



2019年12月

劳资事务焦点动态：《道歉条例》在工作场所的适用性

大家越来越关注工作场所中出现的问题和投诉。常见问题可能包括涉及骚扰、欺凌、歧视和特殊优待的投诉。当紧张加剧时，道歉通常有助于消弭冲突和改善关系。但是，很多人通常不愿意道歉，担心此举可能构成承认过失，而这一点可能在法律诉讼中被对方利用。

香港是亚太地区首个颁布与道歉相关法规的司法管辖区。《道歉条例》(第 631 章) (简称“条例”) 于2017年12月1日生效，目的是促进和鼓励道歉，防止争端升级，尽量友好解决。根据该条例第7条，条例生效后任何人道歉均不构成明示或暗示地承认过失，也不得作为法律程序的证据进行采纳 (有个别例外)。

An apology is defined in the Ordinance as an expression of regret, sympathy or benevolence, whether oral, written or by conduct made by a person or on behalf of a person. It includes an express or implied admission of fault or liability. The Ordinance protects apologies made in proceedings, including judicial, arbitral, administrative, disciplinary and regulatory proceedings, but excludes apologies made in criminal proceedings and proceedings conducted under the Commissions of Inquiry Ordinance (Cap 86), Control of Obscene and Indecent Articles Ordinance (Cap 390), Coroners Ordinance (Cap 504) and of the Legislative Council.

The Ordinance will therefore apply to an apology made in respect of claims and proceedings relating to employment disputes brought in the Labour Tribunal and/or High Court, complaints made to the Equal Opportunities Commission and claims relating to discrimination, harassment and/or victimisation filed in the District Court.

However, it is important to note that there are certain exceptions to the applicability of the Ordinance. Perhaps the most relevant is that a decision maker (for example, the court, tribunal or arbitrator) may, in an exceptional case, exercise a discretion to admit a statement of fact contained in an apology as evidence in the proceedings, where it is just and equitable to do so, having regard to the public interest or the interests of the administration of justice. It is not clear how the decision makers will interpret what constitutes an “exceptional case” and how it will exercise its discretion in determining to admit a statement contained in an apology as evidence in proceedings. Given this uncertainty, it is difficult to see how far a sincere apology would be helpful to parties.

GALL

Whilst it remains to be seen how the Ordinance may have an impact on proceedings, given the large number of labour disputes in Hong Kong, the hope is that the option to apologise without fear of admitting fault will assist in a more amicable resolution of disputes and parties would have less of a need to resort to legal proceedings.

For further information in relation to the Apologies Ordinance and other employment law related matters, please do not hesitate to contact Andrea Randall (andrearandall@gallhk.com / +852 3405 7688).

本文中包含的所有资料仅供一般参考, 不应视为针对特定事实或情况的法律、会计、财务或税务建议或意见, 在此方面不可以之为据行事。因依赖本文所含信息作为或不作为而直接或间接引起的任何损失或损害, 高嘉力律师行概不承担责任。敦请您就自身实际情况以及可能遇到的具体法律问题寻求专门的法律建议。

联系人：



高嘉力 (Nick Gall)
高级合伙人
+852 3405 7666
nickgall@gallhk.com



尹安琦 (Andrea Randall)
合伙人
+852 3405 7630
andrearandall@gallhk.com



王天惠 (Joni Wong)
律师
+852 3405 7616
joniwong@gallhk.com

GALL

僱傭事務荣获的奖项和认可：

- « 在劳资诉讼方面经验非常丰富 »
2020年《钱伯斯亚太指南》
- « 尹安琦 (Andrea Randall) 办事细致、知识渊博 »
劳资就业领域的新一代合伙人 – 2020年度《亚太法律500强指南》 Legal 500 Asia Pacific
- « “高嘉力是一家一流律所，提供实用且物有所值的建议” “非常高效” »
劳资争议解决, 出色执业表现——2020年《亚洲法律概况》
- « 杰出执业者尹安琦 (Andrea Randall) ——劳资类 »
2020年度《亚洲法律概况》 Asialaw Profiles
- « 高嘉力以其“绝佳的劳资诉讼服务”而闻名 »
劳资争议解决领先律所——2019年《亚太法律500强》
- « “尹安琦 (Andrea Randall) 人脉广泛、经验丰富，是一名知识渊博的国际劳资事务律师。” »
2019年《亚洲法律概况》
- « 获奖者 —— 年度全国律师事务所 »
2019年 Benchmark Litigation 亚太顶级律所
- « “推荐律师行”，合伙人尹安琦获评“推荐律师”。 »
《Doyle 指南：2019年香港领先就业律师排行榜》
- « 占据领先地位的律师事务所, 劳资 »
« 领先的劳资关系人士尹安琦 (Andrea Randall) 和 高嘉力 (Nick Gall) »
2018年亚太法律500强
- « 获奖者, 劳资争议解决最佳奖 »
2018年欧洲货币法律传媒集团亚洲商法女性大奖
- « 获奖者 —— 劳动和就业争议解决最佳律师行 »
2018年 Asialaw 亚太地区争议解决奖