

CSAs to Discrimination Legislation (Miscellaneous Amendments) Bill 2018 (marked up)

Amendments to Part 5—Division 1

Clause 18A

3

Amendments to Part 5

Amendments Relating to Harassment at Workplace

Division 1—Sex Discrimination Ordinance (Cap. 480)

18A. Section 2 amended (interpretation)

Section 2(1)—

Add in alphabetical order

“*intern* (實習人員)—see section 23A(2);

internship (實習)—see section 23A(2);

pupillage (見習職位)—see section 36(4);

volunteer (義工)—see section 23A(2);”.

19. Section 23A added

After section 23—

Add

“23A. Sexual harassment at workplace

(1) It is unlawful for a person who is a workplace participant to sexually harass a woman who is also a workplace participant at a workplace of them both.

(2) In this section—

intern (實習人員) means a person who is engaged by another person for an internship but is not an employee of that other person;

internship (實習) means—

(a) a period of work the completion of which is required for attaining a professional or academic qualification and includes a pupillage; or

(b) any other period of work that is usually described as an internship;

volunteer (義工) means a person who performs volunteer work other than in the capacity of an employer or employee;

workplace (工作場所), in relation to a person, means a place—

(a) at which the person works as a workplace participant; or

(b) that the person attends as a workplace participant;

workplace participant (場所使用者) means—

(a) an employee;

(b) an employer;

(c) a contract worker;

(d) the principal, within the meaning of section 13(1), of a contract worker;

(e) a commission agent;

(f) the principal, within the meaning of section 20(1), of a commission agent;~~or~~

(g) a partner in a firm;

(h) an intern; or

(i) a volunteer.”.

19A. Section 46A added

After section 46—

Add

“46A. Liability of persons engaging interns and volunteers

- (1) This section applies for the purposes of section 23A.
- (2) For the avoidance of doubt, this section does not apply for the purposes of any criminal proceedings.
- (3) An act done by an intern in the course of an internship is to be treated as an act done—
 - (a) by the intern; and
 - (b) by the person who engaged the intern for the internship, whether or not the act was done with the knowledge or approval of that person.
- (4) In proceedings brought under this Ordinance against a person in respect of an act alleged to have been done by an intern engaged by the person, it is a defence for the person to prove that the person took reasonably practicable steps to prevent the intern—
 - (a) from doing that act; or
 - (b) from doing acts of that description in the course of the internship.
- (5) Subsections (6) and (7) apply if a volunteer is engaged by another person to perform volunteer work.
- (6) An act done by a volunteer in the course of performing volunteer work is to be treated as an act done—
 - (a) by the volunteer; and
 - (b) by the person who engaged the volunteer to perform the work, whether or not the act was done with the knowledge or approval of that person.

(7) In proceedings brought under this Ordinance against a person in respect of an act alleged to have been done by a volunteer engaged by the person, it is a defence for the person to prove that the person took reasonably practicable steps to prevent the volunteer—

(a) from doing that act; or

(b) from doing acts of that description in the course of performing volunteer work.”.

19B. Section 47 amended (aiding unlawful acts)

After section 47(2)—

Add

“(2A) For the purposes of subsection (1), if a person who engaged an intern—

(a) is liable under section 46A for an act done by the intern; or

(b) would be liable under section 46A for the act but for section 46A(4),

the intern is deemed to aid the doing of the act by that person.

(2B) For the purposes of subsection (1), if a person who engaged a volunteer—

(a) is liable under section 46A for an act done by the volunteer; or

(b) would be liable under section 46A for the act but for section 46A(7),

the volunteer is deemed to aid the doing of the act by that person.”.

19C. Section 76 amended (claims under Part 3 or 4)

Section 76(1)(d)—

Repeal

“46”

Substitute

“46, 46A”.

Division 2—Disability Discrimination Ordinance (Cap. 487)

20. Section 2 amended (interpretation)

(1) Section 2(1)—

Add in alphabetical order

“intern (實習人員)—see section 22A(2);

internship (實習)—see section 22A(2);

pupillage (見習職位)—see section 33(4);

volunteer (義工)—see section 22A(2);”

(2) Section 2(8), after “22,”—

Add

“22A.”

21. Section 22A added

After section 22—

Add

“22A. Harassment at workplace

(1) It is unlawful for a person who is a workplace participant to harass a person with a disability who is also a workplace participant at a workplace of them both.

(2) In this section—

intern (實習人員) means a person who is engaged by another person for an internship but is not an employee of that other person;

internship (實習) means—

(a) a period of work the completion of which is required for attaining a professional or academic qualification and includes a pupillage; or

(b) any other period of work that is usually described as an internship;

volunteer (義工) means a person who performs volunteer work other than in the capacity of an employer or employee;

workplace (工作場所), in relation to a person, means a place—

(a) at which the person works as a workplace participant; or

(b) that the person attends as a workplace participant;

workplace participant (場所使用者) means—

(a) an employee;

(b) an employer;

(c) a contract worker;

(d) the principal, within the meaning of section 13(1), of a contract worker;

(e) a commission agent;

(f) the principal, within the meaning of section 20(1), of a commission agent;~~or~~

(g) a partner in a firm;~~;~~

(h) an intern; or

(i) a volunteer.”.

21A. Section 48A added

After section 48—

Add

“48A. Liability of persons engaging interns and volunteers

- (1) This section applies for the purposes of section 22A.
- (2) For the avoidance of doubt, this section does not apply for the purposes of any criminal proceedings.
- (3) An act done by an intern in the course of an internship is to be treated as an act done—
 - (a) by the intern; and
 - (b) by the person who engaged the intern for the internship, whether or not the act was done with the knowledge or approval of that person.
- (4) In proceedings brought under this Ordinance against a person in respect of an act alleged to have been done by an intern engaged by the person, it is a defence for the person to prove that the person took reasonably practicable steps to prevent the intern—
 - (a) from doing that act; or
 - (b) from doing acts of that description in the course of the internship.
- (5) Subsections (6) and (7) apply if a volunteer is engaged by another person to perform volunteer work.
- (6) An act done by a volunteer in the course of performing volunteer work is to be treated as an act done—
 - (a) by the volunteer; and
 - (b) by the person who engaged the volunteer to perform the work, whether or not the act was done with the knowledge or approval of that person.

(7) In proceedings brought under this Ordinance against a person in respect of an act alleged to have been done by a volunteer engaged by the person, it is a defence for the person to prove that the person took reasonably practicable steps to prevent the volunteer—

(a) from doing that act; or

(b) from doing acts of that description in the course of performing volunteer work.”.

21B. Section 49 amended (aiding unlawful acts)

After section 49(2)—

Add

“(2A) For the purposes of subsection (1), if a person who engaged an intern—

(a) is liable under section 48A for an act done by the intern; or

(b) would be liable under section 48A for the act but for section 48A(4),

the intern is deemed to aid the doing of the act by that person.

(2B) For the purposes of subsection (1), if a person who engaged a volunteer—

(a) is liable under section 48A for an act done by the volunteer; or

(b) would be liable under section 48A for the act but for section 48A(7),

the volunteer is deemed to aid the doing of the act by that person.”

21C. Section 72 amended (claims under Part 3 or 4)

Section 72(1)(d)—

Repeal

“48”

Substitute

“48, 48A”.

Division 3—Race Discrimination Ordinance (Cap. 602)

21D. Section 2 amended (interpretation)

Section 2(1)—

Add in alphabetical order

“*intern* (實習人員)—see section 24A(2);

internship (實習)—see section 24A(2);

pupillage (見習職位)—see section 35(4);

volunteer (義工)—see section 24A(2);”.

22. Section 24A added

After section 24—

Add

“24A. Harassment at workplace

(1) It is unlawful for a person who is a workplace participant to harass another person who is also a workplace participant at a workplace of them both.

(2) In this section—

intern (實習人員) means a person who is engaged by another person for an internship but is not an employee of that other person;

internship (實習) means—

(a) a period of work the completion of which is required for attaining a professional or academic qualification and includes a pupillage; or

(b) any other period of work that is usually described as an internship;

volunteer (義工) means a person who performs volunteer work other than in the capacity of an employer or employee;

workplace (工作場所), in relation to a person, means a place—

- (a) at which the person works as a workplace participant; or
- (b) that the person attends as a workplace participant;

workplace participant (場所使用者) means—

- (a) an employee;
- (b) an employer;
- (c) a contract worker;
- (d) the principal, within the meaning of section 15(1), of a contract worker;
- (e) a commission agent;
- (f) the principal, within the meaning of section 22(1), of a commission agent;~~or~~
- (g) a partner in a firm;
- (h) an intern; or
- (i) a volunteer.”.

23. Section 39 amended (other harassment)

Section 39(5), after “24,”—

Add

“24A.”.

23A. Section 47A added

After section 47—

Add

“47A. Liability of persons engaging interns and volunteers

- (1) This section applies for the purposes of section 24A.
- (2) For the avoidance of doubt, this section does not apply for the purposes of any criminal proceedings.
- (3) An act done by an intern in the course of an internship is to be treated as an act done—
 - (a) by the intern; and
 - (b) by the person who engaged the intern for the internship, whether or not the act was done with the knowledge or approval of that person.
- (4) In proceedings brought under this Ordinance against a person in respect of an act alleged to have been done by an intern engaged by the person, it is a defence for the person to prove that the person took reasonably practicable steps to prevent the intern—
 - (a) from doing that act; or
 - (b) from doing acts of that description in the course of the internship.
- (5) Subsections (6) and (7) apply if a volunteer is engaged by another person to perform volunteer work.
- (6) An act done by a volunteer in the course of performing volunteer work is to be treated as an act done—
 - (a) by the volunteer; and

- _____ (b) by the person who engaged the volunteer to perform the work, whether or not the act was done with the knowledge or approval of that person.
- _____ (7) In proceedings brought under this Ordinance against a person in respect of an act alleged to have been done by a volunteer engaged by the person, it is a defence for the person to prove that the person took reasonably practicable steps to prevent the volunteer—
- _____ (a) from doing that act; or
- _____ (b) from doing acts of that description in the course of performing volunteer work.”.

23B. Section 48 amended (aiding unlawful acts)

After section 48(2)—

Add

- _____ “(2A) For the purposes of subsection (1), if a person who engaged an intern—
- _____ (a) is liable under section 47A for an act done by the intern; or
- _____ (b) would be liable under section 47A for the act but for section 47A(4),
the intern is deemed to aid the doing of the act by that person.
- _____ (2B) For the purposes of subsection (1), if a person who engaged a volunteer—
- _____ (a) is liable under section 47A for an act done by the volunteer; or
- _____ (b) would be liable under section 47A for the act but for section 47A(7),

the volunteer is deemed to aid the doing of the act by that person.”.

23C. Section 70 amended (claims in respect of discrimination, harassment and vilification)

Section 70(1)(d)—

Repeal

“47”

Substitute

“47, 47A”.

Amendments to Part 2

Amendments to SDO Relating to Discrimination on the Ground of Breastfeeding

4. Section 2 amended (interpretation)

- (1) Section 2(1), definition of *discrimination*—

Repeal

“8 or 9”

Substitute

“8, 8A or 9”.

- (2) Section 2(1)—

Add in alphabetical order

“*breastfeeding* (餵哺母乳)—see means breastfeeding within the meaning of section 8A(2)(a);”.

7. Section 8A added

After section 8—

Add

“8A. Discrimination against breastfeeding women

- (1) A person (*the discriminator*) discriminates against a woman in any circumstances relevant for the purposes of Part 3 or 4 if the discriminator—
- (a) on the ground that the woman is breastfeeding, treats the woman less favourably than the discriminator treats or would treat a person who is not breastfeeding; or

- (b) applies to the woman, who is breastfeeding, a requirement or condition that the discriminator applies or would apply to a person who is not breastfeeding and the requirement or condition—
 - (i) is such that the proportion of women who are breastfeeding and can comply with it is considerably smaller than the proportion of persons who are not breastfeeding and can comply with it;
 - (ii) is one that the discriminator cannot show to be justifiable, irrespective of whether the person to whom it is applied is a woman who is breastfeeding; and
 - (iii) is to the detriment of the woman who is breastfeeding because she cannot comply with it.
- (2) For the purposes of this section—
 - (a) a woman is breastfeeding if she—
 - (i) is engaged in the act of breastfeeding ~~her~~her child or expressing breast milk ~~to feed her~~child; or
 - (ii) is a person who feeds ~~her~~her child with her breast milk; and
 - (b) a person who is not breastfeeding is to be construed accordingly.”.