

[24NHRC-I01]

NHRC Investigative Report—Complaint Filed  
by the Taoyuan Flight Attendants Union  
Regarding Gender Discriminatory Dress Codes  
Adopted by Taiwanese Airline Companies



國家人權委員會  
NATIONAL HUMAN RIGHTS  
COMMISSION, TAIWAN

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## **I. Background**

### **1. Complaint**

The Taoyuan Flight Attendants Union (TFAU, “Complainant”) filed a complaint with the National Human Rights Commission of Taiwan (NHRC) regarding “gender discriminatory dress codes adopted by the majority of Taiwanese airline companies.”

### **2. Background**

Taiwan has six commercial airlines that have cabin crew members onboard: China Airlines, EVA Airways, Starlux Airlines, Tigerair Taiwan, Mandarin Airlines, and UNI Airways. Of these six, Tigerair Taiwan has the same trouser uniform for all cabin crew members regardless of gender. The remaining five airlines all require female cabin crew to wear skirts.

The point of contention in this complaint lies in whether cabin crew working for Taiwanese airlines are subject to gender discrimination, and whether the current administrative rules and policies adequately protect female cabin crew from discrimination by third parties. According to the determination of the Approvals Committee,<sup>1</sup> the complaint satisfies the universality rule and is consistent with Article 7 of the *Principles for Accepting and Investigating Human Rights Complaints* formulated by the NHRC in 2023, which states, “A complaint may only be accepted if it involves torture, discrimination, or other serious human rights violations.” The complaint was submitted to the 49<sup>th</sup> meeting of the 1<sup>st</sup> NHRC on January 23<sup>rd</sup>, 2024 for deliberation and was later accepted.

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<sup>1</sup> The Approvals Committee is composed of the vice chairperson and 2 commissioners of the NHRC. Membership rotates every three months and is determined by drawing lots.

## II. Case Overview

This report contains the investigation results for the complaint filed by the TFAU on August 1<sup>st</sup>, 2023. It was prepared in accordance with Article 2, Subparagraph 1 of the *Organic Act of the Control Yuan National Human Rights Commission*, Article 7 of the *Principles for Accepting and Investigating Human Rights Complaints*, and the resolutions of the 49<sup>th</sup> and 55<sup>th</sup> meetings of the 1<sup>st</sup> NHRC.

In its complaint, the TFAU states that the majority of Taiwanese airlines require female cabin crew members to wear skirts, stockings, high heels, and makeup, which the TFAU believes to be a violation of the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), to infringe upon female cabin crew's privacy, and to potentially weaken their emergency response capacity in the event of an evacuation. Furthermore, the current *Gender Equality in Employment Act* only allows individual laborers and jobseekers to file complaints, resulting in a lack of protection for workers as a class or group.

As a part of its investigative process, the NHRC interviewed cabin crew, airline representatives, experts and scholars, government agencies, and NGOs to determine whether the dress codes adopted by the six Taiwanese airline companies constitute gender discrimination pursuant to Articles 1 through 5 and Article 11 of CEDAW; Articles 2, 3, and 7 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR); and Articles 1 and 9 of the International Labor Organization's *Violence and Harassment Convention* (No. 190), among other international human rights standards. More specifically, the aim of the NHRC investigation was to determine whether the dress codes expose female cabin crew to higher occupational health and safety risks and whether government agencies have adequate safeguards in place to protect female cabin crew from discrimination and to ensure that they enjoy the same employment rights and occupational safety conditions as their male counterparts.

In its investigation, the NHRC found that most Taiwanese airlines



indeed have differing dress codes for male and female cabin crew. In particular, female cabin crew are subject to highly specific requirements regarding hair and makeup. Whether airlines enforce such gender stereotype-reinforcing dress codes through performance reviews, disciplinary actions, or dress code compliance checks, it is apparent that female cabin crew are at a comparative disadvantage. In addition, female cabin crew undertake safety training in trousers but lack emergency response training in their uniform skirts and shoes, raising safety concerns. Furthermore, wearing stockings, which are highly flammable, poses a serious fire hazard, limits cabin crew's mobility, and increases the likelihood of sexual harassment. Without a feasible explanation as to the necessity of the differential treatment, domestic airline companies are putting female cabin crew at risk by failing to consider the occupational safety and health risks presented by the dress code from a gender equality perspective.

The NHRC also found that the competent authority had failed to comply with CEDAW's definition of gender discrimination and had not formulated the necessary guidelines to enforce the convention among employers. Due to the nature of the case, the TFAU was rendered unable to file a class action lawsuit as a plaintiff. In addition, the competent authority failed to conduct a study on the safety of stockings and high heels, which cabin crew are required to wear. When asked about the potential need for directives requiring Taiwanese airlines to take preventive measures, the government wrote them off as unnecessary, citing a lack of relevant guidelines in the International Civil Aviation Organization's (ICAO) rule books. Therefore, it cannot be said that the government has fully fulfilled its obligation to the nation to prevent discrimination against female cabin crew and ensure their employment rights, occupational safety, and health.

Based on the results of the investigation, the NHRC hereby presents the following three concluding opinions in accordance with Article 2, Subparagraph 1; Article 5; and Article 9 of the *Organic Act of the Control Yuan National Human Rights Commission* together with four recommendations for the government based on CEDAW and other

applicable international human rights standards:

1. The dress codes enforced by Taiwanese airline companies constitute gender discrimination prohibited by CEDAW.
2. Gender-specific dress codes can subject female workers to inferior or adverse employment conditions in the labor market.
3. The Taiwanese government failed to take the necessary action in a timely manner to protect female cabin crew from discrimination.
4. CEDAW applies to all workplaces where the *Gender Equality in Employment Act* is applicable.
5. The government should require airlines to introduce a trouser uniform option for female cabin crew and formulate a set of administrative directives based on CEDAW to help companies design dress codes that meet gender equality requirements.
6. The *Gender Equality in Employment Act* should be amended to cover systemic gender discrimination that is entrenched in industry practices.
7. The government should introduce enhanced occupational health safeguards for cabin crew.

### **III. Facts: The Complaint and Points of Contention**

#### **1. The complaint**

Based on the complaint submitted by the TFAU on August 1<sup>st</sup>, 2023 and the supplemental official letters received on September 20<sup>th</sup>, 2023 and two emails received on October 5<sup>th</sup>, 2023 and January 19<sup>th</sup>, 2024, the chief facts and claims of the complaint are summarized as follows:

##### **1) Facts**

- a. Compared to international airlines, whose dress codes have become more relaxed over the past few decades, most airlines in Taiwan still require female cabin crew to wear skirts, stockings, makeup, and high heels while on duty. This means that female cabin crew need to spend more time putting on makeup and doing their hair before their shifts begin, which in turn shortens their rest time and incurs additional expenses associated with purchasing cosmetics out of pocket. Female cabin crew are often subject to lengthy inspections or re-training if they do not comply with the dress code of the airline they work for. The complainant believes this to be a practice that objectifies women, subjects female employees to degrading treatment, and constitutes a serious CEDAW violation.
- b. When undergoing flight safety training (such as emergency resuscitation, closing/opening cabin doors, evacuating passengers, and operating evacuation slides and life rafts), cabin crew of both genders are required to wear trousers. The lack of similar training conducted with female cabin crew while wearing their regulation skirts and stockings raises a safety concern as to whether they would be able to respond to actual emergencies effectively. Even during day-to-day operations, female cabin crew must worry about accidental “exposure” while wearing short skirts, especially when they are in a jump seat facing the passengers and might have compromising photos taken of them without their consent.
- c. The complainant added that airline companies have promised time

and again that they would consider a trouser uniform option for female employees when they update their uniforms. However, companies like EVA Airways already have such an option for crew members based in Japan. This suggests that airlines are intentionally holding off on introducing trouser uniforms for female employees, even when the option is already there.

- d. The complainant also pointed out that the current *Gender Equality in Employment Act* only accepts complaints filed by individual workers and jobseekers. However, for business practices such as employee dress codes that involve an entire class of laborers, employees have no means of redress.

## 2) **Claims**

- a. The complainant cited the National Human Rights Commission of Korea's (NHRCK) resolution involving Asiana Airlines' gender discriminatory practices and asked the NHRC to publicly announce that Taiwanese airlines' dress codes constitute a serious gender equality violation and are in violation of CEDAW. The complainant also asked that domestic airline companies immediately provide female cabin crew with a trouser uniform option to ensure that their fundamental rights are protected.
- b. The complainant asked that the current regulations be amended to address the lack of redress channels for systemic gender discrimination that is entrenched in industry practices.

## 2. **Points of contention: What are the issues surrounding the investigation?**

- 1) **Whether these practices constitute gender discrimination:** Is there differential treatment between male and female cabin crew regarding dress codes? If so, does the difference in treatment constitute a gender equality violation as described in CEDAW and other applicable human rights conventions, and does it expose female cabin crew to higher occupational safety and

health risks? How are female cabin crew's employment opportunities and work conditions affected?

- 2) **Whether the government is fulfilling its obligations to the nation:** Is the Taiwanese government taking all necessary measures to fulfill the national responsibilities set forth in CEDAW and other applicable human rights conventions in order to abolish any direct or indirect discrimination, public or otherwise, against women? Is the government taking action to reverse gender stereotypes and prejudices to ensure that women are entitled to the same job security and occupational safeguards as their male counterparts?

## IV. Reasoning and Evidence

### 1. Regulatory basis: Relevant human rights conventions and regulations

Below is a list of international human rights conventions and domestic regulations that apply to the case at hand:

#### 1) International human rights conventions

- a. *Principles relating to the Status of National Institutions* (“*Paris Principles*”)
- b. CEDAW: Articles 1 through 5, 11, and 24
- c. General Recommendation No. 25 on Article 4, Paragraph 1 (temporary special measures) of CEDAW: Paragraphs 5 through 7
- d. General Recommendation No. 28 on Article 2 (core obligations of states parties) of CEDAW: Paragraphs 5, 9, 10, 16, 17, 22, 36, and 37
- e. *Results of the 40<sup>th</sup> Session of the Committee on the Elimination of Discrimination against Women* (E/CN.6/2008/CRP.1)
- f. *International Covenant on Economic, Social and Cultural Rights* (ICESCR): Articles 2, 3, and 7
- g. UN Committee on Economic, Social and Cultural Rights (CESCR) *General Comment No. 10* (The role of national human rights institutions in the protection of economic, social, and cultural rights): Paragraph 3
- h. CESCR *General Comment No. 16* (Article 3: The equal right of men and women to the enjoyment of all economic, social, and cultural rights): Paragraphs 6–8, 10–12, 18–21, 24, 37, and 40–42
- i. CESCR *General Comment No. 20* (Article 2, Paragraph 2: Non-discrimination in economic, social, and cultural rights): Paragraphs 10, 20, 32, 37, 38, and 40
- j. CESCR *General Comment No. 23* (Article 7: Right to just and favorable conditions of work): Paragraphs 47–48, 53–57, 59, 65, 74–75, and 77–80
- k. International Labor Organization’s *Violence and Harassment Convention* (No. 190): Articles 1 and 9

## **2) Domestic laws and regulations**

- a. *Constitution of the Republic of China*: Article 7
- b. *Additional Articles of the Constitution of the Republic of China*: Article 10
- c. *Enforcement Act of the Convention on the Elimination of All Forms of Discrimination against Women*: Articles 2 through 5
- d. *Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights* (collectively, the “two covenants”): Articles 2, 3, and 5
- e. *Organic Act of the Control Yuan National Human Rights Commission*: Article 2
- f. *Principles for Accepting and Investigating Human Rights Complaints*: Article 7
- g. *Gender Equality in Employment Act*: Articles 7, 9, 10, 26, 31, 34, and 38–1
- h. *Enforcement Rules for Act of Gender Equality in Employment*: Articles 2 and 3
- i. *Occupational Safety and Health Act*: Article 5
- j. *Enforcement Rules of the Occupational Safety and Health Act*: Article 8
- k. *Aircraft Flight Operation Regulations*: Articles 2 and 188-191

## **2. Defining the scope of the NHRC’s authority**

The complainant has requested the NHRC to adopt a resolution similar to that of the NHRCK, publicly condemning Taiwanese airline companies’ dress codes and requiring them to immediately provide a trouser uniform option for female cabin crew. In response, the NHRC must clarify the differences between its authority and that of the NHRCK, as well as the actions NHRC is and is not authorized to take:

**1) Unlike the NHRCK, the NHRC is not authorized to make decisions in lieu of conciliation to mandate the cessation of discriminatory practices by private sectors.**

**a. The NHRCK's response to the Korean cabin crew union's complaint regarding female cabin crew dress codes:**

Asiana Airlines is the second largest airline company in South Korea and, prior to March 2013, the only airline in the country that required female cabin crew to wear skirts.

In 2012, the NHRCK accepted a complaint filed by the Korean cabin crew union representatives regarding female cabin crew dress codes. In addition to hearing statements from the complainants and respondents, the NHRCK conducted a human rights analysis based on data collected in public hearings in order to forge alternative solutions. The NHRCK hoped to initiate a public human rights dialogue through these public hearings, which were attended by representatives from the Ministry of Gender Equality and Family and scholars of law, gender studies, and economics. In addition to looking into the cabin crew dress code, the NHRCK conducted a systematic review of dress codes adopted by department stores, financial institutions, dining establishments, and other service industries.<sup>2</sup>

The NHRCK issued a resolution in January 2013 ruling that Asiana Airlines' "skirts only" dress code constituted "discrimination against female cabin crew without just cause" and, pursuant to Article 44, Paragraph 1, Subparagraph 1 of the *National Human Rights Commission of Korea Act*, advised the company to provide a trouser uniform alternative.<sup>3</sup> In March of the same year, Asiana Airlines accepted NHRCK's recommendation and introduced a trouser uniform for its female cabin crew.

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<sup>2</sup> NHRCK press release (November 5, 2012). *Female Cabin crew Dress Code and Appearance Requirements: A Human Rights Perspective*.

<sup>3</sup> NHRCK (November 16, 2013). *Resolution on the Complaint Filed by Union Representatives Regarding Female Cabin crew Dress Codes (Case No. 12 Appeal 0415100)*.



**b. Differences in the NHRC’s and NHRCK’s authority for handling discrimination cases**

Article 44, Paragraph 1, Subparagraph 1 of the *National Human Rights Commission of Korea Act* states:

*“If the [NHRCK] deems that there occurred any violation of human rights or discriminatory acts as a result of the inquiry of any petition, it may recommend [that] the respondent or the head of the institution or the organization to which he or she belongs or the supervisory institution thereof ... take the following measures: (1) implementation of the remedies [in] the subparagraphs of Article 42 [Paragraph 4]; (2) rectification or improvement of any relevant statute, institution, policy or practice.”*

Article 42, Paragraphs 3 and 4 state:

*“If both parties fail to reach an agreement during the course of mediation..., the competent mediation committee may make a decision in lieu of the mediation in order to fairly settle the case.... A decision [made] in lieu of mediation may include any of the following: (1) cessation of a violation of human rights or a discriminatory act subject to inquiry; (2) reinstatement, compensation for damage, and other necessary remedies; (3) measures necessary for the prevention [or] recurrence of the same or similar human rights violation or discriminatory act...”<sup>4</sup>*

However, pursuant to Article 2, Paragraph 1 of the *Organic Act of the Control Yuan National Human Rights Commission*, the NHRC is only authorized to accept and investigate complaints but not to make decisions

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<sup>4</sup> Article 42, Paragraphs 5 and 6 of the *National Human Rights Commission of Korea Act* states, “If a mediation committee makes a decision in lieu of conciliation, it shall serve both parties with the written decision without delay. ... If any party fails to file a complaint within 14 days after he or she has been served with a written decision under paragraph (5), he or she shall be deemed to accept the mediation.” Article 43 of the same *Act* states, “A mediation under Article 42 [Paragraph 2] and a decision in lieu of mediation ... under Article 42 [Paragraph 6] shall have the same effect as a settlement at court.”

in lieu of conciliation for private sectors. In other words, unlike the NHRCK, the NHRC does not have the legal authority to abolish practices adopted by airline companies that infringe human rights or constitute gender discrimination, nor is it allowed to issue any administrative remedies.

**2) The NHRC is responsible for oversight of government agencies and providing recommendations to help abolish all forms of discrimination**

Pursuant to the *Paris Principles*, a state's human rights institution shall be given the legal status to accept a wide range of complaints and shall be given the authority to mediate matters or issue legally binding decisions to resolve said complaints.

However, as mentioned above, the NHRC does not currently have the regulatory status to end discriminatory practices in the private sector, marking a departure from the directives given in the CESCR's *General Comment No. 10*, the CEDAW Committee's *Statement on the Elimination of Discrimination against Women*, and the OSCE Office for Democratic Institutions and Human Rights' (OSCE/ODIHR) *Handbook for National Human Rights Institutions on Women's Rights and Gender Equality*. Pursuant to Article 2 of the *Organic Act of the Control Yuan National Human Rights Commission*, when handling complaints, the NHRC determines whether the matter in question constitutes a systemic, widespread discriminatory practice in society (including in the private sector) in accordance with the equality/non-discrimination principles provided in CEDAW and other human rights conventions. If so, the NHRC oversees the government in the fulfillment of its national obligations set forth under CEDAW and other conventions. Such measures may include due diligence in investigation and taking all necessary measures to protect people from discrimination by third parties. Finally, if structural or systemic issues are identified, the NHRC is charged with providing the government with regulatory or policy recommendations to strengthen the

protection of human rights.<sup>5</sup>

### **3. Data collection methodology**

On February 29, 2024, the NHRC explained to the complainant the differences in authority between it and the NHRCK and explained that, if the matter in question is determined to constitute gender discrimination, the NHRC would only be capable of providing policy recommendations.

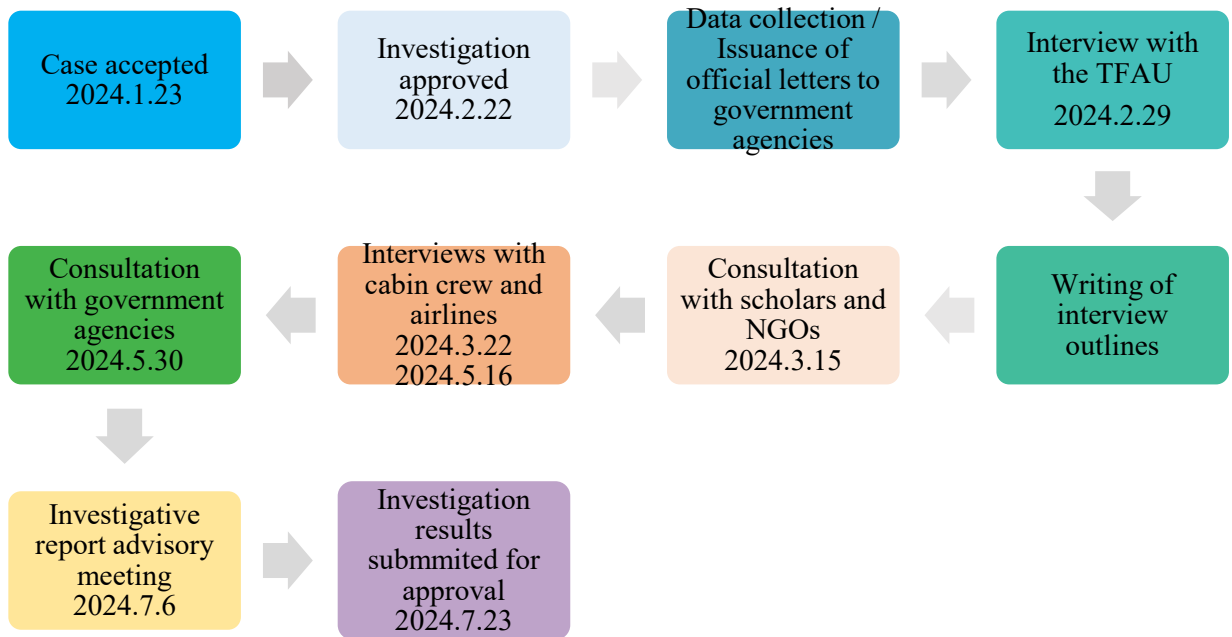
To reiterate, the focus of the investigation is on whether the case constitutes gender discrimination and whether the government has fulfilled its national responsibilities set forth in the applicable human rights conventions. The NHRC referenced the Asian Pacific Forum's (APF) *Undertaking Effective Investigations: A Guide for National Human Rights Institutions* in the formulation of its investigative plan.<sup>6</sup> Please refer to Figure 1 for a summary of the NHRC's data collection and investigation methodology.

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<sup>5</sup> See Paragraph 3 of CESCR's *General Comment No. 10*, the CEDAW Committee's *Statement on the Elimination of Discrimination against Women* (E/CN.6/2008/CRP.1), and OSCE/ODIHR's *Handbook for National Human Rights Institutions on Women's Rights and Gender Equality* (2012).

<sup>6</sup> APF (2013, updated May 2018). *Undertaking Effective Investigations: A Guide for National Human Rights Institutions*.

[Figure 1] Investigative procedures



[Data sources] The NHRC

## 1) Data collection and issuance of official letters of inquiry to government agencies

In addition to the documentation provided by the complainant, the NHRC collected evidence from a wide range of sources and issued official letters to government agencies to request additional data, including airline company bylaws, official government approval documents, meeting minutes, investigative reports, and domestic and international dress code studies.

## 2) Interviews with stakeholders

The NHRC interviewed union members, cabin crew, and airline representatives. It is worth noting that, despite the NHRC's plans to interview cabin crew from all six airlines, only cabin crew from two of the airlines agreed to take part in the investigation (representatives of all six airlines participated in interviews). Prior to the start of each interview, the participants were informed of the NHRC's authority and the purpose of the interview.

### 3) Consultation with experts, scholars, and NGOs

The NHRC consulted experts, scholars, and NGOs in the fields of gender equity, labor rights, and civil aviation when defining the scope of the investigation, developing interview questions, interpreting regulations and case studies, and determining the validity of evidence.

### 4) Advisory meeting with the competent authorities

The NHRC consulted with the Executive Yuan Gender Equality Committee (GEC), Department of Human Rights and Transitional Justice (DHRTJ), Ministry of Transportation and Communications (MOTC), Ministry of Labor (MOL), and Taoyuan City Government on the interpretation and applicability of domestic regulations pertaining to the enforcement of CEDAW and other human rights conventions. Except for the DHRTJ, which provided a statement in writing, all government agencies attended advisory meetings to provide their interpretations of CEDAW and domestic labor laws and share their achievements in safeguarding women's rights and fostering gender equality.

## 4. Gender distribution of cabin crew and pursers (in-flight service managers) across six airlines in Taiwan

Based on data provided by the Civil Aviation Administration, MOTC, the six Taiwanese airlines employ a total of 8,911 cabin crew [Table 1], of whom 8,206 are women (92.09%) and 705 are men (7.91%). Between 58% to 100% of pursers are women, while 0% to 42% are men [Table 2].

[Table 1] Employee composition overview across six Taiwanese airlines

Airline	Total no. of employees	Number of cabin crew	Cabin crew as a percent of all employees	Number of male attendants	Percentage of male attendants	Number of female attendants	Percentage of female attendants
China Airlines	11,462	3,030	26.44%	341	11.25%	2,689	88.75%
EVA Airways	9,623	4,546	47.24%	130	2.86%	4,416	97.14%
Starlux Airlines	4,381	824	18.81%	167	20.27%	657	79.73%
Mandarin Airlines	887	131	14.77%	11	8.40%	120	91.60%
Tigerair Taiwan	796	257	32.29%	49	19.07%	208	80.93%

Airline	Total no. of employees	Number of cabin crew	Cabin crew as a percent of all employees	Number of male attendants	Percentage of male attendants	Number of female attendants	Percentage of female attendants
UNI Airways	627	123	19.62%	7	5.69%	116	94.31%
<b>Total</b>	<b>27,776</b>	<b>8,911</b>	<b>32.08%</b>	<b>705</b>	<b>7.91%</b>	<b>8,206</b>	<b>92.09%</b>

[Data sources] Provided by the Civil Aviation Administration and taken from the meeting minutes of the Female Cabin crew Dress Code/CEDAW Enforcement Advisory Meeting on January 4, 2024

[Table 2] Number of pursers by gender across six Taiwanese airlines

Airline	Number of pursers	Number (%) of male pursers	Number (%) of female pursers
China Airlines	335**	99 (30%)	236 (70%)
EVA Airways	Not provided	0% <sup>+</sup>	100% <sup>+</sup>
Starlux Airlines	Not provided	23% <sup>+</sup>	77% <sup>+</sup>
Mandarin Airlines	26**	6 (42%)	20 (58%)
Tigerair Taiwan	65*	17 (26%)	48 (74%)
UNI Airways	Not provided	21% <sup>+</sup>	79% <sup>+</sup>

[Data sources]

<sup>+</sup> January figures: Provided by the Civil Aviation Administration and taken from the meeting minutes of the Female Cabin crew Dress Code/CEDAW Enforcement Advisory Meeting on January 4, 2024

\* May figures: Based on the Commission’s interview records with six airline companies dated May 16, 2024

\*\* June figures: Based on transcripts of telephone calls made on June 20, 2024

## 5. Before and after the filing of the complaint

### 1) Taoyuan Flight Attendants Union describes events leading up to the complaint

Before the TFAU filed the complaint with the Commission on August 1, 2023, thirteen cabin crew who are members of the TFAU had filed a complaint with the Taoyuan City Government in April 2023 against EVA Airways Corporation for violations of the *Gender Equality in Employment Act*. The complainant alleged that the company dress code (specifically,

the rules regarding skirts, high heels, and makeup) and subsidies provided by Eva Airways for leather shoes constitute gender discrimination, and that the 2023 performance evaluation criteria set by Eva Airways adversely affect cabin crew who apply for menstrual leave, maternity leave, parental leave, or family care leave.

At the 6<sup>th</sup> committee meeting of 2023 on August 31, the Taoyuan City Government Gender Equality in Employment Committee ruled that “the subject of complaint is found not in violation of Article 7 and Paragraph 2, Article 21 of the *Gender Equality in Employment Act*.”<sup>7</sup> Dissatisfied with the outcome, the Grievant applied for a review with the Ministry of Labor Gender Equality in Employment Committee on October 2. On May 6, 2024, the Ministry of Labor Gender Equality in Employment Committee rejected the application and concluded that “the original decision shall be maintained.”<sup>8</sup>

As for the reasons why the Taoyuan City Government and the Ministry of Labor believe that Eva Airways did not violate the *Gender Equality in Employment Act*, see Chapter IV, Section 5. (See Table 3 for a comparison of the content of the complaint handled by the Commission, Taoyuan City Government, and Ministry of Labor.)

## **2) A flag carrier company describes events leading up to the complaint**

This section provides a summary of the processes by which airline companies revise their dress code, performance appraisal, reward and disciplinary action, among other management measures before and after the complaint. For specific rules and contents, see Chapter IV, Section 5.

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<sup>7</sup> Final Decision Report of Taoyuan City Government Gender Equality in Employment Committee, September 26, 2023 (Fu-Lao-Tiao-Zi No. 1120262814).

<sup>8</sup> Final Decision Report of Ministry of Labor Gender Equality in Employment Committee, May 6, 2024 (Lao-Dong-Tiao-Zi No. 1130148098).

[Table 3] A comparison of the dress code complaints

Handling Agency	Grievant	Subject of Complaint	Allegation
National Human Rights Commission	Taoyuan Flight Attendants Union (TFAU)	National flag carrier	<ol style="list-style-type: none"> <li>1. Dress code is discriminatory and contravenes CEDAW.</li> <li>2. Current laws and regulations fail to address collective gender-based discrimination.</li> </ol>
Taoyuan City Government, Ministry of Labor	Eva Airways cabin crew	Eva Airways Corporation	<ol style="list-style-type: none"> <li>1. Dress code and subsidy for leather shoes discriminate against women, which is a violation of the <i>Gender Equality in Employment Act</i>.</li> <li>2. Adverse impact on cabin crew who apply for maternity leave or other types of leave is a violation of the <i>Gender Equality in Employment Act</i>.</li> </ol>

Source: Compiled by the Commission

### a. Dress code revisions

Most airline companies have different dress code requirements for male and female cabin crew.<sup>9</sup> For example, Tigerair Taiwan has adopted some of Tigerair Singapore’s uniform requirements - both men and women may wear pantsuits, while rules with respect to makeup, hairstyle, and socks are different for men and women, albeit minimally compared with other airline companies.

Eva Airways, however, does not have different dress code requirements for men and women; according to the complainant, this is because the company initially only hired female cabin crew and it was therefore not necessary to make references to gender. Eva Airways began hiring male cabin crew after the 2019 strike and has since then specified gender in its rules and requirements by referencing “male” cabin crew.

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<sup>9</sup> Jiao-Hang (I) Letter No. 1138100135 dated April 26, 2024 and Jiao-Hang (I) Letter No. 1138100223 dated June 11, 2024 issued by Civil Aviation Administration, Ministry of Transportation and Communications.



Where no specific mention of gender is made in the rules, the content generally refers to female cabin crew.<sup>10</sup>

After the complaint was filed with the NHRC on August 1, 2023, changes to uniform rules were made by China Airlines and Mandarin Airlines in September, Starlux Airlines in October, and Tigerair Taiwan in November of 2023, and by Eva Airways and UNI Airways in January 2024. Most of the companies made changes to their rules regarding makeup and accessories (e.g., scarf tying methods, nail polish color, etc.), while some companies began allowing staff to wear their uniforms on public transportation. However, no significant changes were made to the point of contention in this complaint: the gender-based uniform rules regarding pants/skirts, socks/stockings, and makeup and hairstyle.

Regarding shoes, Eva Airways and UNI Airways originally required that all shoes – high heels, flats, and leather shoes – must be kept polished at all times. This requirement now only applies to leather shoes in the revised rules. According to an interview, Eva Airways initially required female cabin crew to wear high heels outside of the cabin (while boarding and disembarking and during meetings), and to change into their work shoes (flat-heeled shoes) when working in the cabin, while the only requirement for male cabin crew was to wear leather shoes. In 2023, Eva Airways relaxed this requirement, allowing female cabin crew to wear their choice of footwear, provided that the shoes have a minimum heel height of 2.5 cm, which is similar to the heel height of men’s leather shoes. However, female cabin crew are still required to change into their work shoes for in-flight service. In other words, female cabin crew must have two pairs of shoes when on duty, whereas male cabin crew only require one.<sup>11</sup>

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<sup>10</sup> The Commission’s interview records with the complainant dated February 29 and March 22, 2024.

<sup>11</sup> A compilation of the Commission’s interview records dated February 29 and March 22, 2024; and interview records of six airline companies dated May 16.

## **b. Changes to performance review rules, rewards, and disciplinary action**

According to a review of performance-related rules and regulations enforced by airline companies, two companies expressly state that work attire is linked to performance reviews, whereas the other companies do not. Employees are generally evaluated for their “performance as an individual,” “personality traits,” “professionalism,” “performance during in-flight service,” “attitude toward work,” “teamwork,” and “willingness to learn.” It is not possible to determine with certainty whether work attire influences performance reviews based on these items.

The complainant indicated that, even if workplace attire is not explicitly included in performance reviews, those who fail to comply with the dress code may be asked by the purser to dress accordingly, undergo inspection by the management department, or, in some cases, find themselves subject to constant scrutiny by other pursers during other flights.<sup>12</sup>

Airline company representatives have responded that workplace attire carries very little weight in performance reviews, and cabin crew may strive in other areas to boost their evaluation. Several airline companies have harnessed the power of incentives by rewarding those whose attire is praised by flight passengers (documented in purser’s written reports).<sup>13</sup>

In a comparison of airline companies’ pre- and post- August 1, 2023 performance requirements,<sup>14</sup> no significant changes were found except for minor adjustments to the scores or weights of evaluation items.

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<sup>12</sup> The Commission’s interview records with the complainant dated February 29 and March 22, 2024

<sup>13</sup> The Commission’s interview records with six airline companies dated May 16, 2024

<sup>14</sup> Jiao-Hang (I) Letter No. 1138100135 dated April 26, 2024 and Jiao-Hang (I) Letter No. 1138100223 dated June 11, 2024 issued by the Civil Aviation Administration, Ministry of Transportation and Communications

## **6. Facts about the dress code policy: Statements by each party and actual dress code requirements**

This section is structured as follows: Opinions shared by a group of complainants or airlines are provided in summary form, while opinions restricted to a single individual or airline are presented in separate paragraphs. The purpose of this investigative report is to illuminate structural or systemic phenomena or problems, and not to cast blame. Opinions are presented anonymously as much as possible through the use of aliases. An alias will not be used if the person or entity is still identifiable.

### **1) Does the dress code discriminate based on gender?**

#### **a. Statements by the complainant<sup>15</sup>**

##### **a) Uniform**

Wearing skirts restricts movement during in-flight service, especially when cabin crew have to reach the overhead bin or squat down to pick up meal trays. Some companies require crew members to squat down when serving business class passengers.

Airline companies do not consult cabin crew when designing uniforms. Decisions are usually made by the head of the cabin crew department who does not work at the frontline and therefore does not truly understand the inconveniences that may be encountered at work.

Cabin crew from one company have previously demanded in union meetings and via the company's internal communication channels that union reps or cabin crew be included in the uniform design process. However, the company simply replied that pantsuits would be considered as an option while providing no specifics as to when a new uniform would be designed or what improvements or changes would be made at that time.

The TAFU did offer Eva Airways a short-term solution: to allow

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<sup>15</sup> The Commission's interview records with the complainant dated February 29 and March 22, 2024

cabin crew to wear the pantsuit uniform available in its inventory for the time being.

One cabin crew proposed making uniform rules gender-neutral in the long run, and giving both men and women cabin crew members more flexibility in their uniforms and attire.

#### b) Shoes

Many airline companies require female cabin crew to wear high heels when boarding or disembarking from the plane, and then change into work shoes for in-flight service. The only shoe requirement for male cabin crew is that they wear leather shoes throughout.

Eva Airways originally required female cabin crew to wear shoes with a minimum heel height of 7 cm when boarding or disembarking. The TAFU managed to reduce this heel requirement first to 3 cm and then to 2.5 cm when it filed a complaint with the Taoyuan City Government.

Eva Airways initially subsidized the purchase of two pairs of shoes per year at a rate of NT\$2,500 per pair for men and NT\$1,650 per pair for women, their reason being that men's shoes are more expensive. Again, after the TAFU filed a complaint with the Taoyuan City Government, this requirement was revised to NT\$2,500 per pair for both men and women and NT\$3,300 for two pairs (i.e., NT\$1,650 per pair). Men can choose to buy only one pair of shoes (entitling them to the NT\$2,500 subsidy), whereas female cabin crew will have to buy two pairs, one with heels and one pair of flats.

#### c) Hair and makeup

Each airline company requires female cabin crew, but not men, to wear makeup at their own expense. The airlines refuse to subsidize makeup costs.

Eva Airways regulations are rather special, according to a cabin crew. The company began hiring male crew members only in recent years; therefore, the term “客艙組員” (cabin crew member or cabin crew) in

company rules generally refers specifically to female cabin crew, whereas the term “male crew member” is used when a rule applies to men.

During appearance and makeup checks by the purser, female cabin crew are reminded to refresh their makeup (lipstick/eye shadow/eyebrow pencil), are criticized for having a dull complexion, and are told how to style their hair. Men are subject to beard checks only but are not required to wear makeup.

Compared with men, women crew members have to spend at least an hour—30 to 40 minutes longer than men—on hair and makeup. Throughout cabin service, the purser occasionally reminds female cabin crew to maintain a neat and tidy appearance.

d) The effect of grooming checks on performance evaluations

The purser performs pre-flight grooming checks and requires immediate correction of non-conformances or takes note of non-conformances and schedules re-inspection for later. A cabin crew was informed that disciplinary action may be taken against those who continuously fail to comply, but states that this is unheard of as yet because everyone usually complies to pass re-inspection. Another cabin crew described a similar procedure in that failure to comply with grooming standards would lead to disciplinary action according to company rules. Two other crew members explained that any documented non-conformity, even if they pass reinspection, influences a cabin supervisor’s evaluation of their performance.

*“If [a cabin crew] gets written-up, the management department keeps a record of it, which may be taken into consideration in performance reviews. [My] supervisor said they use these records as a basis for evaluation [because] there are too many people to evaluate.”*

*“Write-ups or improvement requests are usually directed at female cabin crew. [I] have never heard of men getting written up. [This is] because women are being nitpicked on a greater number of*

*things such as skirt length, nails, hairstyle, and general appearance.”*

**b. Statements by the respondents**<sup>16</sup>

a) Uniforms

Several of the airlines stated that uniforms are designed with both the company’s professional image and differing job requirements in mind. One company requires its female crew members to wear one-piece dresses for their own convenience. Another company’s uniform requirements for female cabin crew are based on cost considerations rather than gender. The creation of airline uniforms typically involves the relevant departments establishing a dedicated team to discuss designs and collect opinions from cabin crew.

**Airline A:** Skirts have long been the preferred uniform option for female cabin crew because they convey the elegance and grace of women. So when designing uniforms, there is no conscious decision to design pants or skirts, but rather just a continuation of what has always been done. The company convenes monthly meetings with the union. Union reps are aware that any uniform changes must be implemented company-wide, so they have not raised any special requests during the meetings, but only asked if they can put forward opinions or what the company’s plans are. At present, our management department has not received any requests from cabin crew members to wear pants.

**Airline D:** Cabin crew are tasked with serving passengers, which is irrelevant to whether they wear skirts or pants. Our uniform was previously a blouse and skirt, but our crew complained that the blouse would come untucked when they raised their arms to help passengers, which is why we switched to one-piece dresses. No one requested pants when we redesigned our uniforms in 2015.

**Airline F:** The company has shareholders and operating costs to

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<sup>16</sup> The Commission’s interview records with six airline companies dated May 16, 2024.

consider, so it needs to simplify inventory management. Simple uniform styles such as skirts are the easiest to manage; shirts, on the other hand, have complex collar and shoulder length requirements. In the fourth quarter of 2023, the company conducted an anonymous survey of 600 female cabin crew, and the result showed that 40% wanted to keep the skirt uniforms while 20% wanted to wear pants.

**Starlux Airlines:** The corporate union had not yet been established at the time our uniform was designed, so we were unable to seek opinions. Several cabin crew members had a look at the uniforms before a final decision was made by our chair.

**Tigerair Taiwan:** We allow both male and female cabin crew to wear pants in accordance with the uniform policy of Tigerair Singapore. Pants are gender-neutral, easier to move around in, and aesthetically appealing.

Most companies expressed an inability to provide female cabin crew with the option of wearing pants in the short term, but stated they will give employees the option to do so and design the next set of uniforms with consideration given to employee perspectives, government regulations, the company's professional image, public opinion, and practicality.

**Airline A:** Uniforms represent a company's image and its respect for passengers. Changing the uniform design is extremely important for airlines. Uniforms should have an overall design, and replacing a part of the uniform with pants is not advisable. Changes to uniforms must be aligned with the company's business strategy. Uniforms are worn for about 10 years or longer.

**Airline B:** Beginning in July 2023, female ground staff (tarmac workers) were given the option of wearing skirts or pants. This however only applies to service or maintenance personnel, the nature of whose work differs from that of cabin crew. If the group decides to loosen its dress code policy, it will be implemented in

accordance with the group's regulations.

**Airline C:** When changing our uniform designs in the future, we will consider giving cabin crew the option to wear pants or skirts.

**Airline D:** Workers at cargo terminals wear pants. The problem with two-piece uniforms comprising short shirts and pants is that the wearer's navel can be exposed when they raise their arms, which contradicts the recommendations provided by the cabin crew. A uniform reflects a company's image. It is not possible to modify our uniforms immediately, given the cost considerations. Based on past experience, uniforms are redesigned every 12 to 15 years to keep pace with changes such as company image or logo or for other considerations.

**Airline F:** Even if we do not redesign our uniform and instead offer the pants currently worn by female ground workers as an option for female cabin crew, a preliminary estimate of at least NT\$50 million is required (to effect this change), which will significantly increase inventory costs. Cabin crew do not make up the entirety of the company's employees. It is not advisable to spend all of the company's resources on cabin crew uniforms, which would affect the year-end bonuses and other benefits to which other employees are entitled. It would also be impossible to explain the rationality of our finances to our shareholders, and the general public might also question whether the cost of the new uniforms was included in the ticket prices. In addition, uniforms for airport ground workers are designed differently because the nature of the work done by ground staff, such as the area, distance, and time that ground workers have to cover when walking and moving around in the airport, is different from that of flight crew.

b) Hair and makeup

Some companies explained that there are grooming requirements in place for both male and female cabin crew. Men can wear makeup if they want to, and makeup courses are available to teach everyone how to wear



makeup.

**Airline D:** The company stipulates that makeup should only be used in moderation. Cabin crew can choose to wear only lipstick and no other makeup. The company's rules apply to all cabin crew members. Our makeup, lipstick, and nail requirements apply to everyone irrespective of gender. We do not specify gender in our rules; the term "cabin crew member" refers to both men and women. We treat both men and women equally.

**Airline F:** The company has no specific makeup requirements, as long as the makeup makes the cabin crew look professional, tidy, and well-groomed to passengers.

c) The effect of grooming checks on performance evaluations

One airline company said disciplinary measures are taken only if a dress code violation severely influences the airline's image. Two companies are not overly focused on workplace attire during performance reviews. Three companies have no disciplinary measures in place, and they do not assess crew members on their attire. Four companies give bonus points in performance reviews to those with excellent performance in personal grooming and appearance.

**Airline A:** Grooming standards and appearance are not assessed, but are observed, during annual performance reviews. Any non-compliance results in a verbal warning and deadline for improvement and is considered resolved after improvements are made. However, the purser selects and gives bonus points to cabin crew who keep themselves clean, well-groomed, and tidy throughout a flight.

**Airline B:** Dress code non-compliances that cannot be remedied on the spot are scored accordingly in the purser's online review, but these bear very little weight in performance reviews. There are many other ways for cabin crew to demonstrate their competency and earn extra points.

**Airline C:** Any non-compliance is subject to reinspection and follow-up after it is documented in a report and instructions for improvement are given verbally. Self-management counts for 20% of the purser's evaluation on each flight, and appearance is only one of the many items assessed under self-management, so it has a negligible influence on performance reviews. A "best dressed" cabin crew is selected after each flight, and the top three earn extra points in the self-management category each quarter.

**Airline D:** There are only rules on what is expected. We do not take disciplinary action or give demerits for not putting on lipstick or eyebrow pencil just so. If a cabin crew chooses to work without makeup even when others are very pretty in their makeup, this is their decision - the company respects their decision regardless and will not punish them for it.

**Airline E:** Any praise cabin crew members receive from passengers for their attire and appearance is documented by the chief cabin crew or purser, and the company awards extra points in their performance review to encourage continuous improvement.

**Airline F:** The company has disciplinary measures in place, but we do not punish cabin crew for not complying with uniform standards such as lipstick color, hairstyle, and the height of high heels unless their conduct affects the company's image. Crew members receiving praise, in writing, from passengers for their attire are awarded extra points in their performance review.

### c. **Statements by government agencies**

#### a) Taoyuan City Government

The Taoyuan City Government Gender Equality in Employment Committee ruled that Eva Airways did not violate Article 7 of the *Gender Equality in Employment Act* for the following reasons:<sup>17</sup>

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<sup>17</sup> Final Decision Report of Taoyuan City Government Gender Equality in

- According to Article 13, Chapter 10 of Eva Airways' Cabin Crew Management Regulations, "Cabin crew members must wear an appropriate amount of makeup when on duty." This rule is not discriminatory because it does not specify that only women must wear makeup and men are not required to wear makeup.
- The subsidies provided for the purchase of leather shoes on May 1, 2023 are not discriminatory.
- The different heel height requirements are not discriminatory.
- Cabin crew have neither reported specific cases of adverse treatment for not meeting makeup and high heel requirements, nor described the specific nature of such adverse treatment. It is difficult to conclude that Eva Airways is discriminatory in its dress code policies and practices with respect to when specific types of shoes must be worn.
- In requiring female cabin crew to wear a dress when on duty, Eva Airways did not treat female cabin crew adversely due to their gender.

b) Ministry of Labor

In 2023, the Ministry of Labor explained in a letter to the Commission that whether airline requirements for employees to wear specific uniforms when on duty in an aircraft are necessary for the performance of duties and whether gender-based rules constitute employment discrimination should be determined on the basis of the facts of the entire case, taking aviation safety and professionalism into consideration.<sup>18</sup>

As indicated previously, the Taoyuan City Government issued its final decision concluding that Eva Airways did not engage in adverse treatment based on the following two facts: (1) Eva Airways did not treat female cabin crew adversely because of their gender in regards to requiring female cabin crew to wear dresses when on duty. (2) It is difficult to conclude that Eva Airways is discriminatory in its dress code policies and practices with respect to the circumstances in which specific shoes must be worn, considering that no cabin crew have reported specific cases of receiving

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Employment Committee, September 26, 2023 (Fu-Lao-Tiao-Zi No. 1120262814).

<sup>18</sup> As described in Lao-Dong-Tiao (IV) Letter No. 1120080041 issued by the Ministry of Labor on November 9, 2023.

adverse treatment for not meeting clothing and appearance requirements or described the specific nature of such adverse treatment. In its Final Decision Report of the Ministry of Labor Gender Equality in Employment Committee, the Committee upheld the original disposition, arguing that the final decision made by the Taoyuan City Government is difficult to dispute. However, since company employees have formed an opinion about wearing skirt uniforms, the Committee advised the employer to effectively communicate with employees to address this issue in order to conform to CEDAW practices.<sup>19</sup>

The Ministry of Labor further explained that the definition of “discriminatory treatment” provided in the *Enforcement Rules for the Act of Gender Equality in Employment* includes both direct and indirect adverse treatment. When employees or job applicants allege discriminatory treatment in labor conditions or management measures due to gender, the employer shall make a statement on the discriminatory treatment and shoulder the burden of proof. When employees make a statement on the facts of being discriminated against due to their gender, the competent authority will launch an investigation. If the employer is unable to disprove discriminatory treatment, the local competent authority is likely to determine that discriminatory treatment has occurred. Any determination and resultant handling of discrimination shall be based on the facts of the case. Additionally, the term “gender identity” falls within the scope of “gender and sexual orientation” as mentioned in the *Gender Equality in Employment Act*.<sup>20</sup>

The Ministry of Labor’s opinion on this case is summarized as follows. Eva Airways’ dress code requires cabin crew to wear an appropriate amount of makeup and maintain proper posture when on duty to demonstrate common courtesy and befitting conduct. The code does not expressly stipulate that women must wear makeup and that men are not required to wear makeup. The *Gender Equality in Employment Act* applies to all sectors and industries. Many sectors require employees to wear

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<sup>19</sup> Final Decision Report of Ministry of Labor Gender Equality in Employment Committee, May 6, 2024 (Lao-Dong-Tiao-Zi No. 1130148098).

<sup>20</sup> The Commission’s meeting minutes with the advisory body on May 30, 2024.

uniforms for the purpose of upholding the company's image or for management considerations. If a uniform policy includes only skirts and no pants options, it may potentially be seen as gender discrimination, which could have significant consequences. Regarding whether employers must provide two sets of uniforms (skirts and pants), many employers provide only pants due to cost considerations, though some employees may prefer skirts. Given the range of employee preferences, the Ministry believes employers should engage in effective communication with employees regarding uniforms options.<sup>21</sup>

c) Ministry of Transportation and Communications

The Ministry of Transportation and Communications stated that cabin crew wear work clothes (workwear) instead of uniforms during emergency response training. Because clothes are easily soiled during emergency training or testing, airlines opt for work clothes, which are easier to clean and more durable than uniforms and can be worn repeatedly in drills. Work clothes are made of non-breathable, thick, heavy materials that are unsuitable for wear for general duty performance. Globally, cabin crew wear work clothes only during emergency training.<sup>22</sup>

The *Aircraft Flight Operation Regulations* require on-duty crew members to wear uniforms for the purpose of identifying them as cabin crew so that passengers know exactly who to ask for help when an emergency occurs. Skirts and pants are not the focus of these Regulations. According to an internal survey conducted by an airline company, 68% of female cabin crew preferred skirts.<sup>23</sup>

d) Department of Gender Equality, Executive Yuan<sup>24</sup>

The Department of Gender Equality, Executive Yuan argues that restricting female employees to skirts or high heels for non-work-related purposes is a contravention of Article 5(a) of CEDAW and a form of stereotyping. This is gender discrimination and a direct form of it because

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<sup>21</sup> The Commission's meeting minutes with the advisory body on May 30, 2024.

<sup>22</sup> As explained in Jiao-Hang (I) Letter No. 1128130087 dated November 29, 2023 issued by the Ministry of Transportation and Communications.

<sup>23</sup> The Commission's meeting minutes with the advisory body on May 30, 2024.

<sup>24</sup> The Commission's meeting minutes with the advisory body on May 30, 2024.

it is clearly a distinction based on sex, and the rule applies to women only. If such companies give women the option of wearing skirts or pants, it would conform to gender equality and there would be no stereotyping.

The Department of Gender Equality, Executive Yuan further explained that the discriminatory treatment of stipulating different requirements for different genders constitutes direct discrimination. Another possible scenario is that both men and women are subject to the same rules and requirements, but in practice, only women and not men are penalized for not wearing makeup; if disciplinary results indicate that this is true, then in fact it constitutes indirect discrimination; however, further evidence is required.

#### **d. Airline dress code policies**

##### **a) Uniforms**

Female cabin crew from five airline companies only have the option of wearing skirts, whereas men wear pants. In one airline company, both male and female cabin crew wear pants.

##### **b) Shoes**

Two airline companies expressly require female cabin crew to wear high heels outside of the cabin (while boarding and disembarking), whereas four airlines do not explicitly specify what shoes to wear when on duty outside of the cabin. Four airlines require female cabin crew to wear flats or work shoes while flying, and two companies do not specify. Six of the airlines require male cabin crew to wear leather shoes, but they do not specify where (inside or outside of the cabin).

##### **c) Socks/Stockings**

Six airlines require female cabin crew to wear stockings when on duty. Two of these require them to carry spare stockings when on duty. Male cabin crew members wear socks.

##### **d) Makeup and hair**

Six airlines stipulate that female cabin crew should wear makeup. They have a wide-ranging list of makeup requirements, such as: the makeup should maintain a glowing complexion, it must be complementary

to the uniform, and the eyebrow makeup, eye shadow, lipstick, and nail polish must be in specific colors or styles. A few companies even require female cabin crew to refresh their makeup as necessary when on duty to maintain a fresh appearance and avoid greasy skin.

Male cabin crew are required to keep a well-groomed appearance to demonstrate common courtesy, and their facial hair and nails must be kept in a clean, neat, and well-groomed condition.

e) The effect of grooming checks on performance evaluations

Two airlines expressly state that non-compliances are subject to disciplinary action, and one company evaluates employees on clothing and appearance during performance reviews.

**Airline A:** Appearance, personal grooming, and hygiene are assessed under the general job performance category during performance reviews. Non-compliance with dress code policies is subject to disciplinary action, according to the reward and disciplinary regulations for cabin crew members.

**Airline B:** Non-compliances with uniform requirements for cabin crew members are subject to disciplinary action.

**2) Are there health and safety risks associated with dress code policies?**

**a. Statements by the complainant**

a) Uniform

Health and safety risks include exposing body parts, prone to fall, and difficulty to handle emergency situations, according to cabin crew.

Cabin crew have to perform many actions when on duty, such as squatting, raising their arm, climbing, or sitting down, which increase the risk of exposing their body part or falling. They have to sit in front of passengers during takeoff and landing, and some of them feel self-

conscious or uncomfortable in skirts. There were also cases of being photographed by passengers without permission.

Cabin crew from an airline company had filed a complaint. The only response from the company was to “sit with their legs slanted to the side” as a precaution. They are not allowed to cover their legs with a blanket. In addition, when wearing short-sleeved shirts or shirts with excessively wide cuffs, cabin crew tend to feel exposed when helping passengers with the overhead bin.

A cabin crew had experienced a severe fall because her skirt restricted her movement.

*“You should be able to avoid a fall by balancing yourself with your feet wide apart. I once tripped and fell and sustained a serious injury for months. It could have been prevented if I were able to take a big step forward but the hem of the skirt restricted my movement.”*

The TFAU complained that flag carrier companies require pants to be worn during aviation safety training (opening and closing cabin doors, using evacuation slides and lifeboats, etc.) regardless of gender, but during in-flight services, male cabin crew wear pants, and female cabin crew are required to wear skirts.

*“Airline companies explain that they hope to protect cabin crew from injuries during refresher training, which is conducted to review and update a skill. Wearing skirts increases risks during emergencies. For example, sliding down an evacuation slide increases the force of friction, which may lead to unexpected situations such as skirt getting caught in the slide or being lifted up. Cabin crew also have to wear their own sneakers or sports shoes during training. They have never been trained in their uniform.”*

## b) Shoes



The Grievant listed several health risks of wearing high heels, including being prone to such medical conditions as bunion (hallux valgus) and plantar heel pain (plantar fasciitis). Falls are also a common cause of injury. Some cabin crew were still asked to wear high heels even after providing a doctor's certificate. Some were relieved of the requirement, provided that they present a doctor's certificate and be assessed by the company's physician to determine whether they can work in their own shoes or take leave of absence. Regardless of how long the doctor signs them off work (e.g., 3 months), airlines only approve a month-long leave of absence, and a new application must be submitted for extension.

*"I had a doctor's certificate for plantar fasciitis, but I was still asked to wear high heels."*

*"Company-issued heels do not necessarily fit the shape of my foot. This is a pair of bespoke shoes that cannot be purchased elsewhere."*

*"Falling or slipping during boarding/disembarking or getting on/off a bus is commonly reported. It is very difficult to walk in high heels on snow/ice-covered surface. It is up to the purser whether we can change into our flats after disembarking from the plane. We cannot make our own choices."*

#### c) Stockings

Stockings are susceptible to catching fire and easily cause burn injuries. When an emergency occurs, there is no time to remove stockings. Many cabin crew consider stockings unsafe. They have reported the issue on the company's internal platform, but the company have yet to provide a response.

#### b. Statements by the respondents

a) Uniform

Some companies attribute falls to personal negligence and claim that skirt wearers generally pay heed to the way they walk and move around.

**Airline D:** Anyone can sustain work-related injuries regardless of what they wear - skirts or pants. You should maintain situational awareness as you board or disembark from the plane. Work-related injuries can occur no matter what you wear.

**Airline E:** Men have better motor functions than women and thus are less prone to injuries when boarding or disembarking. Female cabin crew often use hand cream. There have been cases of women falling down the stairs as their hand slipped off the handrail.

**Airline F:** Dress wearers will be mindful of their walking speed and stride length. On the contrary, many people feel that wearing pants enables them to move, walk, or jump freely or climb the stairs three steps at a time. The key is your attitude when wearing the uniform and your ability to show restraint in your movements and actions.

When the Commission presented airlines with research findings that four times more women than men in the aviation industry have applied for compensation due to falls at work, a few of the companies ascribed this phenomenon to gender-based differences, stating that men and women react differently to injuries because of disparities in physical strength.

**Airline E:** Men may not necessarily report a work injury for personal reasons.

**Airline F:** Are the data and facts surrounding work injuries absolutely comparable? Needless to say, the company encourages employees not to endure pain and to apply for leave and compensation when necessary. But according to the actual circumstances at our company, however, women apply even for minor injuries, whereas men are less inclined to apply probably due

to the influence of traditional Confucian culture and a sense that it is unmanly to do so.

A majority of the airlines contended that there are no laws in Taiwan or other countries that prohibit employees from wearing skirts, nor any studies that indicate that only pants should be worn because skirts pose safety concerns during evacuations. The fact that skirts lead to a risk of exposure of certain body parts is not a problem seen only in the aviation industry. This problem is just as likely to occur in any other setting, such as on MRTs where the seats are designed in such a way that passengers face one another, which also increases the risk of exposure.

The Civil Aviation Administration mandates evacuation training when a new aircraft model is introduced. In such cases, uniforms are worn throughout training, including for evacuation procedures, sliding down evacuation slides, and getting on lifeboats. In contrast, routine evacuation training involves performing the same action repeatedly. Although cabin crew can be trained in their uniforms, this type of training accelerates uniform wear and tear, leading to increased training costs. This is why cabin crew train in flats and pants during routine training.

#### b) Shoes

Several airlines consider a heel height of 2.5 cm or 3 cm to be appropriate for walking to and from the plane as it is similar to the heel of men's leather shoes. Cabin crew can change into flat shoes after they board the plane.

**Airline A:** Cabin crew can choose to wear shoes with either 3-cm or 6-cm heels when boarding or disembarking from the plane. A heel height of 3 cm is not very high. Some crew members may have plantar fasciitis that renders them unable to walk in high heels. As long as they inform the management department, they are allowed to work in flat shoes or work shoes issued by the company.

**Eva Airways:** As of May 2023, the company allows female cabin crew to wear shoes with a 2.5-cm heel height, which is roughly the

same as that of men's leather shoes, so that men and women are treated equally. Female cabin crew can work in those shoes during in-flight service or change into flat shoes.

c) Stockings

Numerous companies consider stockings safe even during evacuation. In case of emergency evacuation, passengers are generally asked to remove their high heels, not stockings. Studies on the risks and safety concerns of stockings are focused on the comfort level of passengers traveling on airplanes.

**c. Statements by government agencies<sup>25</sup>**

a) Ministry of Labor

According to the Ministry of Labor, occupational safety and health laws only provide provisions on clothing in situations in which there is potential for imminent danger, such as overly long sleeves, scarves, or hair that could get caught in machinery. There are no provisions on clothing for other sectors and tasks.

The case in question can be processed in accordance with Article 5 of the *Occupational Safety and Health Act*, which makes a declarative statement that employers must adopt preventive measures of all types to prevent occupational accidents. There are no penalties; however, workers may still file a lawsuit based on this article.

The *Occupational Safety and Health Act* requires employers to practice occupational safety and health management and formulate management plans, including emergency response measures. If cabin crew have concerns about evacuation or uniform safety, they can present a proposal to the Occupational Safety and Health Committee and then engage in extensive discussion with their employers. The committee includes labor representatives.

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<sup>25</sup> The Commission's meeting minutes with the advisory body on May 30, 2024.

## b) Ministry of Transportation and Communications

The Ministry of Transportation and Communications considers civil aviation to be an international industry and, therefore, civil aviation laws must be drafted with reference to the laws and regulations of the International Civil Aviation Organization (ICAO) rather than to the research and recommendations of Taiwanese scholars. The Ministry examined ICAO regulations and found no recommendations regarding the materials of cabin crew uniforms. Any relevant information published by the ICAO will serve as a reference for regulatory amendments or compliance by the aviation enterprise.

Several studies advise against wearing stockings and high heels when traveling by air and recommend cotton clothing. Cotton clothing is universally recommended to airplane passengers. Certain materials are dangerous in any environment with high-temperatures or a fire risk. Anyone wearing these materials is at risk in such an environment. This is a general research observation that does not specifically target workers in the aviation industry.

Working onboard planes involves many potential dangers. Any type of clothing, not just stockings, can pose the risk of melting at high temperature and causing skin burns. The key to risk prevention is the type of material used. Stockings can be made of fire-resistant materials. Fire resistance in this context does not mean that the material will not burn, it means that the material will not stick to the skin if it catches fire. Pilots wear fireproof clothing and jackets that will turn into ash if they burn. The technology to produce fire-resistant stockings exists, it is only a matter of cost. Whether airlines are willing to buy such expensive stockings is a matter of their own discretion.

## **7. The Government's Fulfillment of its Obligations as a State**

## **Party to CEDAW**

- 1) The government has taken measures to eliminate both direct and indirect discrimination against women, as well as to address gender stereotypes and biases.**

- a. Complainant's main arguments**

The current *Gender Equality in Employment Act* does not address collective gender discrimination or inequality. A complaint filed by the Taoyuan Flight Attendants Union involving the impact of menstrual leave on performance evaluations was rejected by the Taoyuan City Government for this reason. The city government requested that a representative be chosen to file the complaint. However, this would place enormous pressure on the representative, who would be required to individually handle the collective dispute.

- b. Main arguments by government entities<sup>26</sup>**

- a) Taoyuan City Government**

For labor-management disputes over rights and changes in which a union is involved, the union can act as the complainant. However, the *Gender Equality in Employment Act* requires the presentation of specific, concrete evidence related to a rights infringement, and such complaints have never been filed before. Nevertheless, if a union believes that violations have been committed, they may act as the complainant.

- b) Ministry of Labor**

The law states that during the recruitment process, employers may not discriminate against job applicants or employees due to their gender or sexual orientation. This requires any complaints filed to contain specific facts of legal violations. Upon receiving a complaint, local governments must conduct interviews and investigate the alleged violations that have been committed. Because the union is not party to the case, it will not be able present the facts of the case; only the complainant can do so. Thus, it is still necessary to have individual complainants.

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<sup>26</sup> The Commission's meeting minutes with the advisory body on May 30, 2024.

### c. Actions taken by government entities

#### a) Department of Gender Equality, Executive Yuan<sup>27</sup>

The Department of Gender Equality, Executive Yuan noted that since 2014, certain cases have arisen that address uniform regulations, e.g., the *Police Uniforms Act*, attached instructions of the *Firefighting Uniform Guidelines*, the *Customs Service Personnel Uniform Management Guidelines*, and the uniform regulations of the National Immigration Agency, Ministry of the Interior. These cases involved female employees being required to wearing skirts and not allowed to wear trousers as part of the uniform. Upon review, the special review committee determined that these regulations violated Article 5, Subparagraph (a) of CEDAW. The regulations were then amended to include trousers, and female employees can now choose to wear trousers at work.

Similarly, the Ministry of Education mandates that while school uniforms should be decided on by school uniform committees, female students should not be required to wear skirts; instead, female students can wear their choice of skirts or trousers to avoid gender stereotyping and comply with Article 5 of CEDAW.

The Department of Gender Equality, Executive Yuan also stated that it sent a letter to various ministries/councils in January 2024 requesting that they require their affiliated agencies as well as foundations, state-owned enterprises, private organizations, and related businesses to review their dress codes and provide guidance and oversight to promote improvements and end gender stereotyping. The department also encouraged the ministries/councils to incorporate such efforts into their annual gender equality promotional plans to demonstrate progress in this area.

The Department of Gender Equality, Executive Yuan recommended that all ministries/councils utilize this complaint and the aforementioned police and firefighter uniform cases as CEDAW training materials. During policy meetings or general meetings with internal and external businesses

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<sup>27</sup> The Commission's meeting minutes with the advisory body on May 30, 2024.

and other groups, these cases may be used to raise gender equality awareness.

b) Ministry of Labor<sup>28</sup>

The Ministry of Labor stated that if business entities require their employees to adhere to uniform standards while on duty, they must clearly define such standards in their work rules or employment contracts. Employees can make recommendations regarding uniform design through their unions or during labor-management meetings to reach consensus.<sup>29</sup>

Company work rules must be submitted to the local competent authorities for review. If an employer's management measures or labor conditions raise concerns about gender or sexual orientation discrimination, the local competent authorities will demand that the employer amend its work rules. Direct guidance from the competent authority will be provided only if there is clear textual evidence of gender discrimination; if there are potential concerns about gender discrimination that cannot be directly determined through work rule reviews, the work rules must be submitted to the relevant committee for deliberation.

If an employee files a complaint against specific management measures, the local competent authorities may guide the employer. If an employer is confirmed to have engaged in gender or sexual orientation discrimination, the local competent authorities will impose a penalty on the employer in accordance with the law.

The *Gender Equality in Employment Act* includes certain labor inspections. For instance, businesses with over 30 employees are required to establish relevant regulations, and an inspection will be conducted if the business has no such regulations. However, in cases involving gender discrimination, factual determinations and investigation are still required.

The Ministry of Labor indicated that it would continue to provide

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<sup>28</sup> The Commission's meeting minutes with the advisory body on May 30, 2024.

<sup>29</sup> As described in Lao-Dong-Tiao (IV) Letter No. 1120080041 issued by the Ministry of Labor on November 9, 2023.



administrative guidance and corresponding measures in such areas as promoting the law, training in legal compliance, and holding study sessions.

c) The Ministry of Transportation and Communications<sup>30</sup>

The Ministry of Transportation and Communications explained that on January 4, 2024, the Civil Aviation Administration convened a meeting with domestic and international airlines to discuss future optimization. The airlines acknowledge that they have not fully incorporated the concept of gender equality and emphasized that the current uniforms were designed in compliance with existing procedures at the time and were without discriminatory intent. According to most airline companies, uniform design and production involve significant costs, and new uniform designs are typically used for 10+ years. The airlines made a clear commitment that they will address these issues in their next uniform meetings, and they will include their employees in discussions about uniform revisions, according to the meeting minutes.

In their Gender Equality Promotional Plans, the Ministry of Transportation and Communications and the Civil Aviation Administration have included the option of trousers in addition to skirts as a criterion for future cabin crew uniform evaluations.<sup>31</sup> On April 7, 2022, the Civil Aviation Administration requested domestic and international airlines to help promote the elimination of gender stereotyping in the pilot and cabin crew professions, and encouraged the retention of women of marriage and childbearing age in the workforce as well as the hiring of middle-aged and older women (ages 45-64).<sup>32</sup>

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<sup>30</sup> The Commission's meeting minutes with the advisory body on May 30, 2024.

<sup>31</sup> Page 48 of the *Revised 2024 Gender Equality Promotional Plan of the Ministry of Transportation and Communications (2022-2025)*. The Civil Aviation Administration plans to include "providing uniforms other than skirts for female cabin crew" as an item in their 2026 gender equality evaluation of airline operators. In addition, the administration revised the contents of the Civil Aviation Administration's assessment of gender equality promotion by national and civil air transport industry operators in 2024, and will hold a briefing on the new assessment in 2025.

<sup>32</sup> Civil Aviation Administration, Ministry of Transportation and Communications

Furthermore, on March 25, 2024, the Civil Aviation Administration required domestic and international airlines<sup>33</sup> to actively eliminate occupational gender segregation and avoid considering irrelevant traits such as age, appearance, and figure when recruiting pilots and cabin crew.

d) Taoyuan City Government<sup>34</sup>

The Taoyuan City Government mentioned that administrative actions are not limited to penalties and should also include other forms of administrative guidance. Because CEDAW mandates the elimination of stereotypes, the Taoyuan City Government issued an official letter to EVA Air to make related adjustments. EVA Air replied by promising to discuss this issue at its next uniform committee meeting.

According to the *Gender Equality in Employment Act*, for active investigations, employers must provide evidence, which will be used to determine the outcome of the case. The Taoyuan City Government also uses other methods such as proactively examining recruitment ads or facilitating union-employer communication when unions raise questions about this issue. Nevertheless, administrative penalties are still imposed in accordance with the relevant legal procedures.

**2) The government's implementation of working conditions that ensure equal access to health and safety for men and women in the workplace**

a. **Ministry of Labor**<sup>35</sup>

The Ministry of Labor stated that research on hazards in various industries is conducted by the Institute of Labor, Occupational Safety and Health. A review revealed that no studies have been conducted on whether wearing high heels at work causes plantar fasciitis or other occupational

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Biao-Zhun-5-Zi letter No. 1115007841 released on April 7, 2022.

<sup>33</sup> Civil Aviation Administration, Ministry of Transportation and Communications Biao-Zhun-5-Zi letter No.1135006767 released on March 25, 2024.

<sup>34</sup> The Commission's meeting minutes with the advisory body on May 30, 2024.

<sup>35</sup> The Commission's meeting minutes with the advisory body on May 30, 2024.

diseases. Accordingly, the Occupational Safety and Health Administration, Ministry of Labor will put in a request for the institute to conduct a study on this issue.

In 2012, the Institute of Labor, Occupational Safety and Health collected and analyzed national labor insurance data for a study titled *Prevention and Control Strategies for Occupational Hazard of Falls among Female Employees*. The study results were divided into two categories: (a) hazards that presented an immediate risk to employee safety were promptly included in the regulations and prohibited; (b) information on hazards that did not immediately endanger employee safety was provided to business entities for further risk identification and management. It is impossible for the law to comprehensively address all hazard risks across all industries. Matters involving aviation safety are delegated to the Ministry of Transportation and Communications for handling. Therefore, cabin crew dress codes should be formulated by the Ministry of Transportation and Communications.

The Ministry of Transportation and Communications stated that no studies have been conducted on the issue of stockings. Nonetheless, occupational safety and health regulations require business entities to perform statistical analysis of occupational accidents. The goal is to collect data on injuries, near misses, etc., analyze them, and categorize risk levels. Employers must address urgent risks immediately in compliance with relevant laws and regulations. Matters not governed by the law can be managed by occupational safety and health committees. If employees identify any potential hazards during company operations, they can immediately raise these issues with management and seek solutions.

#### **b. Ministry of Transportation and Communications<sup>36</sup>**

The Ministry of Transportation and Communications reported that no studies have shown that cabin crew were injured or harmed in emergencies due to wearing stockings. Such cases have also not been observed in real life.

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<sup>36</sup> The Commission's meeting minutes with the advisory body on May 30, 2024.

Some studies have recommended wearing cotton clothing instead of stockings or high heels. These recommendations apply to passengers as well. Of course, in fires or other high-temperature situations, certain materials pose risks regardless of who is wearing them. However, no studies or empirical cases specifically targeting professionals have been documented to date.

For example, during the JAL Flight 516 emergency evacuation incident that occurred in early 2024, the key to everyone's safe escape was the crew's effective execution of its training, not whether the crew was wearing skirts or trousers.

Furthermore, during a recent turbulence incident involving Singapore Airlines, the crew did not experience serious casualties due to wearing fitted sarong uniforms. Therefore, the rest of the world may not agree with the assertion that the current uniforms of Taiwanese airlines would increase casualties. Thus, the Civil Aviation Administration will continue to monitor global trends.

## **V. Investigation and Analysis**

### **1. Analysis of Dress Codes**

#### **1) Do the dress codes for female cabin crew constitute gender discrimination?**

This investigation is focused on female cabin crew dress codes. The official term used by the International Civil Aviation Organization for flight attendants is "cabin crew," and their primary duties include ensuring passenger safety; assisting with passenger evacuations, emergency response, and providing service to address passengers' physiological needs associated with long-duration flights.<sup>37</sup>

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<sup>37</sup> G.M., Wan (2013). "To be Powerful or Beautiful: A Discussion of Female Cabin Crew Uniforms Based on the Asiana Airlines Incident." *Flight Safety Quarterly*, p. 13.

According to Article 2, Subparagraph 11 of the *Aircraft Flight Operation Regulations*, the term “cabin crew member” is defined as “a crew member who performs, in the interest of safety of passengers, duties assigned by the operator or the pilot-in-command of the aircraft, but who shall not act as a flight crew member.” Regarding uniforms, Article 188, Paragraph 6 of the same regulations states that “cabin crew members shall wear a company uniform for duty...” The reason for wearing uniforms is to allow passengers to recognize and identify the cabin crew.

The primary issue at hand is whether the dress codes stipulated by the airlines named in the complaint constitute gender discrimination. With reference to the conventions, laws, and regulations that are relevant to this case, evidence was gathered through stakeholder interviews, documents provided by the complainant, and airline regulations obtained at the request of relevant authorities. The factual information related to the dress codes includes requirements for uniforms, shoes, stockings, makeup, and hair, which are laid out and explained below:

- **Uniform styles:** Five airlines require their female cabin crew to wear skirts and their male cabin crew to wear trousers; one airline had trousers for both male and female cabin crew.
- **Shoe styles:** Several airlines require their female cabin crew to wear high heels or heeled shoes while on duty outside the cabin before boarding and after deplaning, but offer the option of work shoes (flat shoes) while serving in the cabin. Male cabin crew are required to wear leather shoes throughout.
- **Socks:** Six airlines mandate that their female cabin crew wear stockings while on duty, with two of these airlines also requiring them to carry spare stockings; male cabin crew are required to wear socks.
- **Makeup and hair:** Six airlines require their female cabin crew to wear makeup, and some require a them to maintain a “healthy glow” and use shades that complement the uniform colors. The makeup regulations cover eye makeup, lipstick, nail color, etc. The cabin crew are expected to refresh their makeup to maintain this look throughout their shifts. None of the airlines had makeup requirements for male attendants; they are required to maintain proper grooming and hygiene habits, and they

are not allowed to have facial hair.

The aforementioned findings are supported by interviews, correspondence, and airline documents containing cabin crew dress codes.

**a. Discrimination as defined by CEDAW: distinctions, exclusions, or restrictions made on the basis of gender**

According to Article 1 of CEDAW, “the term ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

General Recommendation No. 28 of CEDAW further clarifies in Paragraph 5: “The application of the Convention to gender-based discrimination is made clear by the definition of discrimination contained in article 1. This definition points out that any distinction, exclusion or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women of human rights and fundamental freedoms is discrimination, even where discrimination was not intended. This would mean that identical or neutral treatment of women and men might constitute discrimination against women if such treatment resulted in or had the effect of women being denied the exercise of a right because there was no recognition of the pre-existing gender-based disadvantage and inequality that women face.”

Article 4 of CEDAW stipulates two instances of differential treatment that do not constitute discrimination: “1. Adoption...of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination” and “2. Adoption...of special measures...aimed at protecting maternity shall not be considered discriminatory.” The first of these, “Adoption...of temporary special measures aimed at accelerating de facto equality between men and women,” is only for temporary measures; similar provisions exist in other human

rights conventions such as affirmative action and preferential treatment.

#### **b. Differential Treatment in Management Measures**

Concerning whether the regulations on uniforms, shoes, stockings, makeup, and hair constitute differential treatment in **management measures**, this section first defines the relevant laws and regulations and then discusses whether there is discriminatory behavior, whether the differential treatment is disadvantageous, and whether the differential treatment falls within legally permitted exceptions:

- a) Article 7 of the *Constitution of the Republic of China (Taiwan)* stipulates that “All citizens of the Republic of China, irrespective of sex, religion, race, class, or party affiliation, shall be equal before the law.” This article explicitly prohibits discrimination based on gender. The fundamental rights guaranteed in the constitution not only constitute the right of protection against the State, they are also fundamental rights used to determine objective value or objective legal order. As such, this constitutes the obligation of the State to actively protect the fundamental rights and legal interests of citizens from illegal infringement by third parties. To ensure that the state’s protection is sufficient, the executive and legislative powers retain considerable discretionary and formative authority. However, when determining how legislators should fulfill their state protection obligations and protect citizens’ basic rights against third parties, the state must emphasize that its protection will not fall below the necessary standards. Accordingly, Article 1 of the *Gender Equality in Employment Act* states that “the Act is enacted to protect gender equality in the workplace, implement thoroughly the constitutional mandate of eliminating gender discrimination, and promote the spirit of substantial gender equality.” This statement reflects the legislators’ intent to fulfill the State’s protection obligations based on the legitimacy of direct and pluralistic democracy and by balancing the basic rights protections involved in conflicts between private parties. For more information, please refer to the Taipei High Administrative Court verdict Su-Zi No.

1063 released in 2021.

- b) In 2007, the Legislative Yuan passed a resolution approving Taiwan's application to join the United Nations CEDAW. Although the process of depositing it with the Secretary-General of the United Nations had not yet been completed, Taiwan nonetheless passed the *Enforcement Act of the Convention on the Elimination of All Forms of Discrimination against Women* in 2011, giving CEDAW legal effect. Article 2 of the *Enforcement Act of the Convention on the Elimination of All Forms of Discrimination against Women* clearly states that "the provisions of the Convention that protect gender human rights and promote gender equality have the force of domestic law."
- c) Article 7 of the *Gender Equality in Employment Act* states: "Employers shall not discriminate against applicants or employees because of their gender or sexual orientation in the course of recruitment, screening test, hiring, placement, assignment, evaluation and promotion..." This clearly stipulates that employers may not discriminate against individuals on the basis of their gender during recruitment and employment, ensuring that applicants or employees have equal employment opportunities.

Although the aforementioned text mentions only "recruitment, screening test, hiring, placement, assignment, evaluation, and promotion," it is immediately followed by the term "etc.," indicating that similar scenarios are included. This wording allows a broader interpretation of the provision,<sup>38</sup> making it illustrative in nature.<sup>39</sup> This article thus gives several examples of such

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<sup>38</sup> In contrast, Article 11, Paragraph 1 of the same act states: "Employers shall not discriminate against employees because of their gender or sexual orientation in the case of retirement, discharge, severance and termination." This article explicitly lists four situations of leaving the workplace (i.e., retirement, discharge, severance, and termination) without generalization (i.e., the use of "etc.").

<sup>39</sup> Professor Zheng Yupu stated that "Generally, when a law lists one or several items and then follows them with the word 'etc.,' unless there is a special reason for a



situations, followed by abstract and general phrases to summarize the rest. The regulated scenarios include the recruitment, screen testing, hiring, placement, and assignment of applicants and employees before entering the workplace as well as their performance evaluations and promotion once they have been hired. If employers' management measures or work rules involve gender discrimination, they also fall within the prohibited scope of this article. Dress code regulations such as uniforms, shoes, stockings, makeup, and hair regulations are all part of the employers' management measures or work rules.

- d) Accordingly, this case was reviewed using Article 7 of the *Gender Equality in Employment Act*: First, do the dress codes vary according to gender? A comparison of the previously described dress codes for uniforms, shoes, stockings, makeup, and hair reveals differences between the dress codes for male and female cabin crew, confirming the presence of gender differences.
- e) Next, do these differences constitute differential treatment? Article 2 of the *Enforcement Rules for the Act of Gender Equality in Employment* states: "Discriminatory treatment referred to in Articles 7-11, 31 and 35 of the Act shall mean that employers directly or indirectly treat employees or applicants adversely because of their gender or sexual orientation."

If employers directly use gender as a condition for hiring, placing, assigning, or promoting employees, it constitutes direct adverse treatment (or "direct discrimination"). If employers indirectly use gender as a condition for hiring employees (i.e., via seemingly neutral regulations, measures, standards, or procedures) and the conditions are confirmed to have a negative effect on

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different interpretation, items included under 'etc.' must be considered to have the same significance as the listed items for the regulations to apply... In principle, 'etc.' should be interpreted as 'other similar matters.'" See: Y.P., Zheng (1982). "The Word 'Etc.' and Enumerative Provisions." *Studies in Civil and Commercial Law Issues* (Vol. III) (Taipei: Sanmin), p. 350.

employees of any specific gender, it constitutes indirect adverse treatment (or “indirect discrimination”) and should be recognized as gender-based adverse treatment.

Adverse differential treatment is thus not limited to outright adverse situations such as a gender-based refusal to hire, dismissals, demotions, pay reductions, job transfers, low performance evaluation scores, and lack of promotion; it includes consequences stemming from reinforced gender stereotypes as well as relatively adverse situations. Conversely, if the differential treatment is aimed at promoting equality or protecting maternity, it is not considered discriminatory.

Paragraph 20 of General Comment No. 20 of the GCESCR states the following: “The Covenant guarantees the equal right of men and women to the enjoyment of economic, social and cultural rights. Since the adoption of the Covenant, the notion of the prohibited ground 'sex' has evolved considerably to cover not only physiological characteristics but also the social construction of gender stereotypes, prejudices and expected roles, which have created obstacles to the equal fulfilment of economic, social and cultural rights.”

Gender stereotypes are generalized views or preconceptions about the characteristics or roles that women or men should possess or play. When gender stereotypes restrict women and men from developing their individual abilities, pursuing their careers, or making their own life choices, they become harmful and discriminatory.

In 2022, the CEDAW Committee decided to draft General Recommendation No. 41, which discusses the effects of gender stereotypes on women. In 2024, the committee released a concept note that explained the issues addressed during the drafting process.

This concept note states that if laws, policies, or practices based on gender stereotypes in any sector make distinctions in treatment whose purpose or effect is to impair or deny women’s equal rights and fundamental freedom, it constitutes discrimination, and the state parties have an obligation to eliminate it. The term “gender stereotypes” includes practices that assign specific attributes, characteristics, or roles based on male- or femaleness. It involves using knowledge of gender stereotypes to form impressions of individual men or women or applying such stereotypical views in one’s actions. The CEDAW Committee emphasizes that states need to fix, transform, and eliminate gender stereotypes, which are both a root cause and consequence of discrimination against women. This reflects the complex interaction between stereotypes and discrimination and forms a negative, self-reinforcing cycle.<sup>40</sup>

Taiwan’s *Gender Equality Policy Guidelines* promotes the elimination of gender stereotypes, prejudice, and discrimination in all domains to build a gender-equal society and culture. The scope of this promotion includes physical settings (e.g., families, workplaces, schools, social settings, and media) and virtual settings (e.g., digital/online communities). Article 5 of CEDAW also encourages governments to take all appropriate measures to eliminate prejudice based on stereotyped roles for men and women. A related reference can be found on page 27 of the Ministry of Labor’s Gender Equality Promotional Plan (2022-2025).<sup>41</sup>

One of the consequences of gender stereotyping that adversely affects female workers is occupational segregation, which can consist of either horizontal segregation or vertical segregation. The former encompasses the “glass wall” and

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<sup>40</sup> Paragraphs 7, 19, and 22 of “The Committee on the Elimination of Discrimination against Women (Apr. 23, 2024) General Recommendation on Gender Stereotypes: Concept Note.”

<sup>41</sup> Ministry of Labor, Gender Equality Area/Gender Equality Promotional Plan (2022-2025) (2024 rolling revision version).”

“maternal wall” phenomena, whereas the latter refers to the “glass ceiling” phenomenon.<sup>42</sup> These two phenomena have long existed and are difficult to break in the cabin crew profession. In fact, it was only in recent years that some airlines began to hire a small number of male cabin crew. The gender ratio among cabin crew in Taiwanese airlines shows a stark disparity; i.e., there is marked gender-based occupational segregation (Tables 1 and 2, p. 13).

Employers and companies in the workplace are, to a certain extent and within reasonable limits, entitled to establish dress codes based on the characteristics of their businesses. However, under the provisions of the *Constitution of the Republic of China (Taiwan)* and the *Gender Equality in Employment Act*, such dress codes should not reinforce gender stereotypes. Data compiled by the Civil Aviation Administration indicates that while approximately 40% of airlines in the Asian region and nearly 100% of airlines in the European, American, New Zealand, and Australian regions offer both skirt and trouser uniforms, only roughly 17% of Taiwanese airlines offer trouser uniforms. This is a significant gap.<sup>43</sup> A general observation of the dress codes of Taiwanese airlines reveals that the gender stereotype of “women should dress like women and men should dress like men,” dictates the attire and appearance of cabin crew. Gender stereotypes are both a cause and a consequence; this adverse outcome has a profound impact on women, deepening gender-based occupational segregation among cabin crew in the aviation industry and forming what the CEDAW Committee concept note refers to as a “self-reinforcing cycle.”

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<sup>42</sup> M.C., Liu (2019) “The Lingering Ghost of Patriarchy in the Workplace—The Impact of and Strategies Against Gender Stereotypes.” Gender Equality Committee, Executive Yuan website: Gender Notes.

<sup>43</sup> Minutes of the Civil Aviation Administration, Ministry of Transportation and Communications discussion meeting on the work attire and uniforms of female cabin crew to uphold the spirit of the United Nations’ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) recorded on January 4, 2024.

- f) Dress code checks indeed affect performance evaluations. Among the actual standards of Taiwanese airlines, two explicitly state that non-compliance with dress code requirements will result in a warning or more severe penalty, with one of these airlines indicating that such non-compliance will affect performance evaluations, clearly constituting direct adverse treatment.

Further examination of individual dress codes reveals that even airlines that do not explicitly specify rewards or penalties impose shoe, stocking, makeup, and hair regulations on female cabin crew. These regulations inevitably require female cabin crew to spend more labor, time, and money compared to male cabin crew;<sup>44</sup> the process of checking for compliance with the dress code is also very cumbersome. One airline even stated, “If a cabin crew member fail to follow the dress code and do not correct the issue on the spot, pursers will deduct points on the member’s online evaluation. However, the percentage of cabin crew actually receiving such penalties is extremely low, and cabin crew have many ways to earn extra points, so the actual negative effect of dress code non-compliance on performance evaluations is minimal.” Nonetheless, female cabin crew still face the need to spend more time and effort on remedies to earn points and achieve the same evaluation scores as male cabin crew do. When interviewed, one cabin crew mentioned that “Reports and requests

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<sup>44</sup> For example, a media report indicated that the Labor Court in the state of Santa Catarina, Southern Brazil, ruled that GOL Airlines’ mandatory makeup requirement for female employees, which resulted in lower female employee wages compared with those of male employees, constituted gender discrimination. GOL Airlines was thus ordered to pay its female cabin crew and ground staff a makeup allowance of R\$220 (approximately NT\$1,200 per month), an additional allowance for items such as manicures and hair removal, and a total of R\$500,000 (approximately NT\$2.5 million) in damages for emotional distress. See: Central News Agency (September 10, 2021). “Brazilian Labor Court Sets a Precedent, Rules for Airline to Pay Female Employees’ Makeup Expenses,” São Paulo Comprehensive Foreign News Report.

for improvements are mainly directed at female cabin crew. I have never heard of a male cabin crew being reported. This is because female cabin crew have more items to consider, such as skirt length, nails, hair, and makeup.” All these represent relatively adverse treatment towards female cabin crew. Thus, the dress codes clearly result in both direct and indirect adverse treatment towards female cabin crew.

- g) Does the differential treatment fall under the exceptions category? Is it related to the performance of duties? Considering the variety of job types that exist, there may be special circumstances in which employers have legitimate reasons for differential employee or applicant treatment that is not based on discrimination. This is known formally as “bona fide occupational qualifications.” That is, when the employment conditions are such that the gender of the job applicant or employee is essential for the job they are applying for or employed in, and it is a reasonable necessity for normal business operations (e.g., employing only women as female lingerie models), it does not constitute discrimination. This also corresponds to the provision in Article 7 of the *Gender Equality in Employment Act*: “However, if the nature of work only suitable to a specific gender, the above-mentioned restriction shall not apply.”<sup>45</sup>

However, as this constitutes an exception to the prohibition of discrimination, and given the practical difficulties for employees or applicants when it comes to presenting relevant evidence, Article 31 of the *Gender Equality in Employment Act* stipulates that “after employees or applicants make prima facie statements of the discriminatory treatment, the employers shall shoulder the burden to prove the non-sexual or non-sexual-orientation factor of

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<sup>45</sup> Article 3 of the *Enforcement Rules for Act of Gender Equality in Employment* states that “The nature of work only suitable to a specific gender referred to in Article 7 of the Act shall mean work that cannot be accomplished or cannot be possibly accomplished by applicants or employees of a specific gender.”

the discriminatory treatment, or the specific sexual factor necessary for the employees or the applicants to perform the job.” This signifies that applicants only need to provide the objective facts of “being treated adversely because of their gender or sexual orientation,” and employers are responsible for proving the justifiability of such adverse treatment because they possess an informational advantage. Related reference can be found in the Taipei High Administrative Court’s 2021 verdict Su-Zi No. 1063 released in 2021.

In this case, the complainants have already presented written documents and interviews indicating the facts of differential treatment, and the Taiwanese airlines were required to prove the justifiability of their differential treatment in order to confirm that the differential treatment falls under the exceptions category. A defense of bona fide occupational qualifications must include specific job requirements, “all or almost all” requirements, and “justifiable and necessary” requirements.

The airlines contended the following in their interviews: “The uniform represents our company’s business image, and due to cost considerations, changes cannot be made immediately”; “the design emphasizes the gentleness and grace of women, and there is not any deliberate attempt to choose skirts or trousers”; “dress codes are not included in the annual performance evaluations; they are merely an observation item”; “the dress code is only one aspect of self-management and has a negligible impact on performance, rewards, and penalties”; “cabin crew’s duties include serving passengers and do not include whether they wear trousers or skirts”; and “no requests for trousers were made when our uniform was designed.” Some of these statements indicate that company image is a factor of concern when designing uniforms. The airlines also specified that skirts were required because of cost considerations and for their convenience at work rather than because of gender discrimination. Some airlines also commented that whether the female cabin crew wore skirts had no impact on

their performance evaluations, that no female cabin crew had expressed the need to wear trousers in past discussions, that dress codes were in place for both male and female cabin crew, and that there were no rules prohibiting male cabin crew from wearing makeup.

The Taiwanese airlines consistently claimed that their differential treatment of cabin crew is not based on gender, but they did not clarify whether the differential treatment fell under the exceptions category (i.e., the so-called “bona fide occupational qualifications”).

**c. Differential treatment in terms of welfare measures**

Uniform and footwear requirements may also constitute differential treatment in terms of welfare measures. Article 9 of the *Gender Equality in Employment Act* stipulates that “Employers shall not discriminate against employees because of their gender or sexual orientation in the case of holding or providing various welfare measures.” The Ministry of Labor has previously provided an explanation regarding uniform costs. The administrative letter stated that “Uniforms are required by employers to run their businesses, and employees are compelled to wear them at workplaces or when providing service for reasons of workplace safety or labor discipline. The costs should be included as a part of the labor costs or employee benefits.”<sup>46</sup> Therefore, the uniforms and the purchase allowances for shoes and stockings provided by some of the airlines are considered employee welfare items and should not be subject to gender-based differential treatment.

- a) The requirements for cabin crew’s uniforms—trousers for males and skirts for females—indeed create a differentiation based on gender stereotypes, and are both an adverse cause and consequence of gender stereotyping. They reinforce gender stereotypes and

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<sup>46</sup> The Council of Labor Affairs, Executive Yuan Tai-Lao-Zi-Er-Zi letter No. 0043550 released on October 16, 2000.



prevent individuals with different gender identities from choosing uniforms that align with their gender identities.

- b) Regarding footwear allowances, the original self-purchase rule of one airline company was two pairs of dress shoes per year, with male cabin crew receiving NT\$2,500 per pair of shoes and their female counterparts receiving NT\$1,650 per pair of shoes. The airline's reasoning was that men's shoes are generally more expensive, hence the larger allowance. After union complaints, an equal allowance was granted to employees of both genders: NT\$2,500 for one pair and NT\$3,300 for two pairs of shoes (an average of NT\$1,650 TWD per pair). However, this meant that male cabin crew could choose to buy only one pair (and receive a subsidy of NT\$2,500), whereas female cabin crew, who had to wear high heels when working outside the cabin and who preferred to wear flats when working inside the cabin, had to buy two pairs (and receive a subsidy of NT\$3,300).

#### **d. Domestic and International Cases**

As previously mentioned, the data compiled by the Civil Aviation Administration reveals that approximately 40% of airlines in the Asian region and nearly 100% of airlines in the European, American, New Zealand, and Australian regions offer both skirt and trouser uniforms. Nonetheless, there remain numerous dress code-related complaints and investigations worldwide, including the aforementioned NHRCK's female cabin crew uniform complaint case as well as the following cases:

- a) Alaska Airlines Investigation, Washington State Human Rights Commission (WSHRC)

The American Civil Liberties Union (ACLU) and Washington State ACLU assisted non-binary gender-identifying cabin crew in filing a complaint with the WSHRC against Alaska Airlines for its strict binary gender dress code, which violated state laws.

In 2022, WSHRC's investigation revealed that Alaska Airlines' dress code policy, which required an employee to wear a uniform that did not match their gender expression or identity, was in violation of the state's

Anti-Discrimination Act.<sup>47</sup> Subsequently, the Office of the Attorney General, Washington State, representing the WSHRC, filed an administrative complaint on behalf of the cabin crew, eventually leading to Alaska Airlines changing its dress code to eliminate all gender-based restrictions on uniforms, hair, makeup, etc. and providing its upper management with additional training on civil rights, gender identity, and gender expression.<sup>48</sup>

b) Food and Beverage Industry Dress Code Inquiry, Ontario Human Rights Commission (OHRC), Canada

In 2016, a series of investigative reports released by the Canadian Broadcasting Corporation (CBC) exposed the fact that many Canadian restaurant chains mandated that their female servers wear revealing, tight miniskirts, high heels, and low-cut tops as part of their uniforms, placing these women in a position where they were exposed to sexual harassment and potential injuries, due to the fear of losing their jobs.<sup>49</sup> In response, the OHRC initiated an inquiry to investigate dress codes in the food and beverage industry to determine whether they were overly sexualized or gender-based.<sup>50</sup>

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<sup>47</sup> Justin Wetherell v. Alaska Airlines. WSHRC: 17EX-0549-20-1 EEOC: 38G-2021-00254 (Dec. 30, 2020).

<sup>48</sup> Office of the Attorney General, Washington State website: <https://www.atg.wa.gov/cases>; ACLU (April 27, 2023), *Groundbreaking Consent Decree Requires Alaska Airlines to Change Discriminatory Gendered Uniform Policy* [Press release].

<sup>49</sup> See: Lindsay Sample/Marketplace (March 7, 2016). “Restaurant dress codes: Sexy outfits for female staff may be discriminatory.” *CBC News*. Additionally, in 2016, a campaign demanding large restaurant chains stop sexist dress codes in restaurants was launched. See: “Stop sexist dress codes in restaurants” campaign website.

<sup>50</sup> Before the OHRC initiated its inquiry, multiple lawsuits concerning restaurant and bar uniforms had been filed. For example, a former employee of a Canadian sports bar and restaurant chain filed a lawsuit at the Ontario Human Rights Tribunal against her restaurant for gender discrimination. The restaurant had instituted a new dress code requiring female servers to wear revealing, tight miniskirts, high heels, and low-cut tops. The employee, unable to comply with the new rules due to her pregnancy, was eventually dismissed. In 2013, the OHRC ruled in favor of the

The OHRC found that sexualized and gender-specific dress codes were common in restaurants, bars, and other service industries, either through formal regulations or informal pressure, creating an unwelcome and discriminatory employment environment for women. Female employees' attire, makeup, and hair were often continually scrutinized to ensure the employees' compliance with these regulations. In order to secure and maintain their jobs, the employees had to agree to the gendered dress codes and endure exposure to sexual harassment. If they did not agree to said codes, they faced the risk of losing their tips, shifts, and possibly their jobs.

The OHRC urged employers to amend such discriminatory dress codes and also published FAQs for the public and businesses to refer to. The recommendations for businesses included:

- When establishing dress codes, avoid appearance-based gender stereotypes or gender discrimination.
- Consider a range of flexible apparel options that allow employees of/with any gender, gender identity or expression, religious belief, and physical or mental disability to choose their attire without feeling pressured or coerced.
- Offer trousers as a uniform option for all female employees in all positions instead of requiring them to wear skirts.
- Eliminate makeup requirements for women.<sup>51</sup>

c) Cosmetics seller gender discrimination complaint, Taoyuan City Government

A cosmetics company in Taoyuan City required its employees to wear

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employee, ordering the restaurant to compensate said employee and mandating that the restaurant's management personnel complete online human rights training provided by the OHRC. See: McKenna v. Local Heroes Stittsville, 2013 HRTO 1117 (CanLII).

<sup>51</sup> OHRC policy position on sexualized and gender-specific dress codes. See: <https://www.ohrc.on.ca/en/ohrc-policy-position-sexualized-and-gender-specific-dress-codes>.

company uniforms according to their biological gender. During recruitment, the company refused to hire an applicant who declined to wear a uniform that did not match their gender identity, leading the applicant to file a complaint with the Taoyuan City Government.

In 2021, the Taoyuan City Government Gender Equality Committee found that the aforementioned company violated Article 7 of the *Gender Equality in Employment Act*. Under the provisions of Article 38-1, Paragraphs 1 and 3 of the same act, the company was fined, and the name of the company and its responsible person were made public, and an order for immediate improvement was made.<sup>52</sup>

The Taoyuan City Government asserted that the job content of the cosmetics salesperson involved “providing face-to-face services to gain customer recognition of the value and benefits of cosmetic products, resulting in their willingness to pay for the products and complete the sale.” The company failed to prove any reasonable or necessary connection between the gender factor and the nature of the job, evidently discriminating based on the complainant’s sexual orientation. The company appealed to the Ministry of Labor, which upheld the original decision by the Taoyuan City Government, finding no illegality or impropriety in the initial ruling.<sup>53</sup>

- d) Executive Yuan review of policewomen and female firefighter uniform regulations based on CEDAW guidelines.

On July 17, 2014, the 19<sup>th</sup> CEDAW Regulatory Review Task Force Meeting was held by the Executive Yuan. The task force reviewed regulations such as the *Police Uniforms Act* and *Firefighting Uniforms Code*, and determined that mandating that policewomen and female firefighters wear only skirt-based uniforms constituted gender stereotyping and violated the provisions stipulated in Article 5, Subparagraph (a) of

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<sup>52</sup> “Taoyuan City Gender Equality Committee Approval Letter” (sanction Fu-Lao-Tiao-Zi No. 1100001589) released on January 11, 2021.

<sup>53</sup> “Ministry of Labor Appeal Decision Letter” (Lao-Dong-Fa-Su-Zi No. 1100002127) released on July 30, 2021.

CEDAW. Consequently, the dress codes for these personnel were amended in accordance with the *Enforcement Act of the Convention on the Elimination of All Forms of Discrimination against Women* and the resolutions made during the meeting, and trousers were introduced as a uniform option for policewomen and female firefighters.<sup>54</sup>

#### **e. Conclusion**

In summary, the dress codes of the Taiwanese airlines violated CEDAW and the *Gender Equality in Employment Act*, constituting gender discrimination. According to CEDAW, distinctions, exclusions, or restrictions made on the basis of gender are considered differential treatment regardless of whether they are intentional or employers have discriminatory intent. Discrimination can be direct or indirect (i.e., merely by being detrimental to women), and includes outcomes that are relatively disadvantageous to women or that reinforce gender stereotypes. All of these constitute gender discrimination.

In both the domestic and international dress code cases, it is notable that sexualized or gender-specific uniform regulations often led to the exclusion of women and those with differing gender identities from the labor market or placed them at a disadvantage.

In the case addressed here, the Taiwanese airlines' differing dress codes for male and female cabin crew constitute differential treatment. Such differential treatment is not permissible under Article 4 of CEDAW, which only applies to temporary special measures aimed at accelerating de facto equality between men and women (affirmative action), and it adversely affects female cabin crew, constituting adverse differential treatment as specified in Articles 7 and 9 of the *Gender Equality in Employment Act*. No exceptions justifying such gender discrimination were presented by the airlines as a defense, confirming these acts as constituting gender discrimination.

#### **2) Health and safety risks associated with female cabin crew's**

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<sup>54</sup> Minutes of the Executive Yuan's 19<sup>th</sup> CEDAW Regulatory Review Task Force Meeting on July 17, 2014.

## **dress codes**

The second point of contention in this case concerns whether the dress codes for female cabin crew affect their ability to respond in emergencies (e.g., fires and emergency evacuations), increase their safety and health risks, and violate their right to safe and healthy working conditions guaranteed by CEDAW and other international human rights conventions. Specifically, if cabin crew are expected to be able to effectively help passengers escape danger, are their uniforms adequate to protect them and to ensure their ability to aid passengers? The complainants argued that the styling of female cabin crew's uniforms affect their ability to respond in an emergency and pose concerns regarding physical exposure, tripping, and health and safety problems, as follows:

- **Effects on emergency response capabilities:** During aviation safety training, trousers are worn. However, while male cabin crew wear trousers when on duty, most Taiwanese airlines mandate that their female cabin crew wear skirts. The complainants argued that wearing skirts poses significant risks during emergencies, such as increased friction on slides as skirts can potentially get caught or lifted.
- **Risk of exposure:** Many tasks, such as bending down, raising arms overhead, climbing, and sitting can lead to physical exposure or tripping hazards. Additionally, during take-off and landing, some female cabin crew, who have to sit facing passengers, feel uncomfortable or self-conscious; there have also been instances of passengers taking upskirt photos. The airlines instruct their cabin crew to sit with their legs turned sideways as a precautionary measure, but do not allow them to use additional garments to cover their skirts. Additionally, short sleeves or wide sleeve openings often leave female cabin crew's underarm area exposed when assisting economy class passengers with overhead bins.
- **Health and safety risks:** The interviewed cabin crew reported that if they trip, the hems of their skirts prevent them from extending their legs properly, resulting in a second, more serious fall and that high heels cause bunions and plantar fasciitis, posing health risks. Many cabin crew members stated the belief that in the event of a fire, their stockings would melt onto their skin. These issues have been raised

through the airlines' internal platforms, but have not been addressed.

**a. International Human Rights Treaty protections**

Article 11 of CEDAW stipulates that “States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: ... (f) The right to protection of health and to safety in working conditions...”

Article 7, Paragraph 1 of the ICESCR states that “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular: ... (2) safe and healthy working conditions; ...”

Article 1 of ILO Convention No. 190 (Violence and Harassment Convention) defined violence and harassment in the world of work as “...a range of unacceptable behaviors and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment.”

In short, women's equal enjoyment of safe and healthy working conditions and freedom from violence and harassment are basic human rights guaranteed by International Human Rights Treaties.

Article 5, Paragraph 1 of Taiwan's *Occupational Safety and Health Act* states that “Work assigned to laborers by employers shall be within a reasonable and feasible scope, with necessary preventative equipment or measures taken to prevent laborers from being involved in occupational accidents.” The phrase “within a reasonable and feasible scope” was written in reference to Article 8 of the *Enforcement Rules of the Occupational Safety and Health Act*, which signify that “...the scope where necessary preventive equipment or measures can be taken, in accordance with the Act and related safety and health legislations, guidelines, regulations on practices, or regular social beliefs, when the employer knowingly or may be informed that the work laborers engaged

in may harm their lives, bodies and may be hazardous to their health.”

**b. Respondents’ defense**

**a) Do dress codes affect cabin crew’s emergency response capabilities?**

The respondent responded by stating that there are no domestic or international regulations prohibiting the wearing of skirts, and that there has been no literature suggesting that skirts pose safety risks during evacuations compared to trousers. Concerning the issue of exposure when wearing skirts, this is not unique to the aviation industry; it occurs in other settings such as subway cars with face-to-face seating designs. As for escape training courses, cabin crew wear flat shoes and trousers because the training involves going over the same actions repeatedly. Although training in dresses and high heels is also possible, training costs would increase due to uniform wear and tear.

**b) Do dress codes increase safety and health risks for cabin crew?**

The respondent believes that falls may be related to individual inattentiveness, arguing that “injuries can occur in both skirts and trousers” and that “when wearing dresses, cabin crew tend to be more cautious about their walking speed and the distance of their steps.” Regarding heel heights, the respondent indicated that they have already been adjusted, and that “crew members who develop health issues such as plantar fasciitis that makes it uncomfortable to wear high heels can request permission from the management department to wear flat shoes; such requests are always granted.” With respect to stockings, the respondent replied by saying that stockings do not affect escape. For example, current emergency instructions to passengers require that they remove high heels only, not stockings.

The Ministry of Transportation and Communications commented that the International Civil Aviation Organization’s regulations do not provide specific recommendations regarding the fabrics used in cabin crew’ uniforms. Many high-risk situations on board can lead to clothes melting and causing skin burns in the event of high temperatures, not just stockings. The focus should be on the material itself, with the cabin crew having the



option of wearing fire-resistant stockings; the decision comes down to whether to spend the extra money on more expensive fire-resistant stockings.

### c. **Related research**

Research on whether dress codes pose health and safety risks is limited. The findings of domestic research are as follows:

#### a) Emergency response capabilities and safety risks

The complainant pointed out that normally, trousers are worn during safety training, which fails to reflect the physical restrictions and risks caused by the wearing of skirts and stockings in real-life emergencies.

Wan (2016) studied international aviation safety incidents as well as reports published by aviation safety and transportation agencies worldwide over a period of several years to analyze safety issues involving uniforms.<sup>55</sup> The studies indicated that nearly all fatal aircraft accidents result in post-crash fires, which often cause toxic smoke and injuries that prevent rapid evacuation from the aircraft. Therefore, current aviation regulations require aircraft to prove that passengers can evacuate within 90 seconds, mainly to reduce the hazards of fire and smoke to passengers.

Wan remarked that the safety of cabin crew should be prioritized over their appearance, asserting that “focusing on their uniforms is establishing the first line of defense for safety.” She compiled recommendations from the U.S. Federal Aviation Administration, Transport Canada’s Civil Aviation Department, and the Australian Society of Air Safety Investigators on enhancing cabin crew uniform safety. These international transportation and aviation safety bodies shared similar opinions:

- Select long-sleeved tops and trousers.
- Avoid overly long, tight, or short skirts.
- Choose enclosed, low-heeled shoes.

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<sup>55</sup> K.M., Wan (2016). “Cabin crew Uniform and Passenger Apparel Recommendations.” *Cabin Safety and Health Management* (New Taipei City: Yang-Chih Book Co., Ltd.).

- Opt for natural fibers such as cotton and wool.
- Avoid synthetic materials such as nylon stockings that can shrink rapidly and melt upon heat exposure.

On November 4, 1993, a China Airlines flight overshot the runway and ended up in the sea when landing at Hong Kong’s Kai Tak Airport. The cabin crew complained that their uniforms, consisting of long, tight skirts, severely hindered their ability to evacuate quickly.<sup>56</sup>

Additionally, the Civil Aviation Administration website reminds flight crew and passengers to wear appropriate attire during air travel (*italics added for emphasis*):<sup>57</sup>

To avoid wrinkling clothes during long flights, many passengers often choose to wear *apparel made of synthetic blended fibers*. These materials can easily ignite, shrink, and melt; also, they may continue to burn even after being removed from the heat source. Therefore, passengers’ choice of attire has a considerable effect on their safety in emergencies. For example, *when using evacuation slides, the friction generated between passenger stockings and the slide can cause the material to melt and burn, potentially leading to injuries*.

Therefore, in the event of an emergency evacuation or fire, wearing natural fibers such as cotton, wool, or leather offers passengers the best protection. *Exposing large areas of the body, wearing short skirts, or wearing overly tight apparel that may hinder mobility should be avoided*. The best way to prevent foot injuries in accidents or emergencies is to wear proper footwear because

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<sup>56</sup> *Cabin Safety Update*, Vol.5, n.6, 1999, published by the Write Partnership. Quoted from: K.M., Wan (November 2013). “To be Powerful or Beautiful: A Discussion of Female Cabin Crew Uniforms Based on the Asiana Airlines Accident.” *Flight Safety Quarterly*, p. 14.

<sup>57</sup> Civil Aviation Administration, Ministry of Transportation and Communications (December 5, 2018). “What is the Appropriate Way to Dress when Traveling on a Plane?” (<https://www.caa.gov.tw/Article.aspx?a=401&lang=1>)

walking unprotected on surfaces that are covered in fuel or on fire, or are strewn with broken glass or sharp metal debris is undesirable. *It is advisable to wear* fully enclosed leather shoes with laces or straps, such as leather boots or sports shoes, and to avoid wearing flip-flops or high heels. In emergencies, passengers must remove high heels before using the evacuation slides to prevent puncturing them.

The Civil Aviation Administration recommends that passengers wear appropriate attire during flights, and specifically notes the negative impact of stockings, short skirts, and high heels during emergency evacuations. This advice is equally applicable to cabin crew, who are responsible for passenger safety.

b) Risk of falls

In 2012, the Institute of Occupational Safety and Health, Council of Labor Affairs, Executive Yuan<sup>58</sup> found from labor insurance statistics on compensation for falls that without distinguishing between industries, the total number of cases involving falls and the annual fall incidence rate per thousand workers was slightly higher for male workers (13,399 cases and 0.50, respectively) than female workers (11,774 cases and 0.44, respectively).<sup>59</sup> However, when the fall incidence rates of the two genders were compared across industries, the air transport industry showed the most significant difference: the average five-year fall incidence rate for female workers was 0.93 per thousand workers, which was 4.86 times higher than that of their male counterparts. The study highlighted the following (*italics added for emphasis*):

*Some employees, due to dress code requirements, may be restricted by their apparel when they fall, potentially preventing them from regaining their balance and causing more severe injuries. This phenomenon is more likely to occur among employees wearing*

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<sup>58</sup> Now the Institute of Labor, Occupational Safety and Health, Ministry of Labor.

<sup>59</sup> Institute of Occupational Safety and Health, Council of Labor Affairs, Executive Yuan (2012). “An Analysis of Prevention and Control Strategies for Occupational Hazards Caused by Falls among Female Workers” (New Taipei City: author).

*high heels*, which is a matter worthy of attention.

According to interview results, most incidents where cabin crew experienced workplace falls occurred on the commute to and from work. During this period, female cabin crew members had to wear leather shoes with relatively high and narrow heels, indicating that they may adversely affect walking stability. Additionally, *prolonged wearing of high heels can lead to discomfort in the feet, legs, knees, and lower back, with falls potentially triggering further injuries. Business entities, while considering the aesthetics and posture of their employees, must also consider these potential hazards.*

The Council of Labor Affairs, Executive Yuan has issued a press release based on these findings, recommending that employers and employees adopt strategies to prevent falls:<sup>60</sup>

...avoid wearing high-heels: Wearing high heels increases the angle of posterior tilt of the lumbar spine, adding to the load on the back and knees, which can lead to lower back pain.

c) Risk of sexual harassment

The complainant also mentioned the issues of exposure and illicit photos. Wan's research showed that cabin crew work in narrow cabin aisles where they have to communicate at close range and in noisy environments. Because they sometimes have to bend over, stoop, or raise their arms, and because the portrayal of sexually provocative female cabin crew uniforms and figures is common in media, passengers taking illicit photos of female cabin crew and female cabin crew being sexually harassed were common occurrences.<sup>61</sup>

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<sup>60</sup> The Council of Labor Affairs, Executive Yuan (March 2, 2012). "Investigation on the Occupational Hazards of Workers' Falls:" press release.

<sup>61</sup> K.M., Wan (2016). "Cabin Crew Physical and Mental Health Issues," op. cit.; C.Y., Li and C.H., Yuan (July 18, 2015), "Chang Shu-ping: Female Cabin crew Uniforms: Inspiring the Imagination," *United Daily News*; L.H., Liu and W.K. Li (April 7, 2016) "Team Leader Fired for Taking Sneak Photos of Female Cabin crew and

#### **d. Conclusion**

The dress codes for Taiwanese airlines impose higher risks on female cabin crew than their male counterparts, failing to ensure safe and healthy working conditions for the former. In this case, Taiwanese airlines have different dress codes for male and female cabin crew. Unlike male cabin crew, female cabin crew lack emergency response experience while wearing skirts because they do not wear them during aviation safety training. Their uniforms, shoes, and stockings also expose them to greater risks of falling, sexual harassment, and being burned by fire, showing insufficient protection; domestic studies also support these findings. The airlines have failed to comply with the requirements of Article 11 of CEDAW, Article 7 of the ICESCR, and Article 5 of the *Occupational Safety and Health Act*, which mandate that the airlines use/take reasonable and necessary preventive equipment and measures to protect their female cabin crew. However, the airlines are more concerned about their costs and attribute the aforementioned risks to inattentiveness on the part of their female cabin crew, thus failing to assess the occupational safety and health risks of cabin crew from a gender-neutral perspective.

## **2. Analysis of the Government's Fulfillment of Its CEDAW State Obligation**

- 1) Has the government eliminated public and private direct or indirect discrimination against women? Has it changed gender stereotypes and prejudice? Has it prevented discrimination or harm to women by third parties?**

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Poking Fun at Them,” *China Times*; C.L. Yu (November 26, 2019). “Passenger Sued for Taking Illicit Photos of Legs of Female Cabin crew who sat opposite Him and Posting the Photos on Facebook,” SETN.COM.

Regarding whether the government has fulfilled its state obligation as regulated by CEDAW and other International Human Rights Treaties, it is crucial to first determine whether the government has adopted the appropriate legislation and other necessary measures to achieve the elimination of any direct or indirect public or private discrimination against women, change gender stereotypes and prejudice, and prevent discrimination against or harm to women by third parties.

The complainant, the Taoyuan Flight Attendants Union, which consists of 13 cabin crew, filed a complaint with the Taoyuan City Government against EVA Air's regulations on uniforms, appearance, and self-purchased shoe allowances, alleging gender-based differential treatment in terms of dress and shoe requirements, makeup requirements, and the amount of the self-purchased shoe allowance given. The Taoyuan City Government Gender Equality Committee ruled the complaint unfounded; the decision was seconded by the Ministry of Labor's Gender Equality Committee. Their reasons for why the airlines' actions do not constitute gender discrimination are detailed in each approval letter, which differs from the NHRC's dress code analysis and conclusions based on CEDAW's definition of discrimination.

Additionally, concerning the inadequacies in the regulations, the complainant stated that the current *Gender Equality in Employment Act* does not cover or apply to collective gender discrimination or inequality complaints, and that the competent authorities do not accept complaints filed by unions on behalf of victims.

**a. CEDAW's state obligation includes the duty to respect, protect, fulfill, and promote**

Article 1 of CEDAW clearly defines what constitutes discrimination against women (distinctions, exclusions, or restrictions made based on gender that impede or deny women the equal enjoyment of rights and freedom). Article 4 of the convention explains that two types of differential

treatment are not considered discrimination (i.e., temporary special measures aimed at accelerating de facto equality between men and women, and special measures aimed at protecting maternity). Article 2 of the convention requires state parties to pursue by all appropriate means and without delay a policy of eliminating discrimination against women. Article 3 of the convention requires state parties to proactively take measures to ensure the full development and advancement of women in all fields, so that they may enjoy human rights and fundamental freedoms on an equal basis with men. Article 5 of the convention emphasizes that state parties must eliminate social and cultural gender stereotypes and structural discrimination.

Taiwan has made CEDAW legally binding domestically through the *Enforcement Act of the Convention on the Elimination of All Forms of Discrimination against Women* (Article 2), meaning that the state should fulfill all of the obligations listed in CEDAW to ensure legal and factual equality between men and women. State obligations include both methodological and result-oriented obligations, and almost all articles of CEDAW start with the premise that states parties shall take all appropriate measures to eliminate discrimination, with the goal of promoting gender equality not only in law but also in terms of resource allocation.<sup>62</sup>

Paragraph 9 of General Recommendation No. 28 of the CEDAW Committee specifically states that “States parties must address all aspects of their legal obligations under the Convention to respect, protect and fulfil women’s right to non-discrimination and to the enjoyment of equality.” Paragraph 37 emphasizes the promotional duties of state parties, which can be summarized into four state obligations:

- a) Obligation to respect requires that states parties refrain from making laws, formulating policies, taking administrative measures,

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<sup>62</sup> T.L., Yeh (2012). “Introduction,” included in: *Regulatory Review and Seed Training Camp Teaching Materials for Fulfilling the Convention on the Elimination of All Forms of Discrimination Against Women*. Published by the Gender Equality Committee of the Executive Yuan and edited by the Foundation for Women’s Rights Promotion and Development, pp. 1-20.

or developing institutional structures that directly or indirectly result in the denial of the equal enjoyment by women of their civil, political, economic, social and cultural rights.

- b) The obligation to protect requires that states parties protect women from discrimination by private actors and take steps aimed at eliminating prejudices, stereotypes and customs that perpetuate gender discrimination.
- c) The obligation to fulfill requires that states parties take a wide variety of steps to ensure that women and men enjoy equal rights both de jure and de facto, including the adoption of temporary special measures as stipulated in Article 4 of CEDAW and General Recommendation No. 25.
- d) The obligation to promote stipulates that state parties should, in addition to fulfilling the first three obligations in accordance with Paragraph 37 of General Recommendation No. 28, broadly strengthen their knowledge of and support for their other obligations under the convention.

Article 10, Paragraph 6 of the *Additional Articles of the Constitution of the Republic of China* clearly stipulates that “The State shall protect the dignity of women, safeguard their personal safety, eliminate sexual discrimination, and further substantive gender equality.” Article 3 of the *Enforcement Act of Convention on the Elimination of All Forms of Discrimination against Women* explains the hierarchy of the convention relative to domestic regulations and measures: “All rules, regulations, ordinances and administrative measures applicable to the Convention shall refer to the intention of the Convention, and any and all interpretations and explanations provided by the Committee on the Elimination of All Forms of Discrimination against Women of the United Nations.” Article 4 of the enforcement act defines the government’s negative and positive duties: “Upon exercising its authority, all government units shall do so in accordance with all rules and regulations regarding protection to genders and human rights specified in the Convention, eliminate gender discrimination, and actively promote the realization of gender equality.” Article 34, Paragraph 1 of the *Gender Equality in Employment Act* stipulates that “When an employee or job applicant discovers that the



employer has violated the provisions of Articles 7 to 11, Paragraph 2 of Article 13, Article 21, or Article 36, they may file a complaint with the local competent authority.”

**b. Agencies’ failure to determine discrimination based on CEDAW’s definition of discrimination**

The Taoyuan City Government and Ministry of Labor ruled that EVA Air’s uniform, high heel, makeup, and self-purchased shoe allowance regulations do not constitute gender discrimination. Regarding makeup, the Taoyuan City Government Gender Equality Committee accepted EVA Air’s explanations that it provided makeup tutorials for both its male and female cabin crew, and cited Article 13 of its “Cabin Crew Management Regulations,” which states: “Cabin crew must wear appropriate makeup when on duty.” EVA Air stressed that it did not specifically require only women to wear makeup, demonstrating the absence of gender-based differential treatment. The approval letter of the Gender Equality Committee, Ministry of Labor also supported the latter explanation.

However, according to the NHRC’s interview with the complainant, EVA Air previously employed only female cabin crew, so the term “cabin crew” in the “Cabin Crew Management Regulations” clearly refers to female cabin crew. It was only in recent years that EVA Air began recruiting male cabin crew, resulting in the addition of specific “male cabin crew” provisions, as can be seen when comparing Articles 14 and 15 of the management regulations.

Regarding dresses, the approval letter indicated that EVA Air did not discriminate based on gender. However, whether an action is judged as discriminatory against women should be based on its adverse impact on women, without the need to prove discriminatory intent. In fact, any requirement to prove discriminatory intent should be avoided because people who embrace stereotypes may engage in discriminatory behavior without “realizing that they embrace stereotypes, resulting in a reaction of anger, shock, or confusion when they are accused of gender

discrimination.”<sup>63</sup>

Nonetheless, the competent authorities accepted EVA Air’s defense that there was no intent to discriminate based on gender. They did not make an objective judgment based on the adverse impact on women, and failed to consider how to change gender stereotypes as stipulated in Article 5, Subparagraph (a) of CEDAW.

Furthermore, in their review, the competent authorities required cabin crew to present specific instances and details of adverse treatment but did not require the Taiwanese airlines to explain whether the differential treatment met the differential treatment exception criterion (bona fide occupational qualification); e.g., to prove the necessity, legitimacy, and reasonableness of wearing dresses to perform cabin crew duties (in accordance with the *Gender Equality in Employment Act*). Also, the competent authorities did not clarify the relationship between the ruling of non-discrimination and positive affirmative action measures (in accordance with CEDAW) (see Table 4 for details).

[Table 4] CEDAW’s definition of discrimination and exceptions

Actions constituting discrimination (Article 1)		Exceptions (actions not constituting discrimination) (Article 4)
Action	Result	
<p>Any “distinction, exclusion or restriction” made on the basis of sex.</p> <p>→ Helpful reminders:</p> <ul style="list-style-type: none"> <li>• Regardless of intent</li> <li>• Direct discrimination: Distinction, exclusion, or restriction clearly based on gender or gender differences</li> </ul>	<p>The impact or purpose of the action is significant enough to impede or deny (women) the equal enjoyment of their human rights and fundamental freedoms.</p> <p>→ Helpful reminders:</p> <ul style="list-style-type: none"> <li>• Direct adverse consequences</li> <li>• Indirect adverse impacts</li> <li>• Ignoring discriminatory</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary special measures aimed at accelerating de facto equality between men and women</li> <li>• (Permanent) special measures protecting maternity</li> </ul>

<sup>63</sup> Frances Raday, Shai Oksenberg (2022). Article 11, in Patricia Schulz, Ruth Halperin-Kaddari, Beate Rudolf, Marsha A. Freeman (eds.). *The UN Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol: A Commentary*(2<sup>nd</sup>). (Oxford University Press), p. 422.

Actions constituting discrimination (Article 1)		Exceptions (actions not constituting discrimination) (Article 4)
Action	Result	
<ul style="list-style-type: none"> <li>Indirect discrimination: Seemingly neutral or identical treatment, which may not be equal (determined by the actual result of the action)</li> </ul>	structures, historical patterns, and power relations between genders may exacerbate inequalities	

[Source of information]: Prepared by NHRC.

**c. Preventing discrimination or harm to women by third parties; inadequate protection**

The Department of Gender Equality, Executive Yuan noted that since 2014, there have been cases addressing regulations such as the *Police Uniforms Act*, the attached instructions of the *Firefighting Uniforms Code*, the *Customs Service Personnel Uniform Management Guidelines*, and the uniform regulations of the National Immigration Agency, Ministry of the Interior. These cases involved female employees being required to wear skirts as part of their uniform. Upon review, the special review committee determined that these regulations violated Article 5, Subparagraph (a) of CEDAW; said regulations were thus amended. All schools under the Ministry of Education must obtain their committees’ approval regarding their uniform choices; this ensures that female students are not required to wear skirts. However, previous reviews of uniform regulations conducted by the Department of Gender Equality, Executive Yuan have only examined the public sector and schools, and not the private sector and businesses. In January 2024, letters were sent to government ministries and agencies urging them to request the institutions under their jurisdiction to self-assess their attire regulations to eliminate gender stereotypes. Nevertheless, the ministries and agencies have failed to do their own self-assessments as per CEDAW’s definition of gender discrimination, let alone oversee their subordinate institutions’ self-assessments.

Paragraphs 16 and 20 of General Comment No. 16 of the CESCR states that “States parties have an obligation to monitor and regulate the

conduct of non-State actors to ensure that they do not violate the equal right of men and women to enjoy economic, social and cultural rights.”

Paragraph 17 of General Recommendation No. 28 of CEDAW mentions that “States parties also have an obligation to ensure that women are protected against discrimination committed by public authorities, the judiciary, organizations, enterprises or private individuals, in the public and private spheres. This protection shall be provided by competent tribunals and other public institutions and enforced by sanctions and remedies, where appropriate. States parties should ensure that all government bodies and organs are fully aware of the principles of equality and non-discrimination on the basis of sex and gender and that adequate training and awareness-raising programs are set up and carried out in this respect.” Paragraph 37 also mentions the following: “Takes steps to **prevent, prohibit and punish** violations of the Convention by **third parties.**”

Accordingly, states should take all appropriate measures to eliminate discrimination against women by any individual, organization, or business. In this case, the Ministry of Labor indicated that it would continue to provide administrative guidance in the form of promoting the law, guidance for legal compliance, and holding study sessions. The Ministry of Transportation and Communications indicated that it has incorporated trousers as a cabin crew attire evaluation item in its Gender Equality Promotion Plan and also that it has requested domestic and international airlines to actively eliminate occupational gender segregation. Overall, the focus is on soft measures such as prevention and publicity, and protection for female employees remains inadequate.

**d. The current *Gender Equality in Employment Act* does not allow unions to file complaints as complainants**

The current legal framework does not allow unions to file complaints regarding collective gender discrimination; only individual employees or

applicants can file a complaint. The Taoyuan City Government explained that the *Gender Equality in Employment Act* endows specific rights and requires factual circumstances, and that unions, when detecting illegal activity, can only act as whistleblowers, not complainants. The Ministry of Labor stated that the law prohibits employers from discriminating against applicants or employees in recruitment and other aspects on the basis of gender or sexual orientation, and that complaints must contain specific facts detailing violations of the law. Local governments receiving complaints must conduct interviews and investigations. Because unions are not the parties directly involved in case, they cannot present the case facts that complainants can. Thus, individual complainants are still required.

However, the *Act for the Settlement of Labor-Management Disputes* states that unions can act as complainants to engage in litigation, mediation, arbitration, or rulings. Article 40 of the *Labor Incident Act* provides unions the right to litigate in collective and systemic disputes, allowing them to sue employers that harm the interests of their members within the scope defined in their charters.

Unfortunately, this case is governed by the gender discrimination relief and complaint procedures stipulated in the *Gender Equality in Employment Act*, which states that even if the discrimination is collective and systemic, only employees or applicants can file complaints with the local competent authorities as per Article 34; unions can only serve as whistleblowers. The complaints are then reviewed by the Gender Equality Working Committee before an official letter is issued.

- e. **The government has not formulated guidelines to help employers and employees understand human rights and avoid discrimination, making it difficult to realize women's equal rights**

According to Article 2, Subparagraph (f) and Article 5 of CEDAW, states should take all appropriate measures to eliminate the harm of gender stereotypes, as they are both a source and consequence of discrimination against women. Moreover, General Recommendation No. 25 of CEDAW obliges state parties to address prevalent gender relations and stereotypes not only through individual actions but also in laws, legislation, societal structures, and institutions, all of which impact women.

As stated in the Taipei High Administrative Court's verdict Su-Zi No. 1063,

*Eliminating gender stereotypes in the workplace and work-related demands that arise from such perceptions is not something that can be achieved overnight.... Stereotypes, which commonly occur in all professions, need to be corrected through education and training.... The concept of gender-friendliness can enhance the public's sensitivity towards gender equality, enabling empathetic and role reversal-based understanding, and fostering a gender-friendly and substantively equal social environment.*

Taiwan's *Gender Equality in Employment Act* has been in place for more than 20 years, yet service industries such as the civil aviation industry still often retain gender stereotype-based dress codes, showing that there remains room for improvement in raising employers and employees' awareness and understanding of gender equality in the workplace.

The UK's Government Equalities Office the publication *Dress codes and sex discrimination: what you need to know*<sup>64</sup> in May 2018. It explains the laws regarding potential gender discrimination in female employee or applicant dress codes, provides relevant cases and FAQs, helps employees understand their rights, and assists employers in avoiding legal violations. The guidelines recommend that employers avoid making gender-related regulations such as requiring female employees to wear high heels. If

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<sup>64</sup> The Government Equalities Office (2018). *Dress codes and sex discrimination: what you need to know*.

employers mandate that female employees wear makeup, skirts, nail polish, specific hairstyles, or certain types of hosiery, it could constitute direct gender discrimination.

#### **f. Conclusion**

In summary, the state has not taken all appropriate measures to prevent, prohibit, and punish third parties that violate CEDAW. Regardless of whether discrimination is individual or collective, or in the public or private sector, the state has an obligation to take all appropriate measures including legal action to eliminate third-party discrimination against women and to eradicate gender stereotypes and prejudice.

The competent authorities in this case failed to fulfill the state's protection duty and did not assess gender discrimination in accordance with CEDAW's definition. Thus, it did not provide adequate protection for female employees. Furthermore, the competent authorities failed to allow labor unions to act as parties for relief and did not establish guidelines for employers to comply with CEDAW and avoid gender discrimination. Therefore, the competent authorities were insufficient both in fulfilling their procedural obligations and in obtaining substantive outcomes.

#### **2) Did the government take all appropriate measures to ensure that both men and women have the same health and safety working conditions?**

The second issue in determining whether the government has fulfilled its obligations according to CEDAW and other international human rights conventions is to understand whether it has taken all appropriate measures to ensure that both men and women equally enjoy safe and healthy working conditions. The design of female cabin crew's uniforms may impair their emergency response abilities, increase their risk of bodily exposure, and pose a higher risk of falls and other health and safety concerns. Taiwanese airline dress codes fail to take female cabin crew's safety and health risks into account. The question here is whether or not the government has fulfilled its state obligations of respecting, protecting, fulfilling, and promoting women's right to be free from discrimination and to enjoy equal rights as required by CEDAW and other international human rights

conventions?

**a. International human rights conventions require the fulfillment of state obligations**

According to Article 11 of CEDAW and Article 7 of the ICESCR, international human rights conventions guarantee women the right to safe and healthy working conditions and require state parties to take all appropriate measures to eliminate discrimination against women in the workplace. This is to ensure that women enjoy equal rights with men, particularly regarding health and safety in the workplace.

Paragraphs 47 and 55 of General Comment No. 23 of CESCR state that “States parties must take measures to address traditional gender roles and other structural obstacles that perpetuate gender inequality” and “states parties should identify indicators and benchmarks to monitor the implementation of the right to just and favorable conditions of work. Such indicators and benchmarks should address the different elements of the right to just and favorable conditions of work.... States parties should define the indicators that are most relevant to national implementation of the right, such as the incidence of occupational accidents...”

**b. Current actions taken by government entities**

The Ministry of Labor has stated that the Occupational Safety and Health Administration has not conducted any research specifically related to the occupational safety and health of cabin crew. If cabin crew have concerns, they can engage in discussion with their employers through the business entities’ occupational safety and health committees, which contain labor representatives. Furthermore, Article 5 of the *Occupational Safety and Health Act* does not include penalties and only urges employers to prevent workplace accidents within reasonable and feasible limits. It does not provide a basis for the Ministry of Labor to impose fines.<sup>65</sup>

The Ministry of Transportation and Communications states that there are no studies showing injuries or harm incurred by cabin crew during

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<sup>65</sup> The Commission’s meeting minutes with the advisory body on May 30, 2024.



emergencies due to the use of stockings, nor have any such cases been observed. For example, the emergency evacuation of JAL Flight 516 in early 2024 showed the importance of the crew applying their training during accidents. Whether cabin crew wore skirts or trousers would not have impacted the occurrence or the outcome of the accident. The Civil Aviation Administration plans to incorporate “offering female cabin crew uniform options other than skirts” as an evaluation item in the industry assessment scheduled for 2026 to promote gender equality.

Regarding the safety and health risks related to cabin crew’s uniforms in the workplace, such as stocking material and skirt design that can create a tripping hazard, there are currently no reference guidelines in place to reduce these risks and prevent workplace accidents. This indicates a potential inadequacy in the state’s exercise of its obligations, and it may be necessary to supplement the existing specifications.

**c. Steps should be taken to ensure better safety and health and equality for cabin crew**

In the expert inquiry meeting,<sup>66</sup> scholars stated their hope that better protection can be provided for attendants even though uniforms are part of a business’ image. The evacuation of over 300 people in a short period of time during the JAL Flight 516 incident has been praised as a textbook example of flight evacuations. Cabin crew quickly determined the starting point of the fire and prevented passengers from going towards it. The cabin crew instructed passengers not to take their luggage and to take off high heels. While the cabin crew protected the passengers, this raises the question of how to protect the cabin crew. Can their uniforms provide better protection so that they can do their jobs more effectively?

The competent authorities have dismissed recommendations on improving the safety of cabin crew’s uniforms made in international studies by citing the lack of relevant domestic research or pointing out that the International Civil Aviation Organization does not mandate such

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<sup>66</sup> Meeting minutes of the inquiry meeting between the NHRC, experts, and scholars on March 15, 2024.

requirements. However, the global aviation standards and specifications set by the International Civil Aviation Organization for all countries to adhere to are the minimum standards for ensuring global civil aviation safety. The absence of research into the health and safety risks of cabin crew's uniforms does not imply that such risks do not exist. In this case, it remains imperative to encourage business entities to take proactive safety and health risk prevention measures and to ensure that both men and women equally enjoy these protections.

#### **d. Conclusion**

In summary, the state has not taken all appropriate measures to ensure that men and women equally enjoy safe and healthy working conditions. The ICESCR Commission has emphasized that states should establish indicators and benchmarks to monitor the implementation of rights. In this case, dress codes lack relevant health and safety risk research and assessment. Additionally, the government has not actively taken steps to conduct research, establish indicators, or create reference guidelines to mitigate risks and prevent workplace accidents. As a result, the government has failed to encourage business entities to prevent risks and has also failed to protect the safety and health of both men and women. Therefore, it is difficult to conclude that the state has adequately fulfilled its obligations under Article 11 of CEDAW and Article 7 of the ICESCR.

## **VI. Conclusion and Recommendations**

Articles 1 to 5 and Article 24 of CEDAW form the overall interpretative framework for states' obligations. This framework must be applied when discussing the government's obligations regarding the substantive rights outlined in Articles 6 to 16 of CEDAW.<sup>67</sup> CEDAW requires state parties to respect, protect, promote, and fulfill the rights of all women to equality and non-discrimination. Paragraph 37 of General Recommendation No. 28 further elaborates on the appropriate measures that states should take to fulfill these obligations.

Regarding this appeal case, the NHRC reviewed the dress codes of the Taiwanese airlines based on CEDAW regulations to determine whether gender discrimination exists. Additionally, the NHRC assessed whether the government has fulfilled its obligations to eliminate discrimination and promote equality under CEDAW. After interviewing the cabin crew and airline representatives, and consulting with experts, scholars, non-governmental organizations, and officials from the relevant authorities, the NHRC has put forward the following conclusions and recommendations:

### **1. Taiwanese airline cabin crew dress codes constitute gender discrimination prohibited by CEDAW**

In 1998, the International Civil Aviation Organization officially changed the term “flight attendants” to “cabin crew,” reflecting a shift in the roles and functions of these professionals. A comprehensive review of Article 2, Subparagraph 11, and Articles 188–191 of the *Aircraft Flight Operation Regulations* shows that cabin crew's duties and professional requirements prioritize flight safety and executing emergency evacuations over cabin service. The Civil Aviation Administration also advocates that “the primary professional requirement for cabin crew in terms of flight safety lies in their proficiency with emergency and survival equipment, as well as their ability to carry out emergency procedures in response to emergency situations.”<sup>68</sup>

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<sup>67</sup> Referenced Paragraph 6 of General Recommendation No. 25 of CEDAW and Paragraph 7 of General Recommendation No. 28.

<sup>68</sup> As explained in Jiao-Hang (I) Letter No. 1128130087 dated November 29, 2023

Article 188, Paragraph 6 of the aforementioned regulations states that “Cabin crew members shall wear a company uniform when on duty.” According to the Civil Aviation Administration, “The purpose of uniforms is to ensure that passengers can easily identify crew members and follow their instructions during emergencies.”<sup>69</sup>

Thus, it is not inappropriate for airlines to require cabin crew to wear uniforms. However, if further restrictions are imposed that require female cabin crew to wear skirts, it must be proven that this requirement is based on specific needs related to the nature of their duties and that there is a necessity, legitimacy, and reasonableness for such. However, in light of the fact that many European, U.S., and Asian airlines offer female cabin crew the option of wearing trousers, it is difficult for the Taiwanese airline representatives to justify the necessity of female cabin crew wearing skirts while performing their duties.

When examining the dress codes under Articles 1, 5, and 11 of CEDAW, particularly concerning potential absolute or relative disadvantages (direct or indirect impacts) related to performance evaluations and occupational health and safety risks,<sup>70</sup> the NHRC concluded that these practices constitute gender discrimination against female cabin crew. The differing dress code requirements for male and female cabin crew imposed by the Taiwanese airlines do not fall under the exceptions permitted by Article 4 of CEDAW (which allows for measures aimed at accelerating de facto gender equality or protecting maternity). Business image, customer preference, and social customs, the reasons generally cited by airlines for their uniform requirements, do not qualify as a defense of “bona fide occupational qualifications” and fail to refute the inherent gender stereotypes and discrimination.

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issued by the Ministry of Transportation and Communications.

<sup>69</sup> As explained in Jiao-Hang (I) Letter No. 1128130087 dated November 29, 2023 issued by the Ministry of Transportation and Communications.

<sup>70</sup> As discussed in Chapter V, Section 1, the disadvantages and impacts of the gender-specific dress codes include directly linking dress code compliance to performance assessments, requiring female cabin crew to spend more tangible and intangible costs to meet these specifications, and exposing them to higher risks of tripping, physical exposure, sexual harassment, and flammability in the event of a fire.

Female cabin crew comprise over 79%, and in some cases more than 95% of the workforce in Taiwanese airlines. Thus, the prohibition against female cabin crew wearing trousers, combined with detailed requirements regarding makeup and hair appearance significantly reinforce and perpetuate gender stereotypes in society in this gender-segregated occupation.

**2. Gender-specific dress codes can lead to the exclusion of women and individuals with different gender identities from the labor market, or result in disadvantages within the labor market.**

Gender equality is a basic right guaranteed by the *Universal Declaration of Human Rights*, CEDAW, other international human rights laws, as well as the *Constitution of the Republic of China* (Taiwan). Gender equality must be observed in both the public and private sectors (including workplaces).

With reference to Article 2, Article 5, and General Recommendation No. 28 of CEDAW, CEDAW particularly emphasizes that states should work to end traditional customs and social culture that reinforce the superiority of men, discriminate against women, or assign stereotypical roles and tasks to men and women based on gender. Such prejudices or stereotypes have long been the root cause of discrimination against women, making it difficult for women to know, enjoy, or exercise their rights and freedom equally.

During the investigation of this case, the NHRC has frequently encountered critical comments aimed at cabin crew, such as: “They (the female cabin crew) were the ones applying for these jobs and should thus abide by their companies’ regulations. If they do not wish to abide by the regulations, then they should apply for other jobs;” or “This is not the only industry that requires female employees to wear skirts; how can you call this gender discrimination?”

Taiwan’s *Gender Equality in Employment Act* was enacted to address

the problem of structural discrimination that was common in various industries in the past, such as pregnancy prohibition clauses and single female worker clauses that seriously hindered women's right to work.

Employers should not decide whether to employ applicants or determine the working conditions of their employees based on gender characteristics that are unrelated to job performance or duties. Such decisions result in discrimination against applicants or employees who do not (or do) possess these gender characteristics. Only when employers refrain from making such gender-based decisions will they be in compliance with requirements of CEDAW, the *Constitution of the Republic of China* (Taiwan), and the *Gender Equality in Employment Act* to eliminate gender discrimination and promote substantive equality.

Dress codes may seem to be a minor issue, but it is a problem rooted in harmful gender stereotypes and overlooked social prejudice. Gender-specific uniform regulations (which usually apply to women) are often based on gender stereotypes and cause women to be sexualized and objectified, damaging their dignity, and directly or indirectly hindering the equal enjoyment of their rights and fundamental freedoms guaranteed by CEDAW. Such actions further deepen social prejudice and discrimination, and they have far-reaching influence.<sup>71</sup>

As the aforementioned domestic and foreign dress code cases (e.g., the Alaska Airlines case in the U.S., restaurant and bar case in Canada, cosmetic company case in Taiwan, and policewomen and female firefighters case) have shown, gender-specific dress codes may result in the exclusion of women and people with different gender identities from the labor market or in disadvantages in the labor market.

No one should be forced to find another job, lose their seniority, or give up their existing benefits in order to avoid discrimination. Nor should they have to give up their basic rights before they can get or keep a job.

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<sup>71</sup> The Committee on the Elimination of Discrimination against Women (Apr. 23, 2024), General Recommendation on Gender Stereotypes: Concept Note.

The solution is that the government must ensure that all workplaces are non-discriminatory and enhance both employers' and employees' awareness of human rights and gender equality so that the substantive equality guaranteed by CEDAW can be achieved.

**3. The government has failed to take immediate and appropriate measures to prevent female cabin crew from being subjected to third-party discrimination and to actively promote gender equality.**

From the information provided by various government entities and during interviews and consultations, the NHRC found that these government entities failed to reference the definitions provided in CEDAW when reviewing gender discrimination cases, focused on soft measures such as advocacy, left complainants unable to apply for relief through labor unions, or lacked the knowledge to prevent occupational safety risks. The issue of insufficient prevention, protection, and relief mechanisms makes it difficult to eliminate individual or collective discrimination against women in the private sector. As a result, female cabin crew are unable to equally enjoy the employment rights and healthy and safe working conditions guaranteed by Article 11 of CEDAW in their work.

Paragraph 10 of General Recommendation No. 28 of CEDAW and Paragraph 42 of General Comment No. 16 of the CESCR advise that countries are obliged to avoid engaging in acts of negligence or omission that result in discrimination against women.

It has been more than 20 years since the *Gender Equality in Employment Act* was implemented, and more than 10 years since the *Enforcement Act of the Convention on the Elimination of All Forms of Discrimination against Women* came into effect. However, industries such as the civil aviation sector continue to enforce differing dress codes for male and female employees that only exist because of gender stereotypes. There have been a number of complaints or lawsuits arising from disputes over dress codes in workplaces. Nevertheless, the government has not yet provided guiding principles for businesses to formulate dress codes that increase employers and employees' awareness and understanding of

gender discrimination and gender equality in the workplace.

In summary, after investigating this case, the NHRC has concluded that the government has not completely fulfilled its obligations under Articles 2, 3, 5, and 11 of CEDAW, which include taking steps to prevent and prohibit third parties from violating CEDAW, enforcing penalties for such violations, addressing gender stereotypes in society, and, in this instance, actively supporting female cabin crew in realizing their rights.

**4. The NHRC recommends that the government refer to the provisions of CEDAW when applying the Gender Equality in Employment Act.**

Article 2 of the *Enforcement Act of Convention on the Elimination of All Forms of Discrimination against Women* stipulates that “all terms and conditions specified in the Convention regarding protection of human rights of different genders and promotion of sexual equality shall have the same effect as domestic laws.” Article 3 of the same Act also stipulates that “all rules, regulations, ordinances and administrative measures applicable to the Convention shall refer to the intention of the Convention, and any and all interpretations and explanations provided by the Committee on the Elimination of All Forms of Discrimination against Women of the United Nations.”

Based on the above, the NHRC recommends that the government refer to Articles 1, 4, and 5 of CEDAW and the explanations provided by the CEDAW Committee when determining whether a case of discrimination or gender discrimination can be built (or not) under the *Gender Equality in Employment Act* and its *Enforcement Rules*. When handling complaints filed under the *Gender Equality in Employment Act* and determining whether they constitute gender discrimination cases, the government should strictly demand that employers provide evidence of “bona fide occupational qualifications” to prevent the complainants from suffering disadvantages, thereby carrying out the nation’s obligations to protect complainants.



**5. The NHRC recommends that the government fulfill its positive obligations by urging Taiwanese airlines to provide the option of trousers for female cabin crew uniforms as soon as possible, while establishing basic dress codes in accordance with CEDAW so as to help the airlines formulate dress codes that align with gender equality.**

Article 3 of CEDAW emphasizes that states should take positive steps to ensure that women can fully achieve personal development and make progress in all fields. Article 4 of the *Enforcement Act of the Convention on the Elimination of All Forms of Discrimination against Women* also stipulates that “Upon exercising its authority, all government units shall do so in accordance with all rules and regulations regarding protection to genders and human rights specified in the Convention, eliminate gender discrimination, and actively promote the realization of gender equality.”

The NHRC recommends that the Department of Gender Equality (of the Executive Yuan), the Ministry of Transportation and Communications, and the Ministry of Labor urge flag carriers to provide the option of trousers for female cabin crew uniforms as soon as possible, while developing guidelines based on CEDAW specifications with reference to international cases such as that conducted by the UK Government Equalities Office, to help civil aviation and other industries formulate dress codes that align with gender equality, occupational safety, and health. Furthermore, they should develop decision-making mechanisms that embrace diverse and democratic participation.

**6. The NHRC recommends that the government amend the Gender Equality in Employment Act to effectively address the issue of collective gender discrimination.**

Due to the rapid development of social economy, complex issues that affect people’s lives such as pollution, labor, traffic, and consumer disputes, have gone beyond individual interests and now involve the interests of the majority of the general public. Who may be party to a rights dispute cannot be regulated based on past perspectives on the subject of rights. Scholars have emphasized that the eligibility of parties has been expanded to adapt

to this type of litigation. Current remedies entail only requests for monetary damages for subsequent relief, which are insufficient to fully protect the parties' interests. What is more important is to initiate lawsuits prohibiting specific acts to put an immediate stop to the continuation of obstruction.<sup>72</sup>

The scope of application specified in Article 2, Paragraph 1, Subparagraph 3 of the *Labor Incident Act* includes tort disputes arising from labor relations such as violations of gender equality in the workplace, employment discrimination, and occupational hazards. Moreover, Article 40 of the *Labor Incident Act* provides unions the right to litigate collective and systemic disputes, allowing them to sue employers that harm the interests of their members within the scope defined in their charter; they may also request the elimination of the infringement under Article 44-3 of the *Code of Civil Procedure* which governs actions for injunctive relief prohibiting specific acts of a person who has violated the interests of the majority concerned.

According to Article 34 of the *Gender Equality in Employment Act*, even if an event involves collective or institutional discrimination, only individual employees or applicants can file a complaint with the local competent authorities. Labor unions cannot file complaints as concerned parties. Given that workers are often economically disadvantaged in labor relations, if employers infringe upon the interests of the majority of their workers, individual workers who suffer harm are often unable to dispute their employers and fight for their rights and interests on their own. The law should be amended to allow labor unions to file complaints in their own name, thereby preventing employers from continuing to implement discriminatory regulations.

Article 2 of CEDAW requires states to immediately take all appropriate measures to eliminate discrimination against women. It is recommended that the government amend the *Gender Equality in Employment Act* so that in gender discrimination incidents, labor unions

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<sup>72</sup> M.J., Hsu (July 2014). "Preliminary Introduction to Class Action—Focus on Consumer Protection Class Action," *Law Journal*, Vol. 235, p. 85.

can file complaints with the local competent authorities against employers who infringe upon the interests of a majority of their members, so as to effectively prevent the sort of collective, systemic gender discrimination seen in dress codes.

**7. The NHRC recommends that the government improve the occupational safety and health conditions of cabin crew.**

Article 11, Paragraph 1 of CEDAW requires states to eliminate gender discrimination in employment. Subparagraph (f) of Paragraph 1 requires that equal access to health and safety be ensured for women in terms of working conditions. Paragraph 13 of General Recommendation No. 28 of CEDAW requires state parties to fulfill their obligation to take appropriate measures to regulate personal conduct, including in employment, working conditions, and working standards. Paragraphs 74 and 75 of General Comment No. 23 of the CESCR require industrial and commercial businesses to abide by the ICESCR and states that they have the responsibility to respect and realize the rights (of people) to fair and favorable working conditions. Article 9 of ILO Convention No. 190 stipulates that states shall, where reasonably practical, require employers to “take into account violence and harassment and associated psychosocial risks in the management of occupational safety and health.”

As domestic and foreign studies and the recommendations in Chapter V, Section 1 show, dress codes are critical to the safety and health of cabin crew. Ensuring the safety and health of cabin crew is to ensure the safety of passengers. In other words, dress codes are not only an issue about whether cabin crew suffer gender discrimination or interference with their labor rights, but they are also closely related to the public interest.

The NHRC recommends that the Ministry of Labor actively prompt civil aviation industry enterprises to take measures to prevent occupational accidents, stop sexual harassment, and minimize fall risks and other occupational safety and health hazards, thereby jointly creating a gender-friendly, safe, and healthy workplace, as well as effectively ensuring that female cabin crew have equal access to health and safety in terms of working conditions.

The NHRC also recommends that the Ministry of Labor conduct research together with the Ministry of Transportation and Communications on the impact of dress code items such as stockings and high-heeled shoes on occupational injuries suffered by cabin crew, their fire risks, and their emergency response capabilities. Additionally, the ministries should consult experts and scholars in the fields of aviation safety and gender equality.

[24NHRC-I01]

**NHRC Investigative Report—Complaint Filed by the Taoyuan Flight Attendants Regarding Gender Discriminatory Dress Codes Adopted by Taiwanese Airline Companies**

National Human Rights Commission <https://nhrc.cy.gov.tw>

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**Resolution passed at the 55<sup>th</sup> meeting of the 1<sup>st</sup> National Human Rights Commission on July 23, 2024**