

**立法會**  
**Legislative Council**

LC Paper No. CB(2)682/11-12  
(These minutes have been  
seen by the Administration)

Ref : CB2/SS/8/10

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

**Minutes of the second meeting  
held on Tuesday, 3 May 2011, at 4:30 pm  
in Conference Room A of the Legislative Council Building**

**Members present** : Hon Cyd HO Sau-lan (Chairman)  
Hon LEUNG Yiu-chung  
Hon Emily LAU Wai-hing, JP  
Hon TAM Yiu-chung, GBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon WONG Sing-chi  
Hon IP Kwok-him, GBS, JP  
Dr Hon PAN Pey-chyou

**Members absent** : Hon LI Fung-ying, SBS, JP  
Hon CHEUNG Kwok-che  
Hon IP Wai-ming, MH  
Hon WONG Yuk-man

**Public Officers attending** : Item I  
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 Maisie LAM  
Senior Council Secretary (2) 5

Ms Sandy HAU  
Legislative Assistant (2) 5

---

## **I. Meeting with the Administration**

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

2. The Subcommittee requested the Equal Opportunities Commission ("EOC") to—

- (a) provide information on the amount of damages awarded by the court to the plaintiff or appellant of the winning cases in relation to employment-related disability discrimination to which legal assistance was granted by EOC; and
- (b) further explain the statistics in Annexes 1 to 4 to its paper on issues raised by members at the Subcommittee meeting on 28 April 2011 (LC Paper No. CB(2)1637/10-11(01)).

3. EOC undertook to relay to its Legal and Complaints Committee the suggestion of Hon LEUNG Yiu-chung that a complainant who lodged an appeal against a decision of the Committee should be given the opportunity to present the merits of his/her case to the Committee.

## **II. Date of next meeting**

4. Members noted that the Subcommittee would next meet on 6 May 2011 from 8:30 am to 12:30 pm to receive the views of deputations on the

revised Code of Practice on Employment under the Disability Discrimination Ordinance.

5. The being no other business, the meeting ended at 6:30 pm.

Council Business Division 2  
Legislative Council Secretariat  
28 December 2011

**Proceedings of the second meeting of the Subcommittee on  
Revised Code of Practice on Employment under  
the Disability Discrimination Ordinance  
held on Tuesday, 3 May 2011, at 4:30 pm  
in Conference Room A of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action Required</b>
000000 - 000326	Chairman	Opening remarks	
000327 - 000753	Chairperson of Equal Opportunities Commission ("EOC")	Briefing by EOC on the number of enquiries and complaints received in relation to employment-related disability discrimination as requested by members at the meeting on 28 April 2011 [LC Paper No. CB(2)1637/10-11(01)]	
000754 - 001417	Hon Emily LAU Chairperson of EOC Chairman	In response to Hon Emily LAU, EOC's elaboration on the number and judgment of the cases in relation to employment-related disability discrimination to which legal assistance was granted; as well as the factors the court would take into account when determining the damages to be awarded to the claimant  EOC was requested to -  (a) provide information on the amount of damages awarded by the court to the plaintiff or appellant of the winning cases in relation to employment-related disability discrimination to which legal assistance was granted by EOC; and  (b) further explain the statistics in Annexes 1 to 4 to its paper on issues raised by members at the Subcommittee meeting on 28 April 2011	<b>EOC</b>
001418 - 001739	Hon Emily LAU Chairperson of EOC Chairman	The Chairman and Hon Emily LAU's concern about the relatively small number of cases to which legal assistance was granted and which were proceeded to court  EOC's advice that whether legal assistance would be granted in a case would be determined by its Legal and Complaints Committee, having regard to factors such as whether the case concerned raised a question of principle and whether there was sufficient evidence for bringing the case to court	
001740 - 001939	Chairman Chairperson of EOC	In response to the Chairman, EOC's explanation that after the granting of legal assistance, EOC would arrange lawyers to conduct further assessment of the case and advise the assisted person accordingly. Some cases were withdrawn as the assessment of the evidence was not in favour of the assisted person	

Time marker	Speaker(s)	Subject(s)	Action Required
001940 - 002817	Dr Hon PAN Pey-chyou Chairperson of EOC Chairman	<p>Dr Hon PAN Pey-chyou's concern about the decreasing trend of the number of enquiries in relation to employment-related disability discrimination for the period of 2006 to 2010, which ran contrary to the rising trend of the number of non-employment related enquiries during the same period</p> <p>Explanation of EOC that the decrease in the number of enquiries in relation to employment-related disability discrimination was probably due to the reason that the economy and labour market had improved in recent years, with unemployment rate receding</p> <p>In response to Dr Hon PAN Pey-chyou's suggestion that information on the employment status of the person making the enquiries should be collected for enquirer profile analysis purpose, EOC advised that personal data would only be collected when a complaint was lodged</p>	
002818 - 004040	Hon Audrey EU Chairman Chairperson of EOC	<p>In response to Hon Audrey EU, EOC's explanation that a majority of the complaint cases were originated from enquiries made with EOC. When a complaint had been lodged with EOC, it would investigate into the details to see whether the case should proceed to conciliation. If conciliation was not successful, complainants might take legal proceedings and apply for assistance from EOC. All applications for legal assistance would be considered by EOC's Legal and Complaints Committee and the strength of the evidence was the main factor of consideration</p>	
004041 - 004433	Hon Audrey EU Chairman Chairperson of EOC	<p>Hon Audrey EU's concern about the relatively small number of cases to which legal assistance was granted</p> <p>The Chairman sought information on the budget aside by EOC each year to meet the expenses of legal cases</p> <p>Response of EOC that about \$3 million was set aside each year to meet the expenses of legal cases. The availability of funds was not a consideration in deciding whether to grant legal assistance</p>	
004434 - 010034	Hon LEUNG Yiu-chung Chairman Chairperson of EOC Hon Emily LAU	<p>View of Hon LEUNG Yiu-chung that complainants should be allowed to invite other persons, such as representatives of trade unions, to assist them at the conciliation meetings. Reference could be made to the arrangement of the Labour Tribunal where office bearers of registered trade unions, who had been authorized in writing by the claimants to appear as their representatives, would have a right of audience before the Tribunal</p> <p>The Chairman and Hon Emily LAU's concurrence of the view of Hon LEUNG Yiu-chung</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>Advice of EOC that persons who had the written authorization from the complainants could represent the complainants at the conciliation meetings. However, given that conciliation was on voluntary basis, there had been cases that one party of the complaint expressed concern about the representatives of the other party</p>	
010035 - 010918	<p>Hon Emily LAU Chairman Chairperson of EOC Hon LEUNG Yiu-chung</p>	<p>In response to Hon LEUNG Yiu-chung, EOC's explanation that where necessary, the Legal and Complaints Committee would direct that further assessment of the case should be conducted by EOC officers or independent legal advice on the case's strength of evidence should be sought before deciding whether to grant legal assistance</p> <p>View of Hon LEUNG Yiu-chung that a complainant who lodged an appeal against a decision of the Legal and Complaints Committee should be given the opportunity to present the merits of his/her case to the Committee</p> <p>Response of EOC that the issue had been considered by the Legal and Complaints Committee some time ago. That said, it would relay to the Committee the suggestion of Hon LEUNG Yiu-chung</p>	<p><b>EOC</b></p>
010919 - 011750	<p>Chairperson of EOC Hon Emily LAU Chairman</p>	<p>Hon Emily LAU sought information on the number of complaint cases that were substantiated</p> <p>Advice of EOC that it did not have the power to adjudicate claims of discrimination, harassment or vilification. The law required EOC to use its best endeavours to effect a settlement between the complainant and the respondent by conciliation. If a case could not be successfully conciliated, the complainant could only resort to civil proceedings, which were lengthy and complicated. This had deterred people from seeking EOC's assistance. In the light of this, EOC had suggested to the Government the establishment of an equal opportunities tribunal similar to the Labour Tribunal to speed up and simplify the process of adjudication of discrimination claims</p> <p>In response to the Chairman and Hon Emily LAU, EOC's advice that apart from conducting investigation of complaints, EOC would conduct self-initiated investigation as necessary should the discrimination involved broader public interest. A self-initiated investigation completed in recent years was on accessibility in publicly accessible premises</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
011751 - 011935	Hon Emily LAU Chairperson of EOC Chairman	<p>Hon Emily LAU's concern that, with the exception of the years 1997 and 2003, the number of self-initiated investigation conducted by EOC was relatively small</p> <p>EOC's explanation that the reason why there was a rise in the number of self-initiated investigations in 1997 was because the Disability Discrimination Ordinance (Cap. 487) ("DDO") came into effect in September 1996. The investigations in 2003 were related to discrimination against recovered or suspected Severe Acute Respiratory Syndrome patients and other relevant people</p>	
011936 - 012159	Hon Emily LAU Chairperson of EOC Chairman	Reiteration of the concern about the relatively small number of cases to which legal assistance was granted and which were proceeded to court	
012600 - 012739	Chairman Hon Emily LAU	Number of deputations attending the Subcommittee's meeting on 6 May 2011 to give views on the revised Code of Practice on Employment under DDO ("the revised Code")	
<b><i>Examination of the revised Code</i></b>			
012740 - 012927	Chairman Chairperson of EOC	<p><i>Chapter 1 - Introduction</i></p> <p>Members raised no questions on Chapter 1</p>	
012928 - 013214	Chairman Chairperson of EOC Hon Emily LAU	<p><i>Chapter 2 - Application of the DDO in Employment</i></p> <p><u>Paragraphs 2.1 to 2.4</u></p> <p>Whether persons who were falsely labelled as self-employed persons would be covered in Part III and IV of DDO</p> <p>Response of EOC that the scope of employment under DDO included, among others, working full-time, part-time or on any kind of contract, be it permanent or temporary, oral or written</p>	
013215 - 013324	Chairman Hon Emily LAU Chairperson of EOC	<p><u>Paragraphs 2.5 to 2.7</u></p> <p>Members raised no questions on paragraphs 2.5 to 2.7</p>	
013325 - 013447	Chairman Hon Emily LAU Chairperson of EOC	<p><u>Paragraph 2.8</u></p> <p>Hon Emily LAU's concern about the liability of an employer for unlawful acts of discrimination or harassment committed by employees in the course of their employment with or without the knowledge or approval of such conduct on the part of the employer</p> <p>EOC's advice that the general principles which might be used in assessing whether employers had taken</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		reasonably practicable steps in preventing their employees from committing unlawful discrimination or harassment in the workplace or in the course of employment, which would be a defence to liability, had been set out in Chapter 10 of the revised Code	
013448 - 013704	Chairman Hon Emily LAU Chairperson of EOC Admin	<u>Paragraphs 2.9 to 2.12</u>  View of Hon Emily LAU that the Administration and EOC should launch extensive publicity on the revised Code to ensure that employers, and the contractors in particular, would be fully aware of what they had to do to comply with the revised Code	
013705 - 014041	Chairman Chairperson of EOC	<u>Paragraphs 2.13 to 2.16</u>  Members raised no questions on paragraphs 2.13 to 2.16	
014042 - 014202	Chairman Chairperson of EOC	<i>Chapter 3 - Definition of Disability under the DDO</i>  <u>Paragraphs 3.1 to 3.4</u>  Members raised no questions on paragraphs 3.1 to 3.2	
014203 - 014808	Chairman Chairperson of EOC Hon Emily LAU	<u>Paragraph 3.5</u>  Whether requesting for information on the health conditions of the applicant or his/her family members at the application stage would lead to unlawful disability discrimination  Response of EOC that requesting for unnecessary information that might put a person with a disability at a disadvantage at the application stage could easily lead to allegation of unlawful discrimination as referred to in Chapter 6 of the revised Code	
014809 - 015109	Chairman Chairperson of EOC Hon Emily LAU	<i>Chapter 4 - Discrimination under the DDO</i>  <u>Paragraphs 4.1 to 4.5</u>  Members raised no questions on paragraphs 4.1 to 4.5	
015110 - 015135	Chairman Hon Emily LAU	Date of next meeting	