



平等機會委員會
EQUAL OPPORTUNITIES COMMISSION

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Good Management
Practice Series:

The Sex Discrimination
Ordinance

Recruitment Planning

Termination

A contract of employment can be terminated by employers as a result of redundancy or dismissal due to performance or conduct issues. Decisions to terminate employment should be the outcome of fair and consistent procedures, while the reasons need to be objective, based on merits and unrelated to the protected characteristics under the Sex Discrimination Ordinance (SDO), namely sex, marital status, pregnancy or breastfeeding.

Early retirement incentives and retirement schemes could be considered discriminatory under the SDO if the offers or standards are differentiated based on protected characteristics of the employees. For example, setting different retirement age for male and female employees or offering early retirement packages to married employees without valid and objective reasons may lead to discrimination claims. By contrast, providing consistent offers and standards to all employees would ensure that retirement policies are objective and non-discriminatory.

Fair dismissal or redundancy selection procedures:

Consistent Application – All employees are subject to the same objective criteria.

Diverse Panel – Involve a group of people from diverse backgrounds to make decisions.

Record Keeping – Keep written documentation of all decisions made.



What the law says

Under the SDO, it is unlawful for an employer to terminate employment, dismiss or make redundant an employee on the grounds of **sex, marital status, pregnancy or breastfeeding**. Direct discrimination in termination occurs when an employee is terminated, dismissed or made redundant on the basis of his or her protected characteristics. Some criteria used in termination, redundancy or dismissal may carry the risk of indirect discrimination. For example, if redundancies are based solely on absence record, this may indirectly discriminate pregnant employees as their attendance might be affected by medical appointments.

In situations where there are two or more reasons for the dismissal or redundancy, the action would still be considered unlawful and discriminatory if one of the factors is related to a person's **sex, marital status, pregnancy or breastfeeding**.

Examples: what do you think?

Dismissed after maternity leave

A female manager went on maternity leave after working for a manufacturing company for 12 years. She had good working relationships with her colleagues and also had no problems with the management during her service. However, she was dismissed from her job upon returning from maternity leave. While her boss explained that her dismissal was due to the economic downturn, she suspected that it was related to her pregnancy.

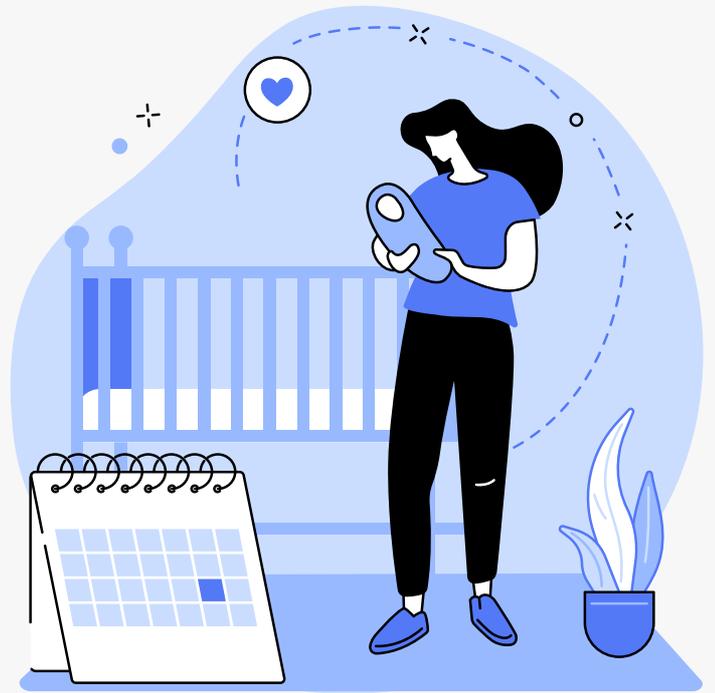
The SDO protects employees from discrimination during and after their pregnancy and maternity leave. If pregnancy is a reason for the dismissal, the act may be unlawful regardless of its timing (i.e. dismissed during or after the period of pregnancy and maternity leave).



Different retirement age

An airline had a policy which required female flight attendants to retire at the age of 40, whereas the retirement age for male flight attendants was 55. At the age of 45, a female flight attendant was asked to retire by the airline after five annual contract extensions. She brought proceedings against the airline under the SDO, alleging that the retirement policy was discriminatory on the ground of sex.

The Court ruled that the retirement policy was discriminatory based on the comparison that a male flight attendant employed during the same period was in a more beneficial position than the female flight attendant, with gender being the only reason to account for the difference.



Good practices



Employ objective, merit-based criteria for redundancies and dismissals and ensure that the reasons for termination are unrelated to protected characteristics.



Ensure that all procedures and decisions leading to termination of employment involve more than one person, and preferably from diverse backgrounds.



Provide training to persons making decisions on termination of employment to identify and refrain from discriminatory practices or actions.



Periodically review all retirement policies and schemes to ensure that the standards and options offered are not differentiated based on protected characteristics.