

Anti-Discrimination Ordinances in Hong Kong

December 17 2019



Agenda

- Anti-discrimination ordinances
 - Unlawful acts
 - Prohibited grounds
- Liability and defence
- Preventing discrimination



Part one

Anti-Discrimination Ordinances in Hong Kong

Anti-discrimination Ordinances

- Sex Discrimination Ordinance (SDO), 1996
- Disability Discrimination Ordinance (DDO), 1996
- Family Status Discrimination Ordinance (FSDO), 1997
- Race Discrimination Ordinance (RDO), 2009



Unlawful Acts

Discrimination

Direct
Discrimination

Indirect
Discrimination

Harassment

Sexual
Harassment

Disability/Racial
Harassment

Vilification

Disability/Racial
Vilification

Serious
Disability/Racial
Vilification

Victimization

Direct Discrimination

- Less favorable treatment on the basis of prohibited grounds, i.e. sex, marital status, pregnancy, disability, family status and race



Indirect Discrimination

- Apply a condition or requirement* equally to everyone, but such condition or requirement has a disproportionate adverse effect on persons with particular characteristics such as sex, pregnancy, marital status, disability, family status and race

* Unless there is a justification for the condition or requirement



Prohibited Grounds

- **Sex Discrimination Ordinance (SDO):**
Sex, marital status, and pregnancy
- **Disability Discrimination Ordinance (DDO):**
Disability
- **Family Status Discrimination Ordinance (FSDO):**
Having the responsibility to care for an immediate family member, who is related by blood, marriage, adoption or affinity
- **Race Discrimination Ordinance (RDO), 2009:**
Race, colour, descent, national origin, or ethnic origin

Definition of Disability

- Total or partial loss of the person's bodily or mental functions
- Total or partial loss of a part of the person's body
- The presence in the body of organism causing / capable of causing disease or illness
- The malfunction, malformation or disfigurement of a part of the person's body
- A disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction
- A disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment that results in disturbed behavior



Definition of Disability includes:

- Present disability
- Past disability
- Future disability
- Imputed disability -(assuming a person having a disability that he/she does not have)



DDO: Associate

- Spouse
- Relative
- Person living with the person with a disability on a genuine domestic basis
- Carer
- Person who is in a business, sporting, or recreational relationship with the person with a disability



Definition of Family Status

- Status of having the responsibility for the care of an immediate family member*

*An immediate family member is a person who is related by blood, marriage, adoption or affinity



Definition of Race

- Race, colour, descent, national origin, or ethnic origin

What's not counted as race:

- ✕ Whether or not indigenous villager
- ✕ Permanent residency, right of abode or right to land; any restriction or condition of stay; or permission to land and remain in Hong Kong
- ✕ Length of residency in Hong Kong
- ✕ Nationality and citizenship



RDO: Near Relative

- the person's spouse
- a parent of the person or of the spouse
- a child of the person or the spouse of such a child (including born out of wedlock, adopted or step child)
- a brother or sister (whether of full blood or half blood) of the person or of the spouse or the spouse of such a brother or sister
- a grandparent of the person or of the spouse
- a grandchild of the person or the spouse of such a grandchild



Major Protected Areas under the Four Ordinances

- ✓ Employment
- ✓ Provision of goods, services or facilities
- ✓ Access to premises (DDO only)
- ✓ Disposal or management of premises
- ✓ Participation in clubs
- ✓ Education
- ✓ Government functions (RDO is not applicable to all government functions)



Employment

- Must work wholly or mainly in Hong Kong
- Employed by a public or private organization in Hong Kong
- Covers BOTH the hiring process and employment period
- Protects workers who are:
 - Full-time AND part-time
 - Permanent, temporary AND casual



Provision of Goods, Services or Facilities

With the provision (for payment or not) of goods, facilities or services, it is unlawful to:

- Refuse or deliberately omit to provide the goods, services or facilities to an individual; or
- Refuse or deliberately omit to provide goods, facilities or services of the like quality, manner and/or terms to the individual.



SDO Exception

- Employment: Where the status is a Genuine Occupational Qualification (GOQ)
- Single-sex educational establishment



DDO Exception

- Genuine occupational qualification
- Inherent requirements of the job
- Unjustifiable hardship
- Infectious diseases



RDO Exception

- Genuine occupational qualification
- Special skills, knowledge or experience
- Local and overseas employment terms
- Performing domestic duties



What is Sexual Harassment?

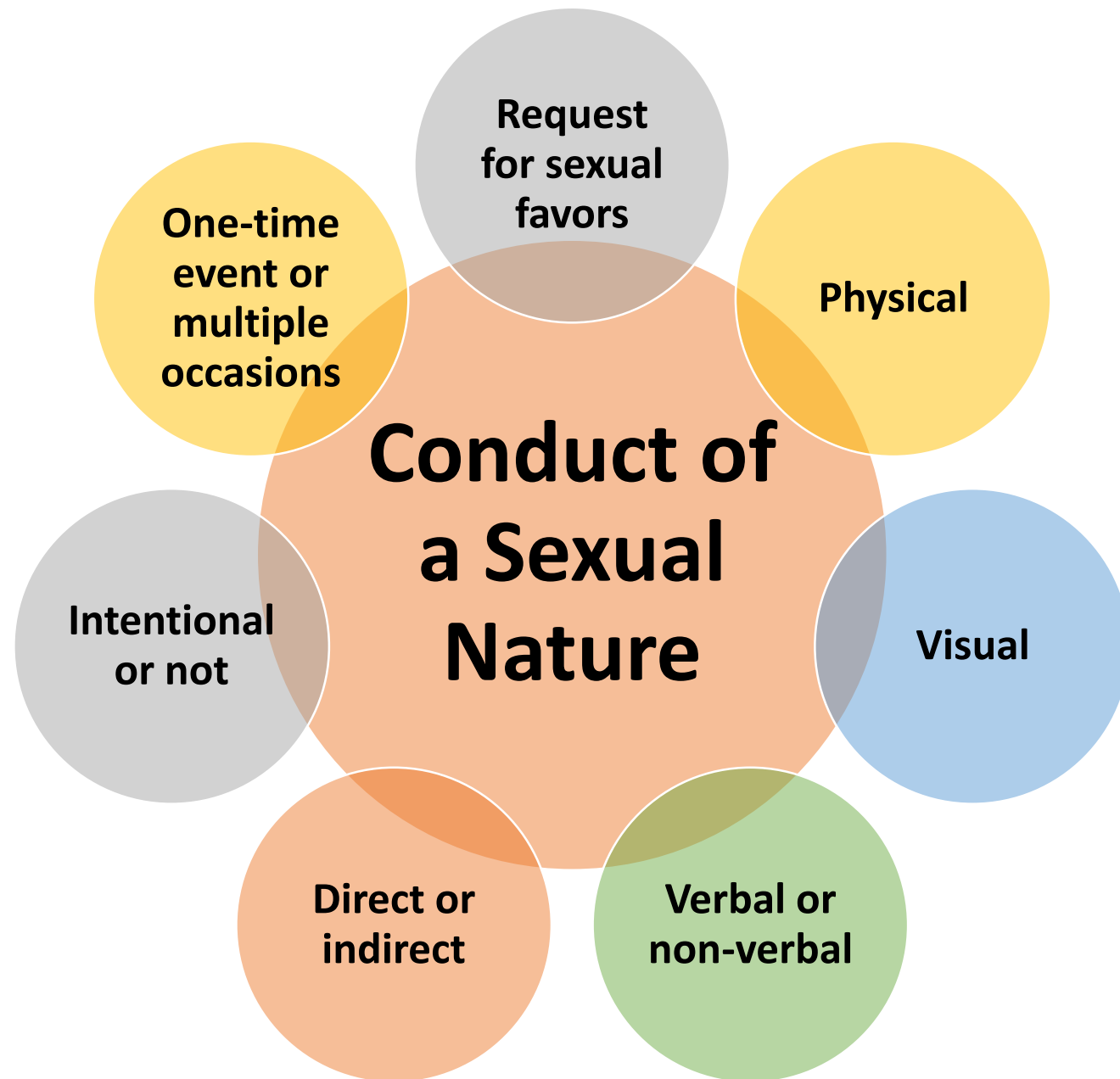
- Unwelcome conduct of a sexual nature (targeting a specific person)
 - Unwelcome sexual advances
 - Unwelcome request for sexual favors
- A sexually hostile or intimidating work environment (NOT targeting a specific person)



Unwelcome Conduct

- Subjective feeling
- Not incited or solicited by the individual
- Deemed offensive or undesirable by the individual
- Does not receive an enthusiastic response from the individual

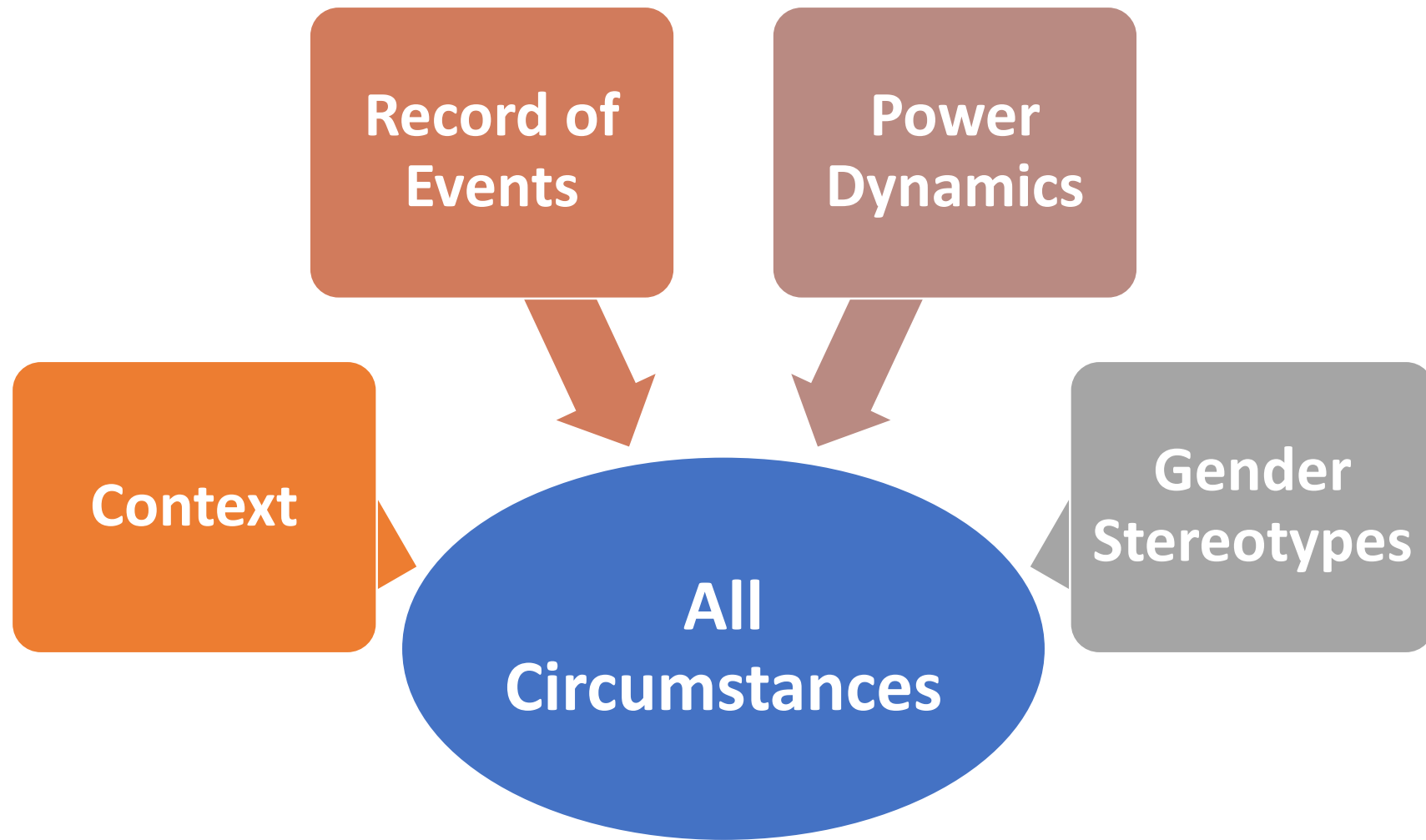




Reasonable Person Standard

- An objective standard
- Not some “virtuous” person
- Judgement not affected by stereotypes





Subjective/Objective test

Subjective Test

- Did A welcome or accept B's conduct at the relevant time?

Objective Test

- Would a reasonable person, having considered all circumstances, anticipate A be offended, humiliated or intimidated by the conduct?



Sexual Harassment: examples

- Derogatory comments on a person's body
- Talking about one's sex life or asking about another person's sex life
- Sexual requests- kisses/hugs/sex
- Leering
- Unwelcome physical contact, e.g. brushing someone's body
- Invasion of privacy-standing/sitting too close
- Taking pictures of the sexual parts of someone's body
- Giving gifts that have sexual connotations



Sexual harassment that may amount to criminal offences

- Making obscene phone calls
- Indecent exposure
- Sexual assault
- Rape



Disability/Racial Harassment

- Can be physical, visual verbal or non-verbal
- An unwelcome conduct
- Creating a racially hostile environment



Subjective/Objective test

Subjective Test

- Did A welcome or accept B's conduct at the relevant time?

Objective Test

- Would a reasonable person, having considered all circumstances, anticipate A be offended, humiliated or intimidated by the conduct?



Applicable fields

- Employment
- Education
- Provision of goods, facilities or services



Vilification

- Activity in public inciting hatred towards, serious contempt for, or severe ridicule of a person or group of persons on the ground of race or disability



Serious Vilification

- Any incitement involving threat of physical harm to a person or his/her property or premises on the ground of his/her race or disability
- A public act
- Criminal offence: fine up to \$100,000 and imprisonment for a maximum of two years



Victimization

Victimisation in employment may occur where a person:

- makes a complaint of discrimination against the discriminator or another person;
- acts as a representative on behalf of a person complaining of discrimination;
- gives evidence or information; or
- alleges that someone has committed an unlawful act.

Applicable Ordinances

SDO, DDO, FSDO and RDO



平等機會委員會
EQUAL OPPORTUNITIES COMMISSION

Part Two

Liability and defence

Liability: Impact vs Intent?

- Unlawful acts in law

Based on impact of the *victim's experience*, not the intent of the harasser.

- Intention

Relevant to pain and suffering of complainant, i.e. redress sought



Liability Cont.

- Personal liability
- Accessory liability
 - Pressure or instruct
 - Knowingly aid



Vicarious Liability

Employer's liability

- Unlawful acts done by employees in the course of employment
- With or without knowledge or approval
- Defence: Reasonably practicable steps to prevent

Principal's liability

- Authorized acts done by agent
- Authorization: Expressed or implied, precedent or subsequent



Employer's Defense: Reasonably Practicable Steps

- ✓ Have an equal opportunities policy in place
- ✓ Establish complaint-handling procedure
- ✓ Provide anti-discrimination/harassment training to employees
- ✓ Make the equal opportunities policy known to all staff
- ✓ Handle complaints properly
- ✓ Review policy regularly



Part Three

Preventing Discrimination

Prevention is better than cure

- Learn more about EO laws, policies, and code of conduct
- Familiarize with the school's EO policy (if any)
- Respect each other's differences and be professional in speech and conduct



If you believe you have been discriminated against or harassed,

- Tell the person to stop
- Know your rights
- Write down what happened
- Discuss it with someone you trust
- Talk with a supervisor
- Lodge a complaint with the EOC (within 12 months)
- Initiate a legal proceeding (within 24 months)

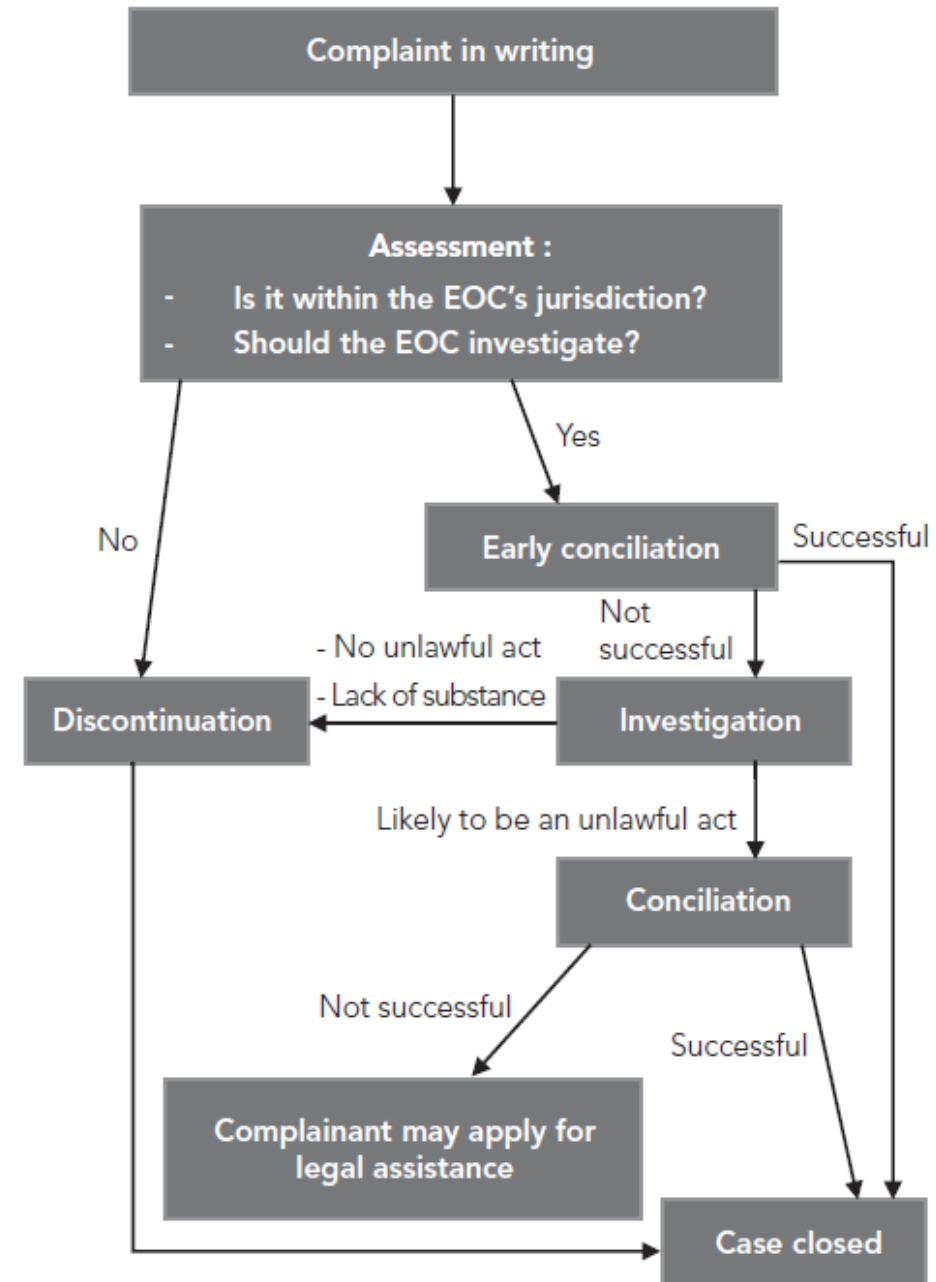


EOC Complaint Procedure

Time Limits for filing a complaint

EOC: 12 months

Legal Proceedings: 24 months



Equal Opportunities Commission

Tel: 2511 8211 Website: www.eoc.org.hk

Add: 16/F, 41 Heung Yip Road, Wong Chuk Hang, Hong Kong

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