易指引是守則的輔讀。如要閱讀全本守則，請瀏覽平機會網頁或與平機會聯絡。

The Equal Opportunities Commission (EOC) has published the *Code of Practice on Employment under the Disability Discrimination Ordinance (2011)*, passed by the Legislative Council in June 2011. This Easy Read Guide is a complementary reading to the Code. Please visit the EOC website or contact the EOC for the full version of the Code.

這與我何干？  
法例如何保障我？

What's in it for me?  
How does the law  
protect me?

我們一生中，少不免經歷到永久或暫時性的殘疾。《殘疾歧視條例》將殘疾廣泛定義，以涵蓋大部分人可能遇到的疾病和損傷。

Almost every one of us may be permanently or temporarily disabled at some point in life. The Disability Discrimination Ordinance (DDO) has defined disability broadly to cover most illnesses and impairments a person may encounter.

見第三章：《殘疾歧視條例》下殘疾的定義  
See Chapter 3: Definition of Disability under the DDO

### 固有要求、合理遷就和不合情理的困難

Inherent Requirement, Reasonable Accommodation and Unjustifiable Hardship

《殘疾歧視條例》保障殘疾人士於求職時或在職期間免受歧視及騷擾。僱主不應以殘疾為理由而歧視求職者及僱員，除非：

- 該人士的殘疾令他/她無法執行該項**工作的固有要求**；
- **提供遷就**會對僱主構成**不合情理的困難**。

The DDO protects persons with disabilities from discrimination and harassment when applying for a job and in employment. It is unlawful for an employer to discriminate a job applicant/an employee on the ground of the person's disability unless:

- The person, because of his/her disability, is unable to perform the **inherent requirements of the job**;
- **Provision of accommodation** would cause **unjustifiable hardship** to the employer.

工作的**固有要求**是指達到工作目標的必需要求。

The **inherent requirements** of a job are those that are necessary for the goals of the job to be achieved.

**合理的遷就**是指對某項工作、僱用常規、或工作環境作出改動或調整，以便殘疾人士可以享有平等的就業機會。

**Reasonable accommodation** refers to any modification or adjustment to a job, an employment practice, or the work environment that makes it possible for an individual with a disability to enjoy equal employment opportunity.

決定是否構成**不合情理的困難**時，應考慮到：

- 所需遷就的合理程度；
- 該項遷就對殘疾人士及其他人可能構成的利益或傷害；
- 若不提供遷就，對該殘疾人士的影響；
- 僱主的財政狀況與提供該項遷就的開支。

Determination of **unjustifiable hardship** involves consideration of:

- The reasonableness of any accommodation sought;
- The benefit or detriment likely to affect the person with a disability and other people;
- The effect on the person with a disability if accommodation could not be provided;
- The financial circumstances of the employer and expenditure required for providing accommodation.

見第五章：固有要求、合理遷就和不合情理的困難  
See Chapter 5: Inherent Requirement, Reasonable Accommodation and Unjustifiable Hardship



# 職場事宜 Workplace Issues

僱主於招聘/僱用期間歧視有殘疾的求職者/僱員，即屬違法。  
In recruitment and in employment, it is unlawful for an employer to discriminate a job applicant/employee with a disability on the ground of his/her disability.

見第二章：《殘疾歧視條例》在僱傭範疇的適用範圍  
See Chapter 2: Application of the DDO in Employment



我可問她是否有殘疾嗎？  
殘疾會影響工作嗎？  
...我不想惹麻煩啊！  
Can I ask her whether she has a disability?  
Does disability affect performance of work?  
... I don't want to get into any trouble!

歡迎你參加今次面試...  
Welcome to this job interview...

要告訴他嗎？  
To tell or... not to tell?

- 人們擔憂因為主動披露殘疾而失去獲聘機會的心情是可以理解的；
- 求職者有權不披露其殘疾情況；
- 然而，有時僱主確須要知道求職者的殘疾才可作出合理的遷就；
- 在缺乏相關資料下，則就算求職者有此需要，亦不能期望僱主能夠在面試時提供遷就。
- It is understandably a tough call whether to disclose a disability to the employer — people don't want to lose out on an employment opportunity;
- A person has the right to choose not to disclose his/her disability;
- But sometimes the employer will need to know about the disability in order to provide reasonable accommodation;
- Without such information, the employer cannot be expected to provide accommodation during interview even when there is an actual need.

見第六章：處理聘任事宜  
See Chapter 6: Managing Recruitment

他為甚麼找我呢？  
不知是否要對付我？  
我應否給他知道我的病況？  
What is he up to?  
Is he going to do something to me?  
Should I let him know more about my illness?



她因病沒有上班已一段時間了... 我是否應該了解一下她的病情？她會否因而覺得我騷擾她呢？

She's been off sick for quite a while... Should I try to find out more about her condition? Is she going to think that I'm harassing her?

《殘疾歧視條例》沒有禁止提出有關某人殘疾的詢問或要求有關資料。但健康/醫療資料屬個人私隱，僱主只應在以下的情況下適度索取相關資料：

- 需要確定有關人士能否執行工作的固有要求；
- 考慮如何在不構成不合情理的困難下為該僱員提供合理的遷就。

The DDO does not prohibit questions/information request about a person's disability. However, medical information is private and personal. It should be obtained on a need-to-know basis, always and only for the consideration of the following:

- Whether the person's disability makes him/her unable to perform the inherent requirements of the job;
- What would be the reasonable accommodation to assist the performance of those requirements without causing unjustifiable hardship.



她是我的首選！  
但她有殘疾  
... but she's got a disability...  
She's my best pick!

與招聘一樣，僱主須確保有關升職、調職和解僱的考慮不受僱員的殘疾影響。除非該僱員的殘疾是與有關工作的固有要求和提供遷就有關。

As in recruitment, employer should make sure that a person's disability does not affect consideration for promotion, transfer and dismissal, unless the disability in question is relevant to the inherent requirement of the job and provision of accommodation.

見第八章：管理升職、調職和解僱  
See Chapter 8: Managing Promotion, Transfer and Dismissal

- 當僱員因殘疾而不能上班，僱主須考慮提供合理的遷就(例如批核病假)；
- 僱員亦有責任就其身體狀況提供充份資料，協助僱主為提供遷就作出考慮。
- When an employee's disability keeps the person from coming to work, reasonable accommodation (e.g. granting of sick leave) should be considered;
- Employees have the responsibility to provide their employer with adequate information in order for provision of accommodation to be considered.

見第七章：管理與殘疾有關的缺勤問題  
See Chapter 7: Managing Disability Related Workplace Absence



## 何謂違反《殘疾歧視條例》的違法行為? What is unlawful under the DDO?

**直接歧視**是指在可比較的情況下，僱主基於某僱員的殘疾，給予他/她較差的待遇。這個定義有三個重要的元素：

- 待遇較差的原因(殘疾是否其原因或部份原因?)；
- 在相關情況下與類似對象的比較(職位相若的同事待遇又如何?)；
- 蒙受的損害(僱員有何損失?)。

**Direct Discrimination** means treating an employee with a disability less favourably on the ground of the person's disability in comparable circumstances. The three essential components are:

- Cause of less favourable treatment (Is disability the or part of the reason?);
- Comparator(s) in relevant circumstances (How are other colleagues in similar positions treated?);
- Detriment (What are the employee's losses?).

**間接歧視**是指：

- 對所有人施加相同的要求/條件；
- 殘疾人士能符合該項要求/條件的人數比例，遠較非殘疾人士為小；
- 該項要求/條件沒有客觀理據支持；
- 為此令殘疾人士蒙受不利。

**Indirect Discrimination** means:

- Imposing the same requirement/condition to everyone;
- The proportion of persons with disabilities who can comply is considerably smaller than those without;
- Such requirement/condition cannot be objectively justified;
- As a result, person(s) with disability(ies) suffer a detriment.

見第四章：《殘疾歧視條例》下的歧視  
See Chapter 4: Discrimination under the DDO

**使人受害的歧視**是指因為某人曾作出或有意作出殘疾歧視的投訴、採取法律行動、擔任證人或協助他人作出以上行為，因而給予該人較差的待遇。

**Victimisation** is treating a person less favourably because he/she has made or plans to make a disability discrimination complaint, takes legal action, acts as witness against disability discrimination or helps somebody else to do so.

見第四章：《殘疾歧視條例》下的歧視  
See Chapter 4: Discrimination under the DDO

**殘疾騷擾**是指基於某人的殘疾，對他/她作出不受歡迎的行徑，而一個合理的人預期被騷擾者會感到受冒犯、侮辱或威嚇。

**Disability Harassment** is an unwelcome conduct on account of a person's disability where a reasonable person, after considering everything, would have anticipated that the person being harassed would be offended, humiliated or intimidated.

**中傷**是指在公開活動中煽動對殘疾人士的仇恨、嚴重鄙視或強烈嘲諷。

**Vilification** refers to any activity in public that incites hatred towards, serious contempt for or severe ridicule of person(s) with disability(ies).

見第九章：殘疾騷擾和中傷  
See Chapter 9: Disability Harassment and Vilification

## 違法歧視誰有責?

Who is liable for discrimination?

每個員工，不論職位，都要為自己所作出的歧視和騷擾行為負上個人責任。

Employees, irrespective of their positions in the organisation, are personally liable for acts of discrimination and harassment committed by them.

除個人責任外，僱主要對僱員所作出的違法歧視和騷擾負上轉承責任。

Apart from personal liability, employers are vicariously liable for the unlawful discrimination and harassment done by their employees.

若僱主能證明已採取「合理可行的措施」防止工作間的歧視，便可豁免責任。

The defence to vicarious liability is to take "reasonably practicable steps" to prevent discrimination in the workplace.

見第十章：《殘疾歧視條例》下的法律責任與「合理可行的措施」  
See Chapter 10: Liabilities under the DDO and "Reasonably Practicable Steps"

## 合理可行的措施 Reasonably Practicable Steps

- ✓ 訂立平等機會政策；
- ✓ 為所有員工提供平等機會培訓；
- ✓ 訂立申訴程序處理歧視投訴；
- ✓ 委派職員處理歧視投訴。
- ✓ Equal Opportunities Policy;
- ✓ Equal Opportunities training for all staff;
- ✓ Grievance procedures for discrimination complaints;
- ✓ Designated personnel to handle discrimination complaints.

見第十一章：平等機會僱主  
See Chapter 11: Being an Equal Opportunities Employer



## 平機會能怎樣幫忙？ How can the EOC help?

### 提出投訴

投訴可以在由事發起12個月內以書面方式向平機會提出。平機會接獲投訴後，會就事件進行調查，並在適當時致力進行調解。如個案未能解決，投訴人可向平機會申請法律協助。投訴人亦可考慮向法律援助署申請法律援助或自行提出訴訟。

### Lodging a Complaint


A complaint should be lodged with the EOC within 12 months of the occurrence of the incident. The EOC would conduct an investigation and endeavour to settle the complaints by way of conciliation. If a case is not settled, the complainant can apply for legal assistance from the EOC. Alternatively, the complainant may apply for legal aid from the Legal Aid Department or institute own legal action.

見第十二章：平等機會委員會  
See Chapter 12: Equal Opportunities Commission

\*所有人物角色並無對任何殘疾、性別或種族有特別含意。  
\*All characters bear no implication to any particular disability, gender or race.

## 平等機會委員會

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