

立法會
Legislative Council

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

**Minutes of the first meeting
held on Thursday, 28 April 2011, at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Cyd HO Sau-lan (Chairman)
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon CHEUNG Kwok-che
Hon IP Wai-ming, MH

Members absent : Hon LEUNG Yiu-chung
Hon LI Fung-ying, SBS, JP
Hon WONG Sing-chi
Hon IP Kwok-him, GBS, JP
Dr Hon PAN Pey-chyou
Hon WONG Yuk-man

Public Officers attending : Item II

Mr Stephen SUI Wai-keung
Commissioner for Rehabilitation
Labour and Welfare Bureau

Equal Opportunities Commission

Mr LAM Woon-kwong
Chairperson

Ms Maggie WU Su-ka
Senior Equal Opportunities Officer (Compliance)

Clerk in attendance : Mr Raymond LAM
Chief Council Secretary (2) 1

Staff in attendance : Ms Wendy KAN
Assistant Legal Adviser 6

Ms Priscilla LAU
Council Secretary (2) 5

Ms Sandy HAU
Legislative Assistant (2) 5

I. Election of Chairman

Hon Cyd HO was elected Chairman of the Subcommittee.

II. Meeting with the Administration

2. The Subcommittee deliberated (index of proceedings attached at **Annex**).

3. The Subcommittee requested the Equal Opportunities Commission ("EOC") to provide -

- (a) the number of enquiries received in relation to employment-related disability discrimination, with a breakdown by year; and
- (b) the number of complaints received in relation to employment-related disability discrimination, with breakdowns by year and outcome of conciliation; and among the cases where conciliation was unsuccessful, the number of cases brought to court.

4. At the suggestion of Ms Audrey EU, EOC agreed to consider establishing on its website some form of link between the revised Code and the latest case law.

5. The Administration undertook to relay to the Labour Department the suggestion of the Chairman and Mr CHEUNG Kwok-che of engaging the participation of EOC in a trial run of the productivity assessment for persons with disabilities under the Minimum Wage Ordinance (Cap. 608) for consideration.

III. Dates of subsequent meetings

6. Members agreed that the Chairman would move a motion on behalf of the Subcommittee at the Council meeting on 11 May 2011 to extend the scrutiny period of the revised Code of Practice on Employment under the Disability Discrimination Ordinance to the Council meeting of 1 June 2011.

7. Members agreed that further meetings would be scheduled on 3 May 2011 from 4:30 pm to 6:30 pm, 6 May 2011 from 8:30 am to 12:30 pm and from 5:15 pm to 7:15 pm to continue discussion with the Administration and EOC. Members further agreed to receive the views of deputations on the revised Code at the meeting on 6 May 2011.

8. The being no other business, the meeting ended at 10:25 am.

Council Business Division 2
Legislative Council Secretariat
20 July 2011

**Proceedings of the first meeting of the Subcommittee on
Revised Code of Practice on Employment under
the Disability Discrimination Ordinance
held on Thursday, 28 April 2011, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker(s)	Subject(s)	Action Required
<i>Agenda Item I – Election of Chairman</i>			
000000 - 000212	Hon Emily LAU Hon Audrey EU Hon CHEUNG Kwok-che Hon Cyd HO	Election of Chairman	
<i>Agenda Item II – Meeting with the Administration and Equal Opportunities Commission</i>			
000213 - 001053	Chairman Clerk Hon Emily LAU Hon Audrey EU Hon CHEUNG Kwok-che	Opening remarks Invitation of public views on the revised Code of Practice on Employment under the Disability Discrimination Ordinance ("the revised Code") Dates of subsequent meetings	
001054 - 001640	Chairperson of the Equal Opportunities Commission ("EOC")	Briefing by EOC on the revision of the existing Disability Discrimination Ordinance: Code of Practice on Employment ("the existing Code")	
001641- 002633	Hon Emily LAU Chairperson of EOC	Hon Emily LAU's suggested inviting employer groups to give views on the revised Code. She expressed concern on - (a) whether the revised Code had struck a proper balance between the interests of employers and employees by facilitating business operation on the one hand, and on the other hand assisting disadvantaged persons with disabilities to achieve a level playing field; (b) which subject matters set out in the revised Code were more controversial; and (c) whether a regulatory impact assessment had been conducted to examine the impact that the revised Code would have on the stakeholders Response of EOC- (a) the revised Code reflected the enforcement experiences of EOC accumulated over a decade. It spelt out in writing the current principles adopted by EOC in handling relevant enquiries and complaints, as well as promoting elimination of disability discrimination in the employment field. All the stakeholder groups,	

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		<p>in particular large enterprises, should therefore be fully aware of these principles, as EOC had all along provided employers with training on how to create an equitable workplace;</p> <p>(b) a more controversial issue that employers and employees groups held different views was the intertwined relationship among inherent requirements, reasonable accommodation and unjustifiable hardship as provided in Chapter 5 of the revised Code; and</p> <p>(c) while no regulatory impact assessment had been conducted, the revised Code did not introduce any new requirements and compliance with it would not lead to a substantial increase in cost on the part of employers. Moreover, implementing the recommendations in the revised Code would help employers to reduce the risk of committing unlawful act(s) and limit chances of incurring vicarious liability. The revised Code could also promote equal opportunities and enhance productivity in the workplace, thereby creating a win-win situation for employers, employees and the society</p>	
002634 - 003434	Hon Audrey EU Chairperson of EOC Chairman ALA6	<p>Hon Audrey EU enquired about -</p> <p>(a) the major differences in respect of content and status between the revised Code and the existing Code; and</p> <p>(b) the availability for employers' reference of information, in written form, on the principles currently adopted by EOC to prevent disability discrimination and promote equal opportunities in the workplace, which served as a basis for drafting the revised Code</p> <p>Response of EOC -</p> <p>(a) it would be difficult to compare the content of the revised Code with that of the existing Code, as the revision was a complete rewrite but not piecemeal amendments;</p> <p>(b) same as the existing Code, the revised Code was not a form of subsidiary legislation but a statutory code that had been laid before the Legislative Council to provide recommendations for good employment procedures and practices. It was not in itself an authoritative statement of the law and it did not create legal obligation;</p>	

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		<p>(c) according to section 65(13) of the Disability Discrimination Ordinance (Cap. 487) ("DDO"), a failure on the part of any person to observe any provision of the revised Code did not of itself render the person liable to any proceedings. However, in any proceeding under DDO, the revised Code was admissible in evidence and the court would take into account relevant parts of the Code in determining any question arising in the proceedings; and</p> <p>(d) while EOC had kept all training materials and correspondence of its complaint cases, as well as provided regular update to the relevant Panel of the Legislative Council on its work, the revised Code was the first complete set of information on the principles currently adopted by EOC to prevent disability discrimination and promote equal opportunities in the workplace</p>	
003435 - 005047	Hon Emily LAU Chairperson of EOC Chairman	<p>Hon Emily LAU sought information on the number of complaint cases related to disability discrimination received by EOC; the expected increase in caseload arising from the putting into effect of the revised Code; and the number of cases where the existing Code had been applied in determining question arising in proceedings under DDO.</p> <p>Response of EOC -</p> <p>(a) EOC's complaints system was aimed at resolving disputes between parties through conciliation. When a complaint was lodged with EOC, it was required by law to conduct an investigation into the complaint and try to settle it by conciliation unless it exercised its discretion to discontinue the investigation. Since the setting up of EOC in 1996, it had received about 3 700 complaints in relation to employment-related disability discrimination, of which about two-thirds which proceeded to conciliation were successfully conciliated. For cases where conciliation was unsuccessful, the complainant might institute civil proceedings and most of these cases were settled out of the court;</p> <p>(b) the existing Code had not been applied in the past proceedings under DDO. This was perhaps due to the reason that the content of the existing Code was relatively concise; and</p> <p>(c) taking into account that the principles laid down in the revised Code were not new requirements but had been adopted by EOC for years, it was</p>	

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		<p>projected that there would not be an upsurge in the number of complaints arising from the putting into effect of the revised Code</p> <p>EOC was requested to provide the number of complaints received in relation to employment-related disability discrimination, with a breakdown by the outcome of conciliation; and among the cases where conciliation was unsuccessful, the number of cases that had resorted to legal proceeding</p>	<p>EOC</p>
<p>004417 - 005007</p>	<p>Hon Emily LAU Chairperson of EOC Chairman</p>	<p>In response to Hon Emily LAU, EOC advised that in finalizing the gazetted version of the revised Code, EOC had taken into account views received during the public consultation exercise on the draft version of the revised Code. EOC stood ready and would allocate sufficient manpower for providing briefings for the stakeholder groups on the revised Code if they so requested</p>	
<p>005008 - 005047</p>	<p>Chairman</p>	<p>Cross references of the relevant legislation in the margins where the relevant topics were discussed</p>	
<p>005048 - 010452</p>	<p>Hon Audrey EU Chairperson of EOC Chairman</p>	<p>Hon Audrey EU commended the use of examples and marginal references to make the revised Code more user-friendly</p> <p>Hon Audrey EU considered that EOC should make it clear which examples in the revised Code were drawn up in the light of the enquiries and complaints received by EOC; and her enquiry as to whether examples given in the revised Code had covered all enquiries and complaints received by EOC, as well as relevant case law in Hong Kong and other jurisdictions under the commonwealth system</p> <p>Response of EOC -</p> <p>(a) the revision of the previous Code was aimed to make it more user-friendly and comprehensive. The case illustrations in the revised Code served as reference to facilitate the employers and employees' easy understanding of the principles and concepts in DDO;</p> <p>(b) while every effort was made to ensure a broad coverage of the typical examples of complaint and enquiry cases handled by EOC over the years, as well as relevant case law examples of Hong Kong and other jurisdictions such as Australia, New Zealand and United Kingdom for illustration, the revised Code, as currently drafted, did not intend to give an exhaustive list of all relevant cases;</p>	

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		<p>(c) taking into account that each individual case was different, the word "might" was used in the examples drawn up on the basis of complaints and enquiries handled by EOC to indicate the possibility that the same consideration might not apply to other cases. Some of these examples had also been modified to demonstrate how DDO might be applied under particular circumstances and to avoid unnecessary negative portrayal of employers and employees; and</p> <p>(d) EOC intended to update the revised Code every few years to ensure that it was up-to-date to reflect the latest developments in social culture and employer-employee relationship</p> <p>In response to Hon Audrey EU's suggestion of establishing some form of links, such as a link on the website of EOC, between the revised Code and the latest case law, EOC advised that it would consider the suggestion</p>	<p>EOC</p>
<p>010453 - 011831</p>	<p>Hon IP Wai-ming Chairman Chairperson of EOC</p>	<p>Concern raised by Hon IP Wai-ming and the Chairman on whether employers, in particular small and medium enterprises, were fully aware of their roles and responsibilities under DDO and the revised Code</p> <p>Hon IP Wai-ming considered that EOC should also revise the Codes of Practice on Employment under the Sex Discrimination Ordinance (Cap. 480) and the Family Status Discrimination Ordinance (Cap. 527)</p> <p>Response of EOC -</p> <p>(a) the extensive public consultation exercise on the draft revised Code conducted in 2010 had covered various stakeholder groups including the Hong Kong Small and Medium Enterprises Association. After the coming into effect of the revised Code, EOC would launch publicity programmes, such as publication of promotional booklets, to facilitate public's understanding of the content of the revised Code and to promote compliance; and</p> <p>(b) EOC would revise the Codes of Practice on Employment under other anti-discrimination ordinances in due course</p> <p>EOC was requested to provide a breakdown by year of the number of complaints and enquiries received</p>	<p>EOC</p>

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011832 - 012000	Chairman	Provision of the revised Code in Braille for persons who were visually impaired	
012001 - 013619	Hon Emily LAU Chairperson of EOC	<p>Hon Emily LAU expressed concern about the low awareness of the employers' responsibilities under the revised Code on the part of small and medium enterprises; and her suggestion that EOC should promote the revised Code and in particular, what constituted employer-employee relationships under DDO as set out in Chapter 2 of the revised Code, through television channels</p> <p>Response of EOC -</p> <p>(a) additional resources had been allocated since 2010 to promote equal opportunities through television series and radio programmes produced by Radio Television Hong Kong. Employers including the small and medium enterprises joining the EOC's EO Club could also keep abreast of the latest development on equal opportunities in workplace through the e-Newsletter, workshops and seminars;</p> <p>(c) chapters 10 and 11 of the revised Code had clearly set out the different levels of liability under DDO when committing unlawful discrimination and the benefits of being an equal opportunities employer; and</p> <p>(b) EOC was not itself a tribunal. It did not have the power to adjudicate claims of discrimination, harassment or vilification. If a case was not successfully conciliated, civil proceeding was the only avenue for compensation claims. This had deterred people from seeking EOC's assistance. In the light of this, EOC was looking at the possibility of establishing an Equal Opportunities Tribunal, with informal procedures and active case management functions, so as to make the adjudication process speedy and more accessible</p>	
013620 - 013939	Hon TAM Yiu-chung Chairperson of EOC	Hon TAM Yiu-chung welcomed the revision of the existing Code which had been in use since 1997 and his view that the promotional effort of EOC should focus on the benefits of being an equal discrimination employer	
013940 - 015509	Chairman Chairperson of EOC Hon CHEUNG Kwok-che Admin	Concern raised by the Chairman on the impact of the implementation of the special arrangement provided in the Minimum Wage Ordinance (Cap. 608) for assessing the degree of productivity of persons with disabilities ("PWDs") on the serving PWDs who were already in employment	

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		<p>Hon CHEUNG Kwok-chee considered that EOC should collect views from rehabilitation organizations and employers who had employed PWDs, particularly non-governmental organizations subvented by the Social Welfare Department, on the implementation of the productivity assessment for PWDs and assess whether it had adversely affected the employment opportunities of PWDs</p> <p>Response of EOC -</p> <p>(a) the productivity assessment for PWDs was still at an early stage of implementation. EOC had maintained contact with the Labour Department to closely monitor the development. Where necessary, EOC would take appropriate actions to safeguard the employment opportunities of PWDs; and</p> <p>(b) EOC had recommended the Administration to review the special arrangement in the light of operational experience one year after the implementation of the statutory minimum wage</p> <p>The Administration agreed to relay to the Labour Department the proposal of Hon CHEUNG Kwok-chee and the Chairman of engaging the participation of EOC in a trial run of the productivity assessment</p>	<p>Admin</p>
015510 - 015618	Chairman	Extension of the scrutiny period of the revised Code	