

facilities are so designed or constructed as to be inaccessible to the disabled persons.

SEXUAL HARASSMENT AND DISABILITY HARASSMENT

Sexual harassment and disability harassment are rendered unlawful by the SDO and DDO respectively.

“Sexual harassment” is defined to include any unwelcome sexual behaviour under circumstances where a reasonable person would have anticipated that the harassed person would be offended, humiliated or intimidated. It includes unwelcome sexual advances, unwelcome requests for sexual favours, other unwelcome sexual conduct of a sexual nature. It also includes creating a sexually hostile or intimidating work environment.

The definition of sexual harassment is quite wide. For example, obscene jokes, suggestive glances, and some offensive body gestures in the presence of a female employee (or even a male employee may be regarded as sexual harassment.

“Disability harassment” occurs when someone engages in unwelcome conduct (which may include an oral or written statement) on account of a person’s disability, or on account of the disability of an associate of a person, in circumstances in which a reasonable person would have anticipated that the disabled person or his or her associate would be offended, humiliated or intimidated by that conduct.

EMPLOYER’S LIABILITY

For the purpose of the Ordinances, employers are liable for their own actions as well as the actions of their employees done in the course of their employment. However, it will be a defence for the employers to prove that they have taken reasonable measures to prevent their employees from contravening the relevant provisions of the Ordinances.

CONSEQUENCES

A person who has been discriminated against or harassed in contravention of any of the Ordinances may lodge a complaint to the Equal Opportunities Commission. The Commission will then investigate the matter and will endeavour to effect a settlement of the matter by conciliation. If the matter cannot be settled, the Commission may consider providing legal or other assistance to the complainant in the legal proceedings instituted by him or her.

The aggrieved person may also institute legal proceedings in the District Court directly to seek money compensation or other remedies. In respect of an unlawful act of discrimination or harassment, the Court may award damages which may include compensation for injury to feeling of the aggrieved person.

CODES OF PRACTICE

The Equal Opportunities Commission has issued Codes of Practice on Employment relating to SDO, DDO and FSDO. Employers are encouraged to follow the guidelines and the recommendation in the Codes.

The law is as stated at January 2003.

This pamphlet is written simply as a brief introduction to the SDO, DDO and FSDO. It is not meant to be exhaustive and does constitute legal advice. If you require legal advice on any matter raised in this pamphlet, you should consult a solicitor.

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LAW GUIDE SERIES No. 15

Highlights of the Sex Discrimination Ordinance (“SDO”), Disability Discrimination Ordinance (“DDO”) and Family Status Discrimination Ordinance (FSDO)”

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SEX DISCRIMINATION

Under the SDO, it is unlawful to discriminate against a person on the ground of that person's sex by treating that person less favourably than persons of the other sex. This is usually referred to as "direct discrimination".

"Indirect discrimination" is also covered by the SDO. It is unlawful to impose unjustifiably a requirement or condition equally to both men and women, but which has an unfair effect so that the proportion of persons of a particular sex who can comply with the requirement or condition is considerably smaller.

DISCRIMINATION ON THE GROUND OF MARITAL STATUS AND PREGNANCY

SDO also prohibits direct discrimination and indirect discrimination on the ground of marital status or pregnancy.

Pursuant to Section 4 of SDO :

- If an act is done for 2 or more reasons; and
- one of the reason is the sex, marital status or pregnancy of a person (whether or not it is the dominant or substantial reason for doing the act),

then, for the purposes of SDO, the act shall be taken to be done for the reason of sex, marital status or pregnancy of the person.

For example, a decision to reject a married woman's job application may be made on several grounds, but if one of the grounds is her marital status, then the decision to reject the application will be deemed to have been made on the ground of her marital status.

DISABILITY DISCRIMINATION

DDO prohibits discrimination on the ground of a person's disability. "DISABILITY" is widely defined and includes different kinds of mental and physical disabilities and the presence in the body of organisms capable of causing disease (e.g. the HIV virus).

It is unlawful to discriminate against a person on the ground of the person's disability by treating him or her less favourably than someone with no disability in comparable circumstances. It is also unlawful to treat a person less favourably on the ground of the disability of his or her spouse, relative or other associates.

DDO expressly states that it is discrimination when a person with a disability is treated less favourably because of the fact that he or she uses a particular auxiliary aid or is accompanied by an interpreter, reader or carer.

Disability discrimination also occurs when a requirement or condition is imposed unjustifiably on all persons but with an unfair effect on persons with a disability.

Pursuant to Section 3 of DDO :

- If an act is done for 2 or more reasons; and
- one of the reasons is the disability of a person (whether or not it is the dominant or substantial reason for doing the act),

then, for the purposes of DDO, the act shall be taken to be done for the reason of disability of the person.

FAMILY STATUS DISCRIMINATION

FSDO prohibits discrimination on the ground of a person's family status. "Family status" refers to the status of having responsibility for the care of an immediate family member. A person who is related by blood, marriage, adoption or affinity is within the meaning of "immediate family member".

Pursuant to Section 4 of FSDO:

- If an act is done for 2 or more reasons; and
- One of the reasons is the family status of a person (whether or not it is the dominant or a substantial reason for doing the act),

then for the purpose of FSDO, the act shall be taken to be done for the reason of the person's family status.

It is unlawful to discriminate against a person because of his family status by treating him or her less favourably than someone without such family status. It is also unlawful where an unjustifiable requirement or condition applies to all persons but with an unfair effect on the person who has family status.

DISCRIMINATION IN EMPLOYMENT FIELD

Discrimination on the grounds of sex, marital status, pregnancy disability or family status in the employment field includes :-

- discrimination in recruitment of staff
- discrimination in promotion, transfer or training
- discrimination in providing benefits, facilities or services
- discrimination in terms of employment
- discrimination in the way of dismissal (and subjecting employees to other unfavourable treatment)

To comply with the Ordinances, an employer should recruit or promote employees based on "genuine occupational qualifications" such as relevant working experience, educational or professional qualification, specific technical or other relevant skills, etc. In general, criteria such as sex, marital status, disability or family status should not be considered except where :

- being a person of a particular sex or a person without a disability is genuinely required by the nature of certain jobs
- recruitment of the disabled person would require provision of special services or facilities which would impose unjustifiable hardship on the employer

The Ordinances are applicable to all employment contracts. In general, it will be unlawful for an employer to discriminate against any of its employees on the ground of sex, marital status, pregnancy, disability or family status in relevant employment matters.

DISCRIMINATION IN THE PROVISION OF GOODS, SERVICES OR FACILITIES

It is unlawful for a provider of goods, services or facilities to discriminate against a person who seeks to obtain the relevant goods, services or facilities on the ground of that person's sex, marital status, pregnancy, disability or family status;

- by refusing to provide that person with any of those goods, services or facilities
- in the terms or conditions on which those goods, services or facilities are provided to that person
- in the manner in which those goods, services or facilities are provided to that person

Exceptions are provided under the DDO where :

- the provision of the goods services or facilities to the disabled persons would impose unjustifiable hardship on the provider
- in the case of certain facilities specified in DDO and to the extent the relevant facilities are physical in nature, those