

**NSS Enriching Knowledge for the Health
Management and Social Care (HMSC) Curriculum
Series –
Discrimination**

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Disability Discrimination Ordinance and Equal Opportunities

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Outline

1. Some Basic Concept on Disability Discrimination
2. The Legal Framework of Disability Discrimination
3. The Disability Discrimination Ordinance
4. Prohibited Acts
5. Exceptions

1. Some Basic Concept

What is Discrimination?

- “Discrimination” is a neutral term – no negative connotations
- Treating people differently on account of irrelevant factors is unfair
- Treating people equally without due regard to their special needs may sometimes also be unfair
- Prejudice and wrong assumptions breed discrimination
- Laws make certain acts of discrimination unlawful
- No intent to discriminate is not an excuse

What is Equal Opportunity?

- Giving everybody a fair chance
- Creating a level playing field
- Addressing special needs
- Providing reasonable accommodation
- Judging people on their merits, not some irrelevant traits

What is Affirmative Action?

- Formal equality → same treatment (process oriented)
- Substantive equality → affirmative action (outcomes oriented)
- Not mandatory in Hong Kong
- Identify special needs (consult & respect)
- Devise special measures to address the special needs
- Measures should be proportionate to the disadvantage
- To monitor, review and adjust as necessary

What is Social Justice?

- Equal access to liberties, rights and opportunities
- Taking care of the disadvantaged members of society
- Certain basic needs must be offered to all
- Even playing field
- Valuing diversity
- Reallocation of resources within society
- A social contract – to play by the rules
- Sometimes need to legislate for justice in society

2. The Legal Framework of Disability Discrimination

Relevant UN Treaties

- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social & Cultural Rights
- International Convention on Elimination of All Forms of Racial Discrimination
- International Convention on Elimination of All Forms of Discrimination Against Women
- Convention on the Rights of the Child
- Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment
- Convention on the Rights of Persons with Disabilities

Existing Equal Opportunity Law

- Disability Discrimination Ordinance (DDO)

- Sex Discrimination Ordinance
- Family Status Discrimination Ordinance
- Race Discrimination Ordinance

Scope

- Employment
- Education
- Provision of goods, services and facilities
- Access to premises
- Management and disposal of premises
- Club and sporting activities
- Government powers and functions (not RDO)

3. The Disability Discrimination Ordinance

Definition of Disability

- Total or partial loss of bodily or mental functions
- Total or partial loss of a part of the body
- Presence in the body of organisms causing disease or illness
- Presence in the body of organisms capable of causing disease
- Malfunction, malformation or disfigurement of a part of the body
- Disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction
- Disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour

“Disability” includes a disability that:

- presently exists
- previously existed but no longer exists
- may exist in the future
- is imputed to a person

4. Prohibited Acts

Direct Discrimination

Treating a person less favourably on the ground of the person’s disability under

comparable circumstances

Example of Direct Discrimination

An employer refuses to hire Ah Ying because she is an ex-mental patient despite she is the best qualified applicant

Indirect Discrimination

- applying same requirements or conditions
- but lesser proportion of persons with a disability can comply
- cannot show to be justifiable

Example of Indirect Discrimination

In organising an outing, a community organisation rented an inaccessible bus

Disability Harassment

- On account of disability
- Engages in unwelcome conduct (subjective)
- A reasonable person, having regard to all the circumstances, anticipate the person would be:
 - ◆ offended
 - ◆ humiliated
 - ◆ intimidated

Example of Harassment

Ah Chi has cerebral palsy. His supervisor scolded: “Speed up, you stupid mental deficient ! ”

Disability Vilification

- incite hatred
- serious contempt
- severe ridicule

Example of Vilification

A group of residents objected to the Government’s plan to set up a mid-way home for ex-mental patients. In a public forum, they said : “They are time-bombs. They are dangerous. They should not be allowed to live in our neighbourhood.”

Serious Vilification

- Activity in public, threatening physical harm, or inciting others to threaten physical harm towards, or towards any premises or property of, persons with a disability
- It is a criminal offence

Penalty: Level 6 fine (\$50,001 - 100,000) or imprisonment for 2 years

Example of serious vilification

A group of residents objected to the setting up of a mid-way home for ex-mental patients in their community. They even threatened to use force to stop staff working in the mid-way home to report duty and to damage the premises .

Victimization

Treats the person victimised less favourably because he or she has:

- brought proceedings
- given evidence or information
- done anything under or by reference to the DDO
- alleged an act which would amount to a contravention of the DDO has been committed

5. Exceptions

Genuine Occupational Qualification

- Having no disability is a genuine occupational qualification
- The person can perform the inherent requirements of the job (accommodation would cause unjustifiable hardship)

Reasonable Accommodation

- Recruitment process
- Physical settings
- Facilities
- Training and assistance

Unjustifiable hardship

- Burden of proof
- Considerations
 - reasonableness of the accommodation to be made available
 - nature of the likely benefit or detriment

- the effect of the disability
- financial resources

Infectious Disease

- The act is reasonably necessary to protect public health
- Scheduled infectious disease under the Prevention and Control of Disease Ordinance
- Any communicable disease specified by the Director of Health by notice in the Gazette
- HIV/AIDS is not an infectious disease

Insurance

- A treatment was effected by reference to actuarial or other data from a source on which it was reasonable to rely; and
- it was reasonable having regard to the data and any other relevant factors

Useful References

Code of Practices and Guidelines

- Code of Practice on Employment under the DDO
- Code of Practice on Education under the DDO
- DDO and I Series
- Guideline for Taxi Services

Relevant Researches

- A Study of Mental Health Service Users' Perception and Experience of Discrimination
- A Baseline Survey of Students' Attitudes toward People with a Disability
- Research on Web Accessibility for People with Disabilities
- Survey on Obstacles to Persons with a Disability in Non-Employment Fields
- A Baseline Survey on Employment Situation of Persons With A Disability
- A Baseline Survey on Public Attitudes towards Persons with a Disability

EOC's Role & Functions

- Promotion and public education
- Research and policy advocacy
- Enquiry and complaint handling
- Legal assistance

Equal Opportunities Commission

- Hotline : 2511 8211
- Fax : 2511 8142
- Email : eoc@eoc.org.hk
- Website : www.eoc.org.hk

Race Discrimination & Cultural Sensitivity

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Outline

1. Experiencing Racial Discrimination and Background Information on Ethnic Minorities
2. 4 Acculturation Strategies of Ethnic minorities/ Mainstream society
3. Scope of the RDO Legislation
4. Barriers of Social Integration and Inclusion (Education)
5. Do's for a Culturally Competent (Attitude & Knowledge)

1. Experiencing Racial Discrimination and Background Information on Ethnic Minorities

Greeting Game & Debriefing

Instruction:

- Act out the way of greeting according to the slip
- Just non-verbal language only
- Feel how others greet and respond you
- Feel how to express/ adjust yourself

Framework: Cultural Intelligence (Working with People from other Cultures)

Cultural Intelligence =

- Knowledge about Cultures facts & cultural traits) +
- Awareness (of yourself & others) +
- Specific Trans-cultural Skills (e.g. language, IT, social)

Ethnic Minority (EM) Population in HK (2006 by-census)

(Immigration Dept. 30.4.2010 for FDWs)

- 5% of HK population, about 350,000 (2006 by-census)
- Total FDWs as at 30.4.2010: 275,236

Filipino:	112,453 (1.6%)
Indonesian:	87,840 (1.3%)
Indian:	20,444 (0.3%)
Nepalese:	15,950 (0.2%)
Thai:	11,900 (0.2%)

Pakistani	11,111 (0.2%)
White & others:	36,384 (0.5%)

No. of NCS students and their tertiary education admissions in HK

- Around 28,722 NCS students in HK, around 10,000 (35%) of them were studying in mainstream schools (2006 by-census)
- 26 designated and over 500 mainstream schools admitted NCS students in 09/10
- Most of the designated schools have much less good reputation than mainstream schools
- Only 6 (0.9%), 10 & 17 NCS students were qualified for tertiary education via JUPAS in 07, 08 & 09 respectively

Experiential Exercise: Language Learning in Writing

Try to write this words in Urdu & Hindi

Reasons of Difficulties of mastering Chinese language for local EM

- Chinese language is generally the 3rd or 4th languages for most EM
- Besides, EM students have to learn French or Mandarin in schools, making them more difficult and less motivated to learn Cantonese
- Particularly before 2004, majority of EM students study in designated schools (with critical mass of non-Chinese speaking students) without much Chinese learning environment
- Lack of comprehensive long-term language policy in HK

Impressions & Mindset Building on EM in HK

Group Sharing:

- What are your quick impressions on EM in HK?
- How do you form such impressions, via personal contacts, media, friends' sharing?

Discussion:

- What do you think of the stereotypical images against Chinese immigrants in USA and portrayed in Western media or Hollywood movies (e.g. "Crash"-Best picture)
- What do you think of the local blogger against EM in HK recently?

Stereotyping

- An oversimplified, generalized image describing all individuals in a group as having the same characteristics in appearance, in behavior, and in beliefs
(Melendez & Ostertag, 1997)
- A negative statement, applies one perception to an entire group
(Brooks Peterson, 2004)

Stereotyping or Labeling about EM (Don't)

- Consider South Asians “cheap citizens”, men like “robbery”, “terrorists” and women like “prostitutes” (made by recent local blogger)
- Label South Asian kids “very Naughty” (how about consider most of them “Active & Expressive”!?)
- Regard South-east Asian country “country of slave”
- Label majority of EM as “illegal immigrants”

Case Story Sharing

- Possible racial discrimination or insensitive practices at workplace (e.g. same job but unequal pay, language excuses) and social setting (e.g. bank, renting a flat, public transportation)
- Insensitive or unsupportive treatment in public service and educational settings
- Feedback & challenges faced by teachers?
- Q & A

2. Four Acculturation Strategies of Ethnic minorities/ Mainstream society

		Heritage	
		Yes	No
Maintain relationship with Dominant Culture/ Mainstream Society	Yes	Integration (Multiculturalism)	Assimilation (Melting pot)
	No	Separation (Segregation)	Marginalization (Exclusion)

Assimilation: The process of assimilation may be deemed to occur to the extent that a person desires contact with the dominant culture while not necessarily maintaining an identity with/her native culture

Integration: The process of integration occurs when individuals who desire to maintain their cultural identity also desire a high level of interaction with the dominant culture

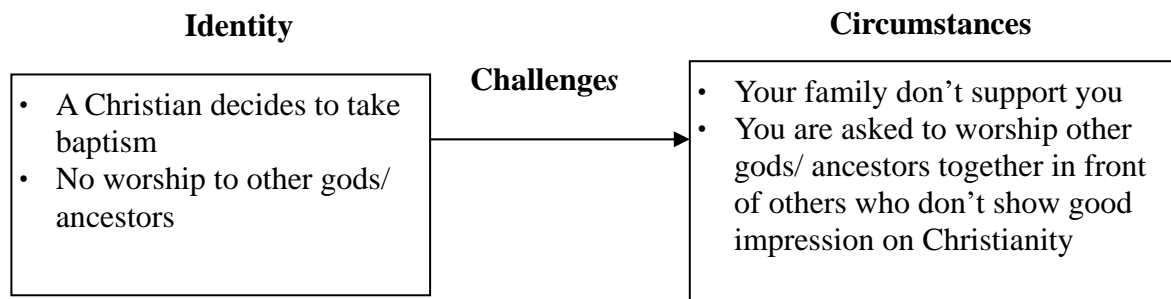
Separation: The process of separation occurs with low levels of interaction with the dominant culture while desiring a close connection with and affirmation of their native culture.

Marginalization: The process of marginalization occurs when persons chose not to identity with either their native cultures or the dominant culture

Self-reflective group sharing: Cultural/ Ethnic Identify

- Each person: identify two important habits which are culturally shared by people around you.
- Would you ever change your habit when faced with cultural differences or shock? Why / why not?
- What if someone else thought it was strange? How would you feel? Would you abandon practice?
- What if you face social exclusion? (e.g. not possible to get job or attend school unless you change your habit)

Personal example



Feelings and Choices

- Ambivalent? Dilemma? Angry?
- Stay firm & preserve your identity?
- Abandon your identity & assimilation?

Identity struggle of Ethnic Minorities in HK

- Halal food & Beard (Muslims)
- Vegetarians (Hindus, Buddhists)
- Veil & Turban with long hair (Muslim women & Sikh men)
- Festival celebrations with families vs. schooling (Indians, Nepalese, Pakistani, etc)
- Learning more about Chinese, English, Mandarin, French or native languages!?

3. Scope of the RDO Legislation

- Employment
- Provision of goods, services and facilities
- Education
- Disposal/management of premises
- Sports, club membership etc
- RDO's application in HKSAR.

Unlawful Acts

- Direct Discrimination
- Racial Harassment
- Vilification
- Indirect Discrimination
- Victimization
- Serious Vilification

Racial Discrimination

Direct discrimination:

- To treat a person less favorably than another person in comparable circumstances on the ground of his/her race or near relative's race
- Segregating a person from other persons on the ground of a person's race

Indirect discrimination:

- Impose same requirement / condition on everyone
- Some racial groups are less able to comply with the requirement /condition & suffer a detriment as a result
- Requirement / condition cannot be justified, i.e. not fair & reasonable

Provisions on Employment

Unlawful to discriminate on the ground of race:

- In the selection process
- In the arrangement of offering employment
- Terms and conditions of employment
- Dismissal or other detriments

Provisions on Education:

Unlawful to discriminate on the ground of race:

- Applicant:
 - Admission
 - Admission terms
- Students:
 - Access to benefits, facilities or services
 - Expulsion
 - Other detriments

Racial Harassment

- Unlawful to harass someone on the ground of someone's race or near relative's race
- Test:
 - Subjective: The feeling of the victim(s)
 - Objective: Reasonableness
- Also unlawful to create a hostile or intimidating environment for someone

Racial Vilification

- Activity in public inciting hatred towards serious contempt; or severe ridicule of persons on the ground of their race.

Serious Racial Vilification

- Activity in Public
- Threatening physical harm to a person **on the ground of the person's race** or damages towards premises or property,
- Intentionally inciting others to vilify other people based on their race
- Criminal Offence; Penalty: Maximum fine at level 6 (\$50,001 – 100,000) and to Imprisonment for 2 years

Victimization

Unlawful to treat someone less favourably for:

- Bringing proceedings under the RDO
- Giving information or evidence in connection with proceedings under the RDO
- Doing something under or by reference to the RDO
- Alleging that someone has contravened the RDO

Discussion Issues relating to RDO

- Language could be a form of indirect discrimination, like by using language excuse to reject non-Chinese speaking job seekers, unless such language (e.g. written Chinese, Mandarin) proved to be genuine occupational requirement)
- No need to make special accommodation for Medium of Instruction in educational and vocational settings
- Voluntary administrative guidelines & checklists of measures
- Special/ Positive Measures (e.g. GCSE/ IGCSE/ GCE) for disadvantaged vs. Unfair to ordinary people!?
- Independent & monitoring roles of EOC, against government?

Limitations of Race Discrimination Ordinance

- Law enforcement bodies (e.g. PD, CSD, ID) are exempted when exercising their power & functions

- Nationality and Citizenship are not covered
- Code of Practice on Education is excluded, as compared with DDO
- Victims dare (not) to lodge complaints (afraid of losing jobs & complicated procedures)
- Local Chinese or local establishments can't lodge complaint

Bill of Rights Ordinance

- Binds the government and all public authorities
- Rights of minorities:
 - Persons belonging to ethnic, religious or linguistic minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language (Article 23)

Preventing Racial Discrimination

- Learn more and be Sensitive to the needs of disadvantaged ethnic minorities and issues of cultural diversity (e.g. religious/ cultural identity matters)
- attending cultural sensitivity & diversity trainings
- Provide bilingual information
- Consider alternatives, special measures & flexible arrangements are needed Monitor work culture to eliminate racial harassment
- Be sensitive to use of language (e.g. naming, stereotypical assumptions)
- Take initiatives to implement programs to promote racial equality

Case Study (educational setting)

- Issue Chinese memos & letters in mainstream schools that some NCS students and parents can't read
- Wearing School Uniforms Vs. Religious Costumes in mainstream public schools
- Question: Possible Racial Discriminatory Practice??

Language Barrier affecting proper access to public/ local services

- Most EM communities can't speak fluent Cantonese. Local born EM can speak better Cantonese
- Majority of EM can't read or write Chinese language, greatly hindering their social integration and inclusion in HK
- Majority of EM can manage to speak basic or fair English, except for some newly arrivals from Asia (e.g. Pakistani, Nepalese, Indonesian)
- Language barrier is also resulted from the fact that certain older generations of local Chinese are not proficient in both spoken & written English

- Some EM fail to get access into proper public or local services, due to inadequate resources or low awareness of providing bilingual and/or interpreting services among service providers

4. Barriers of Social Integration and Inclusion

Education

- High dropout rate especially after F5. Few end up in illegal drug taking unfortunately
- Majority of non-Chinese speaking or EM students fail to get admitted into local tertiary education via JUPAS, mainly due to poor written Chinese language proficiency
- Only 6 NCS students (0.9%) get admitted into tertiary education in 2007 and 17 in 2009 (as compared with around 18% university admission rate for local Chinese)
- Lack of adequate support for NCS students who study in mainstream schools

Employment

- Many of EM working population get low-skilled & low-paid jobs, owing to low-educated background, low Chinese language proficiency and racial discrimination
- Despite of their great potentials/ talents, fair English proficiency and reasonable qualifications obtained in home countries (but not recognized in HK), high unemployment rate (over 20% for EM vs. 5% for locals in 2009) and inter-generation poverty is resulted
- Same job but with less pay in construction field
- Some EM families become less motivated to stay in HK, thereby returning to home countries or migrating to UK

Recent Research done by HKCSS Research

- Comparative study on local and NCS parental involvement and understanding of children's educational attainment ,done by HKCSS and its NGO Network
- 350 parents (191 local Chinese & 189 NCS parents) were interviewed
- Released on 30.5.2010

HKCSS Research Finding

- NCS parents treasure their children's attainment as much as what local EM parents do
- Yet, NCS parents have large gap in understanding educational information as compared with local parents
- Among NCS parents:

- 67.2% don't know about 8 universities in HK
- 62.1% don't know VTC & associate degrees are the options for secondary school students
- 72.2% are not aware of the new educational structure (3-3-4)
- 53% are not aware of the fact that Chinese proficiency is the essential admission criteria to tertiary education in HK
- 74% can't get access to education advancement information due to language barrier
- 64% have less than 5 local friends

Religions for EM (most common & unique)

1. Islam (e.g. Pakistani, Indonesians)
2. Hinduism (e.g. some Indians & Nepalese)
3. Sikhism (Indian Sikhs only)

Islam

Mosque or Islamic Centres, Where Muslims pray and worship the only God Allah

Holy Book "Quran"

Last Prophet: Mohammad

Leader: Imam

Hinduism

Three Main Gods: Bramha, Bishnu & Mahesh

Inclusive with other gods

Caste-oriented

Many Festivals: Dashain & Deewali

Religious Leader: Hindu Priest

Sacred Animal: Cow (don't eat beef)

Sikhism

Sikh Temple (Happy Valley in HK) Where Sikh goes for worship

Worship : to 10 different Gurus, the greatest one is Guru Nanak

Turban : Sikhs men need to put on Turban, a religious identity

Religious/ Cultural Differences: Time Values

- Relaxing, Slower lifestyle Vs. Busy Lifestyle (Time is \$!)
- Punctuality!?
- Family commitment weighs over professional commitment

Religious Taboos (Don't)

- Arrange “haram” food/ drinks for Muslims and beef for Hindus and meat for vegetarian (whereas halal meat, some seafood and vegi meals are the best)
- Overly judgmental on religious issues and gender equality
- Ask Muslim children to draw God or prophets
- Touch Hindus adult heads (sacred body part) casually
- Arrange too many activities and meals for Muslims during daytime of Ramadan (holy month)
- Play secular music against their religions
- Make fun with religious outlooks (e.g. veil, scarf for Muslim women, long beard for Muslim, turban for sikh men)
- Religious conversion

Cultural Taboos (Don’t)

- Call them disrespectfully like 阿差、賓妹
- Treat ourselves more superior than them
- Initiate handshaking or body touch with opposite sex, especially for South Asian women
- Push Muslim ladies to wear skirts uncovering certain leg bodies
- Take pictures of married women (e.g. Pakistani) without consent, especially shown in public

5. Do’s for a Culturally Competent

Attitude & Knowledge

- Treat everyone equally, as locals
- Communicate with genuine care & non-verbal languages
- Put yourself into other shoes
- Be open-minded
- Understand, respect & appreciate differences
- Emphasis on some similarities as “we” feelings
- More aware of EM’s past and present contributions & talents
- Understand different time concepts and family values
- Promote social inclusion, and also cultural diversity by respecting their cultural identity preservation

Skills & Knowledge

- Full compliance on Race Discrimination Ordinance and develop special measures
- Consider if flexible arrangements and special/ positive measures are needed to promote racial equality
- Provide bilingual services, leaflets and forms

- Make use of interpretation and translation services available (e.g. HKCS Cheer Centre at 3755-6822)
- Learn few greetings & useful words (e.g. thanks, good, bye)
 - Hindu greeting for Nepalese & some Indians
 - “Namaste” Muslim greeting for Pakistanis
 - “As-salam-alay-kum” (Allah protects you)
 - Sikh greetings for Indian Sikhs “Sat Sri Akal”

Sharing with EM parents & staff

- EM Children’s educational concerns & aspirations
- Parent & family lives
- Food cultures (e.g. halal)
- Service usefulness

Group Discussion & Suggestions

Government

- Before 1997, written Chinese proficiency for civil service appointments is not a must. After handover, written Chinese proficiency for civil service appointments become much more important. For example, a student who got a A grade in GCSE (Chinese) recently failed to pass the Chinese written admission test in Police Department. There seems to have very few EM admissions and promotions from within for civil service appointments. What do you comment?

Education

- Your suggestions on supporting NCS students and parents more effectively for equal/ effective access to services, effective Chinese learning, tertiary education admission & professional deployment in labor market
- Special/ Positive measures?

HKCSS Recommendations

Education

- One-stop Education consultation centre, incorporated in the 4 EdB regional support centres
 - Consultations, hotlines, interpretation, translated AV materials, parent talks
 - *Teacher Trainings* in cultural sensitivity
 - *Outreaching Teams* by RSWs and EM workers for parent education, supportive networking & empowerment
- Teaching Assistant posts to be added in mainstream schools (over 30 NCS students or over 5% NCS student population)
- After-school Chinese tutorials especially for NCS students from mainstream schools

- CSL policy & alternative Chinese curriculum or benchmark tests to be widely recognized by universities, government and employers

Introduction to CA Services

- Highlight of SHINE services and its rationale
- Community Cook Books
- Possible referrals
- Collaborations with local volunteer groups
- Q & A

Understanding Sex Discrimination

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Outline

1. The trend in the differences between male and female in Hong Kong
2. The Definition of Discrimination
3. The Evolution of Sex Discrimination Ordinance in Hong Kong
4. Sex Discrimination Ordinance (SDO)
5. Which of the following situation(s) is/are Sex Discrimination

1. What is the trend in the differences between male and female?

(HKCSD, 2009)

- Directorate officers in the civil service: F—368 Vs M—838
- Single Parent (2006): F—57,613 Vs M—14,713
- No. of home-markers who are economically inactive: F—664,100 Vs M—12,600
- Proportion of population having age 15 or over attended *secondary education* and above: F--73% Vs M--80.1%
Proportion of population having *degree*: F—14.8% Vs M—18.1%
- Student enrolled in *engineering and technology programme*: F—33.8% Vs M—66.2%
Student enrolled in *education programme*: F—71.6% Vs M—28.4%
- Teachers in *Kindergarten*: F—99.1% Vs M—0.9%
Teacher in *UGC funded institutes*: F—33.9% Vs M—66.1%
- Employed as *manager and administrator*: F—102,600 Vs M—245,300
Employed as *clerk*: F—405,200 Vs M—147,100
- Median monthly employment earning (excluding foreign domestic workers):
F-- \$10,000 Vs M—\$12,000

2. The Definition of Discrimination

Discrimination is unequal treatment of people based on prejudgment because they belong to some category, such as those concerning race, ethnicity, gender, or religion.

(Kirst-Ashman, 2003)

3. The Evolution of Sex Discrimination Ordinance in Hong Kong

1992	The Legislative Council passed a motion to extend CEDAW to HK
1993	The government issued the consultation paper: The Green Paper on Equal Opportunities for Women and Men
1994	Amendment to the New Territories Land (Exemption) Bill
1995	<i>The enactment of the Sex Discrimination Ordinance</i> & the Disability Discrimination Ordinance
1996	1. The extension of CEDAW to HK 2. <i>The establishment of the Equal Opportunities Commission (EOC)</i>
1997	The Family Status Discrimination Ordinance
1999	The Initial Report to the UN CEDAW committee
2001	The establishment of the Women's Commission

* Convention on the Elimination of All Form of Discrimination Against Women

(<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>)

4. Sex Discrimination Ordinance (SDO)

4.1 Scopes of SDO

Discrimination on the basis of *sex (including sex discrimination in pay), marital status and pregnancy, and sexual harassment* are made unlawful.

4.2 Protection in the following fields

- Employment
- Education
- Provision of goods, facilities and services
- Disposal and management of premises
- Eligibility to vote for and to be elected or appointed to advisory bodies
- Participations in clubs
- Activities of Government

4.3 Direct Discrimination & Indirect Discrimination

- ***Direct discrimination*** occurs when a person is treated less favorably than another person of the opposite sex, with a different marital status, or who is not pregnant.

- **Indirect discrimination** occurs when a condition or requirement, which is not justifiable, is applied to everyone but in practice adversely affects persons of a particular sex or marital status, or those who are pregnant.

4.4 Sexual Harassment

- There are two forms of Sexual Harassment.
- The first is any unwelcome sexual behavior or conduct which is offensive, humiliating or intimidating. (Against individual person)
- The second form can be a working/ learning environment where there are actions, languages or pictures that are of a sexual nature that makes it hard for you to do your work or to study. (Sexually hostile/ intimidating environment)
- Sexual harassment can involve physical, visual, verbal or non-verbal conduct of a sexual nature which is uninvited and unwelcome.

4.5 Sex Discrimination in Pay

- Equal Pay for Equal Work (EPEW) means that if a man and a woman are performing the “same work” or “like work” for the same employer, they should receive equal pay.
- Equal Pay for Work of Equal Value (EPEV) means that consistent criteria should be used in determining the terms and conditions of employment for the treatment of men and women performing work of equal value for the same employer.

5. Which of the following situation(s) is/are Sex Discrimination

- You are rejected for a job because you are men
- If you are single and pregnant and the employer says that maternity benefits are only for those who are legally married.
- A female student is expelled from school because of pregnancy.
- If your employer penalizes you for not working overtime because you are not able to do so as you are pregnant.
- Repeated attempts to make a date, despite being told "NO" each time.

- Anyone uses sexually suggestive cartoons in teaching a subject not related to sex.
- In the staff room where there are both female and male colleagues, some colleagues display nude pictures as screen savers on the computer; or some like to exchange obscene jokes with each other in the presence of other colleagues of the opposite sex.
- In a particular restaurant that is open 24 hours, Kitchen Assistants are paid higher salaries if at least 70% of their work is performed during night shift. The same treatment is applied to both male and female Kitchen Assistant.

6. Existing Services Promoting Equality in Regard Sex

6.1 Equal Opportunities Commission (EOC)

- It implements all anti-discrimination ordinances and works towards the elimination of discrimination on the grounds of sex, marital status, pregnancy, disability, family status and race.
- Complaint handling and conciliation
- Legal assistance
- Training and consultancy Services
- Free introductory talks to non-profit making organizations for understanding anti-discrimination ordinances.
- Offer funding to encourage NGOs, community groups and schools to initiate their own projects to promote the message of equal opportunities.
- Produce a wide range of publications such as best practices guidelines, submissions to Legco, research reports, policy papers, posters and other information.

6.2 Women's Commission

- It is a *central mechanism* to promote the well-being and interests of women in Hong Kong and plays a *strategic role* in advising Government on policy direction on women issues.
- Gender Mainstreaming in policy making or service review processes.

- Initiate and undertake independent surveys and research studies on women's issues and organize educational and promotional activities, e.g. family-friendly employment policies and practices or Capacity Building Mileage Programme “To live is to learn”.
- Develop and maintain contact with local and international women's groups and service agencies with a view to sharing experiences.

6.3 NGOs

- Programmes for enhancing women’s capacity, e.g. training courses for women
- Educational programmes for promoting gender/ sex equality, e.g. school talks/ workshops or other community programmes or groups.
- Teaching kits for promoting gender/ sex equality
- Gender sensitivity trainings to various professions, such as teachers, social workers or polices etc.
- Publication and research, e.g. study on youth’s perception toward sexual violence or Gender stereotyping among young people etc.

Family Status Discrimination

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Outline

1. Family Status Discrimination Ordinance (FSDO)
2. Information and Statistics from Equal Opportunity Commission
3. Unlawful acts under the FSDO
4. What Can You Do If You Are Discriminated Against?

1. Family Status Discrimination Ordinance (FSDO)

What is Family Status?

“Family status” means:

- A person has 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. The types of blood relationships covered include mother, father, brother, sister, son, daughter, grandmother, grandfather, grandchild, aunt, uncle, cousin, nephew and niece. Relationship of marriage is that of husband and wife who are lawfully married. Relationships of affinity are those created by marriage, and include, for instance, mother-in-law and father-in-law.

What is Family Status Discrimination Ordinance (FSDO)?

- The FSDO is an anti-discrimination law passed in 1997.
- It makes unlawful for anyone or any organization to discriminate against a person, male or female, on the basis of family status.
- The FSDO applies to 7 different areas.

You are protected by the ordinance in the following fields:

- Employment
- Education
- Provision of goods, facilities or services
- Disposal or management of premises
- Eligibility to vote for and to be elected or appointed to advisory bodies
- Participation in clubs
- Activities of government

Why was the law necessary?

The increasing number of women in the labour market and the 'ageing' of the population in the last decade have made it increasingly necessary for the society to address the needs of workers with family responsibility. Nowadays, family responsibilities like the care of children and elderly parents are the responsibilities of both male and female workers. Workers face growing difficulties in trying to balance the demands of work and family. The potential conflict between work and family commitments affect workers' health, performance, career development, productivity as well as competitiveness.

2. From the website of Equal Opportunity Commission

- Long title
- Interpretation
- Application
- Act done for 2 or more reasons
- Discrimination against a person who has family status
- Discrimination by way of victimisation
- Comparison of cases under section 5
- Discrimination against applicants and employees
- Discrimination against contract workers
- Meaning of employment at establishment in Hong Kong
- Partnerships
- Trade Unions, etc.
- Qualifying bodies
- Persons concerned with provision of vocational training
- Employment agencies
- Discrimination against commission agents
- Government
- Discrimination by responsible bodies for educational establishments
- Discrimination in provision of goods, facilities or services
- Discrimination in disposal or management of premises
- Discrimination: consent for assignment or sub-letting
- Exceptions for small dwellings
- Exceptions for voluntary bodies
- Further exceptions from sections 19(1) and 20
- Discrimination in eligibility to vote for and to be elected or appointed to advisory bodies
- Discrimination by, or in relation to, barristers
- Discrimination by clubs
- Government
- Extent of Part IV

- Discriminatory practices
- Discriminatory advertisements
- Instruction to discriminate
- Pressure to discriminate
- Liability of employees and principals
- Aiding unlawful acts
- Special measures
- Charities
- Insurance, etc.
- Discriminatory training by certain bodies
- Indirect access to benefits, etc.
- Acts done under statutory authority to be exempt from provisions of Part III or IV
- Application to New Territories Ordinance
- Further exceptions
- Functions and powers of Commission
- Review of Schedule 2
- Delegations
- Codes of practice
- Power to conduct formal investigations
- Terms of reference
- Power to obtain information
- Recommendations and reports on formal investigations
- Restrictions on disclosure of information
- Restrictions on proceedings for contravention of Ordinance
- Claims under Part III or IV
- Issue of enforcement notices
- Appeal against enforcement notices
- Investigation as to compliance with enforcement notices
- Register of enforcement notices
- Persistent discrimination
- Enforcement of sections 31, 32 and 33
- Help for aggrieved persons in obtaining information, etc.
- Assistance by way of conciliation
- Assistance other than by way of conciliation
- Period within which proceedings are to be brought
- Validity and revision of contracts Cap 527 s 66
- Rules
- Regulations to empower Commission to bring certain proceedings
- Amendment of Schedules
- Educational establishments and their responsible bodies

- Further exceptions to this ordinance

Complaints statistics for the period 20.9.96 to 30.4.10

	Individual figures	Total
Sex Discrimination Ordinance		
Employment Field	3229	
Other Fields	1228	4457

	Individual figures	Total
Disability Discrimination Ordinance		
Employment Field	3359	
Other Fields	1326	4685

	Individual figures	Total
Family Status Discrimination Ordinance		
Employment Field	308	
Other Fields	42	350

	Individual figures	Total
Race Discrimination Ordinance		
Employment Field	16*	
Other Fields	29	45

	SDO	DDO	FSDO	RDO*	TOTAL
Complaints statistics for the Period of 1.1.2009 to 31.12.2009	344	528	23	26	921
Complaints statistics for the Period of 1.1.2010 to 30.4.2009	102	131	12	27	272

*Cumulative figures since 10 July 2009 when RDO came into effect.

3. Unlawful acts under the FSDO

- What is discrimination?

- There are two kinds of discrimination - direct discrimination and indirect discrimination.
- Direct discrimination occurs when a person is treated less favourably than another person on the ground of family status.
- For example, if a woman is transferred to a less favourable job after childbirth because the employer thinks that a woman with an infant will not be able to travel. If the employer does not apply the same condition to a man with an infant, it could be direct discrimination on ground of family status.
- Indirect discrimination occurs when a condition or requirement, that is not justifiable, is applied to everyone but in practice adversely affects persons who have family status.
- For example, a company insists that all its employees work overtime and a widower who has responsibility for care of his young children cannot comply with that condition. The company then dismisses him.
- The complainant feels aggrieved because as a single parent he cannot comply with that condition.
- If the company cannot justify why each and every employee must meet that condition, it could be a case of indirect discrimination on the ground of family status.

Cases on family status discrimination

Case 1 – Family or Job First?

- Mrs. Ng was an executive at a financial institution.
- One day she had to take a day's leave as her son had to be hospitalized.
- She informed her office about her absence through text message.
- When the doctor informed C that her son needed to remain in the hospital for a few more days, she called her supervisor to request for one more day of leave.
- She was curtly asked whether she wanted her job or her family.
- She went to office the next day but within a few hours received a phone call from the hospital asking her to see the doctor immediately as her son's condition had deteriorated.
- She requested her supervisor for an urgent leave but was denied.
- Left with no choice, she handed in her resignation and left.
- Later Mrs. Ng lodged a complaint with the EOC against the supervisor for discriminating against her and the company for being vicariously liable for the act of her superior.

What the EOC did

- The EOC's case officer notified the company about the complaint and proposed a date for early conciliation.
- Both parties agreed for early conciliation and an agreement was reached. As demanded by Mrs. Ng, the company provided a reference letter for her and also waived the payment, which she was supposed to make, in lieu of the notice period for leaving employment.
- Mrs. Ng decided not to pursue a case against her supervisor since he left the job after she filed a complaint with the EOC.

Case 2 – A Desperate Housewife

- Jane applied to enroll in a secretarial training course offered by a community organization. She was invited to attend a selection interview.
- At first, the interviewer was enthusiastic in explaining to her the course details.
- But the staff's attitude changed when she found out that Jane is a full-time homemaker and a mother of two.
- Although Jane had already informed the staff of her plan to send her children to day care once she gets a job, the staff still rejected her application.
- Jane felt that she was being discriminated against because of her family responsibilities (i.e. looking after her two children).

What the EOC did

- In response to Jane's complaint, the EOC investigator approached the centre-in-charge of the community organization.
- The investigator explained to him the Family Status Discrimination Ordinance in relation to the provision of goods, facilities or services.
- Both the complainant and the respondent agreed to settle the case by early conciliation.
- The centre-in-charge agreed to issue a written apology to Jane, and undertook not to consider an applicant's family responsibilities when admitting students in the future.
- It was also agreed that training on equal opportunities law would be provided on a regular basis to the centre's staff.

Case 3 – Career Prospect and Family Responsibility?

- Mei-ling, a secondary school teacher, breastfed her new born child.
- After school, she would visit the nearby health centre for expressing milk.
- She attended most of the after-school meetings, despite being late sometimes.

- The school principal wrote in her job appraisal that she lacked commitment because she had to take care of her child. He commented that Mei-ling's performance as a teacher was not satisfactory, and therefore she was not considered for promotion to a higher rank.

What the EOC did

- The EOC arranged a conciliation meeting for both parties.
- Initially, Mei-ling demanded a written apology from the respondent, and also an amendment be made to her performance appraisal report. The respondent only agreed to amend the comments in the appraisal report relating to Mei-ling's family status and her suitability for promotion.
- Mei-ling considered that the amendment of the appraisal report was the most important to her, as it would directly affect her career development. Therefore, she did not insist on a written apology.
- The two parties eventually reached agreement on the settlement terms, and the dispute was resolved.

If you are EOC... (Case Discussion)

No Feeding Please

- Jane went to a department store with her six-month-old son Jamie one day. Jamie started crying, seemingly wanting a feed.
- Jane settled herself in a discreet corner and began breastfeeding him. Just as she started, the store manager came and shouted at her, "Some customers might feel offended seeing you breastfeeding here. You better pack your stuff and leave now!"
- Though Jane felt embarrassed and distressed, she insisted to stay until Jamie was fed. She said, "The manager, of course, was not happy, and so she called the security guard. The two just stood by my side staring at me. I felt extremely frustrated at that point, and burst into tears. My sister told them to leave me alone, but they did not listen." Jane finally finished feeding her baby, but the experience was so depressing that she never wanted to breastfeed in public again.

Mr. Chan's Family Responsibility

- Mr. Chan's mother suffers from diabetes and hypertension. She lives alone, and he is the only one in the family who is able to take care of her everyday.
- He has to look after his mother's daily needs, including preparing meals for her, helping her to take medicine and taking her to see the doctor.

His supervisor informed him that he was going to be transferred to another office far away from his mother's home.

- Mr. Chan felt that he had been discriminated against on the ground of his family status - taking care of his sick mother.

Dismissal for taking leave to arrange funeral

- Ms. Wong used to work in a company (R), took leave to arrange the funeral of her deceased father.
- When she was back to work after leave, R told her that she was dismissed.
- Ms. Wong alleged that R told her that since her father had recently passed away he was worried that her emotions would affect the work of other staff.

Disregard for family status while transferring

- Mr. Tam lived with his aunt, who was old and suffered from multiple diseases.
- One day, right before Mr. Tam got off work, he was informed that he had go on a business trip and fly to Beijing on the next day.
- He requested 2 days as a time-buffer, so he can arrange someone to look after his aunt. But his request was turned down.
- The company told him, if he cannot report in Beijing on the following day meant he gave up his position.

Disregard for family status while transferring

- Ms. Lee had been working as a clerk at a bank for five years.
- She was transferred to another department where working hours were considerably longer than her previous department.
- She claimed that this caused her difficulty in taking care of her young children as she was their primary caretaker. Her husband worked mainly in the mainland and was mostly absent from home.
- The bank turned down Ms. Lee's request to transfer back to her original department. She was caught in dilemma.

Lodge complaints with the EOC

Results?

No Feeding Please (What the EOC did)

- An EOC investigation officer explained to the respondents the Family Status Discrimination Ordinance in relation to provision of goods and services. The respondents came to realize that they should adopt an accepting attitude and improve their communication with customers so as to meet their needs.

- The parties involved agreed to settle the case by early conciliation. The store manager and the security guard, represented by their employer, issued a letter of apology to Jane and delivered it personally to the EOC office.
- The management of the department store agreed to formulate a baby-caring policy and to provide a small nursing room for its customers.

My family responsibility (What the EOC did)

- After obtaining legal advice, his supervisor accepted Mr. Chan's proposal, as long as he could prove that he had a genuine family status of taking care of his mother.
- Mr. Chan provided copies of his and his family members' residence. He had also made declarations stating that he had to take care of his mother, and that he had to accompany his mother to attend medical appointments several times a week.
- Mr. Chan's supervisor agreed to post him to an office nearer to his mother's home.

Dismissal for taking leave to arrange funeral (What the EOC did)

- Ms. Chan lodged a complaint with the EOC against R for discriminating her on the ground of family status.
- The case was settled through early conciliation after R agreed to pay a sum equivalent to Ms. Chan's 1.5 months' salary and provide statements of her monthly salary since the date she joined the company

Disregard for family status while transferring (What the EOC did)

- Mr. Tam lodged a complaint with the EOC.
- With EOC's conciliatory mechanism, the company understood that they had to take workers' family responsibility into considerations.
- The company agreed to give Mr. Tam 2 days of time-buffer so he can arrange someone to look after his aunt.
- The company agreed to formulate internal policies regarding equal opportunities.

Disregard for family status while transferring (What the EOC did)

- Ms. Lee lodged a complaint with the EOC alleging family status discrimination.
- The bank agreed to allow Ms. Lee to leave office no later than 6.30 p.m. during weekdays and also to consider adjusting Ms. Lee's job duties and position depending on the operational needs and Ms. Lee's skills and ability.
- The case was resolved

Where Does the FSDO apply to?

- All employers in Hong Kong

- Unless the employee does his/her work wholly or mainly outside Hong Kong.

Know your rights

- The FSDO protects workers from discrimination in the employment field.

Do You Have the Responsibility for the Care of Your Immediate Family Members?

If the answer is yes, then you are protected under the Family Status Discrimination Ordinance (FSDO).

Who Are My Immediate Family Members?

They are the persons that related to you by blood, marriage, adoption or affinity.

Have Any of These Things Ever Happened to You at Work?

- You did not get hired because you told the employer that you are the only care-taker of your young son at home.
- You got fired or laid off because you failed to balance your family commitments with the unjustifiable demand of late hours work of your company.
- You got turned down for a promotion or transfer because of your family status.

You are not alone. As a care-taker of your family members, it is against the law for your employer to discriminate against you on the ground of your family status.

4. What Can You Do If You Are Discriminated Against?

4.1 Write down what happened.

Write down the date, time and place of the incident as soon as possible. Include what was said and who were there. Keep a copy of these notes at home. They will be useful if you decide to file a complaint.

4.2 Get emotional support from friends and family.

It can be very upsetting to feel you have been treated unfairly at work. Think about what you want to do. Get help to do it.

4.3 Talk to your union representative if you are represented by a union.

4.4 Talk to your employer.

Your employer may have an equal opportunity officer or a way for you to file a "Complaint". Check your employee handbook or talk to the personnel department.

4.5 Find out how other employees who have family status have been treated.

4.6 Keep doing a good job.

4.7 Keep a record of your work.

Keep copies at home of your job evaluations and any letters or memos that show that you did a good job. Your boss may criticize your job performance later on in order to defend his or her act of discrimination.

4.8 Lodge a complaint with the EOC.

The Commission was set up to protect you. Hotline of EOC: **2511-8211**.

4.9 Find out more about your legal rights.

You do not need a lawyer to lodge a complaint but you can talk with a lawyer or file a law suit independently, outside the Equal Opportunities Commission.

You can:

4.9.1 Bring suit in the District Court.

4.9.2 Lodge a complaint with the EOC and resolve the problem through conciliation. Settlement agreement could be an end to the behaviour; a letter of apology; for the company to establish an equal opportunities policy; or for financial compensation.

4.9.3 Apply for legal assistance if conciliation is not successful.

Prevent the occurrence of discrimination

- Invite the Equal Opportunities Commission to come and give talks to your staff or call the EOC and ask to join the scheduled talks.
- Invite the EOC to assist in formulating equal opportunity policies.

Get help from EOC

- The EOC has published many educational materials on discrimination laws.

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Electronic Resources

- 1 <http://anti480.org.hk/> Anti-480 Resource Centre for Anti-sexual Violence, Association Concerning Sexual Violence Against Women (ACSVAW).
- 2 www.un.org/womenwatch/daw/csw/ Commission on the Status of Women, United Nations Economic and Social Council, UN.
- 3 <http://www.cuhk.edu.hk/hkiaps/grc/> Gender Research Centre, The Chinese University of Hong Kong
- 4 www.eoc.org.hk 平等機會委員會 Equal Opportunities Commission (EOC)
- 5 <http://www.harmonyhousehk.org/> 和諧之家 Harmony House
- 6 <http://www.famplan.org.hk/> 香港家庭計劃指導會 The Family Planning Association of Hong Kong
- 7 www.womencentre.org.hk 香港婦女中心協會 Hong Kong Federation of Women's Centres (HKFWC).

- 8 www.women.gov.hk 婦女事務委員會 Women's Commission
- 9 <http://www.aaf.org.hk/> 新婦女協進會 The Association for the Advancement
of Feminism (AAF).