

# 投訴處理及法律行動

## Complaint Handling and Legal Actions

根據香港的三條反歧視條例，基於某人的性別、婚姻狀況、懷孕、殘疾或家庭崗位而歧視該人，乃屬違法。而根據《性別歧視條例》及《殘疾歧視條例》，性騷擾或基於殘疾而作出的騷擾及中傷皆屬違法。

反歧視條例中有關僱傭範疇的條文不單保障在職人士，亦為求職者、代理人及承辦商提供保障。條例亦涵蓋關乎職業訓練、職業介紹所、業務合夥、專業團體及職工會等活動。條例中非僱傭範疇的條文，則包括教育及貨品、服務的提供，以至參與會社及體育活動、處所管理及政府事務等各方面。

### 查詢

市民對委員會的工作和本港各種歧視情況的認識日益增加。由1997年4月至1998年3月，委員會共接獲7,248宗查詢，其中包括5,670宗一般查詢和1,614宗具體查詢。在2003/04年度，查詢數字上升兩倍至14,157宗，其中包括7,999宗一般查詢和6,158宗具體查詢。

一般查詢涵蓋所有與委員會相關的工作和三條反歧視條例；而具體查詢則是與個別事件有關的問題。在2003/04年度的6,158宗具體查詢當中，1,670宗(27%)查詢關乎《性別歧視條例》，2,595宗(42%)關乎《殘疾歧視條例》，173宗(3%)關乎《家庭崗位歧視條例》，另有788宗(13%)關於委員會的工作，其餘932宗(15%)則涉及年齡、種族、性傾向、宗教等不屬於委員會權限之內的問題（詳情見表1）。

Under Hong Kong's three anti-discrimination ordinances, it is unlawful to discriminate against anyone on the grounds of sex, marital status, pregnancy, disability or family status. Behaviour such as sexual harassment, or harassment and vilification on the grounds of disability are unlawful under the Sex Discrimination Ordinance and the Disability Discrimination Ordinance.

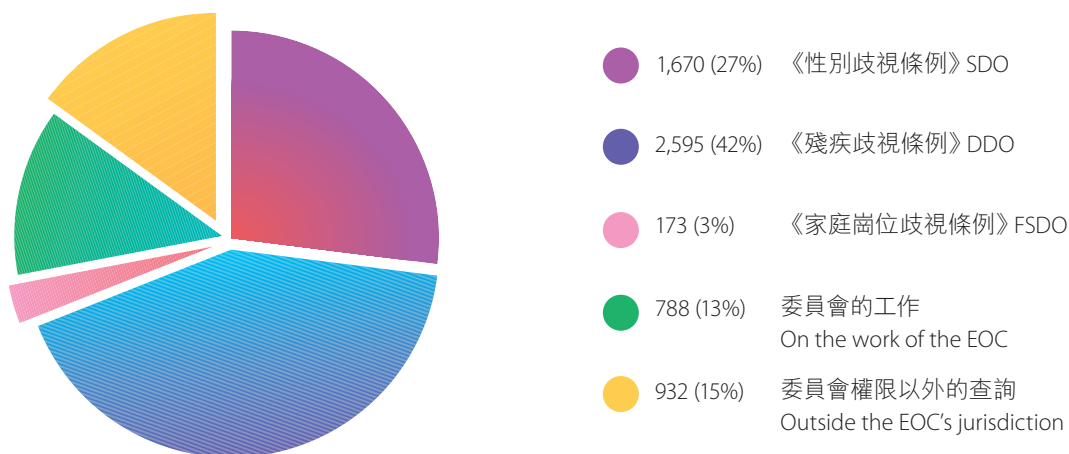
The employment-related provisions of the ordinances provide protection, not only to existing employees but also to job applicants, agents and contractors. They also cover activities relating to vocational training, employment agencies, partnership admissions, professional bodies and trade unions. The non-employment related provisions offer coverage in areas ranging from education and the provision of goods or services to participation in clubs and sporting activities, the management of premises and government activities.

### Enquiries

The public continues to gain an increasing awareness of issues related to the work of the EOC and the different kinds of discrimination in Hong Kong. From April 1997 to March 1998, we recorded a total of 7,284 enquiries consisting of 5,670 general and 1,614 specific enquiries. Since then, this has doubled to 14,157, consisting of 7,999 general and 6,158 specific enquiries in 2003/04.

While general enquiries relate to our overall activities and the anti-discrimination laws, specific enquiries relate to incident-related questions. Of the 6,158 specific enquiries, 1,670 (27%) were related to the Sex Discrimination Ordinance (SDO), 2,595 (42%) to the Disability Discrimination Ordinance (DDO) and 173 (3%) to the Family Status Discrimination Ordinance (FSDO). An additional 788 (13%) covered the work of the EOC while the remaining 932 (15%) enquiries fell outside our jurisdiction, covering areas such as age, race, sexual orientation and religion (See Figure 1).

表1 2003年4月1日至2004年3月31日期間的具體查詢分類(總數: 6,158宗)  
Figure 1 Specific Enquiries from 1 April 2003 to 31 March 2004 (Total number: 6,158)



## 需進行調查及調解的投訴

根據反歧視條例規定，任何人士如認為受到違法的歧視，可親身或授權代表向委員會提出書面投訴。調查期間，委員會會研究個案的情況，然後讓雙方就所指稱的事宜提出意見和回應。我們首先會致力以調解方式協助雙方和解，假若未能和解，委員會可應投訴人的申請，考慮提供其他形式的協助。委員會會研究每一宗申請的原則問題，並評估投訴人能否在沒有委員會協助的情況下獨自處理其個案。協助形式包括給予法律意見、法律協助、或任何委員會認為適當的協助。

## Complaints for Investigation and Conciliation

Anyone who feels that he or she has been treated unlawfully under Hong Kong's anti-discrimination legislation can seek redress by lodging a complaint in writing, either personally or through a representative, with the EOC. During the investigation, we look into the facts of each case. Both parties are then given the opportunity to comment and respond to the allegations made. First of all we endeavour to resolve the matter through conciliation, helping the parties involved to reach a settlement. If a settlement cannot be reached, we can consider other forms of assistance if the complainant makes an application to take the matter further. We look at each application individually, considering issues of principle as well as the ability of the applicant to deal with the case unaided. Assistance granted can include advice, legal assistance or any other assistance deemed appropriate.

表2 2003年4月1日至2004年3月31日期間收到並需進行調查及調解的投訴(總數: 854宗)  
Figure 2 Complaints for Investigation and Conciliation received from 1 April 2003 to 31 March 2004 (Total number: 854)

	《性別歧視條例》 SDO	《殘疾歧視條例》 DDO	《家庭崗位歧視條例》 FSDO	總數 Total
投訴數目 No. of complaints	391 (46%)	420 (49%)	43 (5%)	854
投訴人數目 No. of complainants	201 (40%)	279 (56%)	20 (4%)	500
答辯人數目 No. of respondents	336 (45%)	380 (51%)	28 (4%)	744

**經處理的投訴**

委員會於2003/04年度接獲500名投訴人對744名答辯人作出的投訴，共涉及854宗指稱違法作為的個案，較2002/03年度的748宗為多。在854宗投訴當中，391宗(46%)按《性別歧視條例》提出，420宗(49%)關乎《殘疾歧視條例》，另43宗(5%)關乎《家庭崗位歧視條例》。連同往年未完結的個案，委員會本年度共處理1,151宗投訴，比上一年度的1,597宗減少28%（詳情見表3）。

**Complaints Handled**

During the year, we received complaints from 500 complainants against 744 respondents involving 854 cases of alleged unlawful acts, an increase from the 748 complaints received in 2002/03. Of this number, 391 (46%) were received under the SDO, 420 (49%) under the DDO and 43 (5%) under the FSDO. Together with those carried forward from previous years, we investigated a total of 1,151 complaints, representing a decrease of 28% as compared with 1,597 in the previous year (See Figure 3).

表3 2003年4月1日至2004年3月31日期間需進行調查及調解的投訴(總數：1,151宗)

Figure 3 Complaints for Investigation and Conciliation handled from 1 April 2003 to 31 March 2004 (Total number: 1,151)

	《性別歧視條例》 SDO	《殘疾歧視條例》 DDO	《家庭崗位歧視條例》 FSDO	總數 Total
僱傭範疇 Employment	498 (53%)	384 (41%)	54 (6%)	936
非僱傭範疇 Non-employment	53 (25%)	155 (72%)	7 (3%)	215
總數 Total	551 (48%)	539 (47%)	61 (5%)	1,151

在2003/04年度，委員會完成對942宗指稱違法作為個案的調查（詳情見表3a）。當中有458宗曾進行調解，其中244宗調解成功，其餘214宗未能和解（詳情見表3b）。

In 2003/04, investigation work on 942 cases of alleged unlawful acts was concluded (See Figure 3a). Among them, 458 cases proceeded to conciliation, with 244 having reached successful settlement, while the remaining 214 cases were unsuccessful (See Figure 3b).

表3a 2003年4月1日至2004年3月31日期間經調查及調解後完結的投訴(總數：942宗)

Figure 3a Cases concluded after Investigation and Conciliation from 1 April 2003 to 31 March 2004 (Total number: 942)

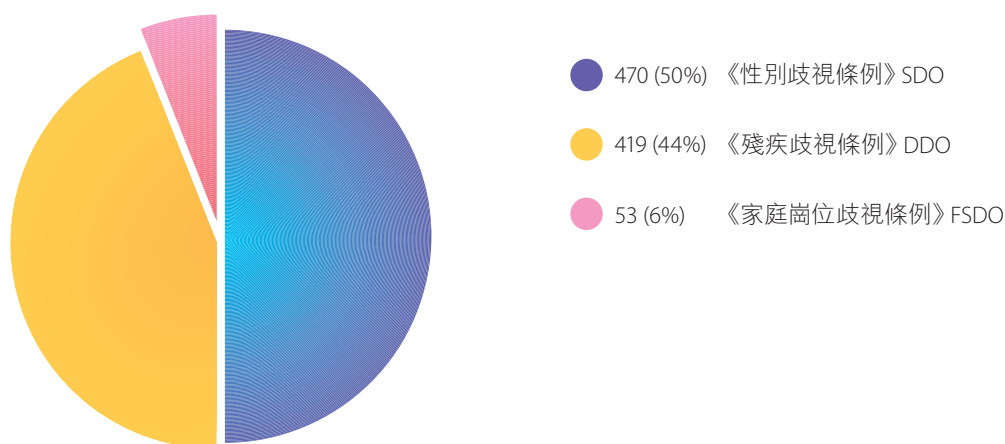
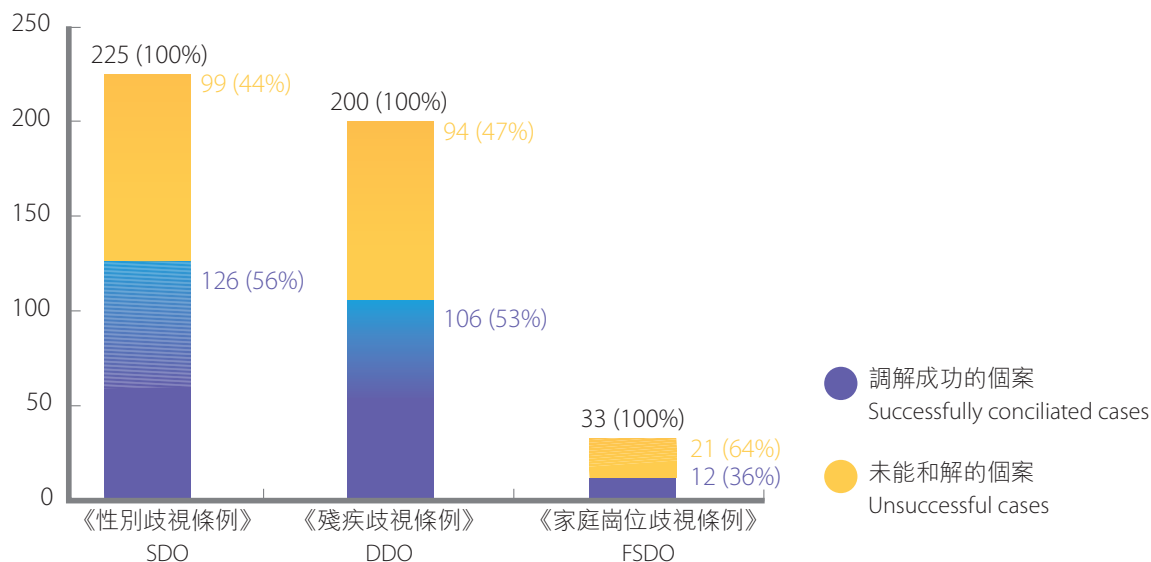


表3b 2003年4月1日至2004年3月31日期間曾進行調解的個案(總數:458宗)

Figure 3b Cases Proceeding to Conciliation from 1 April 2003 to 31 March 2004 (Total Number: 458)



至於未進行調解的投訴，是因為各種原因而終止調查，例如有關作為並不違法、或投訴人不想繼續追究、或受指稱的行為在投訴時已超過12個月。此外，若投訴透過其他機制獲得解決、或委員會認為有關投訴屬瑣屑無聊、無理取鬧、基於錯誤理解或缺乏實質，委員會亦會終止調查。在終止個案方面，本年度有484宗（詳情見表4）。

Complaint cases that do not proceed to conciliation are discontinued for a variety of reasons. This happens if the act in question is not unlawful, the complainant no longer wants to pursue the complaint, or if a period of over 12 months has passed since the act was committed. Investigations also cease if the dispute is resolved through other mechanisms, or if the EOC considers the complaint to be frivolous, vexatious, misconceived or lacking in substance. A total of 484 complaints in this category were discontinued (See Figure 4).

表4 2003年4月1日至2004年3月31日期間個案終止調查的原因

Figure 4 Discontinued Cases by Reason from 1 April 2003 to 31 March 2004

	不屬違法作為 No unlawful acts	瑣屑無聊或缺乏實質 Frivolous or lacking in substance	投訴人不願繼續追究 Complainants did not wish to pursue	投訴得到提早解決 Complaint resolved through early resolution	超過12個月的時限 Beyond 12-month time bar	總數 Total
《性別歧視條例》 SDO	7 (50%)	141 (48%)	71 (53%)	21 (70%)	5 (36%)	245 (51%)
《殘疾歧視條例》 DDO	6 (43%)	136 (46%)	60 (45%)	8 (27%)	9 (64%)	219 (45%)
《家庭崗位歧視條例》 FSDO	1 (7%)	16 (6%)	2 (2%)	1 (3%)	0 (0%)	20 (4%)
總數 Total	14 (100%)	293 (100%)	133 (100%)	30 (100%)	14 (100%)	484 (100%)

與《性別歧視條例》相關之投訴

- 委員會本年度共調查498宗涉及僱傭範疇的指稱，數目最多的依然是懷孕歧視(199宗，佔40%)，其次是性騷擾(142宗，佔29%) (詳情見表5)。
- 委員會本年度共調查53宗涉及非僱傭範疇的指稱，其中32宗(60%)關乎性別歧視 (詳情見表6)。

SDO-related Complaints

- A total of 498 employment-related allegations were investigated. Pregnancy discrimination continued to be the major cause for complaint (199 cases, 40%) followed by sexual harassment (142 cases, 29%) (See Figure 5).
- Investigations were made into 53 non-employment related allegations; of which 32 (60%) were related to sex discrimination (See Figure 6).

表5 2003年4月1日至2004年3月31日期間根據《性別歧視條例》提出，關乎僱傭範疇而獲調查的指稱 (共498宗)  
Figure 5 Employment Related Allegations investigated under the SDO from 1 April 2003 to 31 March 2004 (Total number: 498)

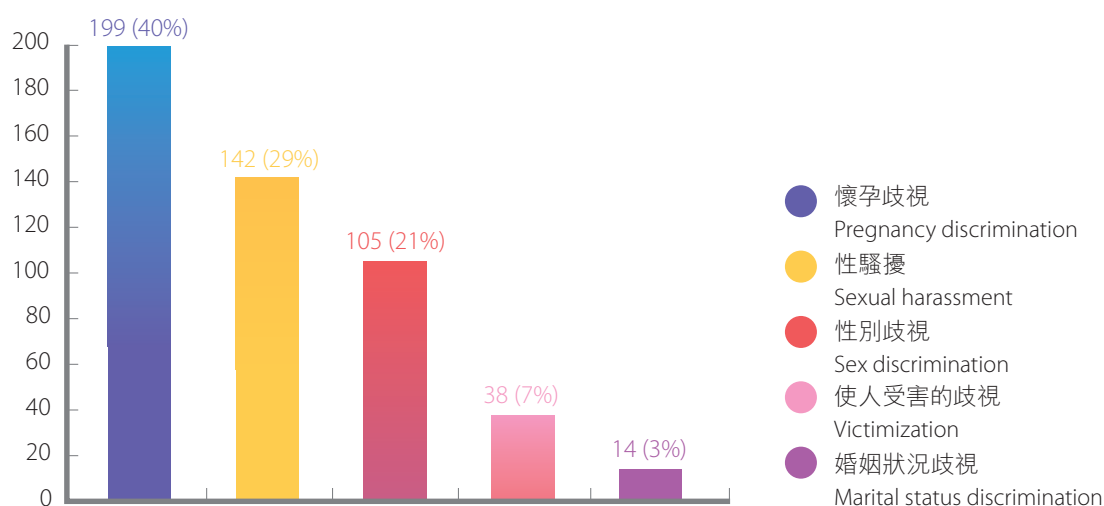
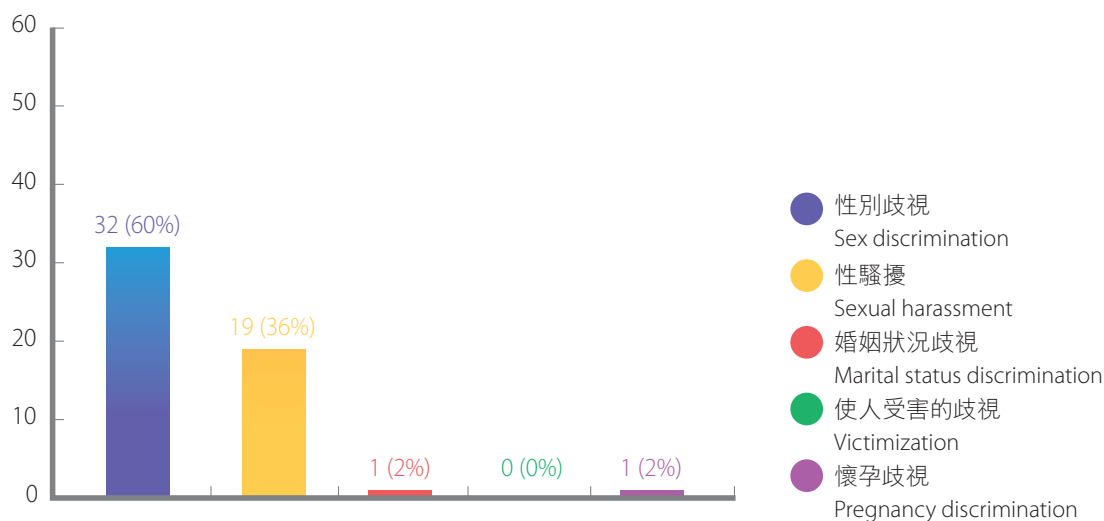


表6 2003年4月1日至2004年3月31日期間根據《性別歧視條例》提出，關乎非僱傭範疇而獲調查的指稱 (共53宗)  
Figure 6 Non-employment Related Allegations investigated under the SDO from 1 April 2003 to 31 March 2004 (Total number: 53)



### 與《殘疾歧視條例》相關之投訴

- 委員會本年度調查了539宗與《殘疾歧視條例》相關的指稱。
- 其中僱傭範疇個案達384宗，非僱傭範疇個案則有155宗，殘疾歧視個案佔最多，達481宗（佔總數89%）（詳情見表7及表8）。

### DDO-related Complaints

- A total of 539 allegations were investigated.
- Among both the 384 employment-related and 155 non-employment related cases handled, disability discrimination was the single largest cause for complaint, accounting for 481 (89%) of the total (See Figures 7 and 8).

表7 2003年4月1日至2004年3月31日期間根據《殘疾歧視條例》提出，關乎僱傭範疇而獲調查的指稱（共384宗）  
Figure 7 Employment Related Allegations investigated under the DDO from 1 April 2003 to 31 March 2004 (Total number: 384)

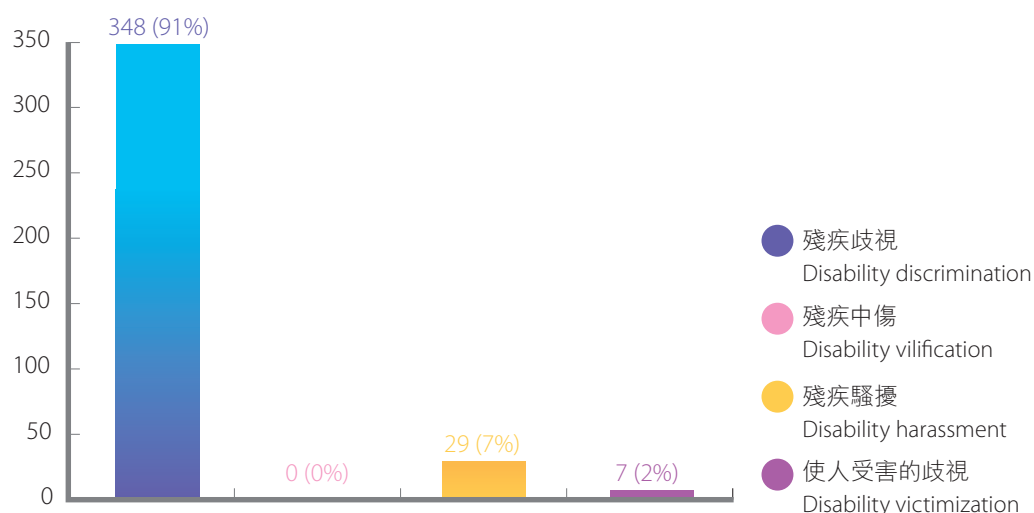


表8 2003年4月1日至2004年3月31日期間根據《殘疾歧視條例》提出，關乎非僱傭範疇而獲調查的指稱（共155宗）  
Figure 8 Non-employment Related Allegations investigated under the DDO from 1 April 2003 to 31 March 2004 (Total number: 155)

投訴類別 Type of complaint	投訴數目 Number of complaints
殘疾歧視 Disability discrimination	<b>133 (86%)</b>
貨品、服務和設施 Goods, services and facilities	78
處所通道 Access to premises	32
教育 Education	8
政府 Government	14
處所的處置和管理 Disposal and management of premises	1
其他 Others	0
殘疾中傷、騷擾和使人受害的歧視 Disability vilification, harassment & victimization	<b>22 (14%)</b>
總數 Total	<b>155 (100%)</b>

### 與《家庭崗位歧視條例》相關之投訴

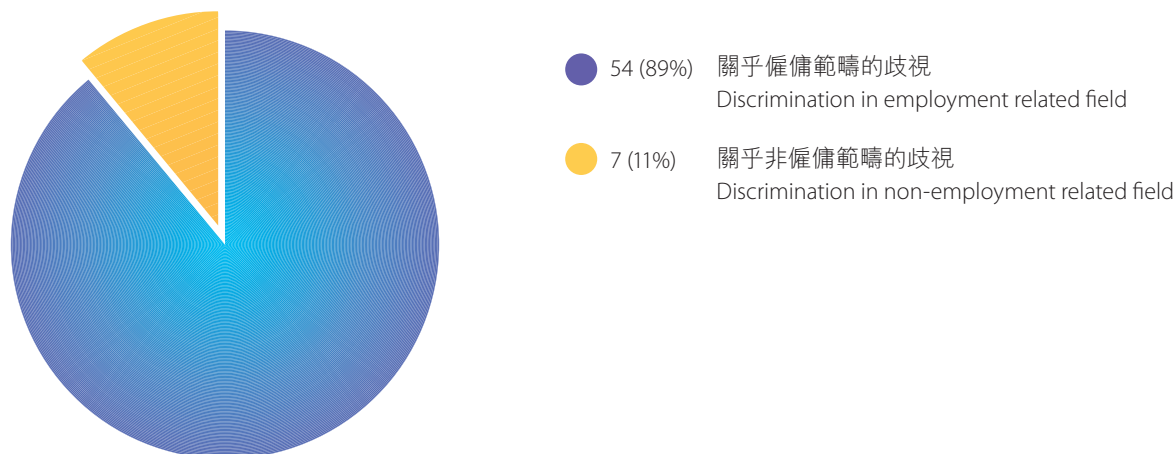
- 委員會本年度調查了61宗有關《家庭崗位歧視條例》的指稱，當中54宗（89%）關乎僱傭範疇，7宗（11%）關乎非僱傭範疇（見表9）。大部分（80%）關乎僱傭範疇的指稱是與基於家庭崗位的解僱有關。

### FSDO-related Complaints

- During the year, a total of 61 FSDO allegations were investigated, 54 (89%) of which were employment-related and seven (11%) non-employment related (See Figure 9). The majority (80%) of the allegations in the employment field were related to dismissal on the grounds of family status.

表9 2003年4月1日至2004年3月31日期間根據《家庭崗位歧視條例》提出，並獲調查的指稱（共61宗）

Figure 9 Allegations investigated under the FSDO from 1 April 2003 to 31 March 2004 (Total number: 61)



## 需跟進之投訴

對於由第三者或不想參與調查或調解的受屈人士所提出的違法行為投訴，委員會亦會採取行動。委員會會聯絡有關人士，就事件作出調查，向他們解釋有關法例，並建議他們加以糾正。因本年度爆發非典型肺炎（「沙士」），引發大量投訴，因此需跟進之投訴上升至112宗。委員會成立了快速應變小組，以「需跟進之投訴」模式處理這些投訴。委員會本年度所處理需跟進的投訴中，40宗是關乎《性別歧視條例》，72宗關乎《殘疾歧視條例》，而委員會並沒有收到關乎《家庭崗位歧視條例》的投訴。

## 法律協助

如果投訴的雙方未能達成和解，委員會可向有意提出訴訟的申請人提供多種協助。在收到協助申請後，委員會的律師會就個案證據是否有力及其他考慮因素作出評估，然後向委員會提出意見，委員會的法律及投訴專責小組根據此意見決定是否給予協助。協助的形式包括：由委員會的律師向申請人提供法律意見、協助申請人取得進一步資料或證據，或由委員會律師或經委員會延聘的私人執業大律師，在訴訟中擔任申請人的法律代表等。

在2003/04年度，委員會共收到80宗有關法律協助的申請，其中35宗獲委員會給予協助。個案分類詳情請參閱附錄5。

## Complaints for Follow-up Action

We also take action on complaints with regard to unlawful acts brought to our attention by third parties, or aggrieved individuals who do not wish to be involved in the investigation or conciliation process. Under these circumstances, the Commission approaches the concerned parties to inquire into the matter, explain the relevant legislation, and advise them to rectify the situation. Complaints for follow-up action soared to a high of 112 cases, as the SARS outbreak brought in a large inflow of complaints. We dealt with these with a quick response team which adopted a 'complaints for follow-up action' approach. During the year, we handled 40 such complaints under the SDO and 72 under the DDO. No complaints in this category were received under the FSDO.

## Legal Assistance

If a complaint has been lodged and conciliation has not been successful, the EOC has the power to grant various forms of assistance to applicants who wish to take legal proceedings with regard to the complaint. When an application for assistance is received, our lawyers will conduct an assessment of the application before advising the Commission on the strength of the evidence and other considerations. Based on this advice, the Legal and Complaints Committee of the Commission will decide whether or not to grant assistance. Assistance granted may include legal advice to the applicant by the Commission's lawyers, legal services for the applicant to obtain further information or evidence, or representation in legal proceedings by the EOC's lawyers, or by barristers in private practice briefed by the Commission.

In 2003/04, we received 80 applications for assistance and granted assistance in 35 cases. A breakdown of these cases can be found under Appendix 5.

## 獲委員會給予法律協助的個案

本年度共有17宗獲委員會協助的個案在展開法律程序前得以解決(包括自往年延續至本年度的個案)，解決原因包括個案雙方達成和解，或委員會因各種原因而撤回法律協助(例如委員會研究證據之後，認為不宜繼續給予協助)，或個案的發展令委員會毋需繼續給予法律協助等。

在這段期間，委員會還向另外26宗個案給予法律協助(包括自往年延續至本年度的個案)，這些個案在2003/04仍未展開法律程序。詳情見附錄6。

## 法律訴訟

本年度區域法院就兩宗懷孕歧視個案評估損害賠償。第一宗個案的審訊在上年度進行，委員會律師代表原告人，向她的準僱主提出訴訟，原告人最後勝訴。評估損害賠償的聆訊在本年度進行，聆訊裁定原告人獲得港幣155,000元賠償。被告人其後提出上訴，獲法院推翻部分原判。2004年11月上訴法院調低損害賠償額至港幣135,000元。

在第二宗個案中，原告人獲委員會提供法律協助，向其僱主展開法律行動，但其僱主並無答辯。區域法院因被告的僱主缺席聆訊而作出的判決，是裁定原告人獲得港幣139,461元賠償。

此外，原告人獲委員會協助展開法律程序的案件共有三宗，其中兩宗達成庭外和解，第三宗在2003/04年度終結時仍在進行中。

五宗在2003/04年度之前展開法律程序的個案在2004年3月底時已經解決。另外兩宗在2003/04年度之前展開法律程序的個案，仍在等候區域法院進行聆訊，其中一宗是殘疾歧視個案，關乎某紀律部隊招聘一名主任級人員，另一宗是關乎一名女僱員因懷孕而被解僱的個案，詳情見附錄7。

## Legally Assisted Cases

During the year, 17 cases where legal assistance had been granted (including cases carried over from previous years) were resolved without the commencement of legal proceedings. These included cases where the parties reached settlement and instances when EOC assistance was withdrawn for a variety of reasons, such as, when upon further examination of the evidence it was considered inappropriate to continue assistance, or when subsequent developments between the parties made it unnecessary for assistance to continue.

During this period, the Commission also handled 26 other cases where legal assistance had been granted (including cases carried over from previous years) but had not yet commenced court proceedings in 2003/04. For further details, please see Appendix 6.

## Court Cases

In 2003/04, assessments for damages were conducted in the District Court for two pregnancy discrimination cases. In the first instance, the trial took place in the previous year, with the plaintiff, represented by an EOC lawyer, winning the case against her prospective employer. At the hearing for the assessment of damages, which took place during the year, the plaintiff was awarded the amount of HK\$155,000 as compensation. The defendant subsequently appealed and was partially successful. In November 2004, the amount of damages was adjusted down by the Court of Appeal to HK\$135,000.

In the second case, with the legal assistance of the EOC, legal action commenced against the plaintiff's employer who did not respond. The default judgment against the defendant's employer by the District Court awarded the plaintiff damages of HK\$139,461.

Legal proceedings also commenced in three other cases with EOC assistance. Two of these were settled out of court while the third was still on-going at the end of 2003/04.

Five cases which commenced prior to 2003/04 were settled at the end of March 2004. A further two cases, which also commenced before 2003/04, are still pending proceedings in the District Court. One of these is a disability discrimination case relating to the recruitment of an officer in one of the disciplinary services, while the other concerns a female employee who was dismissed on the ground of her pregnancy. For further details, please refer to Appendix 7.