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***Legislative Council***

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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

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**Council meeting of 1 June 2011**

**Proposed resolution under section 65(5)  
of the Disability Discrimination Ordinance**

I forward for Members' consideration a proposed resolution which the Secretary for Labour and Welfare will move at the Council meeting of 1 June 2011 under section 65(5) of the Disability Discrimination Ordinance in relation to the Revised Code of Practice on Employment under the Disability Discrimination Ordinance published in the Gazette as Government Notice No. 2159 on 8 April 2011. The President has directed that "it be printed in the terms in which it was handed in" on the Agenda of the Council.

2. The speech, in both Chinese and English, which the Secretary will deliver when moving the proposed resolution is also attached.

(Mrs Justina LAM)  
for Clerk to the Legislative Council

Encl.

## Disability Discrimination Ordinance

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### Resolution

(Under section 65(5) of the Disability Discrimination Ordinance (Cap. 487))

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#### Revised Code of Practice on Employment under the Disability Discrimination Ordinance

**Resolved** that the Revised Code of Practice on Employment under the Disability Discrimination Ordinance, published in the Gazette as Government Notice No. 2159 of 2011 and laid on the table of the Legislative Council on 13 April 2011, be amended-

- (1) in the title, by deleting “**Revised**” and adding “**(2011)**” after “Ordinance”; and in the Chinese text, by deleting “修訂本” and substituting “**(2011)**”;
- (2) in the Table of Contents, in the Chinese text, in subtitle “**●直接歧視 4.12-4.23**”, by deleting “**4.23**” and substituting “**4.22**”;
- (3) in the Table of Contents, in the Chinese text, in subtitle “**●測驗**”, by deleting “**驗**” and substituting “**試**”;
- (4) in the Table of Contents, in subtitle “**Chapter 7: Managing Disability Related Work Absence**”, by deleting “**Work**” and substituting “**Workplace**”;
- (5) in the Table of Contents, in subtitle “**●Avoid stereotypical assumptions about persons with disability**”, by deleting “**disability**” and substituting “**disabilities**”;
- (6) in the Table of Contents, in subtitle “**●Seek better communications with employees with disability**”, by deleting “**disability**” and substituting “**disabilities**”;
- (7) in the Table of Contents, in subtitle “**●Roles and functions**”, by deleting

“Roles” and substituting “Role”;

- (8) in paragraph 1.4, in the Chinese text, after “但” where it secondly appears, by deleting “法庭在處理根據《殘疾歧視條例》提出的訴訟時，將適當地參考本守則的建議” and substituting “本守則可作呈堂證據，當法庭處理根據《殘疾歧視條例》提出的法律程序的問題時，須考慮守則的相關部份”;
- (9) in paragraph 1.9, by deleting “both locally and overseas have been modified to demonstrate how the DDO may be applied” and substituting “, complaints and enquiries have been modified to demonstrate to readers how the DDO may be applied under particular circumstances. Readers should be mindful that each case bears its own uniqueness and refrain from sole and direct application of any example to a particular situation. Where readers intend to rely on the decided cases cited in this Code, they should refer to the respective court judgments”; and in the Chinese text, in the first sentence, by deleting “本地及外國案例引申” and substituting “案例、投訴和查詢改寫而成”, and in the second sentence, by deleting “在真實的法庭審訊中，法庭會” and substituting “由於每宗個案皆有其獨特性，讀者在考慮其個別情況時，不應完全及直接套用本守則之例子。讀者如欲引用守則闡述之法庭個案，須參考有關法庭判案書。在正式的審訊中，法庭才有權”;
- (10) In the margin of paragraph 2.8, by deleting “S 14(4)”;
- (11) in the margin of paragraph 3.3.1, by deleting “(a)”;
- (12) in the margin of paragraph 3.3.2, by deleting “(b)”;
- (13) in the margin of paragraph 3.3.3, by deleting “(c) & (d)”;
- (14) in the margin of paragraph 3.3.4, by deleting “(e)”;
- (15) in the margin of paragraph 3.3.5, by deleting “(f)”;
- (16) in the margin of paragraph 3.3.6, by deleting “(g)”;
- (17) in the subtitle above paragraph 3.4, in the Chinese text, by adding “士” after “人”;

- (18) in the margin of paragraph 3.4.1, by deleting “(ii)”;
- (19) in paragraph 3.4.2, by deleting “might develop” and substituting “may exist”; and in the Chinese text, by deleting “現在雖未出現，但在將來可能演變成” and substituting “在將來可能存在”;
- (20) in the margin of paragraph 3.4.2, by deleting “(iii)”;
- (21) in the case illustration under paragraph 3.4.2, by deleting “is a Hepatitis B carrier” and substituting “had recovered from psychiatric disorder”, by deleting “she” and substituting “her disability”, and by deleting “develop liver cancer” and substituting “relapse”; and in the Chinese text, by deleting “是乙型肝炎帶菌者” and substituting “曾患精神病”, and by deleting “將來會變成肝癌” and substituting “的精神病將來會復發”;
- (22) in the margin of paragraph 3.4.3, by deleting “(iv)”;
- (23) in the case illustration under paragraph 3.4.3, in the Chinese text, by deleting “帶菌” and substituting “感染”;
- (24) in the margin of paragraph 3.5.1, by deleting “(a)”;
- (25) in the margin of paragraph 3.5.2, by deleting “(b)”;
- (26) in the margin of paragraph 3.5.3, by deleting “(c)”;
- (27) in the margin of paragraph 3.5.4, by deleting “(d)”;
- (28) in the margin of paragraph 3.5.5, by deleting “(e)”;
- (29) in the case illustration under paragraph 3.5.5, by deleting “AIDS patients” wherever it appears and substituting “persons living with HIV”; and in the Chinese text, by deleting “患” wherever it appears and substituting “毒感染”;
- (30) in paragraph 4.6, in the Chinese text, by adding “「” before “使” and “」” after “害”;
- (31) in the margin of paragraph 4.13, by deleting “paragraphs 10.6-10.10” and

- substituting “paragraph 10.7”; and in the Chinese text, by adding “例” after “條”, and by deleting “10.6-10.10” and substituting “10.7”;
- (32) in paragraph 4.21, in the Chinese text, by deleting “情感創傷” and substituting “感情損害”;
  - (33) in paragraph 4.24, in the Chinese text, by deleting “少” and substituting “小”;
  - (34) in the margin of paragraph 4.24, in the Chinese text, by adding “6” before “(b)” where it thirdly appears;
  - (35) in the margin of the case illustration under paragraph 4.24, by deleting “6” and substituting “7”; and in the Chinese text, by deleting “6” and substituting “7”, and by adding “「” before “施” and “」” after “性”;
  - (36) in the case illustration under paragraph 4.28, by deleting “and outside the remit of contract law” from the last sentence;
  - (37) in the margin of paragraph 5.4.1, by deleting “5.6-5.8” and substituting “5.5-5.7”;
  - (38) in the margin of paragraph 5.4.2, by deleting “5.9-5.15 and 5.19-5.20” and substituting “5.8-5.14 and 5.18-5.21”;
  - (39) in the margin of paragraph 5.4.3, by deleting “5.16-5.18” and substituting “5.15-5.17”;
  - (40) in the margin of paragraph 5.6.1, in the Chinese text, by deleting “S”;
  - (41) in the margin of paragraph 5.6.2, in the Chinese text, by deleting “S”;
  - (42) in the margin of paragraph 5.6.3, in the Chinese text, by deleting “S”;
  - (43) in the margin of paragraph 5.8, in the Chinese text, by deleting “S”;
  - (44) at the end of paragraph 5.11, by adding “Nevertheless, the standard for good communication varies among different positions; employers should not apply a uniform standard in assessing employees’ performance.”;

- (45) in the case illustration under paragraph 5.12, by deleting “S 12(2)(i)” and substituting “S 12(2)(c)(i)”;
- (46) in the case illustration under paragraph 5.13, in the case citation, by deleting “FCA 640” and substituting “FCAFC 425”;
- (47) in the margin of paragraph 5.15, by deleting “(a)”;
- (48) in the margin of paragraph 5.15.1, by adding “S 4(a)”;
- (49) in the margin of paragraph 5.15.2, by adding “S 4(b)”;
- (50) in the margin of paragraph 5.15.3, by adding “S 4(c)”;
- (51) in the margin of paragraph 5.15.4, by adding “S 4(d)”;
- (52) in the margin of paragraph 5.18, in the Chinese text, by deleting “S”;
- (53) in the margin of paragraph 6.6.1, in the Chinese text, by deleting “S”;
- (54) in the margin of paragraph 6.6.2, in the Chinese text, by deleting “S”;
- (55) in paragraph 6.20, in the first sentence, by deleting “more”, by deleting “to be encouraged” and substituting “admissible”, and

in the last sentence, by deleting “However, it is important to make sure that this information is not used to screen out certain applicants” and substituting “Irrespective of the inclusion or not of such a question in the application form, it remains an applicant’s right to choose not to disclose his/her disability. Nevertheless, in the absence of such information, the employer cannot be expected to provide reasonable accommodation even when there is the need during the interview. Employers should make sure that information about an applicant’s disability is not used to screen out the applicant”; and

in the Chinese text, in the last sentence, by deleting “不過” and substituting “無論申請表內有否列出上述問題，求職者有全權選擇不披露其殘疾情況，然而在缺乏相關資料下，則就算求職者有此需要，亦不能期望僱主能

夠在面試時提供合理的遷就。僱主應謹記”， and by deleting “這些” and substituting “有關申請者的殘疾的”；

- (56) in paragraph 6.37, by deleting “AIDS or are HIV positive” and substituting “HIV”; and in the Chinese text, by deleting “愛滋病患者和愛滋病毒帶菌者” by substituting “愛滋病毒感染者”；
- (57) in the margin of paragraph 7.3, in the Chinese text, by deleting “勞工法例” and substituting “僱傭條例”；
- (58) in paragraph 7.6, by deleting “However, due care should be exercised when dealing with work injury situations. Employers should refrain from premature termination of employment that deprives an employee of his/her entitlements under the Employment Ordinance and/or the Employees' Compensation Ordinance.” and substituting “However, due care should be exercised when dealing with work injury situations to ensure that an employee is not deprived of his/her entitlements under the Employment Ordinance and/or the Employees' Compensation Ordinance.”；
- (59) in the margin of paragraph 7.6, in the Chinese text, by deleting “僱傭” where it secondly appears and substituting “僱員”；
- (60) in paragraph 7.32, in the margin, by deleting “6.36-6.37” and substituting “6.37-6.38”； and in the Chinese text, by deleting “6.36 及 6.37” and substituting “6.37-6.38”；
- (61) in the margin of paragraph 8.4, in the Chinese text, by deleting “4.16-20” and substituting “4.28”；
- (62) in the subtitle above paragraph 8.5, by adding “(EPEW)” after “work” where it first appears; by adding “(EPEV)” after “value”；
- (63) in paragraph 8.5, in the beginning of the paragraph, by adding “Pay should be determined on the basis of established job value. Employers should apply consistent criteria when developing and implementing good practices on EPEW and EPEV.”, in the last sentence, by deleting “equal pay for equal work (EPEW) and equal pay for work of equal value (EPEV)” and substituting “EPEW and EPEV”, and by deleting “, and should determine the pay level of

each job according to its job size and value to the organisation”, and

at the end of the paragraph, by adding “Nevertheless, the salary of individual employees may still be differentiated by objective factors, such as capability, performance, experiences, etc. In accordance with Schedule 2 of the Minimum Wage Ordinance (CAP. 608), persons with disabilities whose productivity may be impaired by their disabilities will have the right to choose to have their productivity assessed to determine whether they should be remunerated at not lower than the statutory minimum wage level or at a rate commensurate with their productivity.”; and

in the Chinese text, in the beginning of the paragraph, by adding “釐定員工薪酬應基於已確立的工作價值。僱主應以劃一的準則訂立及執行同工同酬及同值同酬的良好訂薪措施。”, and in the last sentence, by deleting “，並按每個職位的工作範疇及對機構的價值而決定各個職位的薪酬水平”, and

at the end of the paragraph, by adding“然而，僱主仍可以客觀準則，按個別僱員之能力、表現、經驗等，調整個別僱員之實際薪酬。按《最低工資條例》(第 608 章)的附表 2，因殘疾以致生產能力可能受損的殘疾人士，有權選擇進行生產能力評估，從而釐定他們應獲得的工資不低於法定的最低工資，或收取按生產能力釐定的法定最低工資。”;

- (64) in the margin of paragraph 8.5, by deleting “For further exceptions to the DDO, see S 24 of the Minimum Wage Ordinance (CAP. 608). Also” and substituting “For details,”; and in the Chinese text, by deleting “有關《殘疾歧視條例》下的進一步例外情況，請參閱《最低工資條例》(第 680 章) 的第 24 條。又” and substituting “詳情”;
- (65) in paragraph 8.10, in the Chinese text, by deleting “情感創傷” and substituting “感情損害”;
- (66) in the case illustration under paragraph 9.10, by deleting “patients with AIDS and those who are HIV positive” and substituting “persons living with HIV”, and by deleting “AIDS patients” and substituting “persons living with HIV”; in the Chinese text, by deleting “愛滋病患者和帶菌者” and substituting “愛滋病毒感染者”, and by deleting “愛滋病人” and substituting “愛滋病毒感染



者”;

- (67) in the margin of paragraph 9.15, in the Chinese text, by deleting “第 11.23 至 11.24” and substituting “11.23-11.25”, and by deleting “第 12.3 至 12.11” and substituting “12.3-12.11”;
- (68) in the margin of paragraph 10.1, by deleting “paragraph 2.13-2.14” and substituting “paragraphs 2.10-2.12”;
- (69) in the margin of paragraph 10.7, by deleting “S 14(4)”;
- and in the Chinese text, by deleting “第 14(4)條” and by deleting “2.11” and substituting “2.8”;
- (70) in the subtitle above paragraph 11.3, by deleting “**disability**” and substituting “**disabilities**”;
- (71) in paragraph 11.4.8, by deleting “people” and substituting “persons”;
- and in the Chinese text, by deleting “愛滋病患者” and substituting “愛滋病毒感染者”;
- (72) in paragraph 11.10, in the margin, after “See”, by adding “paragraphs 7.19-7.25 in”;
- (73) in paragraph 12.1, in the first sentence, by deleting “a” and substituting “an independent”, by deleting “and regulation”, and
- in the second sentence, by deleting “is an independent body, publicly funded by the Government” and substituting “regulates public and private organisations, including the Government, to ensure that they comply with the requirements under the anti-discrimination legislation”;
- and
- in the Chinese text, in the first sentence, by deleting “一個由政府全資的”, by deleting “及監管”, and by adding “; 並監管包括政府在內的公、私營機構, 確保它們符合反歧視法例的要求” after “《殘疾歧視條例》”;
- (74) in footnote 1, by deleting “*Teval (HK)*” and substituting “*Teva (UK)*”, and by deleting “0490 08 2704” and substituting “0490\_08\_2704”;
- and in the Chinese text, by deleting “*Teval (HK)*” and substituting “見 *Teva (UK)*”, and by deleting “UK EAT” and substituting “UKEAT 0490\_08\_2704”;

- (75) in footnote 2, in the Chinese text, by adding “見” before “Saggar”;
- (76) in footnote 3, in the Chinese text, by adding “見” before “Carver”;
- (77) in footnote 7, by deleting “See *K and Others v Secretary for Justice* [2000] 3 HKC 796” and substituting “In *K & Others v Secretary for Justice* [2000] 3 HKC 796, the court held that future disability means “...a future disability predicated by a past disability and the risk it refers to is the possibility of recurrence of the past disability, not the risk of acquiring any disability.” In addition, the EOC takes the view that the relevant provision may, in appropriate cases, be applicable to situations other than recurrence of past disability, e.g. a person with high blood glucose level is taken as someone who will acquire diabetes in the future.”; and in the Chinese text, by deleting “*K 及其他人 訴 律政司司長* [2000] 3 HKC 796” and substituting “在 *K 及其他人 訴 律政司司長* [2000] 3 HKC 796 一案中法庭認為將來的殘疾是“...建基於一個過往的殘疾，意指舊病復發的風險，而不是罹患任何殘疾的風險”。除此以外，平機會認為在合適的個案中，相關條文也可能引用於其他非舊病復發的情況，例如：某人因為有高血糖而被認定在將來會患上糖尿病。”;
- (78) in footnote 10, in the Chinese text, by adding “見” before “楊忠偉”;
- (79) in footnote 11, in the Chinese text, by adding “見” before “陳華”;
- (80) in footnote 12, in the Chinese text, by adding “見” before “R”;
- (81) in footnote 13, in the Chinese text, by adding “見” before “James”;
- (82) in footnote 15, in the Chinese text, by adding “見” before “Allonby”;
- (83) in footnote 16, in the Chinese text, by adding “見” before “Waters”;
- (84) in footnote 18, in the Chinese text, by adding “見” before “M”;
- (85) in footnote 23, by adding “See” before “*Commonwealth*”; and in the Chinese text, by adding “見” before “*Commonwealth*”;

- (86) in footnote 24, in the Chinese text, by adding “見” before “*Commonwealth*”;
- (87) in footnote 25, in the Chinese text, by adding “見” before “*M*”;
- (88) in footnote 26, by adding “See” before “*K*”; and in the Chinese text, by adding “見” before “*K*”;
- (89) in footnote 27, in the Chinese text, by adding “見” before “*M*”;
- (90) in footnote 32, by adding “See” before “*Canniffe*”; and in the Chinese text, by adding “見” before “*Canniffe*”;
- (91) in footnote 33, by adding “See” before “*L*”; and in the Chinese text, by adding “見” before “*L*”.

**Speech by the Secretary for Labour and Welfare  
(1 June 2011)**

**Motion to Amend the Revised Code of Practice on  
Employment under  
the Disability Discrimination Ordinance (Cap. 487)**

Mr. President,

I move that the Revised Code of Practice on Employment under the Disability Discrimination Ordinance (“the Revised Code”), which was introduced into this Council on 13 April 2011, be amended as set out in the proposed Resolution.

2. The Disability Discrimination Ordinance (“DDO”) empowers the Equal Opportunities Commission (“EOC”) to issue codes of practice to provide practical guidance for the purpose of elimination of discrimination, harassment and vilification; and the promotion of equality of opportunities between persons with a disability and persons without a disability. The current Code of Practice on Employment was issued in January 1997, providing general guidance to employers and employees in Hong Kong on implementing equality of opportunities between persons with disabilities and those without. Following the implementation of

the DDO, the public has over the years gained better and wider knowledge of the law. In the light of social developments and accumulated enforcement experience, the EOC has reviewed the current Code to ensure that it continues to serve as a useful reference tool for employers, employees and human resources practitioners. In the course of finalising the Revised Code, EOC conducted a wide public consultation on the draft Revised Code from 8 April to 8 July 2010. Having regard to the views collected, the EOC finalised the Revised Code, which was gazetted on 8 April 2011.

3. The EOC has made further amendments to the Revised Code in response to comments during the scrutiny by the “Subcommittee on Revised Code of Practice on Employment under the Disability Discrimination Ordinance” (“the Subcommittee”) which was formed by this Council to examine the Revised Code. These amendments have the support of the Subcommittee.

4. I am grateful for the valuable suggestions made by the Subcommittee. The amendments to the Revised Code that I move today mainly cover further elaboration on a few sections for improved clarity, and a number of textual refinements and

corrections.

5. If the proposed resolution is approved, the Code will come into operation on the date the resolution is published in the Gazette, i.e. 3 June 2011. The EOC will also embark on extensive publicity and educational efforts on the Revised Code including publicity through the media, electronic means and the EOC newsletter and other publication, as well as publication of booklets on the Revised Code and provision of talks and training to employers, employees and other stakeholder groups and organisations.

6. Last but not the least, I would like to take this opportunity to thank the Hon Cyd Ho and Members of the Subcommittees for their efforts and contribution in scrutinising the Revised Code.

7. Mr. President, I beg to move.