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SUMMER

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平等點  
EQUALITY  
PERSPECTIVES

線面



建立友善環境

支持母乳餵哺

Creating a  
Breastfeeding-  
friendly City



平等機會委員會  
EQUAL OPPORTUNITIES COMMISSION



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2016年12月，一名女子登上的士後，在車上給懷中的嬰兒餵哺母乳。殊不知她被司機放在錶板上的手機拍到，相片其後更被上載到某個Facebook的士司機群組，附上嘲笑字句：「咁都得？」

不少網民怒斥發帖者不尊重女性，但亦有人留言道：「餵奶就唔好出街啦。」事件反映了社會上仍有不少人對女性哺乳抱著保守甚或敵對的態度。即使世界衛生組織曾以「任何時候、任何地方」作為海報標語，肯定女性的哺乳權，但部分港人顯然並未「受落」。

改變定見固然需要深耕細作，但法律保障更是不可或缺。由2021年6月19日起，在《性別歧視條例》下，若因為女性餵哺母乳而歧視或騷擾她，而有關行為在法例定明的範疇內發生（例如僱傭、教育、提供貨品／服務／設施等），即屬違法。是次法例修訂為《2020年歧視法例（雜項修訂）條例》及《2021年性別歧視（修訂）條例》帶來的改革之一；平機會早於2016年向政府提交「歧視條例檢討」報告，當中73項建議的其中一項，便是為受到母乳餵哺歧視的女性提供明文保障。

今期《平等點·線·面》旨在簡介相關條文，讓哺乳女性了解自己的法律權利，同時舉例說明僱主和服務提供者等持份者可如何採取適當措施，為哺乳女性建立友善的環境。這些措施將有助機構加強僱員和客戶的歸屬感，達至雙贏局面。

一言蔽之，哺乳，又或是選擇不哺乳，都不是甚麼不見得光的事。一個真正開明和文明的社會，理應明白這點。讓我們尊重女性的抉擇，支持她們行使應有的權利。

平等機會委員會主席  
朱敏健, IDS  
2021年7月

In December 2016, a woman got on a taxi and soon started breastfeeding the baby in her arms. Little did she know that she was being caught on the camera of the driver's phone on the dashboard, and even less that her photo would later appear on a Facebook group for taxi drivers with the derisive caption: "Is this for real?"

Part of the Internet erupted overnight with disgust at the uploader, while others frowned on the woman, leaving comments like "Stay home if you are going to breastfeed". The incident was a clear sign of the lingering conservatism and hostility in society towards women who breastfeed. "Anytime, anywhere" – the message appearing in the World Health Organization's posters about women's right to breastfeed – has yet to sink in among Hongkongers.

But our laws are changing for the better. Effective from 19 June 2021, the Sex Discrimination Ordinance prohibits discrimination and harassment against breastfeeding women in key areas of public life, such as employment, education and provision of goods, services or facilities. These amendments were implemented by the Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020 and the Sex Discrimination (Amendment) Ordinance 2021. In particular, the introduction of express protections against breastfeeding discrimination was based on one of the 73 recommendations the EOC submitted to the Government in 2016, following a sweeping review of the city's anti-discrimination laws.

Our purpose for this issue of *Equality Perspectives* is two-fold: while breaking down the law for breastfeeding women curious about their rights, we also aim to equip employers, service providers and other important stakeholders with knowledge of good practice. After all, efforts in creating a breastfeeding-friendly environment reflect a commitment to advancing women's wellbeing, which can only be conducive to retaining talents and customers alike.

A society where women are shamed for breastfeeding – or, equally, preferring not to – cannot claim itself to be civilised and liberal. Join us now to support women in the choices they make.

Ricky CHU Man-kin, IDS  
Chairperson, Equal Opportunities Commission  
July 2021

# 認識母乳餵哺

## Understanding Breastfeeding



根據衛生署 2019 年的調查，為初生嬰兒哺乳的本港母親在 2018 年高達 87.5%，較 2004 年的 66% 有明顯升幅。

相信大部分人都會認同在育兒過程中，母乳餵哺是自然不過的事。然而，仍有不少人認為女性必須在隱蔽的環境、與孩子獨處時哺乳才算恰當。

要建立真正友善的文化，我們需明白母乳餵哺的價值遠超於育兒的層面；它既是一項人權議題，亦涉及公共健康和社會的長遠福祉。

According to a 2019 survey by the Department of Health, the percentage of Hong Kong mothers breastfeeding their newborns was at 87.5% in 2018, up from 66% in 2004.

While most of us would agree that breastfeeding is a natural way of nourishing children, there is an ingrained assumption that it should remain a private and discreet act.

To foster a truly breastfeeding-friendly culture, we must acknowledge that the importance of breastfeeding goes beyond a mother-child relationship – it is at once an issue of human rights, public health and societal wellbeing.

## 哺乳的益處 The benefits of breastfeeding

世界衛生組織（世衛）指出，母乳餵哺是為幼兒和兒童「提供健康成長和發育所需營養的理想方式」。世衛建議嬰兒出生後首六個月以全母乳餵哺，至六個月大時輔以固體食物，同時持續以母乳餵哺至兩歲或以上。

母乳能有效防止幼兒腸道感染，並有助降低營養不良兒童的死亡率。年幼時得到母乳餵哺的兒童和青少年，亦較少出現超重或肥胖的情況。此外，研究發現哺乳女性患上卵巢癌和乳癌的風險亦相對較低，足見哺乳對母親的健康同樣有正面影響。

The World Health Organization (WHO) describes breastfeeding as the “best source of nourishment for infants and young children”, and recommends that women exclusively breastfeed babies for the first six months of life and continue to breastfeed with complementary solid foods up to two years of age or beyond.

Breastmilk has been found to offer infants protection against gastrointestinal infections and reduce mortality among those who are malnourished. Children and adolescents who were breastfed are also less likely to be overweight or obese. Mothers themselves benefit too, as breastfeeding is associated with lower risks of ovarian and breast cancer in women.



**「母乳餵哺是一項人權議題。」**

—— 聯合國，2016

**“Breastfeeding is a human rights issue.”**

— United Nations, 2016

## 哺乳是人權 Breastfeeding is a human right

2016 年，聯合國「食物權特別報告員」、「身心健康權特別報告員」、「法律和實踐中的歧視婦女問題工作組」，以及兒童權利委員會發表聯合聲明，正式將母乳餵哺定性為人權議題。

此聲明重申兒童的生命、生存與發展權必須受到保障，並強調母乳餵哺是當中不可或缺的一環。聲明亦指出女性在公共空間哺乳時，仍承受著各種壓力、威嚇和污名。各地政府宜採取具體措施，加強支援哺乳女性，確保她們免受歧視。

In 2016, the United Nations Special Rapporteurs on the Right to Food and the Right to Health, the Working Group on Discrimination Against Women in Law and in Practice and the Committee on the Rights of the Child issued a joint statement to promote awareness of breastfeeding as a human rights issue.

In affirming children's rights to life, survival and development, the statement stresses that breastfeeding must be considered an integral component of the fulfilment of such rights. It also calls out the stigma around breastfeeding in public spaces, saying that it exposes women to “unnecessary stress, pressure or intimidation”. Governments are therefore encouraged to take measures to support breastfeeding women and protect them from discrimination.



## 困難未解 Entrenched barriers

雖然 2018 年的數據顯示高達 87.5% 的本港母親曾為初生嬰兒哺乳，但以母乳餵哺嬰兒至 6 個月大的母親比率卻只有 46.5%，持續至 12 個月的則更少，僅得 26.1%。

究其原因，或是母親在身體復原、返回職場後，哺乳時間和空間不足所致。問題的根本在於社會各界有否積極地營造安全和友善的環境，讓女性可繼續安心哺乳。的確，不論是設施不足或缺乏靈活度的機構政策，她們面對的不少障礙均源於社會和文化因素，而非個人問題。

香港母乳育嬰協會於 2018 年發表調查，近 2,000 名受訪哺乳母親當中，近 20% 指曾在工作間集乳時遭受歧視或不愉快待遇。部分僱主不許員工在工作間集乳，拒絕就工作時間或辦公室設施的用途作出彈性安排。

此外，傳媒亦曾報導服務和設施提供者以惡劣的態度對待哺乳母親的事件。2016 年，一位媽媽在壁球場為嬰兒餵哺母乳，並用毛巾覆蓋胸部，場地職員據稱竟要求她轉到廁所哺乳。2018 年，一名酒樓部長被指向正在哺乳的客人作出同樣的要求。



Although as many as 87.5% of Hong Kong mothers breastfed their newborns in 2018, the percentage dropped to less than half – 46.5% – for those who breastfed until the baby reached six months old, and further down to 26.1% at 12 months.

A likely reason is that after mothers recover from giving birth and resume work, there is less time and space to breastfeed. But this begs the question of whether Hong Kong

is doing enough to create safe and supportive environments for sustained breastfeeding in the first place. Indeed, many of the existing barriers – from inadequate facilities to unbending organisational mindsets – are on a societal rather than individual level.

In a survey of around 2,000 breastfeeding mothers released by the Hong Kong Breastfeeding Mothers' Association in 2018, nearly 20% said they had experienced discrimination or hostility while expressing milk at work. Some employers reportedly banned employees from expressing milk in the workplace, and refused to allow any flexibility over work hours and the use of office facilities.

The media has also shed light on incidents of service or facility providers treating breastfeeding women with blatant disrespect. In 2016, a mother breastfeeding her child on a squash court and using a nursing towel to cover her breasts was reportedly told by the staff to stop and go to the washroom; in 2018, a floor supervisor of a *dim sum* restaurant allegedly demanded the same from a breastfeeding customer.

## 尊重女性的抉擇 Choice above everything else

隨著《性別歧視條例》於 2021 年 6 月 19 日起禁止大眾在各個公共生活領域作出基於母乳餵哺的歧視和騷擾行為，哺乳的女性將得到更大的法律保障。下一篇文章將舉出不同實例，說明何謂違法行為。

完善法例之餘，尊重女性的選擇同樣重要。正如聯合國 2016 年的聲明指出，社會在鼓勵女性哺乳的同時，亦不應以敵對或異樣的目光，看待不願哺乳或無法哺乳的女性。部分女性可能在哺乳後覺得疼痛不適，或因擔心未能達到足夠奶量而感到壓力。無論女性作出哪種抉擇，其自主權必須得到社會的充分肯定。

As our next article will explain, from 19 June 2021 onwards the Sex Discrimination Ordinance has been better equipped to protect breastfeeding women, as acts of discrimination and harassment on the ground of breastfeeding are made unlawful in key areas of public life.

Just as importantly, as the 2016 United Nations statement pointed out, we “should be careful not to condemn or judge women who do not want to or cannot breastfeed”. Some may find the soreness unbearable; others may feel frustrated over not expressing enough milk. Ultimately it is about respecting the choices women make and supporting their right to make them.

## 六問六答 掌握法例要點

### Six Questions to Walk You Through the Law

由 2021 年 6 月 19 日起，《性別歧視條例》保障女性免因餵哺母乳受到歧視、騷擾，以及使人受害的歧視。《條例》適用於不同公共生活領域，以下六條問題將有助你掌握當中要點。

With effect from 19 June 2021, the Sex Discrimination Ordinance (SDO) provides for protection against discrimination, harassment and victimisation on the ground of breastfeeding. Learning the answers to the six questions below will help you understand the law, the application of which extends to various areas of public life.



#### 《條例》如何界定餵哺母乳？ What does breastfeeding mean under the SDO?

根據《條例》，餵哺母乳的定義為：(i) 女性正在向兒童餵哺母乳；(ii) 女性正在集乳；或 (iii) 女性以本身母乳餵哺兒童，但在相關行為發生時並沒有餵哺母乳。

For the purposes of the SDO, breastfeeding is defined as where: (i) a woman is breastfeeding a child; (ii) a woman is expressing breast milk; or (iii) a woman feeds a child with her breast milk, but is not doing so when the relevant act is committed.



不論該女性與該兒童是否有血緣關係，該女性都受《條例》保障。

Whether the child is the woman's biological child is irrelevant.

#### 甚麼是基於餵哺母乳的直接歧視？ What is direct breastfeeding discrimination?

基於餵哺母乳的直接歧視是指在相若情況下，給予一名女性的待遇，較給予另一人（沒有餵哺母乳的女性或男性）的待遇為差，原因是該名女性餵哺母乳。

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



餵哺母乳無需是受到較差待遇的唯一原因，才構成直接歧視。只要女性受到較差待遇的其中一個原因是餵哺母乳，即使這並非主要或重要原因，亦足以構成基於餵哺母乳的直接歧視。

Direct breastfeeding discrimination does not require breastfeeding to be the sole reason for the less favourable treatment. If there is more than one reason for the treatment, direct breastfeeding discrimination can be established even if breastfeeding is not the dominant or substantial reason.

#### 例子 Example

彩宜在餐廳內餵哺母乳，店主上前向她表示，若她不停止餵哺母乳，便會請她離開。店主覺得餐廳沒有合適的餵哺母乳設施，並認為彩宜在其他顧客面前餵哺母乳並不恰當。由於店主拒絕向彩宜提供服務的原因之一是她餵哺母乳，根據《條例》，這足以構成基於餵哺母乳的直接歧視。

While Joyce is breastfeeding at a restaurant, the owner comes over and says she won't be allowed to stay if she continues. This is because the owner thinks that there are no suitable breastfeeding facilities at the restaurant and considers it inappropriate for Joyce to breastfeed in front of other customers. As one of the reasons for the owner's refusal to serve Joyce is that she is breastfeeding, this is sufficient to amount to direct discrimination on the ground of breastfeeding under the SDO.

## 甚麼是基於餵哺母乳的間接歧視？ What is indirect breastfeeding discrimination?

如符合以下情況，便屬基於餵哺母乳的間接歧視：

- (1) 向所有人施加一項要求或條件（無論她們是否餵哺母乳的女性）；
- (2) 餵哺母乳的女性能符合該項要求或條件的人數比例，遠較非餵哺母乳人士能符合該項要求或條件的人數比例為小；
- (3) 該項要求或條件沒有理據支持；以及
- (4) 由於該餵哺母乳的女性不能符合該項要求或條件，以致對她造成不利。

Indirect breastfeeding discrimination occurs when:

- (1) A requirement or condition is applied to everyone (whether or not they are breastfeeding women);
- (2) The proportion of breastfeeding women who can comply with it is considerably less than the proportion of non-breastfeeding people who can comply with it;
- (3) The requirement or condition is not justifiable; and
- (4) The requirement or condition is to the detriment of the breastfeeding woman because she cannot comply with it.

### 例子 Example

丹丹在 ABC 有限公司任職接待員，她放完產假後復工。她在生理上最容易集乳的時間是早上 11 時，但辦公室卻沒有合適的空間供她集乳。她要求每天有 20 分鐘小休，前往只需三分鐘路程的商場使用育嬰室集乳。然而，ABC 拒絕她的要求，指公司政策訂明除午餐時間外，僱員不能離開辦公室。除非 ABC 能證明政策有理據支持，否則其作為可能構成基於餵哺母乳的間接歧視。例如，若 ABC 能輕易安排另一名僱員在丹丹集乳期間代她處理工作，該政策便可能屬於不合理。

Donna, a receptionist hired by ABC Limited, returns to work from maternity leave. While 11am is physically the easiest time for her to express milk at work, she can't find an appropriate space in the office for doing so. She requests to go to a nursing room inside a shopping centre, which is only 3 minutes away, for a 20-minute lactation break every day. However, ABC refuses, citing its policy that no employees are allowed to leave office except at lunch hours. This may be indirect breastfeeding discrimination, unless ABC can prove that the policy is justified. If, for instance, ABC can readily arrange for another employee to perform Donna's duties while she expresses milk, the policy may not be justifiable.



## 甚麼是基於餵哺母乳的騷擾？ What is breastfeeding harassment?

有兩種情況可以構成基於餵哺母乳的騷擾。第一種是任何人因為一名女性餵哺母乳而對她作出不受歡迎的行為，而一名合理的人在顧及所有情況後，應會預期該名女性因為有關行為而感到受冒犯、侮辱或威嚇。

Harassment of breastfeeding women can occur in two forms. One is when a person engages in unwelcome conduct towards a woman because she is breastfeeding, and a reasonable person, having regard to all the circumstances, would anticipate that the woman would be offended, humiliated or intimidated by that conduct.

### 例子 Example

凱利近日參加了本地一個體育會社。她帶同其九個月大的嬰兒出席會社聚會，並於開始前在其座位上餵哺母乳。該會副主席見狀拍下凱利哺乳照片，對她說：「你不應在會社中暴露你的乳房。我會向管理委員會的其他委員報告此事。」此行為不受凱利歡迎，且令她感到受冒犯、侮辱和威嚇，故可構成基於餵哺母乳的騷擾。

Hailey recently joined a sporting club in Hong Kong. She attends a social gathering in the club and brings her nine-month-old baby along. Before the gathering starts, she breastfeeds her baby in her seat. The vice-chairperson of the club sees her, takes a photo of her breastfeeding and tells her, "You cannot expose your breasts in the club. I will report this to other members of the management committee". This unwelcome conduct makes Hailey feel offended, humiliated and intimidated and is likely to be breastfeeding harassment.



另一種情況是任何人因為一名女性餵哺母乳，而自行或聯同其他人作出對她造成有敵意或具威嚇性的環境的行為。

The other form of breastfeeding harassment is when a person, because a woman is breastfeeding, engages in conduct alone or with others, which creates a hostile or intimidating environment for the woman.



就第二種情況而言，騷擾行為無需針對餵哺母乳的女性作出，只要有關行為是在餵哺母乳的女性在場時作出，便足以構成基於餵哺母乳的騷擾。

For the second form of breastfeeding harassment, it is not necessary that the harassing conduct is directed at the breastfeeding woman. It is sufficient that the conduct takes place in her presence.

### 例子 Example

某中小企在員工會議上宣布，當沒有人使用公司會議室時，需餵哺母乳的女性僱員可使用會議室集乳。幾名員工隨即發出厭惡聲音，作嘔吐狀，且笑指會議室將到處奶漬。一名餵哺母乳的女性僱員聽到後，感到受威嚇和震驚。有關言行很可能造成具敵意的環境，構成基於餵哺母乳的騷擾。

An SME announces in a staff meeting that breastfeeding female employees can now take lactation breaks to express milk in the office conference room when it is not in use. Hearing this, a few staff members make “eww” sounds, pretend to throw up, and joke that there will be milk stains everywhere in the room. A breastfeeding female employee overhears the comments and feels intimidated and appalled. This is likely to be breastfeeding harassment by creating a hostile environment.

## 甚麼是使人受害的歧視？ What is victimisation?

任何人（歧視者）如因為另一人（受害人士）或第三者已經或擬根據《條例》作出行動，例如提出餵哺母乳歧視或騷擾的投訴，而給予該受害人士差於在類近情況下給予其他人的待遇，即屬使人受害人的歧視。

Victimisation occurs where a person (the discriminator) treats another person (the person victimised) less favourably than other persons in comparable circumstances because the victimised person or a third person has done or intends to take action under the SDO, for example by making a complaint of breastfeeding discrimination or harassment.

### 例子 Example

貝娜是香港某鄉村俱樂部的會員，最近與丈夫領養了一名男嬰，並帶同嬰兒往鄉村俱樂部用膳。當貝娜在俱樂部內開始以母乳餵哺嬰兒時，一名職員告訴她不可以俱樂部內餵哺母乳，因為其他會員會提出投訴。貝娜就俱樂部拒絕讓她在內餵哺母乳一事，向俱樂部提出基於餵哺母乳的歧視投訴。幾個星期後俱樂部以書面回覆，不但沒有處理該歧視事宜，反指由於貝娜提出不合理的投訴而終止她的會籍。此行為可能構成基於餵哺母乳的直接歧視及使人受害的歧視。

Barbara 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 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.



## 基於餵哺母乳的歧視和騷擾行為在哪些範疇中屬於違法？

### In which domains are breastfeeding discrimination and harassment unlawful?

你可能已留意到上述例子皆在某些公共生活領域發生，例如僱傭、會社，以及貨品、服務及設施的提供。《條例》訂明了特定範疇，保障女性在這些範疇免因餵哺母乳受到歧視和騷擾。換言之，只有在這些範疇內發生、基於餵哺母乳的歧視和騷擾，才屬違法。

As you may have noticed, the examples above all take place in certain areas of public life – settings relating to employment, clubs, and the provision of goods, services and facilities. Indeed, the SDO provides for specific contexts where women are protected from breastfeeding discrimination and harassment. In other words, breastfeeding discrimination and harassment are unlawful only when they occur in those areas, some of which are described below.

#### 僱傭及共同工作間

僱主若基於求職者餵哺母乳，在甄選應徵者方面作出的安排上、提出的僱用條款上，或藉着拒絕聘用她而作出歧視，即屬違法。

#### Employment and common workplaces

It is unlawful for employers to discriminate against a prospective employee on the ground of breastfeeding in making arrangements for the purpose of selecting candidates; in the terms of the employment offer; or by refusing to offer employment to her.

僱主若基於現職僱員餵哺母乳，在給予利益、設施或服務的方式上、提供升職、調職或訓練機會的方式上、提出的僱用條款上，或藉着解僱她或使她遭受任何不利而作出歧視，亦屬違法。

It is also unlawful for employers to discriminate against an existing employee on the ground of breastfeeding in the way they provide benefits, facilities, services or opportunities for promotion, transfer and training; in the terms of her employment; or by dismissing her or subjecting her to any other detriment.

#### 例子 Example

XYZ 有限公司的政策訂明，若僱員的表現令人滿意，並且每星期工作達某固定時數，便可獲 10% 年度花紅。阿珊放完產假後復工，要求僱主每天給她兩節各 20 分鐘的小休以便集乳。XYZ 批准了她的要求，因這符合政府建議於每八個小時的工作天給予僱員兩節各 30 分鐘的集乳時段。一年後，儘管阿珊的工作表現評核報告顯示她的表現出色，但 XYZ 決定不給予她 10% 花紅，原因是她在工作時間內休息集乳。

XYZ Limited has a policy which entitles all employees to an annual bonus of 10%, provided that their quality of work has been satisfactory and they have worked a fixed number of hours per week. Sharon returns to work after maternity leave and requests to take two 20-minute lactation breaks per day. XYZ grants her request because it is consistent with the Government's recommendations regarding lactation breaks – up to two 30-minute breaks per eight-hour working day. One year later, they decide not to give her the 10% bonus because of the time off she has taken to express milk, although her appraisal indicates that she has otherwise performed excellently.

XYZ 要求員工必須工作一定時數才能獲取花紅的政策對需要集乳的僱員造成過大的負面影響，而且實際上對阿珊造成不利，令她不能獲得花紅，很大可能構成基於餵哺母乳的間接歧視，屬違法行為。

The requirement to work a fixed number of hours for the bonus, which has a disproportionately negative effect on XYZ's breastfeeding employees who need to express milk, has caused Sharon a detriment in being refused the bonus, and is likely to be indirect breastfeeding discrimination and unlawful.

若一名女性受僱於香港某機構，或謀求該機構僱用，該機構的僱主或僱員向她作出基於她餵哺母乳的騷擾，即屬違法。

If a woman is employed or seeking to be employed at an establishment in Hong Kong, it is unlawful for the employer or an employee of that establishment to harass her on the ground that she is breastfeeding.

《條例》亦保障共同工作場所的場所使用者免受基於餵哺母乳的騷擾，儘管彼此沒有任何僱傭、合約或類似工作關係。

There is also protection from harassment on grounds of breastfeeding between persons in common workplaces where persons are workplace participants there, and despite the fact that there is no employment, contractual or other similar work relationship between them.



工作場所指任何人作為場所使用者而工作或置身的地方。場所使用者包括僱主、僱員、實習人員、義工、商號合夥人、合約工作者及其主事人，以及佣金經紀人及其主事人。

A workplace is defined as any place where a person works or attends as a workplace participant. Workplace participants include employers, employees, interns, volunteers, partners in a firm, contract workers and their principals, as well as commission agents and their principals.

### 例子 Example

非政府組織 ABC 兒童服務機構和資訊科技公司 XYZ 的辦公室設於同一個共用工作間。嘉兒每逢星期三為 ABC 做義工。ABC 同意讓嘉兒小休，以便她集乳，並表示只要她把母乳標示好，便可把母乳儲存於共用廚房內的電冰箱。偉達是 XYZ 的實習人員，他看到電冰箱內的母乳，對嘉兒開玩笑，指她的集乳量比牛還多，他也想喝一口。嘉兒不歡迎該玩笑，並感到被冒犯。此行為很可能構成共同工作場所內基於餵哺母乳的騷擾。

ABC for Children, an NGO, and XYZ Solution, an IT company, have set up their offices in the same co-working space. Claire volunteers every Wednesday for ABC, who has agreed that she can take lactation breaks and store the breast milk in the fridge in the shared kitchen, as long as it is marked as such. David, an intern working for XYZ, sees the breast milk in the fridge and jokes to Claire that she expresses more milk than a cow and he would like to have a sip. Claire does not welcome the joke and feels offended by it. This is likely to be unlawful breastfeeding harassment in a common workplace.



若僱員和代理人在受僱用期間基於餵哺母乳而作出違法歧視或騷擾，則其僱主和主事人須為該違法行為負上法律責任，不論他們是否知悉或批准該行為。另外，任用實習人員和義工的人亦須為其實習人員或義工基於餵哺母乳的騷擾行為負上法律責任。若僱主或任用實習人員或義工的人士證明他們採取了合理地切實可行的步驟，防止僱員、實習人員或義工作出有關行為，即為免責辯護。這些步驟包括定期檢討有關預防工作場所內基於餵哺母乳的歧視或騷擾的政策，透過不同途徑讓相關的工作場所使用者知悉政策，定期向他們提供培訓等。值得注意的是，主事人並無同等的抗辯。

Employers and principals of agents will be held liable for any unlawful act of breastfeeding discrimination or harassment committed by their employees and agents in relation to employment and agency situations, whether or not they knew about or agreed with the act. In relation to breastfeeding harassment, a person engaging an intern or volunteer will also be liable for any unlawful act of harassment by an intern or volunteer. A defence is available for the employer or person engaging the intern or volunteer if they can prove that they took reasonably practicable steps to prevent the relevant employee, intern or volunteer from doing such acts. Such steps may include maintaining an updated policy on preventing breastfeeding discrimination and harassment in the workplace, communicating the policy to relevant workplace participants through various channels, providing them with training on a periodic basis, etc. It must be noted, however, that there is no equivalent defence for principals.

在上述例子中，除非 XYZ 可證明它已採取合理地切實可行的步驟，防止偉達基於嘉兒餵哺母乳而騷擾她，否則 XYZ 須為偉達的違法行為負上法律責任。

In the above example then, unless XYZ can prove that they have taken reasonably practicable steps to prevent David from harassing Claire on the ground of breastfeeding, they may be held liable for his unlawful act.





## 貨品、服務或設施的提供

向公眾人士或部分公眾人士提供貨品、服務或設施的人（「提供者」），如基於一名女性餵哺母乳而拒絕向她提供她所謀求獲得或使用的該等貨品、服務或設施，藉此對她作出歧視，即屬違法。

該提供者在正常情況下會按某方式及某些條款，向男性公眾人士提供某種品質或質素的貨品、服務或設施。若該提供者因為該女性餵哺母乳，拒絕按相同方式及相同條款，向她提供具有相同品質或質素的該等貨品、服務或設施，亦屬違法。

## Provision of goods, services or facilities

It is unlawful for a person providing goods, services or facilities to the public or a section of the public (a “provider”) to discriminate against a woman, who seeks to obtain or use those goods, services or facilities, by refusing to provide them to her because she is breastfeeding.

It is also unlawful for the provider to discriminate against the woman by refusing to provide her with goods, services or facilities of the like quality, in the like manner and on the like terms as are normal in the case of male members of the public because she is breastfeeding.



即使相關貨品、服務或設施無需收費，《條例》依然適用。

It does not matter whether the goods, services or facilities require payment or not.

### 例子 Example

翠莎帶同其六個月大的嬰兒，前往購物中心為自己添置新衣。由於購物中心沒有育嬰室，她遂在購物中心的公共空間坐下來給嬰兒餵哺母乳。一名保安員上前請她停止餵哺母乳，否則會要求她離開；該名保安員受僱於擁有該商場的公司。該行為很可能構成基於餵哺母乳的直接歧視，屬違法行為。僱用該保安員的公司亦可能須負上轉承責任，除非該公司能證明它已採取合理地切實可行的步驟，以防止有關歧視行為。

Teresa visits a shopping centre with her six-month-old baby to buy new clothes for herself. While she is there, she sits in a communal area to breastfeed her baby as there is no nursing room. A security guard who works for the company that owns the shopping centre approaches and says that she has to leave unless she stops breastfeeding her baby. This is likely to be unlawful direct discrimination on grounds of breastfeeding. The company who employs the security guard may also be vicariously liable for the act, unless they can prove that they have taken reasonably practicable steps to prevent it.

任何人在向一名女性提供貨品、服務或設施時，基於她餵哺母乳而騷擾她，即屬違法。

It is unlawful for a provider to harass a woman on the ground that she is breastfeeding while providing goods, services or facilities to her.

### 例子 Example

雅蓮與丈夫和九個月大的嬰兒到酒店度假。她趁丈夫辦理入住手續時，在大堂給嬰兒餵哺母乳。一名服務台員瞪着她看，上前對她說：「真不敢相信你在其他住客面前餵哺母乳。真丟臉！這是高級酒店，你不該來這裡。」這很可能屬不受歡迎的言論，會令雅蓮感到受冒犯、侮辱或威嚇，因此或構成基於餵哺母乳的違法騷擾。僱用服務台員的酒店或須為其行為負上轉承責任，除非酒店能證明它已採取合理地切實可行的步驟，以防止有關騷擾行為。

Evelyn has planned a staycation with her husband and nine-month-old baby at a hotel. As her husband checks in, she decides to breastfeed her baby in the foyer. A concierge stares critically at her and then comes over and says, “I can’t believe you are breastfeeding in front of our other customers. Shame on you. We are a high-class hotel. You don’t belong here.” These are likely to be unwelcome statements which would offend, humiliate or intimidate Evelyn, and therefore are likely to be an act of unlawful breastfeeding harassment. The hotel who employs the concierge may be held vicariously liable for the act unless they can prove that they have taken reasonably practicable steps to prevent it.

任何人若在向一名女性謀求獲得或使用貨品、服務或設施期間，基於她餵哺母乳而騷擾她，即屬違法。這適用於一名服務提供者因餵哺母乳而被一名服務使用者騷擾的情況。

It is also unlawful for a person to harass a woman on the ground that she is breastfeeding while seeking to obtain or use goods, services or facilities provided by her. This applies where a service provider is harassed by a service user on grounds that the service provider is breastfeeding.

### 處所的處置及管理

### Disposal and management of premises

任何人如基於一名女性餵哺母乳，就他／她有權處置的處所（包括售賣、出租、分租該處所），在向該女性提供該處所而提出的條款方面；藉拒絕她為該處所而提出的申請；或相對於需要該類處所的人的名單中的其他人而言，在他／她給予該女性的待遇上歧視她，即屬違法。

It is unlawful for a person who has the power to dispose premises (including the power to sell, rent, let and sub-let those premises) to discriminate against a woman in the terms on which he/she offers her those premises; by refusing her application for those premises; or in his/her treatment of her in relation to any list of persons in need of premises of that description, on the ground that she is breastfeeding.

任何人就他／她管理的處所，如基於一名佔用該處所的女性餵哺母乳，在讓該女性可獲得或享用任何利益或設施的方式上，或將她逐出，或使她遭受任何其他不利而歧視她，亦屬違法。

It is also unlawful for a person who manages premises to discriminate against a woman occupying those premises in the way he/she affords her access to any benefits or facilities, or by evicting her or subjecting her to any other detriment,



就基於餵哺母乳的歧視而言，《條例》對「小型住宅」及擁有該處所的產業權或權益並完全佔用該處所的人，訂明了例外情況。詳情請瀏覽《條例》第 31 條。

In relation to breastfeeding discrimination, the SDO provides for exceptions regarding “small dwellings” and persons who own an estate or interest in the premises and wholly occupy them. For details, please refer to section 31 of the Ordinance.

任何人如就他／她有權處置的處所，在向一名女性提供或要約提供該處所的過程中，對她作出基於餵哺母乳的騷擾，即屬違法。

It is unlawful for a person who has the power to dispose premises to harass a woman on the ground of breastfeeding while providing or offering to provide those premises to her.

任何人如就他／她所管理的處所，向一名佔用該處所的女性作出基於餵哺母乳的騷擾，亦屬違法。

It is also unlawful for a person who manages premises to harass a woman occupying those premises on the ground of breastfeeding.

#### 例子 Example

碧玉剛誕下嬰兒，住在某出租分間單位。該單位的業主是安兒，安兒同時擁有並居於隔壁的單位。她看到碧玉在走廊給嬰兒餵哺母乳，對她嗤之以鼻，並說：「你竟然在這裏暴露乳房餵哺母乳，實太傷風化和不文明！」安兒的行為令碧玉感受到侮辱和威嚇，很可能構成業主因租客餵哺母乳而作出的騷擾，或屬違法。

Betty has a newborn baby and lives in a subdivided unit owned and rented out by Andrea. Andrea also owns and lives in the unit next door. When she sees Betty breastfeeding her baby in the corridor, she snorts and says to her, “It is indecent and barbaric for you to breastfeed and expose your breasts here.” Andrea’s conduct makes Betty feel humiliated and intimidated, and is likely to be unlawful breastfeeding harassment of a tenant by a landlord.





## 會社

任何會社或其管理委員會成員，基於可能成為會社的成員餵哺母乳而拒絕她成為成員而提出的申請，或在該會社準備接納她成為成員的條款或條件上歧視她，即屬違法。

任何會社或其管理委員會成員，基於現有成員餵哺母乳而歧視她，方式包括在給予她成員資格的條款或條件上；拒絕接受她為得到某一等級或類別的成員資格而提出的申請；不讓或限制她獲得享用該會社提供的任何利益、服務或設施；剝奪她的成員資格或改變成員資格的條款；或使她遭受任何其他不利，亦屬違法。



會社指由不少於 30 人，為社會、文學、文化、政治、體育、運動或其他合法目的而組成的組織（不論屬法團與否），並以本身的款項提供和維持全部或部分設施。

## Clubs

It is unlawful for a club or a member of its management committee to discriminate against a prospective member on the ground of breastfeeding by refusing to accept her application, or in the terms or conditions on which the club is prepared to admit her to membership.

It is also unlawful for a club or a member of its management committee to discriminate against an existing member on the ground of breastfeeding in the terms or conditions of membership that are afforded to her; by refusing to accept her application for a particular class or type of membership; by denying 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.

A club refers to any association, incorporate or unincorporate, that is comprised of not less than 30 persons for social, literary, cultural, political, sporting, athletic or other lawful purposes, with its facilities provided and maintained partly or wholly from its funds.

### 例子 Example

阿寶申請加入某舞蹈會社，帶同新生嬰兒前往該會社，與會社經理商討入會事宜。該經理詢問阿寶是否一直以母乳餵哺方式給嬰兒餵食，阿寶回答她是採用該餵食方式。經理表示以往曾收到有關成員在會社內餵哺母乳的投訴，因此要求阿寶承諾不會在會社內餵哺母乳，否則不能接受她的申請。這可能構成基於餵哺母乳的直接歧視。

Paula applies to become a member of a dancing club in Hong Kong. She brings her newborn baby with her when she meets the club manager to discuss her application. The manager asks whether she has been breastfeeding her baby. When she replies in the affirmative, the manager says that her application won't be accepted unless she promises not to breastfeed her baby at the club, since there have been complaints about members breastfeeding at the club. This is likely to be direct breastfeeding discrimination.



任何會社或其管理委員會成員，向會社現有成員或可能成為會社的成員作出基於餵哺母乳的騷擾行為，亦屬違法。

Further, it is unlawful for a club or a member of its management committee to harass a prospective or existing member on the ground that she is breastfeeding.

本文例子說明《條例》就基於餵哺母乳的歧視及騷擾提供的主要保障。《條例》亦適用於其他公共生活範疇，即教育以及政府的權力和職能。

The examples above illustrate some of the main protections against breastfeeding discrimination and harassment under the SDO, which also applies to other key areas of public life, namely education and the exercise of Government powers and functions.

欲全面了解《條例》提供的保障，請參閱平機會為推廣對哺乳女姓的平等待遇、就僱傭及其他範疇擬定的指南。

For a complete understanding of the SDO's protections, please refer to the EOC's guidance on promoting equality for breastfeeding women in **employment-related** settings and **other sectors**.



## 支援哺乳女性 企業角色不可或缺

### How Can Organisations Become Allies for Breastfeeding Women?



隨着《性別歧視條例》的修訂於 2021 年 6 月 19 日生效，哺乳女性得到法律保障，免受歧視和騷擾。不論是僱主或是貨品、服務及設施提供者，各界機構宜制訂相應政策或檢視現行措施，除了預防違法行為發生，亦有助建立平等的企業文化，提升員工和顧客的歸屬感。

**With the prohibitions against breastfeeding discrimination and harassment under the Sex Discrimination Ordinance becoming effective on 19 June 2021, it is advisable for organisations – from employers to providers of goods, services and facilities – to put in place and review relevant policies not only to ensure compliance with the law, but also to foster a culture of equality essential to the retention of employees and customers alike.**

#### 僱主

你可採取下列措施，支持餵哺母乳的僱員：

- 制定有關母乳餵哺的書面政策，列明管理層支持餵哺母乳的立場，並不會容忍員工任何基於餵哺母乳的歧視或騷擾行為。
- 告知員工有關政策，並在有需要時為他們提供培訓。
- 為哺乳員工安排合適的設施和時段以便集乳；若未能提供獨立設施，宜作出替代安排，例如容許員工利用現有房間集乳。
- 在合理和可行的情況下，考慮員工有關彈性工作或更改工作情況的要求，例如由全職轉為兼職、轉換崗位等。

#### Employers

Here are a few tips on what employers can do :

- Develop a written policy on breastfeeding, stating senior management's support to breastfeeding, and that any acts of discrimination or harassment against breastfeeding staff members will not be tolerated.
- Communicate the policy to staff members and provide training to them as needed.
- Make available appropriate facilities and lactation breaks for breastfeeding staff members to express milk at work, and offer alternative arrangements if these are not available, such as allowing employees to express milk in an existing room.
- Consider requests for flexible or adjustment to working conditions, such as switching from full-time to part-time work or to other roles, as far as reasonably practicable.



## 貨品、服務及設施提供者

同樣，若你是貨品、服務及設施提供者，亦應制定書面政策及告知員工詳情，並透過不同平台向顧客宣傳政策和相關設施，好讓餵哺母乳的女性能在有需要時，找到並使用這些設施。

設置育嬰間及哺乳室固然是良好常規，但若哺乳女性不願使用有關設施，便不應強制她們使用。**基於衛生理由，洗手間亦不適宜用於哺乳及集乳。**

### 該做的事

👍 尊重女性自由選擇哺乳的時間和地點。

- 👍 如女客人希望在私隱度較高的地方哺乳，應盡可能提供一個合適的位置。
- 👍 向其他顧客或服務使用者解釋哺乳女性和嬰兒的需要。

## Providers of goods, services and facilities

Besides developing a written organisational policy on breastfeeding and communicating it to staff members, you may also publicise your policy and the facilities available in your premises through different channels, so that breastfeeding women can find and use these facilities when needed.

While 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. **For hygienic reasons, women should not be asked to breastfeed and express milk in toilets.**

### Dos

👍 Respect women's freedom of choice to breastfeed anytime, anywhere.

- 👍 Offer an appropriate location to female customers who wish to have more privacy when breastfeeding.
- 👍 Explain to other customers or service users the needs of breastfeeding women and babies.

### 不該做的事

👎 要求正在哺乳的女性停止、遮蔽身體或轉移到其它地方哺乳。

- 👎 打擾正在哺乳的女性，除非涉及安全問題，如阻塞出口或通道。
- 👎 堅持哺乳女性必須到育嬰間餵哺母乳。
- 👎 要求女性到洗手間哺乳。

### Don'ts

👎 Ask a woman who is breastfeeding to stop, cover up or leave the premise.

- 👎 Do not disturb a woman who is breastfeeding unless there is safety concern, for example due to blockage of a passageway.
- 👎 Insist that the woman must go to the baby care room in the premise.
- 👎 Ask women to breastfeed in toilets.

## 參考資源

- 平機會《對餵哺母乳女性的平等待遇—有關貨品、設施及服務的提供、教育、處所的處置或管理、會社及政府的範疇之指南》
- 平機會《對餵哺母乳女性的平等待遇—有關僱傭及相關範疇的指南》
- 衛生署《實施「母乳餵哺友善工作間」僱主指引》
- 衛生署《僱員指引：母乳餵哺與工作相容》
- 衛生署《實施「母乳餵哺友善場所」指引》

## Resources

- [Guidance on Equality for Breastfeeding Women Relating to the Provision of Goods, Facilities and Services, Education, Disposal or Management of Premises, Clubs, and the Government](#), Equal Opportunities Commission
- [Guidance on Equality for Breastfeeding Women in Employment and Related Sectors](#), Equal Opportunities Commission
- [Employers' Guide to Establishing Breastfeeding Friendly Workplace](#), Department of Health
- [An Employee's Guide to Combining Breastfeeding with Work](#), Department of Health
- [Guide to Establishing Breastfeeding Friendly Premises](#), Department of Health