

立法會
Legislative Council

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LC Paper No. CB(2)2331/08-09
(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 6th meeting
held on Friday, 19 June 2009, at 10:45 am
in Conference Room B of the Legislative Council Building**

Members present : Hon Paul TSE Wai-chun (Chairman)
Dr Hon Margaret NG
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon LEUNG Yiu-chung
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, BBS, JP
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king
Hon IP Kwok-him, GBS, JP

Member absent : Hon TAM Yiu-chung, GBS, 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

Mr Arthur HO Kin-wah
Deputy Secretary for Constitutional and Mainland Affairs

Mr Hubert LAW Hin-cheung
Principal 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

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 detailed provisions of the Code of Practice on Employment (the Code) under the Race Discrimination Ordinance (RDO) [with reference to the marked-up version of the Code prepared by the Equal Opportunities Commission (EOC)]

Admin

2. The Administration agreed to -

Paragraph 3.5 - Domestic helpers

- (a) report on the measures that would be taken by the Administration and EOC to help employers of domestic helpers understand their responsibilities under RDO in response to Member's concern in this regard, when the Secretary for Constitutional and Mainland Affairs moved his motion to amend the Code at the Council meeting on 8 July 2009; and

Paragraph 3.8.1 - Vocational training

- (b) provide update information in writing, outside the context of the Subcommittee, on support measures taken by the vocational training institutions to cater to the training needs of ethnic minorities including those who had difficulties in using English and Chinese.

Action

EOC

3. EOC was requested to -

Paragraph 3.8.2 - Employment agencies

- (a) consider amending the Chinese rendition of "agencies" from "代理" to "介紹所";

Paragraph 5.3.4(3) - Advertising vacancies

- (b) consider amending the Chinese rendition of the word "satisfactory" from "理想" to "良好";

Paragraph 5.3.10(2) - Terms and conditions of employment, benefits, facilities and services

- (c) consider rephrasing the last sentence of the paragraph to avoid giving the impression that employers were obliged to accommodate employees' cultural or religious practices in work arrangements;
- (d) highlighting in the paragraph the importance of mutual respect for differences in cultural and religious practices in accommodating employees' needs in work arrangements;

Paragraph 5.3.10(4)

- (e) amend the Chinese rendition of the word "supplying" ("擔任") to remove the discrepancy between the Chinese and English texts; and

Paragraph 5.3.10(5)

- (f) make textual improvements to the Chinese text of the newly added sentences in the paragraph to enhance comprehensibility.

4. The meeting ended at 12:33 pm.

**Proceedings of the 6th 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 Friday, 19 June 2009, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000140 - 000236	Chairman	Opening remarks	
000237 - 000340	Chairman Ms Emily LAU EOC	The Chinese version of the marked-up copy of the Code of Practice on Employment (the Code) prepared by the Equal Opportunities Commission (EOC) was tabled at the meeting.	
000341 - 000558	Chairman EOC Ms Emily LAU Administration	<u>Scrutiny of the detailed provisions of the Code</u> (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) Paragraph 3.5 - Domestic helpers At the request of Ms Emily LAU, the Administration agreed to report on the measures that would be taken by the Administration and EOC to help employers of domestic helpers understand their responsibilities under RDO in response to Member's concern in this regard, when the Secretary for Constitutional and Mainland Affairs moved his motion to amend the Code at the Council meeting on 8 July 2009.	Admin to follow up (para 2 of minutes)
000559 - 000632	EOC	Paragraph 3.6 - Religion	
000633 - 000825	EOC Chairman	Paragraph 3.7 - Other occupational relationships Paragraph 3.7.3 (Commission agents) EOC's advice that in response to the suggestion of the legal adviser to the Subcommittee, the last sentence of the Chinese text of the paragraph had been rephrased.	
000826 - 001247	EOC Chairman Ms Emily LAU Chairman Administration	Paragraph 3.8.1 (Vocational training) Ms Emily LAU's view that the Administration should ensure that vocational training institutions had adequate resources to conduct designated courses to cater for the needs of ethnic minorities including those who knew little English.	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>The Administration's response that it had allocated additional resources to vocational training institutions for provision of enhanced support to ethnic minority students, information on which had been provided to the Bills Committee formed to study the primary legislation. At the request of Ms Emily LAU, the Administration agreed to provide update information in writing to Members, outside the context of the Subcommittee, on support measures taken by the vocational training institutions to cater to the training needs of ethnic minorities including those who had difficulties in using English and Chinese.</p>	<p>Admin to follow up (para 2 of minutes)</p>
001248 - 001402	<p>Chairman EOC ALA9</p>	<p>Paragraph 3.8.2 (Employment agencies)</p> <p>EOC's advice that in response to the views of deputations, an insertion was made in paragraph 3.8.2(1) that employment agencies might not help employers to discriminate on the ground of race such as by arranging underpayment for workers from certain racial groups.</p> <p>The legal adviser's suggestion that the Chinese rendition of the word "agencies" in the newly added sentence be amended from "代理" to "介紹所".</p>	<p>EOC to follow up (para 3 of minutes)</p>
001403 - 001824	<p>Chairman EOC</p>	<p>Chapter 4 – Rights and responsibilities under the Race Discrimination Ordinance (RDO)</p> <p>Paragraph 4.1 – Responsibilities of employers and principals</p> <p><u>Paragraph 4.1.2(1)</u></p> <p>The Law Society's view that it was inappropriate for the Code to recommend employers to adopt a policy of promoting and monitoring racial equality as it imposed obligations upon employers over and above those required by RDO. EOC's advice that while RDO did not impose a duty to promote racial equality on employers, it was the purpose of the Code to give practical guidance to promote racial equality. EOC therefore took the view that it was appropriate for the Code to encourage employers to promote and monitor racial equality and to provide guidance on good practice in these matters. Nevertheless, in the light of the Law Society's comments, the paragraph was rephrased to clarify that the recommendations on policy of racial equality and good employment practice were for employers to adopt as</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>appropriate according to the scale and structure of their organizations and available resources.</p> <p><u>Paragraph 4.1.2(2)</u></p> <p>EOC's advice that in response to the views of the two legal professional bodies, clarification was inserted in the paragraph to emphasize that whether an event occurring outside normal working hours or workplace came within the course of employment depended very much on the specific circumstances of each case.</p> <p><u>Paragraph 4.1.2(3)</u></p> <p>EOC's advice that in the light of the Law Society's comments, the phrase "employment practice and procedures" was amended to "practice and procedures in the workplace" which was more suited to the contents of the paragraph.</p>	
001825 - 002114	EOC Chairman Ms Emily LAU	<p>Paragraph 4.2 – Rights of employees and workers and their role</p> <p><u>Paragraphs 4.2.1 and 4.2.2</u></p> <p>EOC's advice that textual amendments were made to the Chinese text of the paragraphs.</p> <p><u>Paragraph 4.2.3</u></p> <p>EOC's advice that it had adopted the suggestion of a deputation to expand this part of the Code on the role of employees in eliminating and preventing racial discrimination, in particular racial harassment, along the line of the Code of Practice on Employment under the Sex Discrimination Ordinance (SDO Code).</p>	
002115 - 002658	Chairman EOC Mrs Sophie LEUNG Ms Emily LAU	<p>Chapter 5 – Practising and promoting racial equality</p> <p>Paragraphs 5.1 and 5.2</p> <p><u>Paragraph 5.2.2(2)</u></p> <p>On the Law Society's comment that the use of the phrase "disparately adverse impact" should be amended as RDO referred to a considerably smaller proportion, EOC's response that it was of the view that a less legalistic approach was appropriate in making recommendations of good practice for easier understanding and hence no amendment was proposed to be made in this regard.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
002659 - 002849	EOC Chairman	<p><u>Paragraph 5.3.1(3)</u></p> <p>EOC's advice that in response to the view of a deputation, a new paragraph 5.3.1(3) was added to elaborate on the principles and benefits of using consistent selection criteria in recruitment.</p>	
002850 - 002914	EOC	Paragraph 5.3.2	
002915 - 003857	EOC Chairman Ms Emily LAU Administration	<p>Paragraph 5.3.3 – Genuine occupational qualification</p> <p>Paragraph 5.3.3(1)(c) – With reference to a deputation's view that examples should be added to better explain the meaning of the paragraph, EOC's advice that -</p> <ul style="list-style-type: none"> (a) no example was included as there was no case law on the situation specified in the paragraph; (b) it was explained in paragraph 5.3.3(2) that it was for the employer to show that an exception applied to a job and that the court would examine each claim strictly according to the circumstances of each case; and (c) EOC would review the Code in the light of operation experience and case law development. 	
003858 - 004545	EOC Chairman Ms Emily LAU	<p>Paragraph 5.3.4 – Advertising vacancies</p> <p><u>Paragraph 5.3.4(3)</u></p> <p>EOC's advice that it would amend the Chinese rendition of the word “satisfactory” from "理想" to "良好" as suggested by a deputation.</p> <p>EOC's advice that to its understanding, ethnic minorities did not demand that all job vacancies had to be advertised in different ethnic minority languages, which would be too onerous for small employers. What they were asking for was that vacancies which did not require the ability to read or write in Chinese should be advertised in English as well so that they could have access to such information. EOC was of the view that the paragraph as currently drafted was appropriate for the situation in Hong Kong.</p>	<p>EOC to follow up (para 3 of minutes)</p>

Time Marker	Speaker(s)	Subject(s)	Action required
004546 - 004655	EOC Chairman	Paragraph 5.3.5 – Shortlisting EOC's advice that it had taken on board a deputation's view to add a new paragraph 5.3.5(3) to recommend keeping record of the shortlisting process.	
004656 - 004847	EOC	Paragraph 5.3.6 – Race related information	
004848 - 005029	Chairman EOC	Paragraph 5.3.7 – Interviewing EOC's advice that in response to the views of deputations, it had inserted a new paragraph to emphasize the good practice of keeping record of interview process and had made amendments to relevant paragraphs in the Code to recommend employers to keep record of the recruitment process for no less than 24 months, which corresponded to the time limit for taking legal action against alleged race discrimination.	
005030 - 005206	Chairman EOC	Paragraph 5.3.8 - Tests	
005207 - 005306	Chairman EOC	Paragraph 5.3.9 - Recruitment through employment agencies or employment services EOC's advice that as suggested by a deputation, it had added a paragraph to clarify that by instructing employment agencies that there should be no discrimination in the recruitment process, it would help employers to show that they had discharged their responsibilities under the law.	
005307 - 011825	EOC Chairman Mrs Sophie LEUNG Ms Emily LAU Ms LI Fung-ying Ms Miriam LAU ALA9	<u>Paragraph 5.3.10 – Terms and conditions of employment, benefits, facilities and services</u> EOC's advice that various amendments had been made to paragraph 5.3.10 to substantiate the contents of this part of the Code as suggested by deputations. Mrs Sophie LEUNG's concern that the proposed insertion of the last sentence of paragraph 5.3.10(1) would reduce the flexibility of employers in offering incentive pay to employees. EOC's explanation that it would be unlawful under RDO to discriminate against another person in terms of pay and other benefits only if such discrimination was based on the ground of race and similar contents were found in the Code of Practice under other anti-discrimination ordinances.	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p><u>Paragraph 5.3.10(2)</u></p> <p>Ms Miriam LAU's view that the last sentence of the paragraph should be reworded to avoid giving the impression that employers were obliged to accommodate employees' cultural or religious practices in work arrangements.</p> <p>Ms LI Fung-ying's view that the importance of mutual respect for differences in cultural and religious practices should be highlighted in the paragraph.</p> <p><u>Paragraph 5.3.10(4)</u></p> <p>The legal adviser's comment on the discrepancy between the English and the Chinese text in the example quoted in the paragraph concerning a Pakistani person working in an employment agency supplying clients with temporary staff and a Chinese person supplying permanent staff in the same agency.</p>	<p>EOC to follow-up (para 3 of minutes)</p> <p>EOC to follow-up (para 3 of minutes)</p> <p>EOC to follow-up (para 3 of minutes)</p>
011826 - 012355	Chairman EOC Ms Miriam LAU Dr Margaret NG Ms LI Fung-ying	<p>Paragraphs 5.3.10(4) to (10) - Equal pay for equal work/work of equal value</p> <p>Some deputations' view that it was inappropriate and misleading to include the paragraphs on equal pay for equal work/work of equal value which was an entirely separate issue from race discrimination. EOC's response that although general principles of equal pay for equal value were mainly articulated in the context of gender equality, the issue of pay equality was not necessarily confined to the gender context, but was also capable of arising in the context of racial equality. EOC took the view that it was appropriate to include general principles of equal pay for equal value in order to promote racial equality. These principles were also included in the Code under the Disability Discrimination Ordinance.</p> <p>Ms Miriam LAU's comment that the Chinese text of the newly added sentences in paragraph 5.3.10(5) was not readily understood and textual amendments should be made to enhance comprehensibility.</p>	<p>EOC to follow-up (para 3 of minutes)</p>
012356 - 012504	Chairman EOC	Paragraph 5.3.10(11) - Overseas employees	
012505 - 013038	Chairman EOC	Paragraph 5.3.12 - Language	

Time Marker	Speaker(s)	Subject(s)	Action required
013039 - 013442	EOC Chairman Ms LI Fung-ying Mrs Sophie LEUNG	Paragraph 5.3.13 - Promotion, transfer and training Discussion on whether the word "review" in paragraph 5.3.13(6) should be deleted.	
013443 - 013914	Chairman EOC Mrs Sophie LEUNG	Paragraph 5.3.14 - Prevent harassment on the ground of race EOC's advice that at the suggestion of a deputation, the contents of paragraph 5.3.14 on preventing racial harassment as well as formulating and implementing a policy on racial harassment had been materially expanded along the line of the SDO Code. In response to Mrs Sophie LEUNG, EOC's advice that various publicity initiatives, such as distributing information leaflets and organizing training workshops, would be introduced to enhance knowledge of employers and employees on the Code.	
013915 - 014115	Chairman EOC	Paragraph 5.3.15 - Grievance procedures	
014116 - 014245	Chairman EOC	Paragraph 5.3.16 - Dismissals, redundancies and unfavourable treatment of employees	
014246 - 014630	Chairman EOC Ms LI Fung-ying	Paragraph 5.3.17 - Monitoring The Law Society's view that any suggestion that monitoring should be carried out by all employers should be deleted as employers had no obligation to do so and it would impose a strenuous burden on small employers. EOC's view that in order to promote racial equality, it was appropriate to encourage employers to take reasonably practicable steps to monitor and review racial equality situation within their organizations. It was also recognized in paragraph 5.3.17(3) that employers varied in scale and measures for monitoring might range from assessment through personal knowledge in small enterprises to formal processes in large organizations. Ms LI Fung-ying's enquiry on the reason for amending the Chinese rendition of the word "disparately" from "不公平" to "差異甚大". EOC's advice that it was a textual amendment to better reflect the meaning of the word "disparately".	

Time Marker	Speaker(s)	Subject(s)	Action required
014631 - 014820	Chairman EOC	Paragraph 5.3.18 - Positive action Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
31 July 2009