

# **Equality for Breastfeeding Women**

## **Guidance relating to the Provision of Goods, Facilities and Services, Education, Disposal or Management of Premises, Clubs, and the Government**



平等機會委員會  
EQUAL OPPORTUNITIES COMMISSION

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## 1. Introduction

- 1.1 The Equal Opportunities Commission (EOC) is Hong Kong's statutory body responsible for the implementation and enforcement of the anti-discrimination Ordinances, namely the Sex Discrimination Ordinance (Cap. 480) (SDO), the Disability Discrimination Ordinance (Cap. 487) (DDO), the Family Status Discrimination Ordinance (Cap. 527) (FSDO) and the Race Discrimination Ordinance (Cap. 602) (RDO).
- 1.2 The EOC works towards the elimination of discrimination on the grounds of sex, marital status, pregnancy, breastfeeding, disability and family status; the elimination of sexual harassment; the elimination of harassment on grounds of breastfeeding, as well as the elimination of harassment and vilification on the grounds of disability and race. The EOC also promotes equality of opportunities between men and women, between persons with and without a disability and irrespective of family status and race.
- 1.3 Amendments have been made by the Government to the four anti-discrimination Ordinances, following the EOC's Discrimination Law Review of the existing anti-discrimination Ordinances and recommendations for reform. The EOC welcomes the amendments as they improve the protection from discrimination and harassment in many respects.<sup>1</sup>

### Purpose and contents of the Guidance

- 1.4 This EOC Guidance is provided to assist relevant stakeholders to understand the amendments to the Sex Discrimination Ordinance (SDO), which prohibit discrimination and harassment against breastfeeding women. It is intended to provide practical guidance on both the legal effect of the new provisions, as well as good practices relevant stakeholders can take to promote equality for breastfeeding women in the particular sector.
- 1.5 The provisions prohibiting breastfeeding discrimination and harassment come into force on 19 June 2021.<sup>2</sup> The EOC has published the Guidance relating to the breastfeeding provisions, in order that key stakeholders can familiarise themselves with their rights and obligations, and where necessary make any changes to their policies or practices.

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<sup>1</sup> The amendments to the anti-discrimination Ordinances were made by the [Discrimination \(Miscellaneous Amendments\) Ordinance 2020](#)

<sup>2</sup> [The provisions regarding breastfeeding discrimination and victimisation were implemented by the Discrimination Legislation \(Miscellaneous Amendments\) Ordinance 2020](#), and the provisions regarding breastfeeding harassment were implemented by the [Sex Discrimination \(Amendment\) Ordinance 2021](#)

- 1.6 This Guidance has been produced for all the sectors affected besides the sector of employment: in other words, the Guidance applies to the provision of goods, facilities and services; education; the disposal or management of premises; clubs and the Government. Separate EOC Guidance has been produced relating to breastfeeding provisions in the employment and related sectors, as that is a sector particularly affected by the breastfeeding provisions. The Guidance relating to breastfeeding in employment and related sectors is available on the EOC website.<sup>3</sup>
- 1.7 In addition, the EOC has produced Guidance relating to all the other amendments to the anti-discrimination Ordinances, which came into force on 19 June 2020.<sup>4</sup> That Guidance also explains both the legal effect of the new provisions, as well as good practices that relevant stakeholders are recommended to take to promote equality and prevent discrimination.

### Application of the Guidance

- 1.8 This Guidance applies to all the sectors (apart from the employment and related sectors) to which the breastfeeding provisions apply under Part 4 of the SDO. That is, the Guidance applies to the sectors of the provision of goods, facilities and services; education; the disposal or management of premises; clubs and the Government.
- 1.9 Throughout the Guidance examples are provided to explain the meaning of concepts, such as direct and indirect breastfeeding discrimination, breastfeeding harassment, and victimisation. The examples are provided for illustrative purposes only. Readers should be mindful that each case bears its own uniqueness and should refrain from sole and direct application of any example to a particular situation.
- 1.10 Relevant stakeholders must comply with the obligations under the SDO, and are encouraged to follow the recommended good practices. In all cases, reference should be made to the provisions of the SDO for the exact terms of the law.
- 1.11 The Guidance aims to provide practical guidance but it is not a substitute for legal advice. Relevant stakeholders to which the new provisions apply should consult legal practitioners for appropriate advice on the requirements under the four anti-discrimination Ordinances and the possible legal implication(s) of particular issues or situations.
- 1.12 It should also be noted that other Guidance materials relating to the SDO (for example in relation to protections from pregnancy and maternity discrimination) and the FSDO

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<sup>3</sup> [Equality for Breastfeeding Women: Guidance for the Employment and related sectors, EOC](#)

<sup>4</sup> [Guidance on Amendments to the Anti-discrimination Ordinances, EOC](#)

where a mother cares for her child) may also be relevant, depending on the facts of a situation. The other Guidance materials are available on the EOC website.<sup>5</sup>

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<sup>5</sup> [The Code of Practice on Employment under the Sex Discrimination Ordinance; the Code of Practice on Employment under the Family Status Discrimination Ordinance; EOC Resource Centre for the Ordinances](#)

## 2. Benefits of breastfeeding and numbers of women breastfeeding

- 2.1 The diverse health benefits of breastfeeding for both the babies and their mothers are well documented globally. It is also relevant to note that, given more families in Hong Kong are aware of those benefits, there are growing numbers of women in Hong Kong who breastfeed their children after giving birth.
- 2.2 Breast milk promotes healthy development, and protects the infant against infectious and chronic diseases. Exclusive breastfeeding reduces infant mortality due to common childhood illnesses, such as diarrhoea or pneumonia, and helps for a quicker recovery during illness.<sup>6</sup>
- 2.3 A longer duration of breastfeeding also contributes to the health and well-being of mothers: it reduces the risk of ovarian and breast cancer and helps space pregnancies, given exclusive breastfeeding of babies under six months has a hormonal effect, which often induces a lack of menstruation.<sup>7</sup>
- 2.4 In order to maximise the health benefits of breastfeeding, the World Health Organization (WHO) recommends that women exclusively breastfeed their new born babies for the first six months of life; and that they continue to breastfeed with complementary solid foods up to two years of age or beyond.<sup>8</sup>
- 2.5 Given more women in Hong Kong are aware of the benefits of breastfeeding, and the implementation of a series of supportive measures by the Department of Health, the percentage of mothers breastfeeding their new born increased from 66% in 2004 to more recently 87.5% in 2018.<sup>9</sup> The figures from 2018 also indicate that 46.5% of women are breastfeeding at six months, and 26.1% are breastfeeding at 12 months.<sup>10</sup> This highlights that with increasing numbers of women breastfeeding after giving birth, it is of particular importance to promote equality, as well as prevent discrimination, for those women in any of the sectors where the breastfeeding provisions apply.
- 2.6 Further, many women do or wish to directly breastfeed their babies in public. According to a survey conducted by the Department of Health in 2013, almost 60% of mothers had directly breastfed in public. In addition, among mothers who had never breastfed in public, a half expressed their wish to do so.<sup>11</sup> This is relevant to the sectors to which this

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<sup>6</sup> [World Health Organization, Maternal, New born, Child and Adolescent Health](#)

<sup>7</sup> [World Health Organization, Infant and Young Child Feeding](#)

<sup>8</sup> Ibid

<sup>9</sup> [Employer's Guide to Establishing Breastfeeding Friendly Workplace, June 2015](#), Department of Health, Family Health Service, page 1

<sup>10</sup> [Breastfeeding Survey 2019, Department of Health, Table 1, page 3](#)

<sup>11</sup> [Guide to Establishing Breastfeeding Friendly Premises](#), Department of Health, June 2015

Guidance applies, given those sectors involve public spaces which breastfeeding women may use.



### 3. Meaning of breastfeeding and prohibited conduct

3.1 This section explains the meaning of breastfeeding for the purpose of the SDO, and the forms of prohibited conduct in the sectors to which the breastfeeding provisions are applicable.

#### (a) Meaning of breastfeeding for the purpose of the SDO

3.2 The SDO affords the protection from breastfeeding discrimination and harassment in a number of situations. These apply to:

- ▶ a woman who is engaging in the act of breastfeeding a child;
- ▶ a woman who is engaging in an act of expressing breast milk; and
- ▶ a woman who feeds a child with her breast milk, but is not doing so at the time the relevant act of discrimination is committed.<sup>12</sup>

3.3 The protection from discrimination and harassment against breastfeeding women would include various scenarios where a woman is breastfeeding or expressing milk for a child, even if the child may not be her biological child.<sup>13</sup>

3.4 The SDO also does not prescribe a time limit within which a woman is protected from breastfeeding discrimination and harassment.

3.5 Under the SDO, a woman is protected from breastfeeding discrimination and harassment, as long as an act of breastfeeding or expressing milk is at least one of the reasons for which the woman is treated less favourably, even if it is not the dominant or substantial reason.<sup>14</sup>

#### **Example: treatment for more than one reason**

A restaurant does not allow a breastfeeding woman to stay at the restaurant. There are two reasons for this: 1) the restaurant owner disapproves of women breastfeeding or expressing milk at the restaurant; and 2) does not think the restaurant has sufficient facilities for breastfeeding women. The fact that one of the reasons for the treatment was that the woman was breastfeeding would be sufficient to be the reason for the treatment for the purpose of constituting discrimination.

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<sup>12</sup> Section 8A(2) of the SDO

<sup>13</sup> It would cover, for example, situations where a woman is breastfeeding her baby by adoption, surrogacy procedure, or any other situation where a woman is breastfeeding a child.

<sup>14</sup> Section 4 of the SDO

## **(b) Prohibited conduct and exceptions relating to breastfeeding discrimination and harassment**

3.6 The SDO prohibits several types of conduct relating to breastfeeding: direct discrimination; indirect discrimination; harassment on grounds of breastfeeding; victimisation; discriminatory practices; as well as instructions and pressure to discriminate. The SDO also creates liability in relation to employers and principals and for aiding unlawful acts. Such unlawful conduct and exceptions to unlawful conduct are explained below.

### **(i) Direct discrimination**

3.7 Direct discrimination means treating a breastfeeding woman less favourably than another person (a woman not breastfeeding or a man) in comparable circumstances, because the woman is breastfeeding.

#### **Example: direct discrimination**

**Lucy is a student studying at a university in Hong Kong. She recently gave birth to a daughter and brings her baby to the university campus as she could not arrange care for her baby on that day. When Lucy starts breastfeeding her baby in one of the public spaces at the university, one of her lecturers sees her and says: “You shouldn’t breastfeed your baby at the university, this is not a baby care centre”. The lecturer then reports Lucy to the university management, claiming that by breastfeeding at the university, she is behaving inappropriately. The university issued a warning to Lucy after receiving the report, reminding her not to breastfeed her baby in public spaces at the university anymore. This is likely to be direct breastfeeding discrimination.**

### **(ii) Indirect discrimination**

3.8 Indirect discrimination consists of:

- ▶ applying a requirement or condition to all persons, irrespective of whether they are breastfeeding women or not;
- ▶ the proportion of breastfeeding women who can comply with it is considerably less than the proportion of non-breastfeeding persons who can comply with it;
- ▶ the requirement or condition is not justifiable; and
- ▶ the requirement or condition is to the detriment of the breastfeeding woman because she cannot comply with it.

#### **Example: indirect discrimination**

**A shopping centre in Hong Kong has a policy that it keeps its toilets and nearby baby care room locked and that anyone wishing to use those facilities must request the management to provide the key and then return it afterwards. The toilets and baby care room are also a long distance away from the management office where the key is kept. The reason the baby care room is kept locked is that the management is concerned that it will be vandalised or used for other inappropriate purposes if it was left open, however there is no evidence of such use previously. The baby care room can be used by anyone caring for young children, such as parents and domestic helpers wishing to change the diapers of babies, as well as breastfeeding women wishing to breastfeed or express milk. The requirement that the toilets and baby care room remain locked applies to everyone, however it is likely to have a particular detrimental effect on breastfeeding women, as baby care rooms should be easily accessible. The requirement therefore may be unlawful indirect breastfeeding discrimination.**

#### **(iii) Harassment**

3.9 There are two forms of unlawful harassment of breastfeeding women. This applies where a person harasses a woman on the ground that the woman is breastfeeding by:

- ▶ Unwelcome conduct towards the breastfeeding woman

When a person engages in unwelcome conduct, which a reasonable person, having regard to all the circumstances, would anticipate that the woman would be offended, humiliated or intimidated by that conduct.

- ▶ Creating a hostile or intimidating environment

A person, alone or with others, engages in conduct which creates a hostile or intimidating environment for the woman.<sup>15</sup>

3.10 Conduct includes making a statement to a woman or in her presence, whether the statement is made orally or in writing.<sup>16</sup>

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<sup>15</sup> Section 2A(1) of the SDO

<sup>16</sup> Section 2A(2) of the SDO

**Example: harassment**

**Agnes and her husband recently joined a golf club in Hong Kong. Agnes brings her six month old baby to the club and starts breastfeeding her baby in the restaurant area of the club. The security guard employed by the club sees her, takes a photo of her breastfeeding and tells her “You cannot expose your breasts in the club and I will have to report this to the club management”. This unwelcome conduct makes Agnes feel offended, humiliated and intimidated and is likely to be unlawful breastfeeding harassment of a club member by the club.**

**(iv) Victimisation**

3.11 Victimisation occurs where a person (the discriminator) treats another person (the person victimised) less favourably than other persons in comparable circumstances because the person victimised or a third person has done or intends to do, or is suspected to have done or intends to do, the following:

- ▶ bringing proceedings against the discriminator or any other person under the SDO;
- ▶ giving evidence or information in connection with proceedings brought by any person against the discriminator or any other person under the SDO;
- ▶ otherwise doing anything under or by reference to the SDO in relation to the discriminator or any other person; or
- ▶ alleging that the discriminator or any other person has committed an act which is unlawful under the SDO.

**Example: victimisation**

**Barbara is a member of a country club in Hong Kong. Barbara and her husband recently adopted a baby boy and bring their baby to the country club for a meal. When Barbara starts breastfeeding her baby at the country club, an employee tells her breastfeeding is not allowed at the club as other members may complain. Barbara makes a complaint of breastfeeding discrimination against the club for refusing to allow her to breastfeed. The club responds in a letter several weeks later without addressing the issue of discrimination, but instead stating that Barbara’s membership of the club is being terminated because of her unreasonable complaint. This is likely to be direct breastfeeding discrimination and unlawful victimisation.**

## **(v) Discriminatory practices**

3.12 The SDO also prohibits discriminatory practices relating to breastfeeding women. A discriminatory practice means the application of a requirement or condition which:

- ▶ results in an act of discrimination, that is, unlawful indirect breastfeeding discrimination in the areas of the provision of goods, facilities and services; education; the disposal or management of premises; clubs and the Government; or
- ▶ which would likely result in such an act of discrimination if the persons to whom it is applied were not all of the same sex.<sup>17</sup>

3.13 Proceedings relating to a breach of this provision can only be brought by the EOC.<sup>18</sup>

## **(vi) Instructions and pressure to discriminate**

3.14 It is also unlawful for a person to make instructions to discriminate, or pressure another person to discriminate.

3.15 It is unlawful for a person:

- ▶ who has authority over another person; or
- ▶ in accordance with whose wishes that other person is accustomed to act, to instruct or procure or attempt to procure that other person to do any unlawful act, including breastfeeding discrimination.<sup>19</sup>

3.16 It is also unlawful to induce, or attempt to induce a person to commit an unlawful act, including breastfeeding discrimination, by:

- ▶ providing or offering to provide the person with any benefit; or
- ▶ subjecting or threatening to subject the person to any detriment.<sup>20</sup>

## **(vii) Liability of employers and principals**

3.17 According to the SDO, an unlawful act done by a person in the course of his or her employment may make both that person and his or her employer liable. Employers are legally responsible for the actions of their employees, done in the course of their

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<sup>17</sup> Section 42(1) of the SDO

<sup>18</sup> Section 42(3) of the SDO

<sup>19</sup> See section 44 of the SDO

<sup>20</sup> See section 45 of the SDO

employment, whether or not they were done with the employer's knowledge or approval.<sup>21</sup>

- 3.18 Further, anything done by a person as agent for a principal with the authority (whether express or implied, and whether precedent or subsequent) of the principal shall be treated as done by the principal.<sup>22</sup>
- 3.19 This will apply to employers or principals in any of the sectors to which this Guidance applies. For example, employers providing services will be liable for the acts of employees, and owners of property will be liable for the acts of employees of property management companies in relation to the management of premises.
- 3.20 An employer will not be held liable for the actions of an employee, if the employer can prove that they took reasonably practicable steps to prevent the employee from doing the act or acts of discrimination.
- 3.21 Further, any acts done by a person as an agent for another person with the authority of that person (for example an employee of a property management company acting on behalf of a property owner), shall be treated as being done by both those persons.

#### **(viii) Aiding unlawful acts**

- 3.22 A person who knowingly aids another person to do an unlawful act under the SDO relating to breastfeeding, shall be treated for the purposes of the SDO as himself/herself doing the unlawful act.<sup>23</sup>
- 3.23 An employee or agent for whose act the employer or principal is liable for the purpose of vicarious liability, shall be deemed to aid the doing of the act by the employer or principal.<sup>24</sup>
- 3.24 An exception applies and a person will not be liable for aiding another to do unlawful acts where he/she:
- ▶ acts in reliance on a statement made to him by that other person that, by reason of any provision of the SDO, the act which he/she aids would not be unlawful; and
  - ▶ it is reasonable for him/her to rely on the statement.<sup>25</sup>

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<sup>21</sup> Section 46(1) of the SDO

<sup>22</sup> Section 46(2) of the SDO

<sup>23</sup> Section 47(1) of the SDO

<sup>24</sup> Section 47(2) of the SDO

<sup>25</sup> Section 47(3) of the SDO

3.25 A person who knowingly or recklessly makes such a statement, which in a material respect is false or misleading, commits an offence.<sup>26</sup>

**(ix) Special measures**

3.26 The breastfeeding provisions, similar to other protected characteristics where discrimination is prohibited, also allow for special measures to be provided in order to ensure that breastfeeding women have equal opportunities in different aspects of life, including the provision of services, facilities or goods; the disposal or management of premises; education and clubs.<sup>27</sup> Such special measures are lawful.

3.27 There are three categories of acts that are lawful in these circumstances:

- ▶ acts to ensure that breastfeeding women have equal opportunities with others;
- ▶ providing goods or access to services, facilities or opportunities to meet breastfeeding women's special needs relating to education; clubs or sport; or the provision of premises, goods, services or facilities; and
- ▶ providing breastfeeding women grants, benefits or programmes, whether directly or indirectly, to meet their special needs in relation to education, clubs or sport; or the provision of premises, goods, services or facilities.

3.28 Special measures should be reasonably intended to ensure that breastfeeding women have equal opportunities with other people. In considering whether a measure comes within the provisions of special measures, relevant factors include the following:

- ▶ Whether there is an existing inequality of resources and opportunities that needs to be redressed, or whether the beneficiary of the measure has special need that needs to be met;
- ▶ Whether it is rationally connected to the aim of redressing the inequality or meeting the special need; and
- ▶ Whether it is proportional to the aim of redressing the inequality or meeting the special need.<sup>28</sup>

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<sup>26</sup> Section 47(4) of the SDO

<sup>27</sup> See section 48 of the SDO

<sup>28</sup> See *EOC v Director of Education* [2001] 2 HKLRD 690

**Example: special measure**

**A social club in Hong Kong has a large proportion of female members, and many of them are women with families and young new born children. The club decides to improve its facilities by building a dedicated babycare room at the club where any female members can breastfeed or express milk. This would be a lawful special measure to provide equal opportunities for its female members.**



## **4. Equality for breastfeeding women in the provision of goods, facilities and services**

### **(a) Prohibited conduct in relation to breastfeeding discrimination, harassment and the provision of goods, facilities and services**

4.1 Under the SDO, breastfeeding discrimination is unlawful in relation to the provision of goods, facilities and services.

4.2 It is unlawful for any person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public to discriminate against a woman on the ground that she is breastfeeding, where the woman seeks to obtain or use those goods, facilities or services by:

- ▶ refusing or deliberately omitting to provide her with any of them; or
- ▶ refusing or deliberately omitting to provide her with goods, facilities or services of the like quality, in the like manner and on the like terms as are normal in the case in relation to male members of the public.<sup>29</sup>

4.3 The following are examples of such facilities and services which are subject to requirements not to discriminate on the ground of breastfeeding:

- ▶ access to and use of any place, which members of the public or a section of the public are permitted to enter;
- ▶ accommodation in a hotel, guesthouse or other similar establishment;
- ▶ facilities by way of banking or insurance or for grants, loans, credit or finance;
- ▶ facilities for education;
- ▶ facilities for entertainment, recreation or refreshment;
- ▶ facilities for transport or travel;
- ▶ the services of any profession or trade; and
- ▶ the services of any department of the Government, or any undertaking by or of the Government.<sup>30</sup>

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<sup>29</sup> Section 28(1) of the SDO

<sup>30</sup> Section 28(2) of the SDO

4.4 Below are some examples of common situations in which breastfeeding discrimination may arise in relation to the provision of goods, facilities or services.

**Example: direct discrimination against a service user of a shopping centre**

**Tze-wei goes to her local shopping centre as she needs to buy some clothes. Her newborn baby is at home with her husband. While she is at the shopping centre she sits in a communal area as she wants to express milk for her baby. A security guard who works for the company that owns and manages the shopping centre comes over to her and tells her it is not appropriate to express milk there and asks her to stop. This is likely to be direct discrimination by the company in providing the facilities and services relating to shopping, as a woman is entitled to breastfeed or express milk in a public place.**

**Example: direct discrimination against a service user of public transport**

**Sarah takes her baby daughter on a public transportation company train line. At one of the stations Sarah starts to breastfeed her daughter in one of the public areas. An employee sees Sarah breastfeeding and tells her there is a baby care room at the station and she must use that rather than breastfeeding in the public area of the station, and as Sarah refuses, she is told to leave the station. This is likely to be direct breastfeeding discrimination, as even if there is a baby care facility and many women may prefer to use it, a breastfeeding woman is not obligated to use it. A breastfeeding woman is entitled to choose to breastfeed in public, rather than a baby care facility.**

4.5 It is also unlawful for a person to harass a woman on grounds of breastfeeding:

- ▶ in the course of offering to provide or providing goods, facilities or services to that woman;<sup>31</sup> or
- ▶ in the course of seeking to be provided with goods, facilities or services by her, or being provided with goods, facilities or services by her.<sup>32</sup>

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<sup>31</sup> Section 40(1) of the SDO

<sup>32</sup> Section 40(1A) of the SDO

#### **Example: breastfeeding harassment of a hotel guest**

Cindy is staying at a hotel with her baby. She decides to breastfeed her baby in the foyer of the hotel before she goes out with the baby. One of the reception staff watches Cindy breastfeed, gives Cindy critical looks and then tells her “You should feel shameful to breastfeed in public when you are staying in our high-class hotel”. Such conduct is likely to be unwelcome conduct which would be likely to offend, humiliate or intimidate Cindy and therefore is likely to be unlawful breastfeeding harassment by the employee as a service provider. The hotel is also likely to be liable for the conduct of the employee unless it took reasonably practicable steps to prevent the conduct.

#### **(b) Good practice in relation to providing goods, facilities and services**

- 4.6 Stakeholders who provide goods, facilities or services likely used by breastfeeding women should consider what policies, building facilities or other measures may be appropriate to promote equality and prevent discrimination and harassment against breastfeeding women. Sectors more likely to be affected by the breastfeeding provisions include shopping malls, restaurants, cafes, leisure facilities, and public transport systems.
- 4.7 As a good practice, an organisation which provides facilities or services used by breastfeeding women may wish to take steps to better support breastfeeding women in a number of ways.

#### **(i) Developing policies which support breastfeeding**

- 4.8 It is recommended that an organisation develop written policies to support breastfeeding, that all staff members are made aware of such policies, that all relevant staff members understand what may constitute breastfeeding discrimination or harassment, and that customers using the facilities or services are made aware of those policies so they can fully benefit from them.

#### **Example: good practice in the provision of services or facilities**

The Department of Health has suggested the following steps:

- “Step 1: develop a written organisation policy on “Breastfeeding Friendly Premises”, which will enhance communication among staff and customers, and align practices;

- **Step 2: Identify areas with more privacy in the premises for mothers who wish to breastfeed in private and make those areas known to all staff;**
- **Step 3: Staff orientation is the key to successful implementation of breastfeeding friendly measures. Communicate to each member of the staff about the organisation’s policy and practices of breastfeeding friendly premises. Make sure the staff are familiarised with the policy, know of the areas with more privacy, and confident with managing the common scenarios; and**
- **Step 4: Publicising your breastfeeding friendly premises will enable breastfeeding mothers to find and use it when needed. Also, other customers will be aware that mothers are welcome to breastfeed anywhere at the premises. You may publicise by different means, eg announcing it at your organisation’s website or social media, and/or posting a welcome signage (“You’re welcome to breastfeed”) at eye-catching areas at the entrance and within the premises.”<sup>33</sup>**

#### **Example: breastfeeding policy**

The Department of Health has published a sample policy on “Breastfeeding Friendly Premises” as part of its guidance. It provides:

**“Our Organisation (or Company) acknowledges that breastfeeding is the natural way to feed babies and young children. We welcome and support mothers to breastfeed in public areas of our premises.**

**This policy aims to support mothers to breastfeed in public. All staff should be informed of this policy to ensure they are aware of it.**

**All staff will take the following actions to support the policy:**

- (1) Respect the freedom of breastfeeding mothers in choosing where to breastfeed: the presence of a breastfeeding room does not mean that she must choose to use the room;**
- (2) Do not disturb a breastfeeding mother, ask her to cover up or move to another area unless there is a safety concern or blockage of exit/passage way;**
- (3) Offer an appropriate location (eg seat away from the main traffic, a secluded corner, a breastfeeding room, a nearby community baby care facility) if a mother wishes to have more privacy to breastfeed, as far as practicable. Toilets or restrooms are not appropriate places for feeding babies and should not be offered; and**

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<sup>33</sup> “Guide to Establishing Breastfeeding Friendly Premises”, Department of Health, June 2015, page 5, <https://www.fhs.gov.hk/english/breastfeeding/30037.pdf>

**(4) Support breastfeeding mothers in need, eg explain to other clients about the breastfeeding friendly policy and the feeding needs of babies.”<sup>34</sup>**

**(ii) Installing baby care facilities**

- 4.9 The Government recommends that in commercial buildings baby care and lactation rooms should be provided for those caring for babies and for breastfeeding women. The Buildings Department has produced specific guidance relating to the provision of such baby care and lactation rooms in commercial buildings.<sup>35</sup> The guidance was produced in collaboration with the Food and Health Bureau, Department of Health, Government Property Agency, Architectural Services Department and Housing Department.
- 4.10 The guidance provides recommendations regarding location, room size and layout, general design requirements, as well as the operation and maintenance of those rooms. It recommends that the number of baby care rooms to be provided should be based on the scale of the building, the need of occupiers and visitors, and that at least one is provided in each building.
- 4.11 Although this guidance is not legally binding, it may be evidence as to whether or not in a particular situation there is breastfeeding discrimination.
- 4.12 As a result, stakeholders which provide services or facilities used by breastfeeding women should as a good practice consider whether it is appropriate to install any baby care and lactation rooms in their premises, subject to there being sufficient space and resources, the scale of the building and the need of occupiers and visitors. It is recommended that relevant stakeholders review the Buildings Department Guidance before making any decisions about installing such facilities.
- 4.13 As stated in the Department of Health Guidance sample breastfeeding policy referred to above, for hygienic reasons, using toilets will not be appropriate facilities for breastfeeding and expressing milk. It should further be noted that as stated in that Department of Health Guidance, although establishing baby care and lactation rooms is a good practice, breastfeeding women should not be required to use those facilities if they do not wish to do so.

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<sup>34</sup> Ibid page 6

<sup>35</sup> Buildings Department, [Practice Note for Authorised Persons, Registered Structural Engineers and Registered Geotechnical Engineers, Provision of Baby care Rooms and Lactation Rooms in Commercial Buildings, ADV-32](#), revised November 2018

**Example: establishing a baby care room in a shopping centre as good practice**

The management of a small shopping centre notices that breastfeeding women often use their facilities, and that several have used the toilets to express milk, which is not hygienic. The shopping centre decides to install a baby care room for breastfeeding mothers and mothers with young children to ensure they have a private and hygienic place to breastfeed, express milk or care for their young children. The shopping centre follows the Practice Note issued by the Buildings Department in terms of the location, layout, and design of the baby care room.<sup>36</sup>

**Policies relating to transport and flights on airplanes**

- 4.14 Relevant stakeholders should be aware that there are particular policies and good practices that have been developed in relation to the airline industry to enable breastfeeding mothers to carry breast milk onto flights.
- 4.15 For safety reasons there is a general prohibition on taking more than 100ml of liquids in hand luggage on flights. For all airlines registered in Hong Kong and flights from Hong Kong, there is an exception that breastfeeding women can take more than 100ml of breast milk on board flights, provided that the breast milk is presented for inspection at the security screening checkpoint. There is no requirement that the baby is accompanying the breastfeeding woman.<sup>37</sup>

**Example: breast milk allowed in hand luggage of breastfeeding mother**

Jennifer travels from Hong Kong to London by plane with her newborn baby girl. As she is breastfeeding, she presents a bottle of 500ml of breast milk at the security screening checkpoint of Hong Kong airport. The security officer allows her to board the plane with the breast milk so Jennifer can feed her baby during the flight.

<sup>36</sup> Ibid, see Buildings Department, [Practice Note for Authorised Persons, Registered Structural Engineers and Registered Geotechnical Engineers, Provision of Baby care Rooms and Lactation Rooms in Commercial Buildings, ADV-32](#), revised November 2018

<sup>37</sup> [Civil Aviation Department Hong Kong, Frequently Asked Questions](#), Questions 84 and 85

## 5. Equality for breastfeeding women in the education sector

### (a) Prohibited conduct in relation to breastfeeding discrimination in the education sector

5.1 Breastfeeding discrimination is unlawful in relation to educational establishments, such as universities and vocational training colleges or institutes.<sup>38</sup>

5.2 In relation to breastfeeding discrimination, it is unlawful for an educational establishment to discriminate against a breastfeeding woman:

- ▶ in the terms on which it offers to admit her to the establishment as a student;
- ▶ by refusing or deliberately omitting to accept an application for her admission to the establishment as a student;
- ▶ where she is a student at the establishment:
  - in the way it affords her access to any benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them; or
  - by excluding her from the establishment or subjecting her to any other detriment.<sup>39</sup>

5.3 Breastfeeding harassment is also unlawful in educational establishments in a number of ways. It is unlawful for:

- ▶ a person who is, or is a member of, the responsible body for an educational establishment to harass a woman on grounds of breastfeeding, who is seeking to be, or who is, a student of the establishment.
- ▶ a person who is a member of the staff of an educational establishment to harass a woman on grounds of breastfeeding, who is seeking to be, or who is, a student of the establishment.
- ▶ a person who is a student of an educational establishment to harass a woman on grounds of breastfeeding, who is seeking to be, or who is, a student of the establishment.
- ▶ a person who is seeking to be, or who is, a student of an educational establishment to harass a woman on grounds she is breastfeeding:

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<sup>38</sup> See section 2 and Column 1 of Schedule 1 of the SDO which provides a full list of educational establishments, which must comply with the provisions of the SDO, including relating to breastfeeding.

<sup>39</sup> Section 25 of the SDO

- (i) who is, or is a member of, the responsible body for; or
- (ii) who is a member of the staff of,  
the establishment.<sup>40</sup>

**Example: breastfeeding harassment of student at university**

**Emily is studying in a university in Hong Kong. She recently gave birth to her baby boy and decides to bring her baby to university one day as her partner cannot care for him that day. A fellow student from her course sees her breastfeeding in a public area of the campus and takes several photos of her breastfeeding and tells her “If you breastfeed in public, the public can take photos of you.” This unwelcome conduct offends, humiliates and intimidates Emily, and therefore is likely to be unlawful breastfeeding harassment of a student by a fellow student.**

**(b) Good practice in relation to the education sector**

5.4 It is recommended that educational establishments introduce good practice measures to promote equality and prevent discrimination and harassment against breastfeeding women who are prospective or existing students of those establishments. Some possible good practice measures may include:

- ▶ having a breastfeeding support policy for prospective and existing breastfeeding students;
- ▶ having policies which explain what is unlawful breastfeeding discrimination or harassment;
- ▶ ensuring that all relevant staff members are aware of and implement the policy, for example allowing students sufficient time to breastfeed or express milk;
- ▶ ensuring there are sufficient and appropriate baby care and lactation rooms for breastfeeding women to use at the educational premises; and
- ▶ promoting the baby care support policy to all stakeholders at the educational establishment so that everyone is aware of the support available.

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<sup>40</sup> Section 39 of the SDO.



**Example: good practice in enhancing the facilities in baby care and lactation rooms**

A university in Hong Kong reviews its baby care and lactation room facilities on campus based on the Buildings Department's Practice Note on the Provision of Baby Care Rooms and Lactation Rooms in Commercial Buildings. It states that lactation rooms should have:

- an electric outlet (for breast milk expression equipment);
- small side table (for placing nursing mother's belongings or breast milk expression equipment); and
- comfortable chair/ sofa.<sup>41</sup>

The lactation rooms of the campus currently do not have side tables or chairs, so the university decides to install them in every baby care room to better support any prospective and existing female breastfeeding students, as well as female breastfeeding employees.

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<sup>41</sup> Buildings Department, [Practice Note for Authorised Persons, Registered Structural Engineers and Registered Geotechnical Engineers, Provision of Baby Care Rooms and Lactation Rooms in Commercial Buildings, ADV-32](#), revised November 2018, page 4

## **6. Equality for breastfeeding women in the disposal or management of premises**

### **(a) Prohibited conduct in relation to breastfeeding discrimination and harassment in the disposal or management of premises**

6.1 Breastfeeding discrimination is unlawful in relation to disposal or management of premises, and it is unlawful in several ways.

6.2 It is unlawful for a person, in relation to premises in Hong Kong of which they have power to dispose (including the power to sell, rent, let and sub-let), to discriminate against a breastfeeding woman:

- ▶ in the terms on which he offers her those premises;
- ▶ by refusing her application for those premises; or
- ▶ in his treatment of her in relation to any list of persons in need of premises of that description.<sup>42</sup>

6.3 An exception will apply to the above situation where a person owns an estate or interest in the premises and wholly occupies them, unless the person uses an estate agent for the purposes of disposal of the premises, or publishes an advertisement in connection with the disposal of premises.<sup>43</sup>

6.4 It is also unlawful for a person, in relation to premises managed by him, to discriminate against a breastfeeding woman occupying the premises—

- ▶ in the way he affords her access to any benefits or facilities, or by refusing or deliberately omitting to afford her access to them; or
- ▶ by evicting her, or subjecting her to any other detriment.<sup>44</sup>

6.5 In relation to a tenancy, it is also unlawful for a landlord or other person to discriminate against a breastfeeding woman, by withholding the licence or consent for disposal of the premises from her, where the licence or consent of the landlord or other person is required for disposal (for example assignment of the tenancy or sub-letting).<sup>45</sup>

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<sup>42</sup> Section 29(1) of the SDO

<sup>43</sup> Section 29(3) of the SDO

<sup>44</sup> Section 29(2) of the SDO

<sup>45</sup> Section 30 of the SDO

6.6 The above prohibitions on breastfeeding discrimination in relation to premises (under section 29 and 30 of the SDO), are subject to an exception relating to small premises. Where:

- ▶ the owner or a near relative (the occupier) resides at the premises;
- ▶ the accommodation is shared with other persons residing at the premises; and
- ▶ the premises are small premises as defined in the SDO,

there will be no discrimination.<sup>46</sup>

6.7 Small premises are defined as:

- ▶ residential accommodation where, in addition to the accommodation occupied by the relevant occupier, there is not accommodation for more than two households; or
- ▶ in the case of situations not within the above, in addition to the accommodation occupied by the relevant occupier and any members of their household, there is not accommodation for more than six persons.<sup>47</sup>

6.8 Breastfeeding harassment in relation to premises is unlawful in three situations. It is unlawful in relation to premises for:

- ▶ a person in relation to premises which he/she has the power to dispose, harassing a woman on grounds of breastfeeding, in the course of offering to provide, or providing those premises to her;<sup>48</sup>
- ▶ a person who manages premises, harassing a woman on grounds of breastfeeding, occupying the premises;<sup>49</sup> or
- ▶ in relation to a tenancy, a landlord or other person harassing a woman on grounds of breastfeeding, seeking the license or consent for disposal of the premises to her, where the license or consent of the landlord or any other person is required for the disposal to a person of premises.<sup>50</sup>

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<sup>46</sup> Section 31 of the SDO

<sup>47</sup> Section 31(2) of the SDO

<sup>48</sup> Section 40(2) of the SDO

<sup>49</sup> Section 40(3) of the SDO

<sup>50</sup> Section 40(4) of the SDO

**Example: breastfeeding harassment of a tenant**

Gary rents out a flat to Mei-ling who has a new born baby. After she moves in, Gary who also owns and resides in the flat next to the rented flat, sees Mei-ling breastfeed her baby in the common areas of the building on several occasions. Each time, Gary makes comments that “it is indecent that you breastfeeds in public and exposes your breasts”. This conduct makes Mei-ling feel humiliated and intimidated and is likely to be unlawful breastfeeding harassment of a tenant by a landlord.

**(b) Good practice in relation to the disposal or management of premises**

6.9 Stakeholders who manage and dispose of premises, such as landlords and estate agents acting on their behalf, should consider what good practices to put in place to promote equality and prevent discrimination and harassment against breastfeeding women seeking to occupy or occupying premises.

**Example: review by estate agents of rental policies**

Estate agents should review their policies and practices regarding rental of properties to breastfeeding women and women with young children, to ensure that the latter are not discriminated against on the ground of breastfeeding or family status (having children) in being denied rental accommodation. If the review determines that there may be any less favourable treatment of breastfeeding women or women with young children on the ground of those statuses (for example by being denied rental accommodation), the policies and practices should be reformed.

## 7. Equality for breastfeeding women in clubs

### (a) Prohibited conduct in relation to breastfeeding discrimination and harassment by clubs

7.1 Breastfeeding discrimination in clubs is unlawful in two respects.

7.2 In relation to prospective members, it is unlawful for a club, committee of management of a club or a member of the committee of management of a club to discriminate against a prospective female member who is breastfeeding:

- ▶ by refusing or failing to accept her application for membership; or
- ▶ in the terms or conditions on which the club is prepared to admit her to membership.<sup>51</sup>

7.3 Secondly, in relation to existing members, it is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a breastfeeding woman who is a member of the club:

- ▶ in the terms or conditions of membership that are afforded to her;
- ▶ by refusing or failing to accept her application for a particular class or type of membership;
- ▶ by denying her access, or limiting her access, to any benefit, service or facility provided by the club;
- ▶ by depriving her of membership or varying the terms of membership; or
- ▶ by subjecting her to any other detriment.<sup>52</sup>

#### **Example: direct breastfeeding discrimination**

**A husband and wife apply to become members of a country club in Hong Kong. When they apply at the club they bring their new born baby with them. The manager of the club asks whether the wife is breastfeeding her baby. When the wife says she is breastfeeding, the manager states that as the club has received complaints before about members breastfeeding at the club, she will only be able to join the club if she does not breastfeed her baby there. This is likely to be direct breastfeeding discrimination.**

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<sup>51</sup> Section 37(1) of the SDO

<sup>52</sup> Section 37(2) of the SDO

7.4 It is also unlawful for a club, the committee of management of a club, or a member of the committee of management of a club, to harass a woman on grounds of breastfeeding, who is or has applied to be a member of the club.<sup>53</sup>

**(b) Good practice in relation to clubs**

7.5 The management of clubs should consider what good practices to put in place to promote equality and prevent discrimination and harassment against breastfeeding women who are prospective or existing members. This could for example consist of:

- ▶ introducing policies relating to supporting breastfeeding women who are prospective or existing members;
- ▶ having policies which explain to management and staff of clubs what is unlawful breastfeeding discrimination or harassment; or
- ▶ considering building a baby care room for breastfeeding women, subject to availability of space and resources.

**Example: good practice in a sporting club**

**A sporting club in Hong Kong regularly has members with newborn children, and sometimes they wish to breastfeed or express milk for their children at the club. The club decides to promote that it fully supports breastfeeding members, notifying them of an upgrade in facilities of their baby care and lactation rooms in the regular club newsletter, and putting up signage at the entrance of the club saying the club fully supports breastfeeding members.**

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<sup>53</sup> Section 39A of the SDO.

## **8. Equality for breastfeeding women and the Government sector**

### **(a) Prohibited conduct in relation breastfeeding discrimination in the Government sector**

8.1 It is unlawful for the Government to discriminate against a breastfeeding woman in the performance of its functions or exercise of its powers.<sup>54</sup>

8.2 The Government is also required to comply with the other relevant provisions of the SDO concerning breastfeeding as discussed previously in this Guidance, where its work engages those provisions. For example, where the Government is providing goods, facilities or services, or is providing education, it will be subject to requirements to not discriminate any woman on the ground of breastfeeding.<sup>55</sup>

### **(b) Good practice in relation to the Government sector**

8.3 The Government should consider what good practices to put in place to promote equality and prevent discrimination against breastfeeding women in relation to any area where the Government must comply with the relevant provisions. This includes in areas where the Government is performing its functions or exercising its powers; and when it is providing services or facilities.

8.4 This could include, for example:

- ▶ training frontline staff members who have regular contact with breastfeeding women (for example in public hospitals) of the protections from breastfeeding discrimination;
- ▶ providing adequate numbers of baby care and lactation rooms in Government buildings with appropriate facilities; and
- ▶ allowing breastfeeding women to breastfeed when the Government is exercising its functions to incarcerate women in prison.

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<sup>54</sup> Section 38(1) of the SDO

<sup>55</sup> See for example, section 28 and section 25 of the SDO

**Example: information on baby care facilities in Government premises**

The Department of Health has published a list of all the baby care facilities in Government premises with information on the numbers of facilities and details of their location and other relevant information.<sup>56</sup>

**Example: allowing female prisoners to have their newborn child with them in prison**

Where a female prisoner in Hong Kong has a newborn child, the Prison Rules allow for the child to be admitted and stay at the prison with the mother to allow the woman to breastfeed her child. Any child so admitted shall not be taken from its mother until the Medical Officer certifies that it is in a fit condition to be removed.<sup>57</sup>

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<sup>56</sup> [List of Baby care Facilities in Government Premises](#) (as at 30 June 2020)

<sup>57</sup> Rule 21(1) of the Prison Rules, <https://www.elegislation.gov.hk/hk/cap234A>



## 9. Making a complaint and the role of the EOC

- 9.1 Where any woman believes that she has been discriminated against or harassed on the ground of breastfeeding in the provision of goods, facilities and services; education; disposal and management of premises; clubs; or by the Government, they can lodge a complaint with the relevant person in the particular sector.
- 9.2 The woman may also lodge a complaint in writing with the EOC within 12 months from the time of the incident. On receiving the complaint, the EOC will investigate into the matter and attempt conciliation. If the case cannot be resolved through conciliation, the complainant can apply for legal assistance from the EOC. The complainant can also consider applying for legal aid from the Legal Aid Department or use her own resources to initiate legal proceedings before the District Court of his/her own accord within 24 months from the time of the incident.
- 9.3 For further information relating to making a complaint to the EOC, please see below.

### How to contact the EOC and make a complaint:

Anyone who feels that he/she has been discriminated against, harassed or vilified as specified in the four anti-discrimination Ordinances may lodge a complaint **in writing** to the EOC and submit the complaint to the EOC through one of the following channels:



Letter by Mail



[Online form on the EOC website](#)



Fax



In person at the EOC office



Telephone (for enquiries only)



SMS service (For enquiries by people with hearing impairment/speech difficulties)

Enquiry related to anti-discrimination ordinances: [On-line Enquiry Form](#)

Complaint related to anti-discrimination ordinances: [On-line Complaint Form](#)

Enquiry and complaint related to EOC's services: [On-line Form](#)

## Contact the EOC

Tel: (852) 2511 8211 (for general enquiries only)

Fax: (852) 2511 8142

Address: 16/F, 41 Heung Yip Road, Wong Chuk Hang, Hong Kong.

Email: [eoc@eoc.org.hk](mailto:eoc@eoc.org.hk) (for general enquiries only)

SMS service: 6972566616538 (For enquiries by people with hearing impairment/speech difficulties)

(For enquiries and complaints about discrimination under the anti-discrimination Ordinances, please make use of the above online forms.)

## 10. Further Resources

“Guide to establishing breastfeeding friendly premises”, Department of Health, June 2015:

<https://www.fhs.gov.hk/english/breastfeeding/30037.pdf>

Buildings Department, Provision of Babycare Rooms and Lactation Rooms in Commercial Buildings, ADV-32, revised November 2018:

<https://www.bd.gov.hk/doc/en/resources/codes-and-references/practice-notes-and-circular-letters/pnap/ADV/ADV032.pdf>