

Discrimination Legislation (Miscellaneous Amendments) Bill 2018

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A BILL

To

Amend the Sex Discrimination Ordinance (*SDO*) to make breastfeeding discrimination unlawful; to amend the Race Discrimination Ordinance (*RDO*) to protect an associate of a person from harassment and direct racial discrimination; to expand the meaning of *race* and *racial group* in the RDO to include a race that is imputed to a person; to amend the SDO, the Disability Discrimination Ordinance (*DDO*) and the RDO to make harassment at a workplace unlawful; to amend the DDO and RDO to strengthen the protection against harassment in relation to the provision of goods etc.; to amend the DDO and RDO to make certain acts of harassment committed outside Hong Kong unlawful; to amend the SDO and DDO to make harassment against a member or an applicant for membership of a club unlawful; and to remove the intention requirement for an award of damages for certain acts of indirect discrimination under the SDO, the Family Status Discrimination Ordinance and the RDO.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Discrimination Legislation (Miscellaneous Amendments) Ordinance 2018.
- (2) Subject to subsection (3), this Ordinance comes into operation on the day on which it is published in the Gazette.
- (3) Part 2 comes into operation on the expiry of 12 months beginning on the day on which this Ordinance is published in the Gazette.

2. Enactments amended

The enactments specified in Parts 2 to 9 are amended as set out in those Parts.

Part 2

Amendments to Sex Discrimination Ordinance (Cap. 480) Relating to Discrimination on the Ground of Breastfeeding

3. Long title amended

Long title—

Repeal

“status or pregnancy,”

Substitute

“status, pregnancy or 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 section 8A(2);”.

5. Section 4 amended (act done because of sex, etc. and for other reason)

Section 4—

Repeal paragraph (b)

Substitute

“(b) one of the reasons is—

- (i) a person’s sex;
- (ii) a person’s marital status;
- (iii) a woman’s pregnancy; or
- (iv) that a woman is breastfeeding,
whether or not it is the dominant or a substantial
reason,”.

6. Section 6 amended (sex discrimination against men)

Section 6(2)—

Repeal

“pregnancy or childbirth”

Substitute

“pregnancy, childbirth or breastfeeding”.

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 child or expressing breast milk to feed her child; or
 - (ii) is a person who feeds her child with her breast milk; and
 - (b) a person who is not breastfeeding is to be construed accordingly.”.

8. Section 10A added

Part 2, after section 10—

Add

“10A. Comparison of cases under section 8A

A comparison of the cases under section 8A of—

- (a) a woman who is breastfeeding; and
- (b) a person who is not breastfeeding,

must be such that the relevant circumstances in the one case are the same as, or not materially different from, those in the other.”.

9. Section 42 amended (discriminatory practices)

Section 42—

Repeal subsection (1)**Substitute**

“(1) In this section—

discriminatory practice (歧視性的做法) means the application of a requirement or condition—

- (a) that results in an act of discrimination which is unlawful by virtue of any provision of Part 3 or 4 as read with section 5(1)(b), 7(1)(b), 8(b) or 8A(1)(b); or
- (b) that would be likely to result in such an act of discrimination if the persons to whom it is applied were not all of the same sex.”.

10. Section 48 amended (special measures)

Section 48(a), (b) and (c)—

Repeal

“who are pregnant”

Substitute

“women who are pregnant or breastfeeding”.

11. Section 57 amended (acts done for purposes of protection of women)

(1) Section 57(2)(a)(i)—

Repeal

“maternity; or”

Substitute

“maternity;”.

(2) After section 57(2)(a)(i)—

Add

“(ia) breastfeeding; or”.

Part 3

Amendments to Race Discrimination Ordinance (Cap. 602) Relating to Discrimination and Harassment on the Ground of Race of Associate

12. Section 2 amended (interpretation)

Section 2(1)—

Add in alphabetical order

“*associate* (有聯繫者), in relation to a person, includes—

- (a) a spouse of the person;
- (b) another person who is living with the person on a genuine domestic basis;
- (c) a relative of the person;
- (d) a carer of the person; and
- (e) another person who is in a business, sporting or recreational relationship with the person;

carer (照料者) includes—

- (a) the Director of Social Welfare;
- (b) any officer of the Social Welfare Department authorized in writing by the Director of Social Welfare;
- (c) any person specified in Schedule 6;”.

13. Section 5 substituted

Section 5—

Repeal the section

Substitute

“5. Discrimination on the ground of race of associate

In any circumstances relevant for the purposes of any provision of this Ordinance, a person (*the discriminator*) discriminates against another person (*the relevant person*) if, on the ground of the race of an associate of the relevant person, the discriminator treats the relevant person less favourably than the discriminator treats or would treat another person not having an associate of the same racial group as the associate of the relevant person.”.

14. Section 7 amended (racial harassment)

(1) Section 7(1)—

Repeal

“a near relative”

Substitute

“an associate”.

(2) Section 7(2)—

Repeal

“near relative”

Substitute

“associate”.

15. Section 8 amended (meaning of race, on the ground of race, racial group and comparison of cases of persons or different racial groups)

Section 8—

Repeal subsection (6)**Substitute**

“(6) A comparison of the cases under section 5 of—

- (a) a person having an associate who is of a particular racial group; and
- (b) a person not having an associate who is of that group,

must be such that the relevant circumstances in the one case are the same as, or not materially different from, those in the other.”.

16. Section 84 amended (amendment of Schedules 1, 2, 3, 4 and 5)

- (1) Section 84, heading—

Repeal

“1, 2, 3, 4 and 5”.

- (2) Section 84—

Renumber the section as section 84(1).

- (3) After section 84(1)—

Add

“(2) The Secretary for Constitutional and Mainland Affairs may, by notice published in the Gazette, amend Schedule 6.”.

17. Schedule 6 added

After Schedule 5—

Add

“Schedule 6

[ss. 2 & 84]

Persons Specified as Carers”.

Part 4

Amendments to Race Discrimination Ordinance (Cap. 602) Relating to Discrimination by Imputation

18. **Section 8 amended (meaning of *race*, on the ground of *race*, *racial group* and comparison of cases of persons or different racial groups)**

(1) Section 8(1)(a)—

Repeal

“the person”

Substitute

“the person, and includes a race, colour, descent or national or ethnic origin that is imputed to the person”.

(2) Section 8(1)(b)—

Repeal

“of the race, colour, descent or national or ethnic origin of the person;”

Substitute

“of—

- (i) the race, colour, descent or national or ethnic origin of the person; or
- (ii) the race, colour, descent or national or ethnic origin that is imputed to the person;”.

(3) Section 8(1)(d), after “falls”—

Add

“or is imputed to fall”.

Part 5

Amendments Relating to Harassment at Workplace

Division 1—Sex Discrimination Ordinance (Cap. 480)

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—

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.”.

Division 2—Disability Discrimination Ordinance (Cap. 487)

20. Section 2 amended (interpretation)

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—

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.”.

Division 3—Race Discrimination Ordinance (Cap. 602)

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—

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.”.

23. Section 39 amended (other harassment)

Section 39(5), after “24,”—

Add

“24A,”.

Part 6

Amendments Relating to Harassment in Relation to Provision of Goods etc.

Division 1—Disability Discrimination Ordinance (Cap. 487)

24. Section 38 amended (harassment in relation to the provision of goods, services and facilities)

(1) Section 38(1)—

Repeal

everything after “disability”

Substitute

“who—

- (a) wants to acquire the goods or services;
- (b) is in the course of acquiring the goods or services;
- (c) wants to make use of the facilities; or
- (d) is in the course of making use of the facilities.”.

(2) After section 38(1)—

Add

“(1A) It is unlawful for a person who—

- (a) wants to acquire goods or services;
- (b) is in the course of acquiring goods or services;
- (c) wants to make use of facilities; or
- (d) is in the course of making use of facilities,

to harass another person with a disability who, whether for payment or not, provides the goods, services or facilities.”.

Division 2—Race Discrimination Ordinance (Cap. 602)

25. Section 39 amended (other harassment)

(1) After section 39(1)—

Add

“(1A) It is unlawful for a person who—

(a) seeks to obtain or use goods, facilities or services; or

(b) is provided with goods, facilities or services, to harass another person who is concerned with the provision of the goods, facilities or services.”.

(2) Section 39(5), after “(1),”—

Add

“(1A),”.

Part 7

Amendments Relating to Harassment Committed outside Hong Kong

Division 1—Disability Discrimination Ordinance (Cap. 487)

26. Section 40 amended (extent of Part 4)

After section 40(5)—

Add

“(6) Section 38(1) and (1A) does not apply to an act of harassment that is committed outside Hong Kong except as provided in subsection (7).

(7) Section 38(1) and (1A) applies to an act of harassment that is committed on a ship, aircraft or dynamically supported craft referred to in subsection (3)(a), (b) or (c) even if it is outside Hong Kong when the act is committed.”.

Division 2—Race Discrimination Ordinance (Cap. 602)

27. Section 40 amended (extent of Part 4)

After section 40(5)—

Add

“(6) Section 39(1) and (1A) does not apply to an act of harassment that is committed outside Hong Kong except as provided in subsection (7).

- (7) Section 39(1) and (1A) applies to an act of harassment that is committed on a ship, aircraft or dynamically supported craft referred to in subsection (3)(a), (b) or (c) even if it is outside Hong Kong when the act is committed.”.
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Part 8

Amendments Relating to Harassment by Clubs

Division 1—Sex Discrimination Ordinance (Cap. 480)

28. Section 39A added

After section 39—

Add

“39A. Sexual harassment by clubs

It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to sexually harass a woman who is, or has applied to be, a member of the club.”.

Division 2—Disability Discrimination Ordinance (Cap. 487)

29. Section 2 amended (interpretation)

Section 2(8), after “38,”—

Add

“38A,”.

30. Section 38A added

After section 38—

Add

“38A. Harassment by clubs

It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to harass a person with a disability who is, or has applied to be, a member of the club.”

Part 9

Amendments Relating to Award of Damages

Division 1—Sex Discrimination Ordinance (Cap. 480)

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

After section 76(5)—

Add

“(5A) Subsection (5) does not apply in relation to an unlawful act of discrimination falling within section 5(1)(b), 7(1)(b) or 8(b) that is committed on or after the commencement date of Part 9 of the Discrimination Legislation (Miscellaneous Amendments) Ordinance 2018 (of 2018).”.

Division 2—Family Status Discrimination Ordinance (Cap. 527)

32. Section 54 amended (claims under Part III or IV)

After section 54(6)—

Add

“(6A) Subsection (6) does not apply in relation to an unlawful act of discrimination falling within section 5(b) that is committed on or after the commencement date of Part 9 of the Discrimination Legislation (Miscellaneous Amendments) Ordinance 2018 (of 2018).”.

Division 3—Race Discrimination Ordinance (Cap. 602)

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

After section 70(6)—

Add

“(6A) Subsection (6) does not apply in relation to an unlawful act of discrimination falling within section 4(1)(b) that is committed on or after the commencement date of Part 9 of the Discrimination Legislation (Miscellaneous Amendments) Ordinance 2018 (of 2018).”.

Explanatory Memorandum

This Bill amends various provisions of anti-discrimination legislation for the purposes set out in the long title of the Bill.

2. The Bill is divided into 9 Parts.

Part 1 of the Bill

3. Part 1 sets out the short title and provides for commencement.

Part 2 of the Bill

4. Part 2 amends the Sex Discrimination Ordinance (Cap. 480) (*SDO*) so that it is unlawful for a person to discriminate against a woman on the ground that the woman is breastfeeding. In particular—
 - (a) clause 7 adds a new section 8A to the *SDO*. The new section 8A(1) covers both direct and indirect discrimination on the ground that a woman is breastfeeding. The new section 8A(2) sets out the meaning of a woman who is breastfeeding;
 - (b) clause 8 adds a new section 10A to the *SDO* which requires the comparison of the cases under the new section 8A to be such that the relevant circumstances in the one case are the same as, or not materially different from, those in the other; and
 - (c) clauses 3 to 6 and 9 to 11 make certain consequential amendments to the *SDO*.

Part 3 of the Bill

5. Currently, it is unlawful under the Race Discrimination Ordinance (Cap. 602) (**RDO**) to directly discriminate or harass a person on the ground of the race of that person's near relative.
6. Part 3 replaces the references to "near relative" in certain provisions of the RDO with references to "associate" so that it is unlawful to directly discriminate or harass a person on the ground of the race of that person's associate. In particular—
 - (a) clause 12 adds the definitions of *associate* and *carer* to section 2(1) of the RDO;
 - (b) clauses 13, 14 and 15 respectively replace the references to "near relative" in sections 5, 7 and 8 of the RDO with references to "associate";
 - (c) clause 16 adds a new provision to section 84 of the RDO which empowers the Secretary for Constitutional and Mainland Affairs to amend the new Schedule 6 to the RDO; and
 - (d) clause 17 adds a new Schedule 6 to the RDO for persons specified as carers.

Part 4 of the Bill

7. Part 4 (clause 18) expands the meaning of *race* and *racial group* in the RDO to include a race, colour, descent or national or ethnic origin that is imputed to a person.

Part 5 of the Bill

8. Part 5 contains amendments to the SDO, the Disability Discrimination Ordinance (Cap. 487) (**DDO**) and the RDO to make harassment at a workplace unlawful.
9. Clause 19 adds a new section 23A to the SDO so that 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. **Workplace** and **workplace participant** are defined in the new section 23A(2).
10. Clauses 21 and 22 respectively add a new section to the DDO and RDO similar to the new section 23A of the SDO for disability harassment and racial harassment at a workplace. Clauses 20 and 23 make certain consequential amendments.

Part 6 of the Bill

11. Part 6 contains amendments to the DDO and RDO to strengthen the protection against harassment in relation to the provision of goods, services or facilities.
12. Clause 24(1) amends section 38(1) of the DDO to protect a recipient or user, or prospective recipient or user, of goods, services or facilities from disability harassment.
13. Clause 24(2) adds a new section 38(1A) to the DDO to protect a provider or prospective provider of goods, services or facilities from disability harassment.
14. Similar to the new section 38(1A) of the DDO, clause 25(1) adds a new section 39(1A) to the RDO to protect a provider or

prospective provider of goods, facilities or services from racial harassment. Clause 25(2) makes a consequential amendment.

Part 7 of the Bill

15. Part 7 contains amendments to the DDO and RDO so that the provisions relating to harassment in relation to the provision of goods, services or facilities extend to acts of harassment committed on local ships or aircraft outside Hong Kong.

Part 8 of the Bill

16. Part 8 contains amendments to the SDO and DDO to protect a member or an applicant for membership of a club from sexual harassment and disability harassment.

Part 9 of the Bill

17. Part 9 contains amendments to the SDO, the Family Status Discrimination Ordinance (Cap. 527) and the RDO to remove the intention requirement for an award of damages in claims in respect of an act of indirect discrimination committed on or after the commencement date of Part 9 of the Discrimination Legislation (Miscellaneous Amendments) Ordinance 2018.