

Changes to Hong Kong's Discrimination Ordinances: What Employers Need to Know

Insights

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In June 2020, Hong Kong passed the [Discrimination Legislation \(Miscellaneous Amendments\) Ordinance 2020](#) (“Amendment”), amending the Sex Discrimination Ordinance (SDO), the Race Discrimination Ordinance (RDO), the Disability Discrimination Ordinance (DDO), and the Family Status Discrimination Ordinance (FSDO). Except for a prohibition against breastfeeding discrimination, which will become effective on 19 June 2021, all other amendments came into effect on 19 June 2020.

Below is a summary of the key changes and suggestions for employers.

Amendment Prohibiting Breastfeeding Discrimination in The Workplace

The SDO will be amended to include breastfeeding as an unlawful basis for discrimination against women. Under the new amendment, an employer will have directly discriminated against an employee on the grounds of breastfeeding if the employer treats the employee less favorably than employees who are not breastfeeding in the same circumstances. An employer will have indirectly discriminated against breastfeeding employees if they establish a condition or requirement that is applied to all employees but unfairly affects breastfeeding employees, such as requiring all employees to work night shifts.

Employers should consider the following suggestions to prevent both direct and indirect discrimination based on breastfeeding in the workplace:

- Provide suitable facilities for breastfeeding and allow employees flexibility in the timing of their breaks.
- Consider allowing breastfeeding employees “lactation breaks” in addition to their regular breaks.
- Be cautious when requiring employees to work certain shifts when other shifts are available and would be more conducive to breastfeeding. (e.g. day vs. night shifts).
- Consider if it is viable to allow employees to bring infants on-site for feeding during lactation breaks or consider other flexible work conditions for employees who are breastfeeding. This may also help parents return to work earlier than previously planned.

Protection Against Disability and Racial Harassment by Service Providers and Customers

Under the SDO, it is unlawful for a service provider to sexually harass a customer while offering, providing, or acquiring goods and services (and vice versa). The DDO and the RDO have now been amended to provide similar protection to prohibit disability and racially-based harassment by service providers and customers while providing goods and services. This protection also extends to Hong Kong-registered ships and aircraft while outside Hong Kong.

Employer Liability for Interns and Volunteers

The discrimination ordinances provide that it is unlawful for a “workplace participant” to harass another “workplace participant” based on sex, race, or disability. Previously “workplace participant” only included formal employees. However, the new amendment has expanded the definition of “workplace participant” to include interns and volunteers. This means that the person who engaged the intern or volunteer will be responsible for any harassment committed by interns and volunteers even though there is not an employment relationship.

Damages for Unlawful Indirect Discrimination

The SDO, RDO, and FSDO have been amended to remove the current requirement that discrimination based on sex, race or family status is “intentional” for the claimant to be awarded damages. Previously, the claimant would not be awarded damages if the respondent could prove their discriminatory action was unintentional. Therefore, claimants may be awarded damages for discriminatory action taken on or after 19 June 2020, even if the less favorable treatment was unintentional.

What Do Employers Need to Do?

Employers should make sure that all persons in the workplace including employees, interns, and volunteers are properly trained on how to avoid harassment in the workplace and the reporting procedures if harassment occurs. For example, employers should:

- Create a “Zero-Tolerance” policy for discrimination and harassment in the workplace, if there is not one already in place. Include the procedure for termination in the policy and make sure all employees, interns, and volunteers are aware of the policy.
- Ensure the employee handbook or manual covers and clearly defines harassment, discrimination, and the consequences for violating the company policy.
- Provide anti-discrimination and anti-harassment training to interns and volunteers and provide “refresher courses” to all employees.
- Update training to cover implicit or unconscious bias and remind all workplace participants that discrimination can be unintentional.
- Encourage open communication by making sure employees feel comfortable discussing concerns with supervisors, HR, and/or a designated person in the workplace.

The above list does not discuss all the new amendments to Hong Kong’s discrimination ordinances. Please reach out to any member of the [International Practice Group](#) at Fisher Phillips for more

information on the new obligations or for assistance in drafting and implementing an anti-discrimination and harassment policy.

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