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12 June 2009

Hon Paul Tse Wai-chun  
Chairman  
Subcommittee on Race Discrimination (Formal Investigations) Rules,  
Race Discrimination (Investigation and Conciliation) Rules and  
Code of Practice on Employment under the Race Discrimination Ordinance  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Hong Kong

Dear Hon Tse,

**Comments on the draft Code of Practice on Employment published  
under the Race Discrimination Ordinance ("RDO")**

Thank you for inviting the Employers' Federation of Hong Kong to comment on the draft Code of Practice on Employment under the Race Discrimination Ordinance and to attend the meeting scheduled on 12 June 2009.

The Federation does not condone any form of inappropriate discrimination and is firmly of the view that discrimination on the grounds of race has no place in Hong Kong. Against this background, the Federation has been actively involved in the drafting of the Race Discrimination Ordinance. We have also reiterated on various occasions the importance of education and promotion in view of the complex and novel concepts in the Ordinance.

The Federation thus welcomes the publication of the draft Code of Practice explaining the RDO. Yet, the one published in the Gazette on 8 May 2009 is different in both content and structure from the document produced for consultation in October last year. It would thus be of great help if more time could be allowed for employers to go over it in detail once again.

The Code in effect sets out certain provisions of the Ordinance and endeavours to explain those provisions. The Federation agrees that the use of examples in order to explain such complicated concepts is preferred. We would like to see more illustrations in the new version of the Code, which are significantly fewer than the last one.

There are a number of areas which the Federation would appreciate increased explanation or clarification:-

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- (a) Elements such as "equal pay for equal work" are elaborated in the latest version of the Code. While appreciating the spirit of "equal pay for equal work" or "equal pay for equal value", it is well beyond the issue of race discrimination. It is inappropriate and misleading to compare any of the Hong Kong discrimination ordinances with equal pay legislation. Suggestions that "equal pay for equal work" laws exist in Hong Kong implies that employers are under an obligation to undertake a job evaluation assessment. This is incorrect and misleading. Whilst employers must not treat persons less favourably due to their sex, race, disability etc, this does not mean that employers have to pay the same amount to all persons who provide a certain level of work.
- (b) It is stated in the Code that employers should always follow "the spirit of practising and promoting racial equality". We share the view that employers should make best efforts in providing a discrimination-free environment in the workplace. Yet, it is not the obligation of any employer other than EOC to "promote" racial equality.
- (c) A primary area of concern for our members relates to recruitment. In this respect our members are particularly concerned as to the need to justify pre-conditions which may have a differential impact on different races (eg language requirements) as well as the structuring of different remuneration packages for different applicants. Whilst section 5.3.12 of the Code sets out certain information, it contains no examples at all and, we suggest, should be materially expanded.
- (d) The interaction between the concept of the "race" and the religion of an individual needs to be explained further in the Code. This is particularly important in a multi-cultural city such as Hong Kong.
- (e) The issue of the provision of expatriate terms for certain employees has been given high profile in the media over the past couple of years. The exemptions which exist in the RDO concerning expatriate terms are unique for Hong Kong. The condition of expatriate employment may also change over time e.g. cessation of special skills, right of abode etc which might create confusion and concern on the "eligibility" of expatriate terms. The Federation is of the view that it is important that the EOC sets out its views as to how these exemptions will operate in practice. It will also be helpful to provide more illustrations or examples.
- (f) Small employers will find the Code difficult to observe. While it is inappropriate for the Code to recommend the adoption of a specific policy, the policy set out in the Code could be too strenuous for small companies to comply with. In the case of appointing agencies or employment services, for example, monitoring will be difficult (or even impossible) for small employers.

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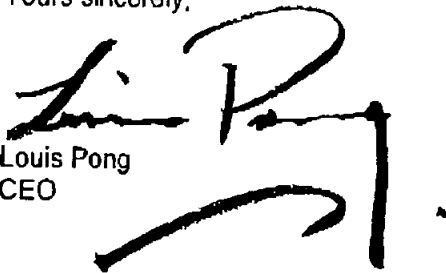
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- (g) It is incorrect to state in paragraph 4.1.2(2) that all social gatherings involving employees immediately after work are within the course of employment.

Employers need to have time to review and understand the legislation before its coming into force. A critical aspect of such review and understanding will be the final version of the Code. As such employers and employees should, we suggest, be given at least three months to digest the final version of the Code before the implementation of the RDO. It is also important for EOC to provide sufficient assistance with the necessary training.

The Federation would welcome the opportunity to discuss the above comments with the Commission. Please feel free to contact me at 2528 0712.

Yours sincerely,



Louis Pong  
CEO