

LEGISLATIVE COUNCIL BRIEF
RACE DISCRIMINATION ORDINANCE
(Chapter 602)

CODE OF PRACTICE ON EMPLOYMENT

Introduction

The Race Discrimination Ordinance (Cap. 602) (RDO) was passed on 10 July 2008. Under section 63 of the RDO which became effective on 3 October 2008, the Equal Opportunities Commission (EOC) may issue codes of practice for the purpose of elimination of discrimination, harassment and vilification; and for the purpose of promotion of equality of opportunity and harmony between different racial groups. The EOC has issued a Code of Practice on Employment under the RDO. The Code, proposed to come into effect subject to the vetting procedures under the RDO, has been published in the gazette on 8 May 2009.

Purpose of the Code

2. The purpose of the Code is to give practical guidance on how to prevent discrimination and harassment on the ground of race; and to promote racial equality and harmony in the employment field. It is intended to encourage employers, employees and other concerned parties to promote racial equality and harmony in the workplace by adopting good practices, and to help them to understand their respective rights and

responsibilities under the RDO so that they will respect, and refrain from infringing, the rights of other people. The Code also helps employees and workers to know what to do if they encounter discrimination and harassment on the ground of race.

Consultation process

3. Prior to publication in the gazette, the EOC conducted public consultation between October 2008 and January 2009 on the first draft of the Code. A total of 88 written submissions were received by the EOC on the first draft. In addition, a series of 10 public consultation meetings were held. There were 45 other briefing sessions held with various stakeholder organizations.

4. The first draft of the Code was revised substantially taking into account the submissions and views received, including the discussion in the Panel on Constitutional Affairs of the Legislative Council (Panel) meeting on 17 November 2008. Wording and expressions have been reviewed to emphasize the promotion racial equality in the workplace. Illustrations and examples have been reviewed to facilitate a better understanding of the application of the RDO. A revised draft was then discussed in the Panel meeting on 16 March 2009. The EOC received further views and comments on the revised draft.

The Code

5. The Code emphasizes on providing recommendations for good employment procedures and practices. Employers are encouraged to adopt these recommendations. They cover all aspects and stages of the employment relationship, including good procedures and practices relating to recruitment criteria, vacancy advertising, terms and conditions of employment, promotion and training, harassment, and termination of employment.

6. The Code recommends good practice on language issues and also recommends employers to review their rules, policies and practices so that they are justified by specific job requirements or organization needs. The Code encourages employers to make effort to accommodate cultural practices of employees. It contains illustrations and examples derived from relevant case law to demonstrate how principles relating to the issue of justification may be applied in particular situations and what measures employers could consider in accommodating employees.

7. The Code recommends a systematic approach by adopting a policy on racial equality. A sample policy is provided for reference. Employers are also encouraged to monitor the implementation of such policy through gathering relevant information, and to take positive action that is allowed under the RDO in order to promote substantive racial equality where appropriate.

8. In making these recommendations, reference has been made to relevant materials, including codes under other discrimination ordinances and relevant overseas materials such as the UK Code of Practice on Racial Equality in Employment.

9. In addition to recommendations on good practice, the Code gives a general introduction on the scope and application of the RDO, explaining what acts are unlawful under it. Exceptions and other matters not affected by the RDO are highlighted, including an explanation of the types of positive action allowed by the RDO to provide facilities and benefits to people from disadvantaged racial groups so that they may have equal opportunities in employment

10. The Code encourages employers to discharge their responsibilities under the RDO by following its recommendations. It also encourages employees and workers to understand and fulfill their role and responsibilities.

Equal Opportunities Commission
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