

Leaflet on Breastfeeding Discrimination in the Provision of Goods, Facilities and Services and in Other Sectors

Starting from **19 June 2021**, all women in Hong Kong are protected from breastfeeding discrimination under the Sex Discrimination Ordinance (SDO). The protection covers employment and related sectors, as well as other sectors, namely:



- Provision of goods, facilities and services
- Education
- Management or disposal of premises
- Participation in clubs
- Government

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.

What is breastfeeding discrimination?

Breastfeeding discrimination can come in various forms.

Direct discrimination – this means treating a breastfeeding woman less favourably than another person (whether a female not breastfeeding or a male) in comparable circumstances, because that woman is breastfeeding.

Example: Amy is having lunch with her friends at a restaurant. She brings along her newborn baby to see her friends. When she starts breastfeeding her baby, one of the waiters comes up and says to Amy, “Ma’am, you cannot breastfeed in the restaurant. I am afraid you will have to leave.” This is likely to be unlawful direct discrimination against a breastfeeding woman by the restaurant in refusing to serve Amy.

Indirect discrimination – this means applying a requirement or condition to all persons, irrespective of whether they are breastfeeding or not, but:

- 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 a breastfeeding woman because they cannot comply with it.

Example: A shopping centre has a policy of keeping all its toilets and baby care room locked at all times to prevent the facilities from being vandalised or used for inappropriate purposes, although this has never happened before. Anyone who wishes to use the facilities must go to the management office and obtain the key(s) for unlocking the rooms, and then return the keys afterwards. This poses considerable inconvenience to women travelling with infants, given that the management office is located quite far away from the toilets and baby care room. As such, although the requirement of keeping the toilets and baby care room locked applies to everyone, it is likely to have a detrimental effect on breastfeeding women, and constitute unlawful indirect breastfeeding discrimination.

Victimisation – this means a person (the discriminator) treats another person (the victimised person) less favourably than other persons in comparable circumstances because that victimised person has done or intends to do, or is suspected to have done or intend to:

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

Example: Judy is a member of a country club in Hong Kong. She and her husband recently adopted a baby boy and bring their baby to the country club for a meal. When Judy starts breastfeeding her baby at the country club, an employee tells her breastfeeding is not allowed at the club as other members may complain. Judy 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 Judy's membership of the club is being terminated because of her unreasonable complaint. This is likely to be direct breastfeeding discrimination and unlawful victimisation.

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.

Provision of goods, facilities and services

Under the SDO, 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, by:

- Refusing or deliberately omitting to provide her with any of the goods, facilities or services; 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.

Examples of facilities and services

- 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;
- Services of any profession or trade; and
- Services of any department of the Government, or any undertaking by or of the Government.

Example: Sarah brings her baby daughter to the park. As the baby becomes restless, Sarah suspects that she is getting hungry. She then sits down on a bench and starts to breastfeed her daughter in the park. A park security officer sees Sarah breastfeeding and tells her there is a baby care room in the park. She should use the baby care room rather than breastfeeding in the open public area of the park. Sarah refuses and says that she is in the middle of breastfeeding her baby. The security officer tells Sarah to stop or leave the park immediately. This is likely to be direct breastfeeding discrimination. 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.

Good practices by providers of goods, facilities and services

1. Develop a written policy on breastfeeding

Develop a written organisation policy on breastfeeding, which sets out the organisation's commitment to supporting breastfeeding and creating a breastfeeding friendly environment.

2. Provide appropriate facilities for breastfeeding

Identify areas with more privacy in the premises for mothers who wish to breastfeed in private and make available appropriate facilities.

3. Arrange training for staff

Communicate to each staff member the organisation's policy and practices of providing a breastfeeding friendly environment. Make sure staff members are familiarised with the policy, have knowledge of the locations and facilities for

breastfeeding, and are competent in managing the common scenarios of breastfeeding.

4. Publicise the breastfeeding policy and measures

Promulgate the breastfeeding friendly measures and facilities, such as through the organisation's website or social media page, to enable breastfeeding mothers to find and use the facilities when needed.

Installing babycare and lactation facilities

The SDO does not prescribe the kinds of facilities to be provided for breastfeeding women. Nevertheless, the Government recommends that babycare and lactation rooms should be provided in commercial buildings for those caring for babies and for breastfeeding mothers.

The Buildings Department has produced specific guidance¹ relating to the provision of babycare and lactation rooms in commercial buildings, advising that the number of babycare rooms to be provided should be based on the scale of the building, the need of occupiers and visitors, and that at least one room is provided in each building.

The guidance also provides recommendations on the location, room size and layout, general design requirements, as well as the operation and maintenance of those rooms. Providers of goods, facilities and services are advised to make reference to the Buildings Department guidance before installing babycare and lactation facilities. In any case, toilets and bathrooms are never suitable facilities for breastfeeding due to sanitary reasons.

Breastfeeding discrimination in other sectors

Education

It is unlawful for educational establishments, including universities and vocational training institutes or colleges, to discriminate against a breastfeeding woman:

- in the terms offered to the woman in admitting her as a student; or
- by refusing or deliberately omitting to accept an application for her admission to the establishment as a student;

¹ The Practice Note for Authorised Persons, Registered Structural Engineer and Registered Geotechnical Engineers, Provision of Babycare Rooms and Lactation Rooms in Commercial Buildings, ADV-32, revised November 2018

Where the breastfeeding woman is a student at the establishment, it is unlawful for the establishment to discriminate against the woman:

- 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.

Management and disposal of premises

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.

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 premise from the woman, where the licence or consent of the landlord or other person is required for disposal (for example assignment of the tenancy or sub-letting).

Participation in clubs

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.

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

Government

It is unlawful for the Government to discriminate against a breastfeeding woman in the performance of its functions or exercise of its powers, and in providing goods, facilities or services, or providing education.

Creating a breastfeeding friendly environment

Dos

- ✓ Respect the mother's freedom of choice to breastfeed anytime, anywhere.
- ✓ Do not disturb a mother who is breastfeeding unless there is safety concern or blockage of passageway.
- ✓ Offer an appropriate location to a mother who wishes to have more privacy when breastfeeding.
- ✓ Explain to other customers or service users the needs of breastfeeding mothers and babies.

Don'ts

- ✗ Ask a mother who is breastfeeding to stop, cover up or leave the premise.
- ✗ Insist that the mother must go to the baby care room in the premise.
- ✗ Ask mothers to breastfeed their babies in toilets.

Resources on establishing breastfeeding friendly environment:

- Guidance on Breastfeeding in the Employment and Related Sectors, EOC
- Guidance on Breastfeeding in the Provision of Goods, Facilities and Services, EOC
- Guide to Establishing Breastfeeding Friendly Premises, Department of Health
- The Practice Note for Authorised Persons, Registered Structural Engineer and Registered Geotechnical Engineers, Provision of Baby care Rooms and Lactation Rooms in Commercial Buildings, ADV-32, Buildings Department


What can you do if you suffer breastfeeding discrimination?

Anyone who feels that she has been discriminated on the ground of breastfeeding in the sectors mentioned above 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: [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](#)

For further information, please contact:

Equal Opportunities Commission

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 (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.)



平等機會委員會
EQUAL OPPORTUNITIES COMMISSION

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