

Costs in discrimination claims

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Procedure and costs

The procedures for equal opportunities proceedings are based on the Rules of the District Court. More specific rules are made under sections 73B, 73C, 73D and 73E of the District Court Ordinance (Cap 336). In practice, the procedures are very similar to those for ordinary civil claims conducted in the District Court but the following points should be noted:

References: District Court Ordinance (Cap 336), ss 73B, 73C, 73D, 73E

- The usual practice of the court in awarding costs to the successful party varies. In discrimination claims, the normal practice is that each party bears its own costs.
- The District Court in the exercise of its jurisdiction in equal opportunities proceedings is not bound by the rules of evidence. The court may inform itself on any matter in such manner as it sees fit, with due regard to the rights of the parties to a fair hearing, the need to determine the substantial merits of the case and the need to achieve a prompt hearing of the matters at issue between the parties.

General rule - each party bearing its own costs

In discrimination cases in the District Court, each party will normally bear its own costs unless the court determines that the proceedings were brought maliciously or frivolously or there are special circumstances which warrant an award of costs.

Reference: District Court Ordinance (Cap 336), ss 73B, 73C, 73D, 73E

Exceptions to general rule

Costs may be awarded against either the plaintiff or the defendant on the grounds of 'malicious or frivolous' litigation. Employers who are faced with frivolous litigation have been awarded costs.

Examples - costs awarded to defendant (employer)

In *Chen Ray v Tamara Rus and IBM China/Hong Kong*, the plaintiff had deliberately and maliciously failed to disclose material evidence which was calculated to put forth a one-sided and distorted picture to the court. Costs were awarded to the defendant.

Reference: *Chen Ray v Tamara Rus and IBM China/Hong Kong Ltd* [2001] 3 HKLRD 541; [2002] 1 HKC 546

In *Sit Ka Yin Priscilla v Equal Opportunities Commission*, the court awarded costs to the defendant finding that the plaintiff's claim was brought frivolously as the plaintiff brought serious allegations against the defendant but could not provide even a hint of evidence to substantiate her complaints.

Reference: *Sit Ka Yin Priscilla v Equal Opportunities Commission* [2010] HKCU 2279



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In *Chan Wai Ho v Civil Service Bureau*, the District Court awarded costs against a plaintiff for bringing a frivolous claim against the employer (Civil Service Bureau) on the ground that there was no objective evidence to support his claim. The court observed that it would encourage the proliferation of unsubstantiated claims if the plaintiff was not ordered to pay costs.

Reference: *Chan Wai Ho v Civil Service Bureau* [2011] HKCU 1942

Examples - costs awarded to plaintiff (employee)

In *A v Chan Wai Tong*, the District Court awarded costs to the plaintiff because the defendant refused to attempt conciliation arranged by the Equal Opportunities Commission and made a totally fabricated defence.

Reference: *A v Chan Wai Tong* [2011] HKCU 2522

In *Burton*, the District Court considered that a claim for sexual harassment deserves separate consideration as every adult should know that unwelcome sexual advances are wrongful. These are 'special circumstances' under DCO, s 73B to warrant an award of costs against defendants. *Burton* is followed by *King of the King Group*.

References: District Court Ordinance, s 73B

L v Burton [2010] 6 HKC 463

B v King of the King Group Ltd [2012] HKCU 1206

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