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# Gender equality in Hong Kong: at a glance

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### Introduction

One of the major driving forces behind Hong Kong becoming a leading international business and financial centre is its openness to people of all backgrounds. This leads to a diverse and highly cooperative workforce. As receptive as Hong Kong society is, however, gender discrimination against women in a workplace setting is still not uncommon.

The latest Population Census in 2021 showed that women continue to have a lower labour force participation rate than men – even though there are more women than men in Hong Kong. Besides that, earnings for women are generally lower than men, whether by age groups or by occupation groups.<sup>(1)</sup>

Discrimination against women is a contributing factor to these trends. The Women's Foundation in Hong Kong<sup>(2)</sup> found that 30% of women dropped out of the workforce due to the pressure of being the primary caregiver. It was also found that fewer than 50% of employers are willing to hire women with children.<sup>(3)</sup> The Equal Opportunities Commission (EOC) in Hong Kong took the view that traditional family roles and caring responsibilities are impeding women from being economically active and even if they become so they face inequality such as pay gaps and harassment in the workplace.<sup>(4)</sup>

The complaints statistics published by the EOC in Hong Kong reinforces these findings. They show that pregnancy discrimination and sexual harassment are the most common types of complaints in Hong Kong and most sexual harassment complaints were filed by women.<sup>(5)</sup> The EOC found that women are more likely to be sexually harassed at work.<sup>(6)</sup> The most common form of harassment is sexually suggestive comments or jokes; other forms include inappropriate physical contact, leering, and offensive lewd or sexual gestures.<sup>(7)</sup>

At the same time, pregnant women experience discrimination during and after pregnancy. Some have been unable to apply for sick leave for pre-natal check-up, denied leave for taking care of children, or have experienced changes to their employment package without their consent because of their pregnancy.<sup>(8)</sup> Furthermore, women with caring responsibilities are more likely to encounter disadvantages than men, due to their traditional role as the carers.

Transgender women and women within the lesbian, gay, bisexual, transgender, queer or questioning, intersex and asexual community also face discrimination. Whilst they identify themselves as women, they face discrimination due to their legal gender recognition and sexual orientation. Some have reported receiving negative treatment at work - for example, being insulted, denied promotion or job offer, or dismissed by reason of their identities.<sup>(9)</sup> These conducts could all potentially be cases of discrimination against women.

### Protection of women against discrimination

To deal with the gender inequality situation in Hong Kong, the Sex Discrimination Ordinance (SDO) (Cap. 480) and the Family Status Discrimination Ordinance (FSDO) (Cap. 527) were implemented in the mid-1990s. This legislation seeks to protect women against discrimination or unequal treatment by reason of their gender and family status. However, the extent to which this legislation applies to transgender women is not clear.

Specifically, the SDO and the FSDO prohibit discrimination against a woman because of her attributes such as sex, marital status, pregnancy, breastfeeding and family status (referred to below as "female attributes").

#### ***By reason of sex***

Section 5 of the SDO prohibits discrimination against women by reason of sex, and it is considered as discrimination if a person:

- treats a woman less favourably than a man in comparable circumstances; or
- applies an equal requirement to a woman and to a man, but:
  - the proportion of women who can comply with such requirement is considerably smaller than that of men;
  - the equal requirement is not justifiable; and
  - such requirement is to her detriment as she cannot comply with it.

#### ***By reason of marital status***

Section 7 of the SDO prohibits discrimination against women by reason of her marital status, and it is considered as discrimination if a person:

- treats a woman less favourably than he treats another woman of different marital status in comparable circumstances; or
- applies an equal requirement to a woman and to another woman of different marital status, but:
  - the proportion of women with the relevant marital status who can comply with it is considerably smaller than that of women with a different marital status;
  - the equal requirement is not justifiable; and
  - such requirement is to her detriment as she cannot comply with it.

#### ***By reason of pregnancy***

Section 8 of the SDO prohibits discrimination against women by reason of her pregnancy and it is considered as discrimination if a person:

- treats a pregnant woman less favourably than he treats another woman who is not pregnant in comparable circumstances; or
- applies an equal requirement to a pregnant woman and to another woman who is not pregnant, but:
  - the proportion of pregnant women who can comply with it is considerably smaller than that of women who are not pregnant;
  - the equal requirement is not justifiable; and
  - such requirement is to her detriment as she cannot comply with it.

#### ***By reason of breastfeeding***

Section 8A of the SDO prohibits discrimination against women by reason of breastfeeding, and it is considered as discrimination if a person:

- treats a breastfeeding woman less favourably than another woman who is not breastfeeding in comparable circumstances; or
- applies an equal requirement to a breastfeeding woman and to another woman who is not breastfeeding, but:
  - the proportion of breastfeeding women who can comply with it is considerably smaller than that of women who are not breastfeeding;
  - the equal requirement is not justifiable; and
  - such requirement is to her detriment as she cannot comply with it.

#### ***By reason of family status***

Section 5 of the FSDO prohibits discrimination against women by reason of family status (ie, having responsibility for the care of an immediate family member),<sup>(10)</sup> and it is considered as a discrimination of such if a person:

- treat a woman with family status or particular family status less favourably than he treats another person without family status or that particular family status; or
- applies an equal requirement to a woman with family status or particular family status and to another person without family status or that particular family status, but:
  - the proportion of women with family status or particular family status who can comply with it is considerably smaller than that of other persons without family status or that particular family status;
  - the equal requirement is not justifiable; and
  - such requirement is to her detriment as she cannot comply with it.

#### ***By reason of discrimination by employer***

The scenarios below are examples of unlawful discrimination by an employer against its female employee:

- During the process of recruitment, the employer determines who should be offered a job based on one or more female attributes.
- A female employee is offered less favourable terms in her employment contract than are offered to her male counterpart in the same position.
- A female employee is denied or only given limited opportunities for promotion, transfer, training, benefits or others by reason of the female attributes.
- The employer refuses to grant a female employee with children reasonable working arrangements so that she can care for her children.
- A female employee is dismissed by reason of one or more female attributes.

#### **Protection of women against harassment**

Working women often encounter harassment, and that harassment can take many forms. To ensure a safe working environment for women, the SDO makes any harassment of a breastfeeding woman or any woman at work unlawful.

Section 2A of the SDO prohibits the following breastfeeding harassment behaviour:

- a person engages in unwelcome conduct that would reasonably be expected to make a breastfeeding woman feel offended, humiliated or intimidated; or
- the person, alone or together with other persons, engages in conduct that creates a hostile or intimidating environment for the breastfeeding woman.

In addition, section 23 the SDO prohibits sexual harassment of women at the workplace. Sexual harassment occurs when:

- a person sexually harasses a woman by making an unwelcome sexual advance or an unwelcome request for sexual favours, or engages in other unwelcome conduct of a sexual nature in relation to her, where a reasonable person having regard to all the

circumstances would have anticipated that she would be offended, humiliated or intimidated; or

- a person, alone or together with other persons, engages in conduct of a sexual nature which creates a hostile or intimidating environment for her.

According to the EOC's SDO Code of Practice, the first form could include:

- leering and lewd gestures;
- touching or brushing up against another person;
- suggesting sexual cooperation;
- making sexually derogatory or stereotypical remarks or jokes; and
- asking about a person's sex life.

The second form could include displaying sexist or other sexually offensive materials, for example, pornography.<sup>(11)</sup>

### **Employer's liabilities**

Employers can be held vicariously liable for discrimination and/or harassment on the part of their employees, whether or not it was done with the employer's knowledge or approval.<sup>(12)</sup> In other words, if an employee has committed any act which is unlawful under the SDO or FSDO, provided that such act was committed by the employee during the course of employment, their employer may be treated as if it was the person committing the unlawful act itself. In practice, complaints of discrimination and/or harassment against an employee will normally also involve their employer.

An employer will not be liable if it shows that they have taken "such steps as were reasonably practicable to prevent the employee from doing that [unlawful] act, or from doing in the course of his employment acts of that description."<sup>(13)</sup> As suggested by the EOC, these steps could include:

- establishing relevant policies;
- putting in place a complaint mechanism;
- offering trainings to employees;
- handling complaints properly;
- implementing appropriate disciplinary actions and improvement measures; and
- regularly reviewing related policies, procedures, and measures.<sup>(14)</sup>

### **Recommendations for employers**

Employers should be aware of the gender inequality issues that persist in Hong Kong, and be alert to the risk of such issues arising among their own employees. Employers are encouraged to take steps to promote a gender balance and equality of opportunity within their work environment. Not only will this reduce the likelihood of a complaint or claim, it is also likely to increase stability and productivity within the workforce.

For example, employers may:

- adopt a set of consistent selection criteria in recruiting job applicants for the same position or promoting existing employees;
- apply a set of assessment criteria that is based on merits and not gender or family status in appraising the performance of an employee. Besides that, the promotion of the existing employees should follow a set of transparent and non-discriminatory criteria;
- formulate anti-discrimination and anti-harassment policies with reference to the EOC's Codes of Practice, review and update the policies regularly and seek professional guidance if necessary;
- set up an equal opportunity committee to oversee the implementation of equal treatment within the organisation and to deal with complaints;
- establish a practical complaints-handling mechanism and internal grievance procedure. Where complaints have been made, the employer should investigate the incident promptly and take appropriate disciplinary action;
- provide training to employees regarding anti-discrimination and anti-harassment – for example, the prohibited acts under the relevant ordinances, individual's rights and responsibilities, potential liabilities for any unlawful acts, and how to deal with these situations when they arise; and
- ensure that communication with employees avoid assumptions and stereotypes regarding their commitment, competency and/or efficiency.

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### **Endnotes**

(1) Census & Statistics Department, Women and Men in Hong Kong Key Statistics (2022 Ed), p216 & 217.

(2) A non-profit organisation that advocates for gender equality.

(3) Women's Foundation 2019 Infographic.

(4) EOC Strategic Plan 2020-2022, para 6.1.

(5) EOC Publication on Gender Equality in Hong Kong (August 2021).

(6) EOC 2021 Survey on Sexual Harassment in Hong Kong.

(7) EOC 2021 Survey on Sexual Harassment in Hong Kong.

(8) EOC 2016 Study on Pregnancy Discrimination and Negative Perceptions Faced by Pregnant Women and Working Mothers in Small and Medium Enterprises (May 2016), p2-6.

(9) EOC Questions and Answers on the Rights of Transsexual People in HK, p4

(10) FSDO s2.

(11) SDO Code of Practice, paragraph 6.1.

(12) SDO s46; FSDO s34.

(13) SDO s46; FSDO s34.

(14) Ip, Chung Yan 2022. A Territory-wide Representative Survey on Sexual Harassment in Hong Kong 2021: Report. Hong Kong: EOC, p13.