



complaint of sexual harassment.

Confidentiality

The principle of confidentiality should underpin any policy on sexual harassment. In short, this means that any information relating to a complaint of sexual harassment must only be given on a need-to-know basis. Employers need to ensure that managers understand this principle when dealing with complaints. By adopting such a principle, it gives assurance to the complainant or potential complainant that management appreciates the sensitive nature of sexual harassment and that the details of complaint will not be disclosed to other colleagues.

(9) Sex as a Genuine Occupational Qualification

Discrimination on the ground of sex is unlawful

Men and women are entitled to equal consideration for jobs, irrespective of their sex. It is unlawful under the Sex Discrimination Ordinance (SDO), for employers to single out men only, or women only, for a job. They can only do so in exceptional circumstances where being a man or being a woman is a Genuine Occupational Qualification (GOQ) for a particular job.

Exception where sex is a Genuine Occupational Qualification

There are a few instances in which employers can claim sex as a GOQ for a job. Where a GOQ exists for a job, it applies also to consideration for promotion, transfer, or training for that job, but cannot be used to justify a dismissal.

In what circumstances is sex a Genuine Occupational Qualification?

The circumstances in which sex is a GOQ for a job are:

- The essential nature of the job requires a man or a woman because of physiology or for authenticity in dramatic performances or other entertainment. For example, in the modelling of clothes or playing the role of a particular sex in a film or in a play.
- The job requires a man or a woman to preserve decency or privacy. For example, the requirement of a male to work as an attendant in a men's changing room.
- The job is likely to involve the employee working or living in a domestic setting and has significant physical or social contact with the person living there. For example, domestic helpers or, companion to an elderly person.
- The nature of work or the location of the establishment requires the employee to live in premises provided by the employer and the only available premises do not provide both separate sleeping accommodation and sanitary facilities

¹⁰ Guidelines on the setting up of such a policy are contained in the Code of Practice on Employment under the Sex Discrimination Ordinance published by the EOC.



for either sex. For example, working on a small boat or at a remote site.

- The employment establishment is a single-sex establishment or in a single-sex part of an establishment where people receive special care, supervision or attention; and the essential character of that establishment or the part of it requires a person of the same sex to do the job. For example, a male warden in a male prison or a female attendant working in a section of a hospital for female patients only.
- The holder of the job provides individuals with personal services promoting their welfare or education, or similar personal services, and such services are most effectively performed by one sex. For example, a female counsellor at a shelter home for battered women or a female social worker at a girls' home.
- The job needs to be held by a man (or a woman) because it is likely to involve the performance of duties outside Hong Kong in a place where the customs or laws do not permit a woman (or a man) to effectively perform such duties. For example, a sales manager who is required to negotiate business deals in a country where the customs would forbid the involvement of a women.
- The job is one of two to be held by a married couple. For example, where a married couple is employed as foster parents at a children's home.

Where sex is a GOQ for a job, it is not unlawful for employers to discriminate on the ground of sex in relation to whom they offer employment or to whom they offer promotion, transfer or training in respect of that job.

Is Genuine Occupational Qualification an automatic exception?

No, GOQ is not an automatic exception for sex discrimination. In each case it will be necessary for the employer, who claims GOQ as an exception or defence, to show that GOQ applies to the particular job in question.

Furthermore, GOQ cannot be relied on as an exception for a job which involves a number of duties (some of which may otherwise form

the basis for sex being a GOQ) if, at the time of filling a vacancy for the job, the employer already has employees of the opposite sex to the applicant, who are capable of performing those duties which would require the job holder to be of a particular sex, and it would be reasonable for such employees to carry out such duties, and the number of such other employees is sufficient so as not to cause undue inconvenience for the employer.

For example, there is a vacancy for a sales assistant in women's section of a department store where all existing sales assistants are females. The employer refuses to consider appointing a male as the job involves taking body measurements and assisting customers in fitting, and considers that the job must be held by a female to preserve decency or privacy as within the meaning of the GOQ exception. However, the employer's refusal may be unlawful. He or she may not rely on the GOQ exception if there are other female assistants who work in the store and who can help taking body measurements or assisting customers on occasions where it is necessary.

It is recommended that a job for which a GOQ was used in the past should always be re-examined if the post becomes vacant to see whether the GOQ still applies. Circumstances may well have changed and the GOQ may no longer be inapplicable.