

THE CHINESE UNIVERSITY OF HONG KONG
Committee Against Discrimination and Sexual Harassment

Guidelines for staff and students who have a concern or a complaint of discrimination/harassment

A. Unlawful acts under the four anti-discrimination ordinances in Hong Kong

1. There are four anti-discrimination ordinances in Hong Kong, namely the Sex Discrimination Ordinance (“SDO”), Disability Discrimination Ordinance (“DDO”), Family Status Discrimination Ordinance (“FSDO”) and Race Discrimination Ordinance (“RDO”). The Ordinances render unlawful acts which discriminate against persons on the ground of gender, marital status, pregnancy, breastfeeding, family status, disability or race in the prescribed areas of activities; they also render unlawful acts of sexual harassment, harassment on the ground of breastfeeding, disability/racial harassment and vilification. The following behaviours are illustrative of, but not limited to, what may be regarded as discrimination/harassment:

a. Sex/Marital Status/Pregnancy/Breastfeeding Discrimination/Harassment

- (i) Sex/marital status discrimination
 - Decisions on promotion and salary increase made based on the sex/marital status of the employee.
- (ii) Pregnancy discrimination
 - Not offering a job/admission to an applicant/a student because she is pregnant.
 - An employer insists that all its employees work over time. An employee is penalized because she is not able to work overtime as she is pregnant.
- (iii) Breastfeeding discrimination/harassment
 - A breastfeeding woman who is the best qualified candidate but is not selected for the job because she is breastfeeding.
 - Making jokes to a breastfeeding woman or in her presence.

(For complaints or incidents relating to sexual harassment, please refer to a separate set of Guidelines on sexual harassment.)

b. Disability Discrimination, Harassment and Vilification

- (i) Disability discrimination
 - Not offering admission to students on the ground of their disability.

- Dismissing employees who have recovered from an illness because the employer thinks that their disability will relapse in the future.
 - Not allowing longer examination time for students with writing difficulties.
- (ii) Disability harassment
- Offensive jokes or sarcastic comments about one's disability and abusive behavior towards one's disability.
- (iii) Disability vilification
- A person speaks in an activity open to all staff members and students that persons with disability are useless and a burden to society.
- c. Family Status Discrimination**
- Not offering admission to qualified students because they have a new born baby.
 - Not promoting qualified staff with infants fearing that they might not be able to travel.
 - An employer insists that all its employees work overtime so the employer dismisses employees who cannot work overtime because they have a responsibility to take care of their young children.
- d. Race Discrimination, Harassment and Vilification**
- (i) Race discrimination
- Refusing to admit students of ethnic minority to a student association because of their skin colour.
 - Not offering a job on the ground of the applicant's race.
 - A blanket ban on beard for all staff and students may discriminate against some ethnic groups (who by their custom have to keep a beard), when compared to other racial groups, if information shows that the blanket ban is not justifiable.
- (ii) Race harassment
- Offensive jokes or sarcastic comments about one's racial background, accent or customs, etc.
- (iii) Race vilification
- Posting some derogatory remarks/speaking openly targeting at persons of certain race on campus.

For more information, please refer to the website of the Equal Opportunities Commission at www.eoc.org.hk.

B. What should you do if you feel being discriminated, harassed or vilified?

There are a number of things you might want to consider:

1. Try to self-manage the situation, sort it out, where practicable, with the person or people involved. Speak up at the time. Tell the discriminators that their behaviour is unacceptable and should be stopped immediately. Correcting the situation immediately is in everyone's best interests. In particular, ignoring the prohibited behaviour may make the situation worse because the discriminators may misinterpret a lack of response as approval or condonation of the behaviour.
2. Approach your immediate supervisor, unit head, or an advisor/a resource person for advice and assistance in resolving the problem informally if the discriminators do not stop their behaviour.
3. Keep a written record of what has happened after the incident as soon as possible, including the dates, time, location, witnesses (if any) and nature (what the discriminators have said or done) and your own response(s). The information will be helpful when you want to take action at a later date. If the discrimination involves verbal abuse, try to record word for word what was said. This is particularly important if you feel you are being discriminated, harassed or vilified.
4. Tell someone you trust or a counsellor, and ask for emotional support and advice.
5. Seek confidential advice and help from the responsible officer at the Diversity and Inclusion Office (DIO), i.e. Committee Secretary (CS) of the Committee Against Discrimination and Sexual Harassment (CADSH). All complaints will be handled in a confidential manner in accordance with the existing University policies and applicable laws.
6. You are encouraged to come forward with complaints as soon as possible after the alleged incident as a lapse in time may, under certain circumstances, present difficulty for the University in conducting a thorough investigation and collecting evidence.

C. How the University handles discrimination/harassment cases?

1. The University has procedures to deal with allegations or complaints of the unlawful acts under the anti-discrimination ordinances, and to provide proper redress if and when discrimination, harassment and vilification occur. According to the complaint procedures, there are informal resolution and formal complaints. Conciliation and complaint investigation processes are available to staff and students through the Panel Against Discrimination and Sexual Harassment. All complaints will be received and handled in a confidential manner in accordance with the existing University policies and applicable laws.

1.1. Informal Resolution

- a. The aim of the informal resolution is to address your concern with a view to clarifying the problem and facilitating early resolution. You may approach your immediate supervisor, unit head or an advisor/a resource person for advice and help to resolve the problem informally. If the resolution has not been achieved to your satisfaction, you may contact the responsible officer at DIO who can assist you in:
 - (i) Clarifying what has occurred and whether the behaviour might constitute unlawful acts under the anti-discrimination ordinances;
 - (ii) Providing information about the complaint procedures;
 - (iii) Understanding your rights under the relevant laws and regulations including victimization;
 - (iv) Knowing about available options which include:
 - Early resolution, i.e. the responsible officer at DIO may attempt to resolve the problem informally by taking appropriate preventive or remedial measures. The purpose would be to make the discriminators aware of the way their behaviour has been perceived and ask them to stop the behaviour immediately;
 - Conciliation and complaint investigation by the University;
 - Your right to lodge complaints with the Equal Opportunities Commission or to take civil action in the District Court of Hong Kong.
 - (v) Obtaining information and advice about where you can go to get more help, e.g. counselling and how to initiate a complaint.

1.2. Conciliation

a. *What is conciliation?*

Conciliation is a voluntary process. It will only be arranged where both the complainants and respondents are willing to take part in the conciliation. If the parties reach a settlement, the agreement signed by the parties is legally binding. Under normal circumstances, attempts at conciliation do not require the filing of a written complaint.

b. *Who will conduct conciliation?*

The CS of CADSH or a conciliator acceptable to both parties will normally be appointed to conduct the conciliation. The conciliator will serve as facilitator to help the parties identify issues, explore possible ways to resolve the dispute, and help them reach an agreement that both find satisfactory. The conciliator will interview the complainants and the respondents separately. In the conciliation process, no meeting notes will be taken.

- c. *What are the possible outcomes of conciliation?*
- (i) If the conciliation fails to reach a settlement, the complainants can continue to enforce their rights. If a settlement has been reached during the conciliation, the parties may enter into a legally binding agreement to record the terms of the settlement. The settlement can contain:
- an apology;
 - a guarantee that no further discriminatory acts will occur; and
 - an agreed procedure for monitoring the situation and resolving any future concerns.
- (ii) Each party will sign the agreement and keep a copy. Information about the complaint and resolution including a copy of the agreement will be kept in the office of the CS of CADSH for record purpose and shall be dealt with by all the parties concerned in strict confidence and in accordance with the University's existing policies and applicable laws.
- d. *Will the conciliator monitor the performance of the agreement?*
- No. But the conciliator would inform the parties that if a breach occurs, the complainants have the right to file a written complaint pursuing a formal investigation.

1.3. Investigation

- a. *What is investigation?*
- (i) Investigation is a formal procedure. If you wish the University to initiate an investigation into an act of discrimination, harassment or vilification, you should make a written request for a formal investigation by completing a complaint form.
- (ii) You should note that, apart from background or certain personal information, details of the complaint, including your

name and the allegation made, will be disclosed to the respondent under the principle of natural justice.

- (iii) Upon receipt of a written request, the Panel Convenor will appoint at least two panelists of different gender to investigate the complaint. The CS of CADSH will be appointed as Secretary of the Investigation Team. Members of the Investigation Team should not be from the department/unit in which the complainants or the respondents are concerned.
- (iv) Under special circumstances as deemed necessary by the Panel Convenor, a non-staff Council member, an external member or a student representative may be invited to join the Investigation Team to assist in the process and secure the confidence of the parties.
- (v) The Investigation Team will interview you and the respondents separately. You will usually be interviewed first. If necessary, witnesses and any other parties concerned will also be interviewed individually in conformance with the privacy and confidentiality laws.

b. *What role will an investigation team play?*

The Investigation Team will conduct a full and impartial investigation to determine whether the complaint can be substantiated. Upon completion of the investigation, the Investigation Team will submit a fact-finding report to the Panel Convenor. The Investigation Team would not play any role in recommending sanction, penalty, or disciplinary action which will rest on relevant disciplinary committee(s).

c. *What are the possible outcomes of an investigation?*

- (i) The Panel Convenor shall review the fact-finding report submitted by the Investigation Team and notify both parties concerned in writing of the fact-finding report. If the decision of the Investigation Team is that the allegation of an unlawful act is established, then the respondents may submit an appeal to the Panel Convenor. If the decision is that the allegation of a lawful act is not established, then you may submit an appeal to the Panel Convenor. If there is no appeal (or the appeal is not allowed), the Panel Convenor shall submit a final report to the Vice-President (Administration) (VP(A)) for consideration.
- (ii) If there is a finding of an unlawful act, then the Panel Convenor shall make recommendations on disposal of the case and submit

a final report to VP(A) for consideration. VP(A) shall make a specific decision on the disposal of the case and convey the decision in writing to the complainants and respondents.

d. *Will you have the right to appeal against the decision of the investigation team?*

(i) Yes. If the decision of the Investigation Team is that the complaint is not established, you will have the right to appeal in writing to the Panel Convenor.

(ii) An appeal will be allowed only where you have new evidence and other information and material relevant to the case, or you can demonstrate that there is procedural unfairness in handling the complaint.

(iii) If the appeal is allowed, the Panel Convenor will establish an Ad Hoc Panel to review the fact-finding report, taking into account the written appeal stated in your written submission. The Ad Hoc Panel shall include a panel of three members of the Panel Against Discrimination and Sexual Harassment who have not had any prior involvement in the case. Their decision on the facts will be final, and will be reported to the Panel Convenor.

e. *What action will the University take if the complaint is found to be substantiated?*

The University is entitled to invoke formal disciplinary procedures and take appropriate disciplinary action against the staff members or students concerned.

f. *Will anyone be punished if the complaint is found to be unsubstantiated?*

No staff members or students of the University will be punished for initiating a good faith complaint or for providing information in the complaint investigation processes. However, the University reserves the right to take disciplinary action against any staff member or student making a false complaint or intentionally providing false information in any complaint process.

Further information about formal procedures for investigation is set out in the University's Procedures for Handling Discrimination Complaints which can be downloaded from the website of DIO at <https://www.dio.cuhk.edu.hk/> or the website of CADSH at <https://cadsh.cuhk.edu.hk/en-gb/>.

D. Is there a time limit for lodging a complaint?

1. Yes. There are time limits for lodging a complaint with the University's Panel Against Discrimination and Sexual Harassment, the Equal Opportunities Commission (EOC) and taking court action. The Panel Convenor may decide not to conduct an investigation into a complaint if it is lodged more than 6 months when the act was done or 30 working days after conciliation has been ended.
2. If you want to lodge a complaint with EOC, you should do so within 12 months after the incident has taken place. Any decision to take legal proceedings to the District Court should be made within 2 years after the incident has taken place.

E. What are the support and advice available?

1. The University is committed to providing support to any person who has a concern, problem or complaint relating to any forms of discrimination, harassment or vilification. The CS of CADSH is available to provide advice on the mechanism and options for dealing with allegations or complaints and to offer assistance, including counselling, during the subsequent conciliation or investigation processes. If you need advice or assistance, please call the CADSH hotline at 3943 8716 or email to padsh@cuhk.edu.hk.
2. If you are a full-time staff member, you can also get support and counselling through the University's Employee Assistance Programme which offers 24-hour service (Hotline: 2721 3939).
3. If you are a student, you may go to the Office of Student Affairs for counselling service (Contact no.: 3943 7208/ 3943 3493). All information provided will be kept in strict confidence.
4. In case of emergency, please contact the Security Office at 3943 7999.