

Let's Build a Breastfeeding-friendly Workplace



Mother's time
Will return shortly



平等機會委員會
EQUAL OPPORTUNITIES COMMISSION

Lucy's Story

Lucy works as a clerk for a small company with less than 10 employees. She returns to work after giving birth and finishing her maternity leave. Taking the advice of her doctor to breastfeed her baby, Lucy requests to her employer to express milk during her lunch break in a meeting room at the office. Other than being used for meeting clients during office hours occasionally, the room is unused most of the time. The employer, however, refuses Lucy's request, saying that she will make the room messy and that the room can only be used for meetings and no other purposes. This is despite the fact that Lucy has seen other colleagues having lunch in the room. Since Lucy cannot find a room for expressing milk at her workplace, she decides to give up breastfeeding her baby.

Questions

- Are women protected from breastfeeding discrimination and harassment when they are expressing milk at work?
- Is Lucy's employer discriminating against her in refusing to let her use the meeting room for expressing milk?

Starting from 19 June 2021, all women in Hong Kong are protected from breastfeeding discrimination and harassment under the Sex Discrimination Ordinance (SDO) in various sectors, including employment and related sectors. It is unlawful for an employer to treat a female employee less favourably because she is breastfeeding, or to harass a female employee because she is breastfeeding, in specified situations under the law.

Definition of breastfeeding

Under the SDO, the act of breastfeeding is defined as:

- A woman who is engaging in the act of breastfeeding a child, whether the child is her biological child or not.
- A woman who is engaging in the act of expressing breast milk.
- 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.



Who is protected?

All employees, including prospective and existing employees, as well as foreign domestic helpers, are protected from breastfeeding discrimination and harassment under the law. In addition, the law protects:

- Contractors and sub-contractors
- Commission agents
- Partners in partnerships (where a firm consists of not less than six partners)
- Barristers, pupils, and tenants in any barristers' chambers
- Service users of employment agencies
- Specified persons working in common workplaces in relation to breastfeeding harassment



What is breastfeeding discrimination, harassment and victimisation?

Breastfeeding discrimination, harassment and victimisation in the workplace are distinct forms of conduct.

Direct discrimination

This means treating a breastfeeding employee less favourably than another employee (a female employee not breastfeeding or a male) in comparable circumstances, because the employee is breastfeeding.

Example:

The experience of Lucy mentioned above is direct discrimination on the ground of breastfeeding. This is because the employer allows other employees to use the meeting room for other purposes, but does not allow Lucy to use it for expressing milk, and as a result treats her less favourably than other persons in comparable circumstances.



Indirect discrimination

This means applying a requirement or condition to all employees, irrespective of whether they are breastfeeding or not, but:

- The proportion of breastfeeding employees who can comply with it is considerably less than the proportion of non-breastfeeding employees who can comply with it;
- The requirement or condition is not justifiable; and
- The requirement or condition is to the detriment of the breastfeeding employee(s) because she (they) cannot comply with it.

Example:

Nancy works for a packaging company five days a week from 9am to 6pm with a one-hour lunch break. During work each day, she takes two 20-minute breaks – one in the morning and one in the afternoon – to express milk for her six-month-old baby. Recently the company imposed a policy requiring all employees to work at least eight hours per day, or they will lose their performance related annual bonus. This means that Nancy cannot take lactation breaks, or she will have to work overtime to make up for the time taken for those breaks, otherwise she will lose her bonus. The company's policy, which will have a detrimental impact on Nancy and other breastfeeding employees, is likely to be unlawful indirect breastfeeding discrimination, unless the company can justify the requirement.



Breastfeeding harassment

There are two forms of 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.

Conduct includes making a statement to a woman or in her presence, whether the statement is made orally or in writing.



Example:

A technology company in Hong Kong decides that it is going to install a nursing room in its office for breastfeeding female employees in order to ensure it has better family-friendly facilities for its staff. The company announces the plan in a staff meeting. At the meeting several male staff members make jokes at the back of the room that they should call the room “Cow Milking Room” for all the “cows” at the office. A breastfeeding female employee overhears the comments and feels very intimidated and shocked by them. This is likely to be unlawful harassment of the breastfeeding female employee by creating a hostile environment.



Victimisation

This means treating an employee (the victimised person) less favourably than other employees in comparable circumstances because the employee concerned has done or intends to do, or is suspected to have done or intend to:

- Allege that the employer (the discriminator) or any other person has committed breastfeeding discrimination or harassment under the SDO;
- Bring proceedings against the discriminator or any other person for breastfeeding discrimination or harassment under the SDO;
- Give evidence or information in connection with proceedings brought by another employee or any person against the discriminator or any other person for breastfeeding discrimination or harassment under the SDO; or
- Otherwise do anything under or by reference to the provisions on breastfeeding discrimination or harassment under the SDO in relation to the discriminator or any other person.



Example:

Barbara is employed as an accountant for a retail company in Hong Kong. When she returns to work after maternity leave, she requests to have two 20-minute breaks during the work day to express milk for her baby. The supervisor refuses her request, saying that “breastfeeding women should work the same hours as everyone else or they should quit work and stay at home”. Barbara considers this to be direct or indirect breastfeeding discrimination and makes a complaint against the supervisor to the employer and the Equal Opportunities Commission. After she has filed the complaint, she is immediately fired because she made the complaint. This is likely to be unlawful victimisation.



Acts of discrimination and harassment

Situations where breastfeeding discrimination or harassment in employment may arise with prospective or existing employees are:

- Not being hired for a job or given less favourable terms in the offer.
- Bypassed for a promotion or training opportunities.
- Subjected to demotion or unfavourable transfer.
- Being denied appropriate facilities to breastfeed or express milk.
- Being harassed in relation to expressing milk or breastfeeding.
- Being denied requests to change working conditions, such as flexible working or part-time work.
- Given less pay rise or bonus than other employees, or even subjected to reduction in salary.
- Being denied a temporary alternative role even if there is a health risk in the existing role.
- Being dismissed or subjected to any other detriment.

Liability of employers and principals:

Employers are legally responsible for the discriminatory acts of their employees, done in the course of their employment, whether or not they were done with the employer's knowledge or approval. An employer will be held liable for the discriminatory acts by an employee, unless the employer can prove that he/she took reasonably practicable steps to prevent the employee from doing the acts.

Also, 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.

Instructions and pressure to discriminate:

It is unlawful for a person to make instructions to discriminate, or pressure another person to discriminate on the ground of breastfeeding.

Aiding unlawful acts:

A person who knowingly aids another person to do an unlawful act relating to breastfeeding under the SDO shall be treated for the purpose of the SDO as himself/herself doing the unlawful act.



Good practices for employers to prevent breastfeeding discrimination and harassment

Employers should ensure good communication with breastfeeding and other employees. They should avoid making assumptions about the commitment, competency or efficiency of breastfeeding employees. In addition, employers should be aware of the rights and responsibilities of both their organisations and breastfeeding employees, and ensure that they comply with the provisions of the SDO and the Employment Ordinance.



Breastfeeding is not an obstacle to productivity. It can actually help retain skilled staff. According to the International Labour Organization (ILO), research shows that women are more likely to stay in their job in the longer term, if they can breastfeed/express milk at work. Supporting breastfeeding employees only involves limited costs for employers, both in terms of the employee's time and the infrastructure that it requires.

Steps that employers can take to prevent discrimination and harassment

1. Develop a written policy

Develop and implement a written policy on breastfeeding in consultation with all staff members. The policy should set out:

- The employer's position on supporting breastfeeding in the workplace, and that any discrimination or harassment against breastfeeding employees will not be tolerated;
- The procedures for making and processing requests to breastfeed or express milk;

- How requests for adjustment in working conditions will be considered and what types of adjustments may be considered and made;
- How changes in working conditions will or will not affect the employees' pay or related benefits; and
- The facilities to be made available for employees to breastfeed or express milk.

2. Communicate the policy to staff

Disseminate the policy to all staff members at all ranks and levels, and provide training to those who are responsible for implementing the policy.

3. Provide appropriate facilities for breastfeeding staff

Consider and arrange appropriate facilities, such as a room with privacy, chair with back rest, table and refrigerator, to facilitate staff to breastfeed or express milk. In case such facilities are not available or possible to install, consider any alternative arrangements, such as allowing staff to visit nearby community breastfeeding facilities.

4. Carefully consider requests for adjusting working conditions

Employers should carefully consider employees' requests for adjusting working conditions, such as having additional breaks or extending existing

breaks for expressing milk, altering the start and end times of work, switching from full-time to part-time work, or a temporary alternative role if the health of the employee and her baby may be at risk.



Questions & Answers

Q: How many lactation breaks should employees be given each work day?

A: The SDO does not stipulate the number of lactation breaks. According to the guidelines by the Department of Health, employers are recommended to consider allowing two 30-minute lactation breaks or an hour in total for an eight-hour working day.

Q: Should lactation breaks be included in the working hours and remunerated accordingly?

A: The Department of Health guidelines recommend that lactation breaks should be counted as working hours and remunerated accordingly, and that pay should not be deducted for those breaks. Employees are also not expected to make up for the time expressing milk. It is recommended that employers discuss and agree with the employees on the arrangements before implementation.

Q: How long should employees be allowed to take lactation breaks? If an employee has been breastfeeding for more than a year, can the employer shorten her lactation breaks or stop giving her the breaks?

A: The SDO does not stipulate a time limit within which a woman is protected from breastfeeding discrimination. Although the daily milk intake of children and the frequency of breastfeeding will reduce as children grow, it is up to individual mothers to decide how long she wishes to breastfeed her child. Employers should consider flexibly each request to breastfeed or to continue breastfeeding based on the particular circumstances of the case.

Q: I run a small firm with limited resources. The office has no available space with privacy for employees to express milk. Does this mean that I have breached the law and committed breastfeeding discrimination?

A: It is understood that some companies and particularly small companies may not have the resources to provide appropriate space and facilities for employees to breastfeed and express milk. In these circumstances, employers may consider alternative arrangements, such as allowing breastfeeding employees to visit nearby community baby care facilities to express milk or if the employee concerned lives nearby, go home to breastfeed the child. Employers should also be aware that toilets or bathrooms are never appropriate facilities for sanitary reasons. It is crucial that employers discuss and agree with the employees over the arrangements.

Q: Can a breastfeeding employee refuse to perform certain roles or duties?

A: If the inherent nature of the existing employment position involves potential health risks to a breastfeeding employee or her child, such as exposure to ionising radiation, it may be necessary for the employer to consider temporary alternative roles for the employee concerned during the period she is breastfeeding.



Resources on establishing a breastfeeding-friendly workplace:



Guidance on Breastfeeding in the Employment and Related Sectors, EOC



Guidance on Breastfeeding in the Provision of Goods, Facilities and Services, Education, Disposal or Management of Premises, Clubs, and the Government, EOC



An Employer's Guide to Establishing Breastfeeding Friendly Workplace, Department of Health



An Employee's Guide to Combining Breastfeeding with Work, Department of Health

What can you do if you suffer breastfeeding discrimination or harassment at work?

Anyone who feels that she has been discriminated or harassed on the ground of breastfeeding in the workplace 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



Enquiry related to anti-discrimination ordinances



Complaint related to anti-discrimination ordinances



Enquiry and complaint related to EOC's services

**For further information, please contact:
Equal Opportunities Commission**

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

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

Fax: (852) 2511 8142

Email: 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 online forms on the EOC website.)

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Note: This leaflet is for reference only and should not be taken as a substitute for legal advice.