



OUR REF.: EOC/CR/COP/01/01
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13 May 2011

Mr. Raymond LAM
Clerk to Subcommittee on Revised Code of Practice on
Employment under the Disability Discrimination Ordinance
Legislative Council
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Mr. LAM,

**Subcommittee on
Revised Code of Practice on Employment under
the Disability Discrimination Ordinance**

In the meeting on 11 May 2011 of the Subcommittee on Revised Code of Practice on Employment under the Disability Discrimination Ordinance (the Subcommittee), Members requested the Equal Opportunities Commission (EOC) to include a warning on the use of cited cases in the Code and the legal advisor to the Subcommittee has pointed out clerical discrepancies and asked the EOC to reconsider the interpretation of "Future Disability" in the Code.

After due consideration of all suggestions, the EOC proposes to make further amendments to the Code highlighted (bolded and underlined) in the following. A marked-up copy of the Code indicating all the accumulated amendments is enclosed with this letter as Annex 1 also for Members' information and final approval.

1. In response to Members' request, a sentence is added to paragraph 1.9 and the whole paragraph should read as follows:

(English version) "Examples derived from decided cases, complaints and enquiries have been modified to demonstrate to readers how the DDO may be applied under particular circumstances. Readers should be mindful that each case bears its own uniqueness and refrain from sole and direct application of any example to a particular situation. **Where readers intend to rely on the decided cases cited in this Code, they should refer to the respective court judgments.**"

In an actual court case, it will be for the court to decide whether precedent cases are applicable.”

(Chinese version) “由案例、投訴和查詢改寫而成的例子，旨在協助讀者了解《殘疾歧視條例》在某些情況下的應用性。由於每宗個案皆有其獨特性，讀者在考慮其個別情況時，不應完全及直接套用本守則之例子。讀者如欲引用守則闡述之法庭個案，須參考有關法庭判案書。在正式的審訊中，法庭才有權決定那些先例會被引用。”

2. In response to the various enquiries made by the legal advisor to the Subcommittee, the following amendments have been made:

i) (Chinese version only) “的問題” is added to the second to the last sentence in paragraph 1.4 and it should read:

“...。但本守則可作呈堂證據，當法庭處理根據《殘疾歧視條例》提出的法律程序的問題時，須考慮守則的相關部份。”

ii) Footnote 1 should now read:

(English version) See *Teva (UK) Ltd. v Goubatchev* [2009] UKEAT 0490_08_2704

(Chinese version) 見 *Teva (UK) Ltd. v Goubatchev* [2009] UKEAT 0490_08_2704

iii) Paragraph 3.4.2, relevant case illustration and relevant footnote 7 are amended to read:

(English version) “3.4.2 Future disability – **a disability that may exist in the future**”

(Chinese version) “3.4.2 將來的殘疾 -- 在將來可能存在的殘疾”

(English version) **An employee who had recovered from psychiatric disorder was dismissed because the employer thought that her disability would relapse in the future. The employer could be liable for disability discrimination.**

(Chinese version) 某僱員曾患精神病，其僱主認為她的精神病將來會復發，故此把她解僱。僱主或需為殘疾歧視負上法律責任。

Footnote 7: (English version) In *K & Others v Secretary for Justice* [2000] 3 HKC 796, the court held that future disability means “...a future disability predicated by a past disability and the risk it refers to is the possibility of recurrence of the past disability, not the risk of acquiring any disability.” In addition, the EOC takes the view that the relevant provision may, in appropriate cases, be applicable to situations other than recurrence of past disability, e.g. a person with high blood glucose level is taken as someone who will acquire diabetes in the future.

(Chinese version) 在 *K 及其他人 訴 律政司司長* [2000] 3 HKC 796 一案中法庭認為將來的殘疾是“...建基於一個過往的殘疾，意指舊病復發的風險，而不是罹患任何殘疾的風險”。除此以外，平機會認為在合適的個案中，相關條文也可能引用於其他非舊病復發的情況，例如：某人因為有高血糖而被認定在將來會患上糖尿病。

iv) (English version only) “Persons living with AIDS” as stated in the case illustration in paragraph 3.5 and in paragraph 6.37 changed to “persons living with **HIV**”

v) Last sentence in paragraph 8.5 amended to read:

(English version) “In accordance with **Schedule 2 of the Minimum Wage Ordinance (CAP. 608)**, persons with disabilities whose productivity may be impaired by their disabilities will have the right to...”

(Chinese version) “按《最低工資條例》(第 608 章)的附表 2，因殘疾以致生產能力可能受損的殘疾人士，有權...”

vi) (English version) “Patients with AIDS and those who are HIV positive” and “AIDS patients” as stated in the case illustration in paragraph 9.10 both changed to “**persons living with HIV**”

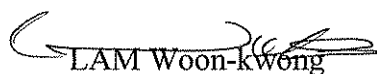
(Chinese version) “愛滋病患者和帶菌者” and “愛滋病病人” as stated in the case illustration in paragraph 9.10 both changed to “愛滋病毒感染者”

vii) (English version) “People living with HIV” as stated in paragraph 11.4.8 changed to “**persons** living with HIV”

(Chinese version) “愛滋病患者” as stated in paragraph 11.4.8 changed to “愛滋病毒感染者”

The EOC is grateful for all Members’ suggestions for improvement of the Code. We hope that this Code which everyone has contributed to the construction will assist both employees and employers in Hong Kong in creating an inclusive workplace free of disability discrimination.

Yours sincerely,



LAM Woon-kwong

Chairperson

Equal Opportunities Commission

Encl.

c.c. Mr. Stephen SUI, Commissioner for Rehabilitation, Labour and Welfare Bureau
(Fax No.: 2543 0486)