

HONG KONG CHIEF EXECUTIVE SETS TIMETABLE FOR EQUAL OPPORTUNITIES PUSH

The Hong Kong Government is considering key changes to the existing anti-discrimination ordinances. The proposed changes have been brought forward following a consultation carried out by the Equal Opportunities Commission (EOC) in 2014. In her inaugural policy address, the Chief Executive Carrie Lam said the Government would submit legislative amendment proposals in the 2017-2018 session of the Legislative Council to implement the key recommendations.

THE MAJOR CHANGES

The proposed changes are meant to encourage family-friendly workplaces, expand the scope of harassment protection and address the issue of stereotypical assumptions during the hiring process. The main changes are as follows:

Proposed changes	Implications
<p>1. Discrimination on the basis of breastfeeding: to introduce express provisions in either the Sex Discrimination Ordinance (SDO) or the Family Status Discrimination Ordinance (FSDO) prohibiting direct and indirect discrimination on grounds of breastfeeding and to include expressing milk in the definition of breastfeeding.</p>	<p>☑ Although Hong Kong has made effort to normalise breastfeeding, breastfeeding is still very much plagued by discrimination at work and in the public at large. There is nothing in the SDO or FSDO that specifically deals with this.</p> <p>If the proposed changes become law, it would be unlawful to ask women to either stop expressing milk in the workplace or breastfeeding in restaurants, libraries and clubs, as this would amount to unlawful discrimination.</p> <p>Rigid or inflexible policies that prohibit or restrict employees from taking lactation breaks could give rise to discrimination complaints.</p>
<p>2. Discrimination on the basis of "imputed" race: to amend the Race Discrimination Ordinance (RDO) to include protection from direct discrimination and harassment by perception or imputation that a person is of a particular racial group.</p>	<p>☑ Currently, stereotyping someone as belonging to a particular race and treating that person less favourably is not unlawful.</p> <p>If the proposed changes become law, it would be unlawful to harass or treat an individual less favourably by blindly</p>

Proposed changes	Implications
	<p>assuming the individual is of a particular race group or ethnic origin, even when they are not.</p>
<p>3. Expanding the scope of harassment protection:</p> <p>a. "Association" with a race: to amend provisions in the RDO that prohibit direct discrimination on the ground of race of a "near relative" by replacing it with a broader definition of "associate" to include:</p> <ul style="list-style-type: none"> • a spouse of the person; • another person who is living with the person on a genuine domestic basis; • a relative of the person; • a carer of the person; and • another person who is in a business, sporting, or • recreational relationship with the person. <p>b. Sexual, disability and racial harassment of co-worker and volunteers in a common workplace: to expand the scope of protection from sexual, disability and racial harassment, such as between persons in a common workplace such as consignment workers and volunteers;</p> <p>c. Racial and disability harassment by service users: to expand the scope of protection under the RDO and Disability Discrimination Ordinance (DDO) to provide protection from racial and disability harassment of service providers by service users;</p> <p>d. Racial and disability harassment by service users on a Hong Kong aircraft or ship: to expand the protection from racial and disability harassment of service providers by service users, where such harassment takes place outside Hong Kong, but on Hong Kong registered aircraft and ships;</p> <p>e. Sexual, disability and racial harassment of co-tenant or sub-tenant: to amend the SDO, RDO and DDO to provide protection for tenants or sub-tenants from sexual, racial or disability harassment by another tenant or</p>	<p><input checked="" type="checkbox"/> Harassment, particularly sexual harassment, unfortunately still remains rife in the workplace in Hong Kong.</p> <p>If the proposed changes become law, harassment on the basis of sex, disability, race (including imputed race and association with a race) would be outlawed: -</p> <ul style="list-style-type: none"> • in a common workplace; • in co-tenanted or sub-tenanted premises; • on an aircraft or ship; and • in a club. <p>This would apply not only to employers and co-workers, but also to service providers, customers, co-tenants, sub-tenants and management of clubs.</p>

Proposed changes	Implications
<p>sub-tenant occupying the same premises;</p> <p>f. Sexual, disability and racial harassment of members or prospective members by club management: to amend the SDO, RDO and DDO to provide protection of members or prospective members from sexual, racial and disability harassment by management of clubs.</p>	
<p>4. Dispensing with proof of intention to discriminate: the repeal of provisions under the SDO, FSDO and RDO which require proof of intention to discriminate in order to award damages for indirect discrimination claims.</p>	<p><input checked="" type="checkbox"/> At present, awarding damages for indirect discrimination under the SDO, FSDO and RDO requires proof that the respondent intended to discriminate against the plaintiff, but there is no such requirement under the DDO.</p> <p>Successful claims for indirect discrimination are therefore quite rare in Hong Kong.</p> <p>The repeal of provisions requiring a proof of intention to discriminate will make it easier for genuinely aggrieved parties to make good their indirect discrimination cases and obtain damages from the wrongdoer.</p>

BEST PRACTICE FOR EMPLOYERS

Even before the proposed changes are tabled for discussion at LegCo, there is much that employers can do to improve their brand, promote diversity and attract talent.

1. **Family-friendly facilities and policies:** Employers should be prepared to provide appropriate space in the office to allow employees to take lactation breaks and express milk. Work policies should be sufficiently flexible to enable new mothers to take lactation breaks at work.
2. **No stereotypical assumptions:** The provisions regarding discrimination on the ground of the race of an "associate" are likely to have most effect in the hiring process. For example, an employer may make an assumption that a candidate does not read or speak Chinese or English based on their surname or appearance, when the candidate is fully capable of doing so. Employers should be warned not to make stereotypical assumptions before making any hiring, firing or promotion decisions.
3. **Anti-harassment policies, training & complaint procedures:** As for the issue of harassment as between persons in a common workplace, it is important for corporates to have in place appropriate anti-harassment policies and procedures and to make sure these are communicated and understood by everyone working on the premises.

To promote a harassment free and non-hostile workplace, everyone should be encouraged to report any incident of harassment by co-workers, customers and service users whether on the basis of sex, disability, race and even breastfeeding!

Discrimination law in Hong Kong remains a closely watched topic. Further updates to follow!

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