

Updates to the discrimination laws in Hong Kong



The Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020 came into force on 19 June 2020. The ordinance amends the four existing anti-discrimination ordinances, namely the Sex Discrimination Ordinance, the Race Discrimination Ordinance, the Family Status Discrimination Ordinance and the Disability Discrimination Ordinance.

The major amendments which have been ushered in include the following:

Amendments to the Race Discrimination Ordinance

- Employees are now protected from direct racial discrimination and harassment, on the grounds of the race of his/her "associate". An "associate" includes a spouse, 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.
- Direct and indirect racial discrimination and racial harassment are prohibited on the grounds of the race, colour, descent or national or ethnic origin, even if that is only imputed to the person.

Protection from harassment even where there is no employment relationship

- Provisions have been added to the Sex Discrimination Ordinance, Race Discrimination Ordinance and Disability Discrimination Ordinance, whereby a "workplace participant" is prohibited from harassing another "workplace participant". A "workplace participant" is widely defined as an employee, an employer, a contract worker, the principal of a contract worker, a commission agent, the principal of a commission agent, a partner in a firm, an intern, or a volunteer.
- A person who engages an intern or a volunteer will be liable for the sexual, racial or disability harassment committed by the intern or the volunteer. This is so unless it can be proven that reasonably practicable steps have been taken to prevent the intern or the volunteer from doing that act or from doing acts of that description.
- Persons who provide goods, services and facilities will be able to avail themselves of protection from racial, and disability harassment from customers. The protection will extend to harassment which occurs outside Hong Kong on a Hong Kong registered aircraft or ship.

Award of Damages

- Under the Sex Discrimination Ordinance, the Family Status Discrimination Ordinance and the Race Discrimination Ordinance, a respondent can no longer rely on the defence that it has no intention of discriminating against the claimant where a case of unlawful indirect discrimination has been made out against the respondent.

Breastfeeding

"Breastfeeding" has been designated as a new ground of discrimination under the Sex Discrimination Ordinance. Employers will be prohibited from directly or indirectly discriminating against or victimizing breastfeeding women in key sectors such as employment, education, and the provision of goods, services and facilities. However, the breastfeeding provisions will not come into effect until 19 June 2021.

- Although the Bill does not require employers to make any accommodation for breastfeeding employees, employers may consider the recommendations made by the Family Health Service of the Department of Health on fostering a breastfeeding friendly workplace:
 - (i) allowing lactation breaks for around two 30-minute breaks, which will be counted as “paid” working hours”, during a 8-hour work day for at least one year after childbirth;
 - (ii) providing a private space for breastfeeding with appropriate facilities, such as an appropriate chair, a table and an electrical socket for connecting breastmilk pumps; and
 - (iii) providing a refrigerator for storing breastmilk.

Given the extent of the changes which are in effect and those which will be brought into effect in the future, employers should now review their existing workplace harassment policies to ensure that it applies to all “workplace participants”. Employers should ensure that they provide training on the effect of the changes to ensure that everyone is aware of what amounts to acceptable conduct in the workplace and where conduct falls short of what is acceptable, the recipient of such conduct knows how to raise a complaint.

Companies which provide goods, services and facilities should not only ensure that their employees are aware of their rights and how to file complaints but should also make it clear to their customers that the company has a zero tolerance policy concerning harassment.

Please do get in touch with Nathalie Sit, Jezamine Fewins or your usual Stephenson Harwood contact if you require advice on the issues arising out of this client alert.

Get in touch



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