

**立法會**  
**Legislative Council**

Ref : CB2/SS/14/08

LC Paper No. CB(2)2330/08-09  
(These minutes have been seen  
by the Administration)

**Subcommittee on Race Discrimination (Formal Investigations) Rules,  
Race Discrimination (Investigation and Conciliation) Rules and  
Code of Practice on Employment under the Race Discrimination Ordinance**

**Minutes of the 5<sup>th</sup> meeting  
held on Thursday, 18 June 2009, at 8:30 am  
in Conference Room B of the Legislative Council Building**

**Members present** : Hon Paul TSE Wai-chun (Chairman)  
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon LI Fung-ying, BBS, JP  
Hon Cyd HO Sau-lan  
Hon Starry LEE Wai-king  
Hon IP Kwok-him, GBS, JP

**Members absent** : Dr Hon Margaret NG  
Hon LEUNG Yiu-chung  
Hon Miriam LAU Kin-ye, GBS, JP  
Hon TAM Yiu-chung, GBS, JP  
Hon Abraham SHEK Lai-him, SBS, JP

**Public Officers attending** : Equal Opportunities Commission

Mr Raymond TANG Yee-bong  
Chairperson

Mr Joseph LI  
Director of Operation Division

Mr Herman POON Lik-hang  
Chief Legal Counsel

The Administration

Constitutional and Mainland Affairs Bureau

Mr Raymond TAM Chi-yuen  
Under Secretary for Constitutional and Mainland Affairs

Miss Leonie LEE  
Assistant Secretary for Constitutional and Mainland Affairs

**Clerk in attendance** : Miss Flora TAI  
Chief Council Secretary (2)3

**Staff in attendance** : Ms Clara TAM  
Assistant Legal Adviser 9

Ms Amy YU  
Senior Council Secretary (2)3

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Action

**I. Meeting with the Administration and Equal Opportunities Commission**  
[LC Paper Nos. CB(2)1642/08-09(01) and (02), CB(2)1764/08-09(01), CB(2)1891/08-09(01), CB(2)1892/08-09(01) - (03) and G.N. 2733 of 2009]

The Subcommittee deliberated (index of proceedings attached at **Annex**).

Scrutiny of the Code of Practice on Employment under the Race Discrimination Ordinance (RDO)

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**EOC**

2. The Equal Opportunities Commission (EOC) was requested to consider members' suggestions of -

- (a) stating clearly the duration of the grace period for small employers in paragraph 3.4.1;
- (b) deleting the last sentence in paragraph 3.4.2 to avoid confusion; and
- (c) providing employers of domestic helpers with more practical guidelines with specific illustrations to help them understand their responsibilities under RDO and refrain from committing acts of race discrimination (please refer to page 5 of the Annex for more details).

**Admin**

3. The Administration was requested to revert to the Subcommittee on members' suggestion of adding a clause to the standard employment contract of domestic helpers to alert employers of their responsibilities under RDO.

4. The meeting ended at 10:37 am.

**Proceedings of the 5<sup>th</sup> meeting of the  
Subcommittee on Race Discrimination (Formal Investigations) Rules,  
Race Discrimination (Investigation and Conciliation) Rules and  
Code of Practice on Employment under the Race Discrimination Ordinance  
on Thursday, 18 June 2009, at 8:30 am  
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000102 - 000243	Chairman	Opening remarks	
000244 - 000333	Chairman ALA9	Letter dated 15 June 2009 from the Equal Opportunities Commission (EOC) in response to the legal adviser's suggestions on revising the Chinese text of the Race Discrimination (Investigation and Conciliation) Rules [LC Paper No. CB(2)1892/08-09(01)]	
000334 - 000359	Chairman Ms Emily LAU	Administration's paper on funding support for activities to promote racial harmony and support services for ethnic minorities [LC paper No. CB(2)1892/08-09(02)]	
000400 - 001354	EOC Ms Emily LAU Clerk Chairman Ms LI Fung-ying Mr IP Kwok-him	<b><u>Scrutiny of the detailed provisions of the Code of Practice on Employment (the Code)</u></b> (with reference to the marked-up version of the Code provided by EOC and EOC's response to the summary of views of deputations prepared by the Legislative Council Secretariat)	
001355 - 001647	Chairman EOC Mr IP Kwok-him Ms Emily LAU	<b>Chapter 1 - Introduction</b>  paragraph 1.1	
001648 - 002306	EOC Ms Emily LAU Chairman Mr IP Kwok-him Administration	paragraph 1.2	
002307 - 002719	EOC Ms LI Fung-ying Ms Emily LAU	paragraph 1.3	
002720 - 002935	EOC Chairman	paragraph 1.4	
002936 - 003725	EOC Mr IP Kwok-him Chairman Ms Emily LAU Administration	<b>Chapter 2 – Meaning of Race under the Race Discrimination ordinance (RDO)</b>  Paragraph 2.1  paragraph 2.1.3 – EOC's response to the Law Society's comment on the reference to "ICERD and related documents"	

Time Marker	Speaker(s)	Subject(s)	Action required
003726 - 004854	EOC Chairman Administration Ms Emily LAU Mrs Sophie LEUNG Mr IP Kwok-him	Paragraph 2.2  Paragraph 2.2.1 – Religion  EOC's advice that in response to the views of deputations on the need to highlight the issue of religion in the meaning of race under RDO -  (a) the heading "Religion" was inserted to the paragraph; and  (b) a cross-reference to Illustration 9 was inserted in the paragraph to show how requirements or conditions having an impact on people's religious practices might indirectly discriminate certain racial groups.  Ms Emily LAU's enquiry as to whether it would constitute race discrimination if an employee was not allowed to wear hijab in her workplace.  EOC's response that it would depend on whether in the particular circumstances of the case, the employer could show the requirement or condition to be justified on non-racial grounds, such as the need to pursue a legitimate aim (for example health and safety).	
004855 - 005131	Chairman EOC Ms Emily LAU	Paragraph 2.3 – Language  EOC's advice that in response to the views of deputations, a new paragraph 2.3 under the heading "Language" was inserted to highlight the point that treatment based on language might lead to racial discrimination or harassment.	
005132 - 005620	EOC Ms Emily LAU Chairman	Paragraph 2.4	
005621 - 005835	Chairman EOC Administration	<b>Chapter 3 – Scope of Part 3 of RDO</b>  Paragraphs 3.1 and 3.2	
005836 - 011532	EOC Ms Sophie LEUNG Chairman Ms LI Fung-ying Ms Emily LAU Ms Cyd HO Ms Starry LEE	Paragraph 3.3 – Work wholly or mainly outside Hong Kong  Mrs Sophie LEUNG's concern about practical difficulties in determining whether a person worked wholly or mainly outside Hong Kong.  Ms LI Fung-ying and Ms Emily LAU's request for clarification as to whether a person would be regarded as working mainly in Hong Kong	

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		<p>if the person had worked in Hong Kong more than 50% of the time.</p> <p>Ms Starry LEE's request for clarification on whether other factors such as the place of incorporation of employer company would be taken into consideration in determining whether or not a person worked mainly or wholly in Hong Kong.</p> <p>EOC's response that -</p> <ul style="list-style-type: none"><li>(a) it was provided under section 16(1) of RDO that RDO did not apply to people who worked wholly or mainly outside Hong Kong;</li><li>(b) according to the relevant UK cases, the whole period of employment should be taken into account in determining whether a person worked wholly or mainly outside Hong Kong, and a historical facts approach would be adopted in making such assessment, i.e. a person would be regarded as working mainly outside Hong Kong if he had in fact spent more time working outside Hong Kong in the whole period of employment than in Hong Kong, irrespective of the contractual or prospective allocation of time between Hong Kong and outside Hong Kong. A slight amendment had been made to paragraph 3.3.1(3) (by adding the words "in fact") to clarify this point;</li><li>(c) the actual time a person had spent working in and outside Hong Kong would be the principal factor of consideration, irrespective of the place where the employment contract was made, the place of incorporation of the employer company or the nationality of the employee concerned;</li><li>(d) case law on these issues was capable of further development and EOC would keep these issues under review; and</li><li>(e) the onus of providing proof on actual working time was on the claimant. When dealing with such complaints, EOC would also request the employer concerned to provide relevant information.</li></ul>	

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011533 - 011755	EOC Chairman	Paragraph 2.1.4(2)  EOC's response to Hong Kong Human Rights Monitor's suggested amendments to the Chinese text of paragraph 2.1.4(2)	
011756 - 013313	Chairman EOC Mr IP Kwok-him Ms LI Fung-ying Ms Emily LAU Mrs Sophie LEUNG Administration	Paragraph 3.4 – Grace period for small employers; and paragraph 3.5 – Domestic helpers  Ms LI Fung-ying's view that for the avoidance of doubt, the duration of the grace period should be made clear in paragraph 3.4.1. EOC's response that consideration could be given to stating the expiry date of the grace period in the paragraph.  Ms Emily LAU's view that the last two sentences of paragraph 3.4.2 were confusing and should be reworded. Ms LI Fung-ying's suggestion that as it was stated clearly in paragraph 3.5.2 that RDO would apply once the domestic helper had been employed, consideration could be given to deleting the last sentence in paragraph 3.4.2 to avoid confusion.  In response to Mrs Sophie LEUNG's suggestion of allowing some sort of grace period to employment of domestic helpers (for instance, employment contracts which were in force at the time RDO was brought into operation to be exempted from application of RDO), EOC's advice that by virtue of section 10(3) of RDO the grace period specified in RDO did not apply to the employment of domestic helpers.	<b>EOC to follow-up</b> (para 2 of minutes)  <b>EOC to follow-up</b> (para 2 of minutes)
013314 - 020702	Ms Starry LEE EOC Chairman Mr IP Kwok-him Ms Emily LAU Administration Mrs Sophie LEUNG Ms LI Fung-ying Ms Cyd HO	Ms Starry LEE's view that given the large number of households with foreign domestic helpers, it was important that more practical guidelines with specific illustrations be provided to employers of domestic helpers to help them understand their responsibilities under RDO and refrain from committing acts of race discrimination. Her suggestion that leaflets on such guidelines be prepared and distributed to employers and domestic helpers.  Ms Cyd HO's suggestion that arrangement should be made for such leaflets to be distributed by the Immigration Department to persons applying for employment of domestic helpers.  The Chairman's suggestion that such leaflets should also be distributed through the employment agencies for domestic helpers.	

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		<p>Mrs Sophie LEUNG's suggestion that information on such leaflets should be uploaded onto the web (e.g. website of the Immigration Department) and a clause should be added to the standard employment contract of domestic helpers to alert employers of their responsibilities under RDO.</p> <p>EOC's response that upon the implementation of RDO, various initiatives would be taken to educate employers of domestic helpers on their responsibilities under the RDO. Apart from preparing leaflets and distributing them through different channels, EOC would also disseminate such information through its newsletter, and the media. In addition, seminars and briefing sessions for employers of domestic helpers would be held. Consideration would be given to the suggestions given by members in this regard.</p> <p>Administration's undertaking to revert to the Subcommittee on members' suggestion of adding a clause to the standard employment contract of domestic helpers to alert employers of their responsibilities under RDO.</p>	<p><b>EOC to follow-up</b> (para 2 of minutes)</p> <p><b>Admin to follow-up</b> (Para 3 of minutes)</p>

Council Business Division 2  
Legislative Council Secretariat  
31 July 2009