

2020

平機會刊物 EOC Publication

平等點點

EQUALITY
PERSPECTIVES

線面



Better Laws for a Better World

推動法改 創平等新天



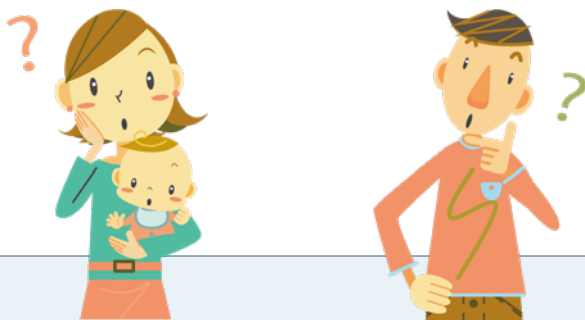
平等機會委員會
EQUAL OPPORTUNITIES COMMISSION

2 主席的話 CHAIRPERSON'S MESSAGE

3 知識補給站 EXPLAINER

修訂反歧視法例與我何干？

HOW THE AMENDMENTS TO
THE ANTI-DISCRIMINATION
LAWS AFFECT YOU



14 解讀大局 THE BIGGER PICTURE

爭取改變，從何開始？

WE WANT CHANGE,
BUT HOW DO WE
MAKE IT HAPPEN?



香港黃竹坑香葉道 41 號 16 樓
16/F, 41 Heung Yip Road, Wong Chuk Hang, Hong Kong

電話 Tel: 2511 8211
傳真 Fax: 2877 7600

網頁 Website: www.eoc.org.hk
電郵 E-mail: eoc@eoc.org.hk

短訊查詢服務 SMS Enquiry Service: 6972566616538
(供聽障 / 有語言障礙人士使用 For people with hearing impairment /
speech difficulties)

平機會在
EOC on



YouTube 頻道 YouTube channel:
www.youtube.com/user/hkeoc



Facebook 專頁 Facebook pages:
共融 i 世代 Generation i
Uniquelyme HK
Embrace Campaign



LinkedIn 專頁 LinkedIn page:
Equal Opportunities Commission



正當香港社會日益撕裂、彷彿所有議題均被捲入政治紛爭之際，有一條法案於本年六月獲不同光譜的立法會議員一致通過，說的正是《2018 年歧視法例（雜項修訂）條例草案》。

是次草案意義重大、影響深遠。透過修訂《性別歧視條例》、《殘疾歧視條例》、《家庭崗位歧視條例》及《種族歧視條例》，草案為本港的反歧視法例帶來八項重要改變，讓市民遇到某些形式的歧視和騷擾時，可享有法律保障。無疑，任何一個重視人權的社會，均不會對這些行為坐視不理。

今期《平等點•線•面》先為讀者提供「懶人包」，逐一解釋這些修訂，例如修訂後的《性別歧視條例》便明文禁止基於餵哺母乳的歧視，適用於僱傭、教育，以及貨品、服務及設施的提供等公共範疇。

然而，是次法例改革只是個開始。正如我們的第二篇文章提到，這項草案源於平機會於 2013 年就四條條例開展了全面的檢討工作。我們其後於 2016 年向政府提交報告，共提出 73 項建議，其中 27 項需優先處理。

作為執行香港反歧視法例的獨立法定機構，我們的理念始終如一：法律必須與時並進，以確保弱勢社群得到應有保障。不論各界有何顧慮，平機會將繼續憑藉豐富的經驗和專業知識，拆局解難，並與公民社會、立法會議員和政府積極合作，推動法例改革。

平等機會委員會主席
朱敏健, IDS
2020 年 9 月



Just when every issue and every conversation seem to fall hostage to political tribalism in Hong Kong, lawmakers across the aisle came together in a rare show of solidarity this June, voting unanimously in support of the Discrimination Legislation (Miscellaneous Amendments) Bill 2018.

The Bill carries significant and far-reaching implications. Through eight major changes to Hong Kong's anti-discrimination laws, namely the Sex Discrimination Ordinance (SDO), Disability Discrimination Ordinance, Family Status Discrimination Ordinance and Race Discrimination Ordinance, it seeks to strengthen legal protection against certain forms of discrimination and harassment – injustices that should have no place in any society that values human rights.

This issue of *Equality Perspectives* opens with an explainer chronicling the amendments. For instance, the SDO has been revised to expressly prohibit discrimination against breastfeeding women in key sectors of public life, such as employment, education, and the provision of goods, services and facilities.

The road to legislative reform, however, has just begun. As our second article points out, the origin of the Bill lies in a comprehensive review of the four ordinances initiated by the EOC in 2013. In our report to the Government in 2016, we made as many as 73 recommendations and listed 27 as priority for follow-up.

As an independent statutory body enforcing the city's anti-discrimination laws, our belief has and will always stay the same: the law is not static, and it must evolve to protect the vulnerable. Whatever concerns there may be and wherever they sprout, the EOC will leverage its expertise and experience to address them one by one, and continue to work alongside civil society, lawmakers and the Government to drive legislative change.

Ricky CHU Man-kin, IDS
Chairperson, Equal Opportunities Commission
September 2020

修訂反歧視法例與我何干？

HOW THE AMENDMENTS TO THE ANTI-DISCRIMINATION LAWS AFFECT YOU

你有否為孩子餵哺母乳？

你是僱主嗎？你的僱員當中有沒有餵哺母乳的女性？

你在過去一星期內曾否光顧任何店舖或餐廳？

你有做義工嗎？你工作時有實習生幫忙嗎？

如你的其中一個答案是「有」的話，請花幾分鐘的時間，
認識香港反歧視法的最新發展。

事因《2020 年歧視法例（雜項修訂）條例》

已於今年六月生效，對你或多或少都有影響。

Are you breastfeeding your child?

Are you an employer of any breastfeeding women?

Have you been a service user in a shop or a restaurant in the last week?

Do you do volunteer work for any organisation?

Do you have any interns working for you?

If you answered yes to any of these questions, then spare a few minutes for this crash course on the latest developments of Hong Kong's anti-discrimination laws. The Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020 came into force this June, and believe it or not, it is going to affect you one way or another!



這條條例主要帶來八項法律改革，但要明白它們的實際意義和適用範圍，必先掌握幾個基本概念。

The Ordinance implemented eight legal changes, but before we dive in to explain their scope and effect, a refresher on some fundamental concepts would be helpful.



受保障特徵 Protected characteristic

任何違法的歧視行為，必定是針對一個人的某項特徵而作出的，不論該人是真的擁有此項特徵，抑或是被認為擁有此項特徵。香港現時共有四條反歧視條例，分別為《性別歧視條例》、《殘疾歧視條例》、《家庭崗位歧視條例》及《種族歧視條例》。條例保障的特徵包括性別、婚姻狀況、懷孕、餵哺母乳（此乃是次修例所引入的受保障特徵）、殘疾、家庭崗位，以及種族。

For any act of discrimination to be unlawful, it must be based on a certain characteristic, a trait that a person has, or is attributed to her/him. Currently, there are four anti-discrimination ordinances in Hong Kong, namely the Sex Discrimination Ordinance (SDO), Disability Discrimination Ordinance (DDO), Family Status Discrimination Ordinance (FSDO), and Race Discrimination Ordinance (RDO). The grounds protected under these laws are sex, marital status, pregnancy, breastfeeding (added under the new amendments), disability, family status and race.

PROUD
OF WHO
I AM



直接歧視 Direct discrimination

直接歧視是指基於一個人的受保障特徵，對其作出較差的待遇。如直接歧視發生於法例訂明的適用範疇（如僱傭；貨品、服務及設施的提供；教育，以及處所的管理和處置等），即屬違法。以《種族歧視條例》為例，如一名業主刊登廣告招租，卻基於種族拒絕將單位租給一名巴基斯坦裔人士，即構成在「處所的處置」此範疇內作出直接歧視，屬違法行為。

Direct discrimination occurs when a person with a protected characteristic is treated less favourably on the ground of that characteristic, and is unlawful in areas of public life regulated by the law, such as employment; the provision of goods, services and facilities; education; and management and disposal of premises. Under the RDO, for instance, a landlord who advertises to rent a property cannot refuse to rent it to a Pakistani because of her/his race, as it amounts to direct racial discrimination in the disposal of premises.



間接歧視 Indirect discrimination

「間接歧視」是指向所有人施以同一條件或要求，表面上一視同仁，但實際上持有某項受保障特徵的人會因為較難符合該條件或要求，而蒙受不利。若間接歧視發生於法例規管的範疇（如僱傭等），而相關條件或要求並無充分理據，即屬違法。舉例來說，如僱主要求所有僱員加班，並懲處拒絕加班的僱員，則可能對懷孕的女性員工構成間接歧視。她們或因需要抽空進行產前檢查，而較難符合此要求。

Indirect discrimination occurs when a requirement or condition is applied to everyone, but in practice adversely affects people sharing a protected characteristic because it is less likely for them to be able to comply with that requirement or condition. Indirect discrimination is unlawful when the requirement is not justifiable, and is applied in one of the areas regulated by the law, such as employment. It may be a contravention of the SDO, for instance, to require all employees to work overtime and penalise those who do not, as it could result in indirect discrimination against pregnant female workers. They are less likely to be able to comply with the policy because of the need to spend time on pre-natal medical checkups.





性騷擾 Sexual harassment

根據《性別歧視條例》，以下兩種情況均屬性騷擾：

- 向某人作出任何與性相關的行為（包括提出性要求，以及要求得到性方面的好處），而此行為不但不受該人歡迎，一個合理的第三者在顧及所有情況後，亦預期該人會感到被冒犯、侮辱或威嚇（例如一名教授不斷將目光放在一名學生的胸部位置）；
- 獨自或與其他人一起作出任何與性相關的行為，而此行為對他人造成一個有敵意或威嚇性的環境（例如一名經理在下屬面前講黃色笑話）。

There are two forms of sexual harassment as defined by the SDO:

- Any unwelcome conduct of a sexual nature, including sexual advances and requests for sexual favours, that is directed at a person where a reasonable third person, having considered all relevant circumstances, would have anticipated that the other person would be offended, humiliated or intimidated (e.g. a professor staring at a student's breasts);
- Any act of a sexual nature, whether performed alone or with others, that creates a hostile or intimidating environment for another person (e.g. a manager telling sex jokes in front of junior staff).



殘疾騷擾 Disability harassment

根據《殘疾歧視條例》，殘疾騷擾是指基於某人的殘疾作出不受該人歡迎的行為，而一個合理的第三者在顧及所有情況後，亦預期該人會感到被冒犯、侮辱或威嚇（例如一名學生戲稱一名患有自閉症的同學為「畸形」）。

Under the DDO, this refers to any unwelcome act on the ground of a person's disability, where a reasonable third person, having considered all relevant circumstances, would have anticipated that the other person would be offended, humiliated or intimidated (e.g. a student calling a fellow classmate "freak" because of her/his autism).



種族騷擾 Racial harassment

根據《種族歧視條例》，以下兩種情況均屬種族騷擾：

- 基於某人的種族向該人作出不受歡迎的行為，而一個合理的第三者在顧及所有情況後，亦預期該人會感到被冒犯、侮辱或威嚇（例如一名學生取笑一名印尼裔同學的膚色）；
- 獨自或與其他人一起作出基於某人種族的行為，而此行為對該人造成一個有敵意或威嚇性的環境（例如一名教師在一名華裔同事面前表示，所有華人都非常野蠻和狡猾）。

There are two forms of racial harassment as defined by the RDO:

- Any unwelcome conduct that is directed at a person and based on her/his race where a reasonable third person, having considered all relevant circumstances, would have anticipated that the other person would be offended, humiliated or intimidated (e.g. a student mocking an Indonesian classmate for her skin colour);
- Any act, whether performed alone or with others, that is based on a person's race and creates a hostile or intimidating environment for that person (e.g. a teacher saying in front of a Chinese colleague that all Chinese people are uncivilised and dishonest).



如違反《性別歧視條例》、《殘疾歧視條例》、《家庭崗位歧視條例》及《種族歧視條例》下有關歧視及騷擾的條文，或須負上民事責任。部分性騷擾行為（例如未經同意下觸摸他人私處）亦有機會同時構成《刑事罪行條例》第122條下的「猥褻侵犯罪」。

Contraventions of discrimination and harassment-related provisions under the SDO, DDO, FSDO and RDO are civil offences. However, some acts of sexual harassment, such as touching a person's private parts without her/his consent, may also constitute indecent assault, which is a criminal offence under section 122 of the Crimes Ordinance.

掌握了上述概念，你便會明白這次修例如何加強了我們面對各種歧視和騷擾時可享有的法律保障。事實上，除了與餵哺母乳相關的條文將於 2021 年 6 月 19 日生效外，所有修訂現已生效。

Now that we have grasped some of the key concepts related to the anti-discrimination ordinances, we can better understand why the latest amendments are a big step forward in protections from discrimination and harassment. Below is a summary of the amendments, all of which are now in force except the breastfeeding-related provisions, which will be effective from 19 June 2021.



1. 基於女性餵哺母乳而作出歧視

Breastfeeding discrimination

經修訂後的《性別歧視條例》禁止在多個公共生活領域基於餵哺母乳作出直接及間接歧視，當中包括僱傭；貨品、服務及設施的提供；教育；處所的處置和管理；會社；以及政府行使其職權及職能。

法例不但保障正在餵哺母乳的女性（不論她是否正在餵哺其親生孩子），亦保障正在集乳的女性。即使歧視行為並非於女性餵哺母乳的期間發生，只要該行為是基於餵哺母乳而作出，法例亦同樣適用。

在僱傭範疇內，基於餵哺母乳的歧視可衍生自不同情況，例如禁止餵哺母乳的僱員享用辦公室設施，或基於她們抽空餵哺母乳或集乳而作出處分等。

The SDO has been amended to prohibit direct and indirect discrimination on the ground of breastfeeding in various areas of public life: employment; the provision of goods, services and facilities; education; management and disposal of premises; clubs; and the performance of Government functions and powers.

The law protects any woman who is breastfeeding a child – whether her own or not – and covers situations where a woman is expressing breast milk. A woman who feeds a child with her breast milk, but is not doing so at the time when the relevant act of discrimination is committed, is protected by the law as well.

Breastfeeding discrimination in employment may arise in a number of scenarios, such as denying access to office facilities for breastfeeding employees, or penalising them for taking breaks to breastfeed or express milk.

個案 CASE STUDY

某公司向員工表示，如每年的工作表現令人滿意，該年即可獲發 10% 花紅。評估準則之一，是員工有否完全符合公司的工作規定，包括每星期的工作時數。淑美放畢產假後回到公司工作，並提出每天小休兩次，每次 20 分鐘，以便集乳。公司批准了，但一年後卻只因淑美每天抽空集乳，決定不發 10% 花紅給她，即使她的工作評估報告顯示她表現卓越。公司此舉可能構成基於餵哺母乳的間接歧視，或屬違法。

A company has a bonus policy for all employees, which entitles them to a 10% additional bonus per annum where they have worked satisfactorily. One factor in determining whether the employees have worked satisfactorily is whether they have fully complied with the working conditions, including numbers of hours worked per week. Shuk-mei returns to work after maternity leave and requests to take two additional 20-minute breaks per day to express milk. Although the employer allows her to take the breaks, one year later the employer decides not to give the 10% bonus to Shuk-mei solely because of the extra time she has taken off to express milk. This is despite the fact that she has otherwise performed excellently, as indicated in her written appraisal. The refusal to pay the bonus is likely to be indirect breastfeeding discrimination and unlawful.

基於女性餵哺母乳的歧視亦有可能在提供貨品、服務及設施的情景下發生，例如不允許女性在某公眾地方餵哺母乳或集乳。

In the context of the provision of goods, services and facilities, discrimination against breastfeeding women is also likely to arise, for example if they are not allowed to breastfeed or express milk in a public place.

個案 CASE STUDY

Amy 與她的伴侶和新生嬰兒正在一間餐廳吃午餐。孩子突然煩躁不安，Amy 擔心她肚餓，於是開始給她餵哺母乳。一位侍應立刻走近說：「小姐，你這樣令其他客人很不自在，請你停止，否則我會請你離開。」這可構成基於餵哺母乳的直接歧視，或屬違法。

Amy is having lunch at a restaurant with her partner and newborn child. The child becomes restless suddenly. Suspecting that she is hungry, Amy starts breastfeeding her. One of the waiters comes up and says to Amy, "Ma'am, you're making our customers uncomfortable. I'm afraid you'll have to leave if you keep doing this." This is likely to be unlawful direct discrimination against a breastfeeding woman.

此外，《性別歧視條例》禁止了在上述領域作出基於餵哺母乳而「使人受害」的歧視。意思是指，因一名餵哺母乳的女性或第三者曾經或有意指稱某人違反《性別歧視條例》（除非有關指稱屬於虛假或並非真誠地作出）、向平機會或僱主（如指稱的歧視行為於僱傭範疇內發生）投訴、根據條例採取法律程序，或就相關程序提供資料，因而給予該人較差的待遇。

The SDO also prohibits discrimination on the ground of breastfeeding by "victimisation" in the areas stated above. Victimisation occurs when a breastfeeding woman or a third person is treated less favourably because she or he has or plans to make an allegation about an SDO contravention (except when the allegation was false and not made in good faith), lodge a complaint with the EOC or the employer (if the alleged discriminatory act takes place in the area of employment), bring proceedings under the SDO, or give information in relation to these proceedings.



「母乳餵哺是提供新生兒所需營養的最佳方式……一起支持媽媽們隨時隨地餵哺母乳。」

——世界衛生組織

"Breastfeeding is the best way to provide infants with the nutrients they need... Support mums to breastfeed anytime, anywhere."

—— World Health Organization



2. 某人基於你相識的人的種族，對你作出歧視或騷擾

Discrimination and harassment based on the race of someone you know

經修訂後的《種族歧視條例》保障任何人不會基於其「有聯繫者」的種族而受到歧視和騷擾。一個人的「有聯繫者」包括其配偶、親屬及照料者；與該人在真正的家庭基礎上共同生活的人；以及與該人

The RDO has been amended to provide protection for a person against discrimination and harassment on the ground of the race of her/his "associate". Under the law, an associate may refer to a spouse, relative or carer of the person; anyone living with the person on a genuine domestic basis; or anyone who is in a business, sporting or recreational

> 知識補給站 EXPLAINER

有業務、體育或消閒關係的人。相比《種族歧視條例》以往所採用的「近親」概念，「有聯繫者」的保障範圍明顯大得多。

禁止基於「有聯繫者」的種族而作出歧視和騷擾的條文適用於多個公共生活範疇，包括僱傭；教育；貨品、服務及設施的提供；處所的處置和管理；以及會社。

relationship with the person. It therefore provides much wider protection than the notion of “near relative” previously adopted in the RDO.

The prohibition on racial discrimination and harassment by association applies to key areas of public life: employment; education; the provision of goods, services and facilities; management and disposal of premises; and clubs.

個案 CASE STUDY

健民是華裔學生，與尼泊爾裔的 Raju 就讀同一所中學。他們是好友，亦是學校籃球隊的成員。有一天訓練完畢後，一名隊友趁 Raju 不在，向健民說：「為甚麼你經常與 Raju 來往？南亞人全部都很污糟和令人厭惡，你跟他做朋友，你也沒分別。」這可構成基於健民的「有聯繫者」（Raju）的種族而作出的騷擾行為，或屬違法。

Kin-man is Chinese and attends the same secondary school as Raju, who is Nepalese. They are close friends and both are in the school's basketball team. One day, after practice, a team member notices Raju is not around and says to Kin-man, “Why are you hanging out with Raju all the time? South Asians are filthy and disgusting, and you're just the same if you're friends with them.” This may amount to unlawful racial harassment by association against Kin-man.

3. 某人假定你屬於某種族，並因此對你作出歧視或騷擾 Discrimination and harassment based on a race attributed to you

經修訂後的《種族歧視條例》保障任何人不會因為被認為、被覺得或被假設屬於某種族或某種族群體而受到歧視和騷擾，即使相關假設不符事實。法例稱之為「基於他人認定歸於某人的種族」而作出的歧視和騷擾，適用於僱傭；教育；貨品、服務及設施的提供；處所的處置和管理；以及會社等範疇。



The RDO has been amended to provide protection where a person is believed, perceived or assumed to be of a particular race or racial group (even when this is not true), and is discriminated against or harassed on this ground. This is known as racial discrimination and harassment by “imputation”, and is prohibited in the areas of employment; education; the provision of goods, services and facilities; management and disposal of premises; and clubs.

個案 CASE STUDY

某公關公司招聘客戶經理，收到來自一名叫 Komal Abidi 的女性的應徵信，隨信附上的履歷顯示她有合適的資歷及工作經驗。Komal 其實是華人，與一名巴基斯坦裔的穆斯林男性結了婚，婚後給自己取了穆斯林名字，並冠以夫姓。該公司不希望僱用南亞裔人士，並假設 Komal 是南亞裔，因此拒絕讓她接受面試。這可構成「基於他人認定歸於某人的種族」而作出的直接歧視，或屬違法。

A PR firm receives applications for an account manager position. A woman named Komal Abidi sends in her CV, which indicates that she has the credentials and experience suited for the role. Komal is in fact ethnically Chinese, but is married to a Muslim Pakistani man and has taken on a Muslim first name and her husband's last name. The firm does not wish to hire South Asians and refuses to give Komal an interview, assuming that she is South Asian. This is likely to be unlawful direct racial discrimination by imputation.

4. 某人與你在同一場所工作，並對你作出騷擾

Harassment by someone working in the same workplace as you

經修訂後的《性別歧視條例》、《殘疾歧視條例》及《種族歧視條例》禁止任何工作場所的使用者，對同一場所的其他使用者在該場所內作出性騷擾、殘疾騷擾及種族騷擾。這可稱為共同工作場所內的騷擾。

「使用者」定義廣闊，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。至於「工作場所」，則指某人作為場所「使用者」而工作的所在地方，或該人作為場所「使用者」而置身的地方。例子包括：公司辦公室（僱員及實習生一起工作）；時興的「共享工作空間」（不同公司的僱員在同一場所工作）；由非政府組織營運的服務中心（機構員工和義工一起工作）；超市（不同產品推銷公司的派遣員工與超市員工一起工作）；以及慈善機構為了集合義工、方便溝通而開設的 Whatsapp 群組等。

The SDO, DDO and RDO have been amended to prohibit sexual, disability and racial harassment committed by a “workplace participant” against another “workplace participant” at the workplace where they both work or attend. This can be described as common workplace harassment.

Under the law, “workplace participants” are defined to include employers, employees, interns, volunteers, partners in a firm, contract workers and their principals, as well as commission agents and their principals. The amendments further define a “workplace” as any place attended by a person as a workplace participant, or a place where a person works as a workplace participant. In practice, this could include the office of a company where staff and interns work together; a co-working space where employees of different organisations both work; a service centre run by an NGO where employees and volunteer workers both work; a supermarket where employees of product promotion companies and employees of the supermarket have a shared workplace; or volunteers working for the same charity who have a Whatsapp chat group for their work.

個案 CASE STUDY

Cynthia 在一間大型零售店內的專櫃工作，負責推銷家電產品。她受僱於推銷公司，而非該間零售店。Henry 是零售店的助理，與 Cynthia 在店鋪內的同一區工作。有天，Henry 走近 Cynthia，說她很性感、很漂亮，然後將手放在她的腰間，令她感到被威嚇。Henry 的行為可構成違法的性騷擾。

Cynthia works on consignment at a large retail shop as a promoter of home appliances. She is employed by the promoter company, not the retail shop. Henry is an assistant of the shop and works in the same section as Cynthia does. One day he approaches Cynthia, tells her she looks sexy and beautiful, and puts his hand on her waist. Cynthia feels intimidated throughout the episode. This is likely to be unlawful sexual harassment.



如僱員、代理人、實習人員或義工在僱傭、實習或進行義務工作的過程中作出違法的性騷擾、殘疾騷擾或種族騷擾行為，僱主、主事人或任用實習人員及義工的人將同樣負有法律責任，不論他／她是否知悉或批准該行為。

法例列明抗辯理由，但只適用於僱主或任用實習人員及義工的人：他／她必須證明已採取「合理地切實可行的措施」去預防相關的僱員、實習人員或義工作出騷擾行為（注意：法例並沒賦予主事人同樣的抗辯理由）。

Employers, principals of agents, as well as persons engaging interns and volunteers will be held liable for any unlawful act of sexual, disability and racial harassment committed by their employees, agents, interns and volunteers respectively in relation to employment situations or in the course of the relevant internship and volunteer work, whether or not they knew about or agreed with the act.

There is only a defence for the employer or person engaging the intern or volunteer, where they can prove that they took reasonably practicable steps to prevent the relevant employee, intern or volunteer from doing such acts (note: there is no equivalent defence for principals).

預防措施可包括制定全面的防治騷擾政策、透過不同途徑確保所有工作場所的使用者知悉相關政策，以及定期提供培訓、提醒相關人士等。如遇上民事索償，法庭將因應個案的特定情況，考慮措施是否足夠。



Preventive measures may include formulating a comprehensive anti-harassment policy, informing all workplace participants of the policy through different channels, and giving regular training and reminders. Ultimately, in the event of a civil claim, the Court will consider the circumstances of the case and decide whether the measures taken are sufficient.

個案 CASE STUDY

Girl Power 是非政府組織，致力推動女性權益。她們即將出版研究報告，並邀請了兩名義工 Ted 和 Pam 幫忙編輯報告。雖然 Ted 和 Pam 素未謀面，但負責報告的 Girl Power 項目經理為了方便三人溝通，在 Whatsapp 開設了聊天群組。Ted 其後多次在群組內發放上半身的裸照，並在訊息裏標記和調戲 Pam。Pam 感到被冒犯，於是離開群組。Ted 的行為或已構成違法的性騷擾，而如果 Girl Power 從未採取任何措施以阻止 Ted 的行為，亦可能需要為他的行為負上轉承責任。

Girl Power, an NGO dedicated to promoting women's rights, engages two volunteers, Ted and Pam, to edit a research report that will be published soon. Ted and Pam have never met each other. The Project Manager at Girl Power creates a Whatsapp chatgroup with them to facilitate communication. Ted repeatedly sends shirtless pictures of himself to the chatgroup, tags Pam, and flirts with her even though she never responds to his texts. Pam feels offended and finally leaves the chat group. Ted is likely to have committed unlawful sexual harassment, and Girl Power may be held liable for his acts if no steps were taken to prevent him from doing them.

5. 向貨品、服務或設施提供者作出騷擾

Harassment against providers of goods, services or facilities

經修訂後的《殘疾歧視條例》及《種族歧視條例》保障了貨品、服務或設施提供者（簡稱「服務提供者」）免受正在或打算獲取／使用這些貨品、設施或服務的人（簡稱「服務使用者」）的殘疾騷擾和種族騷擾。這項改革與 2014 年《性別歧視條例》的修訂看齊，該項修訂就性騷擾同樣引入了相應的保障。



The DDO and RDO have been amended to protect providers of goods, services or facilities ("service providers") from disability and racial harassment by people who are acquiring, seeking to obtain, or using those goods, services or facilities ("service users"). The changes mirror amendments to the SDO in 2014 that introduced similar protections from sexual harassment.



於修例前，有關性騷擾、殘疾騷擾和種族騷擾的條文只是單方面禁止服務提供者向服務使用者作出騷擾行為。

Previously, in settings related to the provision of goods, services or facilities, the prohibition on sexual, disability and racial harassment only prohibited service providers from harassing service users.

個案 CASE STUDY

Alex 受腦麻痺影響，需要使用輪椅。他任職於入境處轄下的某辦事處，負責櫃枱工作。一位訪客欲申請出生證明的核證副本，遂向 Alex 索取申請表。正當 Alex 離開櫃枱去拿申請表時，訪客不耐煩地說道：「你動作也太慢了吧，坐輪椅就不要在這裏工作。」Alex 感到被冒犯。訪客的行為或已構成違法的殘疾騷擾。

Alex has cerebral palsy and is a wheelchair user. He works at a counter in an office under the Immigration Department. A visitor wishes to apply for a certified copy of her birth certificate and requests to have the relevant form. When Alex leaves his desk to fetch the form, the visitor snaps impatiently, "You're too slow. You shouldn't be working here if you're in a wheelchair". Alex feels offended. This is likely to be unlawful disability harassment.

6. 香港境外的騷擾行為

Harassment committed outside Hong Kong

《殘疾歧視條例》及《種族歧視條例》還有另一項修訂，與上一項修訂有關。修訂後的條例保障了服務提供者在香港註冊或由政府管有的船隻和飛機上，免受服務使用者的殘疾騷擾和種族騷擾，即使相關行為在香港境外發生。



Related to the above amendments, there have also been amendments to the DDO and RDO to provide protection against disability and racial harassment of service providers by service users on an aircraft or ship registered in Hong Kong or owned by the Government, even when the relevant acts occur outside Hong Kong.

個案 CASE STUDY

Manu 是印度裔人士，在一間於香港註冊的航空公司任職機艙服務員。有次他在一班由孟買飛往香港的航班上工作，當時飛機位處國際空域，他與一名乘客擦身而過，並聽到她說：「救命，印度人最令人作嘔，他們全部都有異味。」相關言論是基於 Manu 的種族而作出的，Manu 聽到後感到被侮辱，且對他造成一個有敵意的環境。縱然乘客的行為在香港境外發生，亦有可能構成違法的種族騷擾。

Manu, who is Indian, works as a flight attendant for a Hong Kong-registered airline. During a flight from Mumbai to Hong Kong and while the plane is in international space, he passes by a passenger and hears her saying, "God, Indians are the worst. They stink." Manu feels humiliated hearing the remarks, which are based on his race and create a hostile environment for Manu. This is likely to be unlawful racial harassment against Manu by the passenger, even though it took place outside Hong Kong.

7. 針對會社成員及申請人而作出的騷擾

Harassment against current and prospective members of clubs

經修訂後的《性別歧視條例》及《殘疾歧視條例》保障會社的現有成員以及申請成為會社成員的人，

The SDO and DDO have been amended to provide protection for existing and prospective members of a club against sexual and

免受會社或其管理人員的性騷擾及殘疾騷擾。根據法例，「會社」是指任何不少於 30 人的組織（不論屬於法團與否），因「社會、文學、文化、政治、體育、運動或其他合法目的」而組成，並賴以本身的款項提供和維持組織的全部或部分設施。

disability harassment by the club or its management. Under the law, 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.



《種族歧視條例》一直以來均保障市民在「會社」的範疇免受種族騷擾，因此修訂後的《性別歧視條例》及《殘疾歧視條例》變得與前者一致。

The amendments align the SDO and DDO with the RDO, which has always provided protection against racial harassment in equivalent settings of clubs.



個案 CASE STUDY

Robert 有意成為某體育會的成員。他提交申請後，體育會的經理邀請他到咖啡店詳談細節，並介紹即將舉行的活動。經理見到 Robert 時對他說：「我隔著你的上衣也看得見你的胸肌，你脫去衣服後一定更好看。你經常健身嗎？」，進而伸手搓弄他的胸部。Robert 覺得被冒犯，憤然離去。經理的行為有可能構成違法的性騷擾。

Robert applies to be a member of a sports club. The club manager invites him for coffee to go over the details of the application and introduce upcoming activities. At the café, the manager says to Robert, “Your chest is bulging under that shirt. You must look great nude, Do you go to the gym much?”, and starts squeezing his chest. Robert feels offended and leaves. This is likely to be unlawful sexual harassment against Robert.

8. 間接歧視案件中的賠償考量

Damages for indirect discrimination

根據修訂後的《性別歧視條例》、《家庭崗位歧視條例》及《種族歧視條例》，在有關間接的性別歧視、懷孕歧視、婚姻狀況歧視、家庭崗位歧視及種

The SDO, FSDO and RDO have been amended so that damages can be awarded in claims of unlawful indirect discrimination based on sex, pregnancy, marital status, family status and race brought before the

族歧視的案件中，即使答辯人從未意圖對申索人作出歧視，申索人亦有機會獲判損害賠償。

在修例之前，即使法庭裁定答辯人曾基於上述的受保障特徵作出間接歧視，如答辯人能證明他／她在實施相關的要求或條件時，從未意圖對申索人作出較差的待遇，則申索人不能獲判損害賠償，而《殘疾歧視條例》卻從來沒有類似條文。



District Court, whether or not the respondent intended to discriminate against the claimant.

Previously, even when the Court held that there was indirect discrimination on these grounds, no damages could be awarded if the respondent proved that they did not intend to treat the claimant less favourably in applying the relevant requirement or condition that led to indirect discrimination. The DDO has never contained an equivalent provision.



修訂後的《性別歧視條例》、《家庭崗位歧視條例》及《種族歧視條例》與《殘疾歧視條例》變得一致，亦有助確保市民遇到違法的間接歧視時，能有機會申請和獲得合理賠償。

The amendments to the SDO, FSDO and RDO ensure consistency across the four ordinances, and enable victims of unlawful indirect discrimination to seek and obtain appropriate compensation.

個案 CASE STUDY

Rachel 育有一子，並於一間客戶熱線中心工作。某天，管理層宣佈延長 Rachel 所屬組別的當更時間，下班時間由下午 3 時延至下午 6 時。由於這項措施對 Rachel 及兩位同樣需要接孩子放學的僱員造成不利，因此她們向管理層投訴。管理層卻回應指，她們必須遵守新措施，否則會被解僱。

三人其後入稟區域法院，指該公司作出間接的家庭崗位歧視，要求賠償。公司答辯時沒有提供任何證據，解釋為何所有僱員均須遵守新規定。法庭遂裁定這項規定並無充分理據，且對負有家庭崗位的僱員造成不合比例的負面影響。雖然沒有證據顯示該公司意圖歧視負有家庭崗位的僱員，法庭裁定 Rachel 及另外兩位申索人仍可獲得損害賠償。

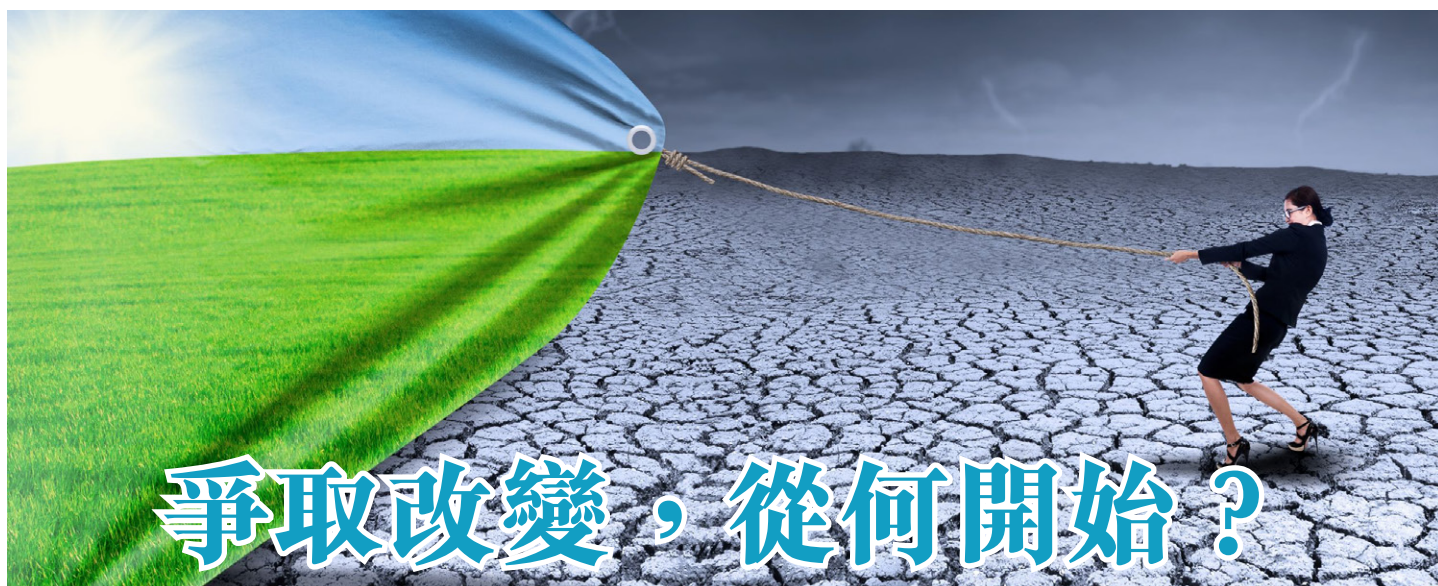
Rachel has a child and works at a call centre. Management announce that they are changing her team's shifts to finish at 6pm instead of 3pm. This puts Rachel as well as two other employees who have to collect their children from school at a disadvantage. They complain to the management, and are told they must comply strictly with the policy or else they will be dismissed.

They file a claim against the company in the District Court of indirect family status discrimination. The company provides no evidence as to why exceptions cannot be made to the policy. The Court rules that the requirement is unjustifiable, and that it adversely and disproportionately affects employees with family caring responsibilities. Although it is not proved that the company intended to discriminate against employees with family status, the Court awards damages to Rachel and the two other claimants.



想掌握各法律用語的詳細定義？想閱覽更多例子、了解哪些行為有機會違反修訂後的法例？想在你所屬的機構推行良好常規？立即參考平機會的[網上指南](#)。

Read our [online guidance](#) for detailed definitions of terms, additional examples of possible contraventions of the amended laws, as well as suggestions for good practice measures.



WE WANT CHANGE, BUT HOW DO WE MAKE IT HAPPEN?

《2020 年歧視法例（雜項修訂）條例》正式生效固然令人鼓舞，但背後卻有另一個故事。

2013 年，平機會就香港的反歧視條例展開檢討，規模可謂史無前例，願景亦十分宏大，直面不少棘手但必須提出的問題，例如《種族歧視條例》應否保障人們免受國籍、公民身份及居民身份歧視；已婚配偶的法律權利和義務，應否同樣適用於同居伴侶和在海外註冊的民事結伴伴侶（包括同性及異性伴侶）；政府的職權和職能為何沒有被納入《種族歧視條例》中的適用範圍；以及如何加強平機會的權力等（如容許平機會以自己的名義針對歧視性措施提出訴訟）。

平機會其後整合了公眾諮詢期間所收到的 125,000 份回應，亦參考了其他普通法地區的做法，最終在 2016 年向政府提交了 73 項建議。政府至今採納了當中八項，亦即是《2020 年歧視法例（雜項修訂）條例》中的八項修訂。當局曾向立法會解釋，正「集中處理複雜性和爭議性較低的建議，以期逐步推展所需的法例修訂工作」，目標是「在現屆政府任期內，告知市民就未來路向作出的決定」。

The implementation of the Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020 was a welcome move, but it is far from the full story.

It all began in 2013, when the EOC embarked on a review of Hong Kong's anti-discrimination laws. It was unprecedented in scale and ambitious in its vision, asking sticky but vital questions, such as whether the Race Discrimination Ordinance (RDO) should provide protection against discrimination on the grounds of nationality, citizenship and residency status; whether co-habiting couples and those in civil partnerships registered overseas (including both same-sex and heterosexual couples) should share the same legal rights and obligations as married couples; why Government functions and powers are immune from claims of racial discrimination under the RDO; and how the EOC's powers can be expanded, for example, to initiate proceedings in its own name for discriminatory practices.

After consolidating an overwhelming 125,000 responses from public consultation and making reference to other common law jurisdictions, the EOC made 73 recommendations to the Government in 2016. To date, the Government has taken forward eight of those (with the above new Ordinance). It has also explained to the legislature that it is taking the rest of EOC's recommendations "step-by-step" and prioritising them based on their level of complexity and controversy, with a view to informing the public of its decision on "the way forward" within the current term of the Government.

平機會樂見政府拿出時間表，但與此同時，市民仍期望政府能具體指出修訂優次的理據，當中有哪些複雜和受爭議的地方；亦只有這樣，平機會才能與當局及社會大眾合力解決。

以《種族歧視條例》為例，政府的職權和職能一直不受相關條文規管，而聯合國消除種族歧視委員會已於 2018 年呼籲政府修例，但亦有說法指，修例將妨礙某些部門的恆常工作。如說法屬實，我們仍可探討以下問題：（一）哪些工作將會受到影響？（二）能否在不造成種族歧視的情況下，同樣達到這些工作的目的？（三）有立法會議員曾建議，法例可訂明抗辯理由或更針對性的豁免，而非容許政府的所有職權和職能不受規管，此做法又是否可行？

再複雜、再具爭議的議題，都必須透過這種理性和仔細分析的態度處理，更要開誠布公、實事求是地與持份者對話。

這亦是平機會一直以來堅守的原則，不論是研究如何立法禁止針對性傾向、性別認同及雙性人身份的歧視；抑或保障人們免受基於國籍、公民身份及居民身份的歧視等，平機會將繼續依循這原則，以期推動改革，讓弱勢社群的權利得到充分保障。

消除歧視從來都是一項棘手的工作，只因它往往撼動到不少人的固有觀念，逼使他／她們反思自己的習慣。要爭取改變，就必須具備應對爭議的勇氣和梳理細節的能力。平機會將繼續努力，勇謀兼備，力求讓法例日臻完善，建立真正平等的社會。

The EOC appreciates the timeline, but it would be helpful to know the rationale behind the prioritisation, and what the complexities and controversies are, so that the Commission can work with the Government and the public to resolve them together.

For instance, some opine that the exemption of Government functions and powers from the RDO's provisions – already called out by the United Nations Committee on the Elimination of Racial Discrimination in 2018 – is essential for the routine work of certain departments. Even if that is the case, questions remain as to: (i) what kind of work would be affected without the exemption; (ii) whether the same objective can be achieved by alternative measures; and (iii) whether, as some lawmakers suggested, defences and more targeted exemptions can be introduced to replace a blanket immunity.

This is but one example of how a supposedly complex and controversial topic can and should be rationally addressed through a nuanced dissection of the underlying issues, as well as an open, no-nonsense dialogue with stakeholders.

This is also the approach the EOC will continue to adopt when it comes to driving change and safeguarding the rights of marginalised communities, whether it is mapping out possible legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status; or protecting people against discrimination based on their nationality, citizenship or residency status.

Issues are and will always be thorny, if only because the fight against discrimination forces many to take a hard look at their habits and ideologies. The will to change requires both the courage and expertise to handle sensitivities and subtleties. Until the law affords equality for all, the EOC will keep on putting up a fight with brains and brawn.



想進一步了解平機會於 2016 年向政府提出的 73 項建議？立即下載我們的《歧視條例檢討》意見書。

For a complete look at the 73 recommendations the EOC made to the Government in 2016, download our [Discrimination Law Review report](#).