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Maine Human Rights Commission



2011 Annual Report

July 1, 2010 - June 30, 2011

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Maine Human Rights Commission

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John P. Gause
Commission Counsel
Acting Executive Director

A LETTER FROM THE CHAIRMAN

January 1, 2012

The Honorable Paul LePage, Governor
The Honorable Kevin L. Raye, Senate President
The Honorable Robert W. Nutting, Speaker
State House
Augusta ME 04333

Dear Governor LePage, President Raye and Speaker Nutting:

On behalf of myself, my fellow Commissioners, and staff of the Maine Human Rights Commission, we are pleased to present you with the 2011 Annual Report of the Maine Human Rights Commission. In 2011 we welcomed Commissioner Thompson to a position that had been vacant for a several months. As you can see by the following, we are upholding the charge of the Commission and handling the challenge to enforce Maine's anti-discrimination laws. The Annual Report provides data that demonstrates that the Commission is fulfilling its responsibilities. A few highlights are as follows:

- The number of new charges that were filed increased 16% from the previous year to 764.
- Employment charges comprised the largest category of complaints filed. 80.1% of charges filed were employment charges; 9.3% were public accommodation charges; housing charges decreased from the prior year to 10.1%; and education charges comprised .5% of the overall total.
- Disability charges comprised the largest number of allegations filed, with the number increasing slightly from the previous year (from 438 to 450); the percentage of the total number of allegations filed decreased slightly from 37% to 34%.
- Sex discrimination charges remained about the same (152), and the percentage was 11% of the total charges filed.
- The number of sex discrimination allegations that were sexual harassment claims remained about the same (70), which was 46% of the total sex discrimination allegations.
- Whistleblower allegations increased in number (to 235 allegations) and in percentage of total allegations (to 18% of total). Whistleblower allegations continue to exceed sex discrimination allegations.
- Disability, sex, and whistleblower allegations were named in 63% of the new allegations filed. Race/color, ancestry/national origin, age, retaliation & sexual orientation collectively comprised 33% of the total. All other categories comprised the remaining 4%.
- Sexual orientation allegations comprised 3% of the total.

- The number of charges closed decreased by nearly 14% from the previous year.
- 196 cases were listed on Commission agendas. 65% were uncontested and listed on the consent agenda. Commissioners heard argument in 67 cases. Reasonable grounds were found in 24% of the cases.
- At the end of FY 2011, 871 cases were pending in our inventory. The number of pending cases increased 22% from the previous year (from 670 to 817).

In addition to the above, the staff and Commissioners have participated in more than 36 training forums during this time period both providing and receiving the newest information pertinent to our arena.

On behalf of my fellow Commissioners, we pledge our continued commitment to the promotion of diversity, tolerance, and to ensuring basic human rights for all Maine citizens and visitors to our wonderful State. We certainly look forward to the continuing relationship with the Executive and Legislative branches to assure the citizens of Maine the basic protections afforded under the Maine Human Rights Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul K. Vestal". The signature is fluid and cursive, with a large initial "P" and "V".

Paul K. Vestal
Chairman of Maine Human Rights Commission

THE COMMISSION

The Maine Human Rights Commission is the State agency charged with the responsibility of enforcing Maine’s anti-discrimination laws. The Commission investigates complaints of unlawful discrimination in employment, housing, education, access to public accommodations, extension of credit, and offensive names. The Commission attempts to resolve complaints of discrimination to the mutual satisfaction of those who are involved. The Maine Human Rights Act authorizes the Commission to pursue remedies for unlawful discrimination in court when necessary to enforce the Act.

The Commission was established in 1971 and has jurisdiction over allegations of discrimination in the following areas:

AREAS OF JURISDICTION

EMPLOYMENT	HOUSING	ACCESS TO PUBLIC ACCOMMODATION	CREDIT EXTENSION	EDUCATION
Race	Race	Race	Race	Race
Color	Color	Color	Color	--
Sex	Sex	Sex	Sex	Sex
Sexual Orientation	Sexual Orientation	Sexual Orientation	Sexual Orientation	Sexual Orientation
Physical disability	Physical disability	Physical disability	--	Physical disability
Mental disability	Mental disability	Mental disability	--	Mental disability
National Origin	National Origin	National Origin	National Origin	National Origin
Ancestry	Ancestry	Ancestry	Ancestry	--
Religion	Religion	Religion	Religion	--
Age	--	--	Age	--
Workers’ Comp Retaliation	Receipt of public assistance	Children (lodging only)	Marital Status	--
Whistleblower Retaliation				
	Familial Status	--	--	--
Genetic Information	--	--	--	--

Below is a timeline of some of the most significant additions to the Maine Human Rights Act.

- 1972** Race, Color, National Origin, Ancestry, Religion, Age
- 1973** Sex, Marital Status (Credit)
- 1974** Physical Disability
- 1975** Mental Disability, Source of Income (Housing)
- 1979** Pregnancy
- 1981** Familial Status (Housing)
- 1987** Workers’ Comp Retaliation (Employment)
- 1988** Whistleblowers’ Retaliation (Employment)
- 1998** Genetic Information
- 2005** Sexual Orientation

Commission policy is formulated by five Commissioners appointed by the Governor for staggered five year terms. Commissioners make the final finding on all charges of discrimination investigated by the Commission staff and not settled or administratively dismissed. The Governor designates the Chair of the Commission from among its members.

Section 4566 of the Maine Human Rights Act outlines the powers and duties of the Commission. These include the following:

- to investigate all conditions and practices within the State which allegedly detract from the enjoyment, by each inhabitant of the State, of full human rights and personal dignity;
- to investigate all forms of invidious discrimination, whether carried out legally or illegally, and whether by public agencies or private persons;
- to recommend measures calculated to promote full enjoyment of human rights and personal dignity.

STAFFING AND BUDGET

The Commission appoints an Executive Director. The Executive Director in turn has the authority to appoint and supervise the Commission's staff. The Commission has four major divisions:

- **Investigation**

The Investigation Division is responsible for all aspects of case processing from determining whether or not allegations are legally sufficient to constitute a charge of discrimination within the jurisdiction of the Maine Human Rights Act to issuing Investigator's Reports, which analyze facts, apply the law, and recommend specific findings to the Commission.

- **Compliance**

The Compliance Division is responsible for all settlement efforts of the agency. The Division has direct responsibility for negotiating conciliation agreements after findings of reasonable grounds and conducting both written and on-site monitoring of such agreements to ensure that terms are met. The Compliance Officer sets overall negotiation strategy and reviews and monitors pre-determination settlement agreements. This Division also provides technical assistance to employers in reviewing Affirmative Action Plans and personnel policies and is involved in the public education efforts of the Commission.

- **Legal**

This Division is responsible for litigation activity as well as providing legal advice to the staff and Commission. The Commission Counsel reviews the Investigator's Reports for legal sufficiency, provides legal opinions, drafts legislation and proposed regulations, litigates cases, and advises the Executive Director on contract matters involving governmental agencies and private parties.

- **Administration**

The Administration Division is the division responsible for the effective operation of the office. Responsibilities include all personnel functions along with budget and other fiscal duties. Support is provided to other Divisions.

BUDGET

The Maine Human Rights Commission's fiscal year 2011 budget appropriation was \$951,221 including \$354,687 in federal funds from the Equal Employment Opportunity Commission and the U.S. Department of Housing & Urban Development.

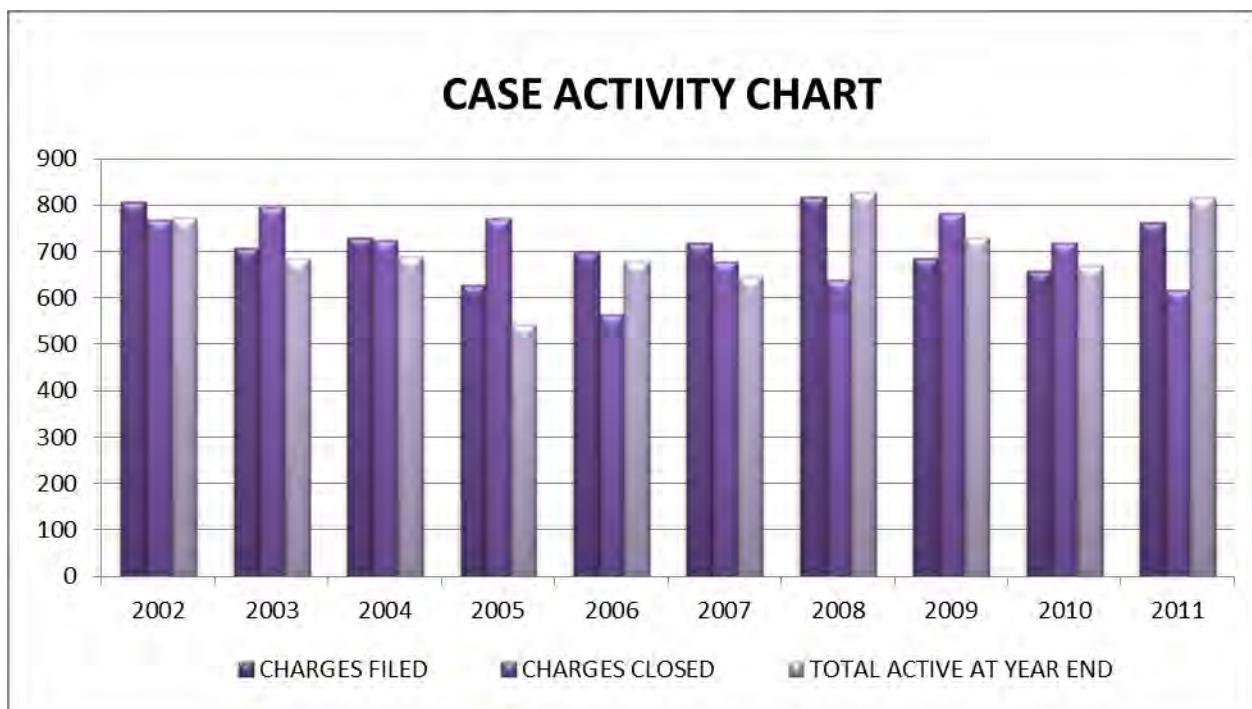
Approximately 86.6% of the agency's budget was allocated to fixed costs such as salaries and benefits. This is due to the highly personnel-intensive nature of the Commission's work in investigating, resolving, and litigating charges.

CASE ACTIVITY

During the last fiscal year, seven hundred sixty-four (764) new charges were filed, which represents an increase from the previous year. A total of 1,337 bases were named in these charges, representing more complex investigations in many cases. Six hundred and seventeen (617) cases were closed during the same time period. The pending inventory of cases has increased by 22% since last fiscal year.

CASE ACTIVITY FY 2002 – 2011

FISCAL YEAR	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
PREVIOUS YEAR TOTAL	732	771	683	688	544	679	646	826	729	670
CHARGES FILED	808	708	731	628	700	718	819	685	659	764
CHARGES CLOSED	769	796	726	772	565	678	639	782	718	617
TOTAL	771	683	688	544	679	646	826	729	670	817



CHARGES FILED

As in past years, the Commission continued to devote the majority of its resources to the processing of charges of discrimination filed with it.

- 764 new charges were filed.
- Nearly 80.1% of these new charges alleged discrimination in employment.
- The largest number of complaints filed were on the basis of disability (34%).
- The second and third largest numbers of complaints filed were based on whistleblower retaliation 18% and sex 11%.
- Disability, whistleblower, and sex comprised 63% of the complaints filed.
- Race/color was the 4th largest category of complaints (10%), followed by
 - Retaliation (8%)
 - Age (8%)
 - Other (4%)
 - Ancestry / National Origin (4%)
 - Sexual Orientation (3%)

Of the sex discrimination complaints filed, seventy (70) alleged sexual harassment. This number comprised 46% of the total of sex discrimination complaints.

BASIS OF CHARGES FILED SUMMARY FISCAL YEAR 2011

BASIS	# ALLEGATIONS
Disability	450
Whistleblower Retaliation	235
Sex	152
Race / Color	132
Retaliation	109
Age	109
All Other	54
Ancestry / National Origin	51
Sexual Orientation	45
TOTAL ALLEGATIONS	1337

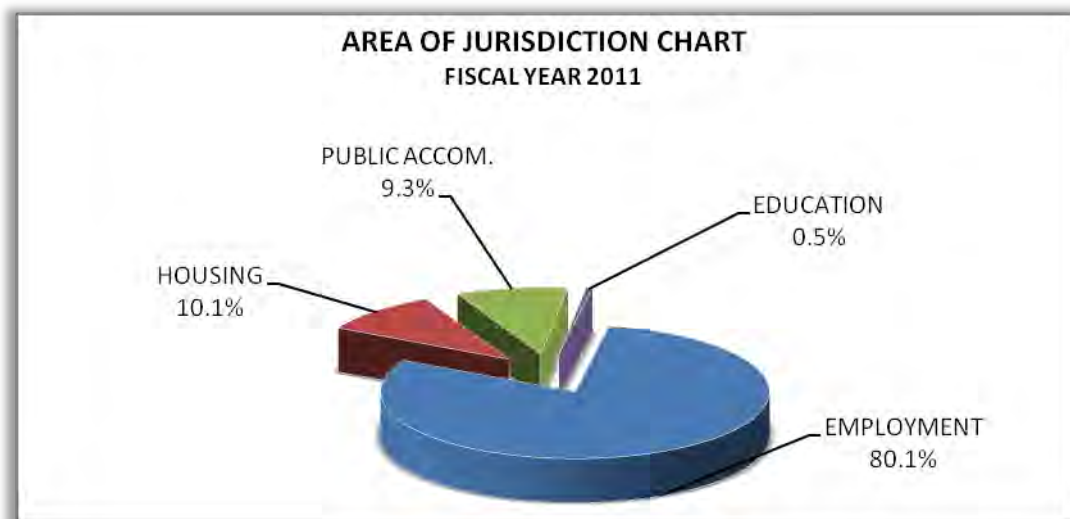


CHARGES FILED BY BASIS FY 2002 -2011

BASES	FY:	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
RACE / COLOR		97	82	64	60	64	88	113	123	101	132
SEX		296	262	258	201	236	207	196	149	147	152
DISABILITY		320	320	306	281	308	346	467	450	438	450
RELIGION		17	13	18	15	10	16	25	15	20	23
AGE		117	82	95	75	66	94	97	60	75	109
ANCESTRY / NATIONAL ORIGIN		54	42	38	43	40	43	106	51	35	51
MARITAL STATUS (Credit only)		1	0	0	0	0	0	0	0	0	0
SOURCE OF INCOME (Housing)		3	7	15	10	16	8	9	10	10	10
FAMILIAL STATUS (Housing)		6	14	6	14	19	13	6	19	22	21
WHISTLEBLOWER RETALIATION		155	151	167	138	143	147	201	180	197	235
WORKERS' COMP RETALIATION		2	5	2	4	1	3	0	0	0	0
RETALIATION		82	91	72	68	98	98	147	56	96	109
SEXUAL ORIENTATION		N/A	N/A	N/A	N/A	13	33	32	19	50	45
GENETIC INFORMATION		0	0	0	0	0	1	0	0	0	0
TOTAL ALLEGATIONS		1150	1069	1041	909	1014	1097	1399	1132	1191	1337

CHARGES FILED BY JURISDICTION FY 2002 -2011

JURISDICTION	FY:	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
EMPLOYMENT		680	590	613	516	503	544	604	653	492	618
HOUSING		14	53	69	75	136	114	59	122	113	78
PUBLIC ACCOMMODATION		94	58	43	34	49	54	142	64	52	72
EDUCATION		20	7	7	4	12	6	11	10	9	4
CREDIT EXTENSION		0	0	0	0	1	1	1	0	0	0
OFFENSIVE NAMES		0	0	0	0	0	0	2	0	0	0
TOTALS		808	708	731	628	700	718	819	849	666	772



CHARGES CLOSED

Six hundred and seventeen (617) charges of discrimination were investigated and closed during the last fiscal year.

Merit Closures

Merit closures are closures in which either a determination was made that there were reasonable grounds to believe that unlawful discrimination had occurred or cases in which the complainant received some benefit from the respondent prior to a determination on the merits of the complaint. Merit closures include reasonable grounds determinations, with successful and unsuccessful conciliations; pre-determination settlements; and withdrawals with settlement.

During the last fiscal year, there were two hundred and twenty-five (225) cases closed which were reasonable grounds cases or cases that provided benefits to complainants.

The Commission encourages voluntary settlement and is willing to work with the parties to achieve a resolution that is acceptable. Cases may be resolved at any time while they are before the Commission by means of a settlement. Settlements can take two forms: 1) **a negotiated settlement agreement** or 2) **a withdrawal with settlement**. Settlement agreements are formal documents prepared by the Commission and signed by both parties and a representative of the Commission. Terms are monitored by the Commission's Compliance Division.

Some parties reach settlements independent of the Commission, in which cases the complainants choose to withdraw their charges. A withdrawal with settlement may contain all of the terms found in a settlement agreement, but there is no agreement to which the Commission is a party. The Commission does not monitor a withdrawal with settlement.

During the last fiscal year, one hundred and seventy-eight (178) cases were settled prior to a finding by the Commission. The monetary value of these settlements amounted to \$1,729,651 for complainants. It should be noted that in addition to monetary awards, settlements often include such non-monetary relief as an offer of a job or housing unit, modifications providing accessibility, reinstatement, attorney's fees, cleared personnel records, policy modifications, letters of recommendation, and non-retaliation provisions.

Also during this time period there were nineteen (19) successful conciliations of the forty-seven (47) reasonable grounds determinations. The Maine Human Rights Act requires the Commission to undertake formal conciliation efforts in all cases in which it is determined that reasonable grounds exist to believe that unlawful discrimination has occurred. The monetary value of these conciliations was \$219,560. Total monetary relief for merit closures was \$1,949,211.

Administrative Dismissals

Cases can be administratively dismissed for several reasons prior to a Commission determination. Complainants may choose to **withdraw** their charge of discrimination. Withdrawals most often occur when complainants, after hearing the facts presented by respondents at a fact finding conference, or reviewing the respondents' written answers to the charge, decide that they do not wish the Commission to continue processing their case any longer. Twenty-eight (28) charges were withdrawn during the last year.

Complainants may also obtain **Right-To-Sue** letters from the Commission after 180 days from the filing of a charge. If the Commission issues a Right-To-Sue letter, the case is closed and the

complainant can file a lawsuit in court. One hundred and twenty-five (125) Right-To-Sue letters were issued in the last fiscal year.

Other cases are **administratively dismissed** by the Executive Director for such reasons as lack of jurisdiction, failure by the complainant to cooperate with the investigation, or failure by the complainant to substantiate a complaint. Ninety (90) cases were closed during the last year for such reasons.

WITHDRAWALS AND DISMISSALS FOR FY 2011

TYPE	NUMBER
CHARGE WITHDRAWN	28
RIGHT TO SUE	125
FAILURE TO COOPERATE/PROCEED	61
NO JURISDICTION	18
OTHER	11
TOTAL	243

Non merit closures

In addition to cases closed finding reasonable grounds and/or providing some remedy to the complainant, and cases administratively dismissed, one hundred forty-nine (149) cases were dismissed after a finding that no reasonable grounds existed to believe that unlawful discrimination had occurred.

Commissioner determinations

If a case cannot be settled, the complainant does not withdraw, or the matter is not administratively dismissed, a report is prepared by the Investigator assigned to the complaint and a recommendation is made to the Commission as to whether reasonable grounds exist to believe that unlawful discrimination occurred.

One hundred and ninety-six (196) cases came before the Commission in fiscal year 2011 for a determination. One hundred and twenty-nine (129) cases had no written objection to the Investigator’s recommendation, and were placed on the Commission’s Consent Agenda. In those cases, Commissioners adopted the recommendation of the Investigator without argument. The Commission found reasonable grounds to believe that unlawful discrimination had occurred in forty-seven (47) cases, which was 24% of the cases they considered. The Commission found no reasonable grounds to believe that unlawful discrimination occurred in one hundred and forty-nine (149) cases. Not all cases in which the Commission makes determinations are closed within the same fiscal year. Cases in which the Commissioners find reasonable grounds continue through a conciliation process. The above figures represent cases considered by the Commission in fiscal year 2011. The figures following represent cases actually closed during fiscal year 2011.

SUMMARY OF CASE CLOSURES FOR FY 2011

CASES CLOSED FY 11	MERIT CLOSURES: 36.5%			NO RG DETERMINATIONS 24%	WITHDRAWALS & DISMISSALS 39.5%
	SETTLEMENTS	SUCCESSFUL CONCILIATIONS	UNSUCCESSFUL CONCILIATIONS		
617	178	19	28	149	243

LITIGATION

The Maine Human Rights Act authorizes the Commission to file a lawsuit in Superior Court in the name of the Commission, for the use of the complainant, in cases where reasonable grounds are found to believe that unlawful discrimination has occurred, and where conciliation has failed. The Commission Counsel directs these legal efforts and represents the Commission.

During Fiscal Year 2011, the Commission directed Counsel to file complaints in two cases on behalf of the Commission. Eight cases were resolved that had been referred to Counsel for litigation or amicus filings. The Commission was a party in fifteen court cases throughout the year. At the end of Fiscal Year 2011, there were seven cases pending in court in which the Commission was a party.