

**EOC MEMORANDUM ON
FAMILY STATUS DISCRIMINATION (AMENDMENT) BILL 2000**

Introduction

In April 1998 the Equal Opportunities Commission (“EOC”) wrote to the Home Affairs Bureau (“HAB”), pointing out that, by drafting section 5(a) of the Family Status Discrimination Ordinance, Cap.527 (“FSDO”) the way that it had, a situation had been created where not only was it unlawful to discriminate against persons with family status when compared to persons without family status, it was also unlawful to discriminate against persons with a particular type of family status when compared to persons without that type of family status.

2. In particular, it was pointed out that, pursuant to section 8(2)(a) of the FSDO, an employer may not discriminate in terms of the benefits payable to employees on the ground that such employees have responsibility for the care of different types of immediate family members. It was also pointed out that this created a problem with medical benefits, as schedule 2 of the FSDO exempts a variety of benefits, but medical benefits are not exempt.

3. At the end of 1999 HAB indicated to the EOC that it was prepared to seek an amendment of the FSDO to cure this problem and sought the support of the EOC. The EOC advised that it would support an amendment on the basis that such amendment would clarify that it was not unlawful for an employer to restrict medical benefits to one or more types of immediate family members (without giving the same to all immediate family members).

4. A copy of the Labour Advisory Board (LAB) Paper 25/99 on the proposed FSDO amendment was subsequently provided to the EOC. The EOC gave an in-principle support to the proposal set out in that paper.

EOC Views following Gazettal of Bill

5. Following gazettal of the Bill in February 2000, the EOC expressed to HAB the following concerns about the amending provisions :

- (i) the proposed section 39A referred not only to Part III of the FSDO, (which deals with employment), but to Parts IV and V (which deal with discrimination in other fields and other unlawful acts);
- (ii) the proposed section 39A went beyond medical benefits, and covered all “benefits, facilities or services”;
- (iii) the proposed amendment would extend to compassionate leave, which meant that employers could discriminate against employees in respect of them taking time off for different types of immediate family members for whom they had responsibility of care;
- (iv) the proposed amendments should not be drafted in such a way so as to permit disparate treatment between employees of the same rank; and
- (v) the proposed section 39A talked in terms of the way employers afforded immediate family members of employees direct or indirect access to benefits, services or facilities, yet the issue was the treatment of employees (or contract workers or principals) viz a vis access to such benefits, services or facilities, and the proposed amendment made sections 8(2)(a), 9(2)(d) and 6(2)(c) of the FSDO almost redundant.

EOC Views of Committee Stage Amendments to Bill

6. In April 2000, HAB provided an Information Paper on Family

Status Discrimination (Amendment) Bill 2000 to the EOC, together with a copy of the draft Committee Stage Amendments to the Bill.

7. The majority of the EOC Members agree with HAB's draft Committee Stage Amendments to the Bill. A majority of the EOC Members also agree that the amendments should have retrospective effect from 21 November 1997.

8. The minority of the EOC Members prefer a narrower approach and amendments limited to medical and dental benefits only. Of particular concern to the minority is the issue of compassionate leave. The EOC has received 11 complaints relating to compassionate leave under the FSDO, including the following two examples :

- (i) a complainant was refused compassionate leave when his step-father passed away, as the employer only permitted compassionate leave for the passing away of a person directly related to the employee; and
- (ii) a complainant was refused compassionate leave when her father passed away, although the employer permitted compassionate leave for sick children.

Equal Opportunities Commission
May 2000