

# MAINE STATE LEGISLATURE

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# Maine Human Rights Commission

## 2023 Annual Report

July 1, 2022 - June 30, 2023

Maine Human Rights Commission  
51 State House Station, Augusta, Maine 04333  
[www.maine.gov/mhrc](http://www.maine.gov/mhrc)

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# Maine Human Rights Commission

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September 11, 2023

The Honorable Janet Mills, Governor  
The Honorable Troy Jackson, President of the Maine Senate  
The Honorable Rachel Talbot Ross, Speaker of the Maine House of Representatives  
State House, Augusta, Maine 04333

Dear Governor Mills, President Jackson, and Speaker Talbot Ross:

On behalf of the Commissioners and staff of the Maine Human Rights Commission (“Commission”), we are pleased to present you with our agency’s Fiscal Year 2023 (“FY 2023”) Annual Report.

After two very long years in which COVID-19 seemed to dominate our collective lives, in FY 2023 the State of Maine and its government began to emerge from pandemic mode. Some operational changes the Commission adopted during the pandemic appear likely to endure (much Commission complaint-filing and pleading now is done electronically, and our agency investigations and mediations are conducted mostly remotely), while some continue to evolve (public hearings and outreach events returning to in-person or hybrid formats), so the new “normal” for Commission matters continues to evolve. With so much change in the air, the Commission continued in FY 2023 to uphold our statutory charge to enforce Maine’s anti-discrimination laws. A few highlights are as follows:

- The Commission received 683 new complaints in FY 2023, up from the prior year’s 614.
- Of new complaints filed, 57% were based on employment, 21% were based on housing, 16% were based on public accommodations, and 2% were based on education.<sup>1</sup>
- Investigators wrote reports after completed investigations in approximately 166 cases during FY 2023.
- 
- Commissioners found “
- The Commission closed 654 cases in FY 2023.
- At the end of FY 2023, 789 cases remained pending, a slight increase in pending cases from the prior year.

The Commission continues to work to eliminate unlawful discrimination for all citizens of and visitors to Maine. We hope this report is of assistance, as our agency seeks to work closely with the Executive and Legislative branches as we jointly assure the citizens of Maine the protections afforded by the Maine Human Rights Act.

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<sup>1</sup> The data presented on complaints filed in FY 2023 is believed to include all allegations made under a given jurisdictional basis (housing, employment, etc.), but due to FY 2022-3 changes in the reporting tools available from a federal funder, the Commission’s confidence in the reliability of these results is less than total.

Sincerely,



Jefferson Ashby, Acting Commission Chair

## THE COMMISSION

Established in 1971, the Commission is a quasi-independent state agency that enforces Maine's anti-discrimination laws encompassed in the Maine Human Rights Act ("MHRA") at Title 5 of the Maine Revised Statutes ("M.R.S."), Sections 4551-4636. The MHRA charges the Commission with investigating conditions and practices which allegedly detract from enjoyment of full human rights and personal dignity (whether carried out legally or illegally, and whether by public agencies or private persons) and recommending measures calculated to promote full enjoyment of human rights and personal dignity. The MHRA mandates that the Commission "shall conduct such preliminary investigation as it determines necessary" to determine if there are "reasonable grounds" (or "cause") to believe that unlawful discrimination occurred in employment, housing, education, access to public accommodations, extension of credit, genetic non-discrimination, and offensive names. 5 M.R.S. § 4612(1)(B). The Commission also investigates Maine Whistleblowers' Protection Act ("WPA") retaliation complaints pursuant to 26 M.R.S. §§ 831 - 834-A.

During FY 2023, the Commission had jurisdiction over allegations of discrimination in the following areas:

JURISDICTIONAL BASIS	EMPLOYMENT	HOUSING	ACCESS TO PUBLIC ACCOMMODATION	CREDIT EXTENSION	EDUCATION	YEAR ENACTED
Age	X	N/A	N/A	X	N/A	1972
Ancestry	X	X	X	X	N/A	1972
Color	X	X	X	X	N/A	1972
National Origin	X	X	X	X	X	1972
Race	X	X	X	X	X	1972
Religion	X	X	X	X	N/A	1972
Marital Status	N/A	N/A	N/A	X	N/A	1973
Sex	X	X	X	X	X	1973
Physical disability	X	X	X	N/A	X	1974
Mental disability	X	X	X	N/A	X	1975
Receipt of Public Assistance	N/A	X	N/A	N/A	N/A	1975
Pregnancy	X	N/A	N/A			1979
Familial Status (minor child)	N/A	X	N/A	N/A	N/A	1981
Workers' Comp Retaliation	X	N/A	N/A	N/A	N/A	1987
Whistleblower Retaliation	X	N/A	N/A	N/A	N/A	1988
Children (lodging only)	N/A	N/A	X	N/A	N/A	1989
MHRA Retaliation/Interference	X	X	X	X	X	1993
Genetic Information	X	N/A	N/A	N/A	N/A	1998
Sexual Orientation (including GI and GE)	X	X	X	X	X	2005
Familial status (minor child & dependent adult)	X	X				2021
Domestic Violence Victim (Perm. Prot. Order)	X	X				2021
Ancestry, Religion, Color					X	2021
Age			X			2021

The agency's structure is such that five volunteer Commissioners are appointed by a Governor for staggered five-year terms; a Governor may designate the Chair of the Commission. The Commissioners appoint a Commission

Counsel and an Executive Director. The MHRA ensures that the Commission is apolitical, with requirement that no more than three Commissioners may be from any political party. The MHRA requires the Commission to offer parties to a complaint an opportunity to try to resolve the dispute prior to a determination of whether there is cause to believe that unlawful discrimination occurred. Commissioners make final determinations on all discrimination complaints investigated by Commission staff that are not resolved administratively or settled. The MHRA specifically authorizes the agency to pursue remedies for unlawful discrimination in court when enforcement in the public interest is necessary. 5 M.R.S. § 4612. The Commission has “the further duty to recommend measures calculated to promote the full enjoyment of human rights and personal dignity by all the inhabitants of this State”, 5 M.R.S. § 4566, and occasionally is called upon to present information to the Maine Legislature about matters that might affect human rights in the State.

## **PROCESS**

The Commission receives an intake (which it drafts into a complaint, if MHRA jurisdiction exists) or a complaint, notifies the respondent, and obtains its answer to the complaint and agency requests for information and documents. The Commission sends those to the complainant to get their reply supporting their allegations. If at that time a complaint is not administratively dismissed or resolved by the parties, or the complainant has not proceeded directly to court, the case is assigned to an investigator for a preliminary investigation. The investigator prepares a written report outlining relevant facts, applicable laws, and recommended findings on each claim as to whether there are “reasonable grounds”, or cause to believe unlawful discrimination or retaliation occurred. The Commission staff provides reports with summaries of investigation, legal analysis, and recommendations to Commissioners for decision at public meetings. After a cause finding, the Commission attempts to resolve the dispute by agreement (“conciliation”); if conciliation is unsuccessful the complainant and Commission both may file lawsuits in court.

## **STAFFING**

The Executive Director, who is ultimately responsible for all agency activity, hires and supervises Commission staff. In FY 2023, nearly half of the agency’s staff were investigators, who: reviewed hundreds of Intake Questionnaires to screen out non-jurisdictional matters or draft complaints in jurisdictional matters; conducted fact-finding as to whether complainants substantiated discrimination claims; and wrote Investigator’s Reports that analyzed facts, applied legal principles, and recommended specific findings to the Commissioners. During FY 23, a Lead Investigator assisted in supervising this work. Commission Counsel provided legal advice to Commissioners and staff, reviewing all investigator reports for legal sufficiency, litigating enforcement actions in the public interest, drafting proposed regulations, and providing information to the Legislature. During FY 23, a Deputy Commission Counsel assisted with these duties. Other staffers included: the agency’s Operations Director, who during some of FY 23 managed personnel, budget/fiscal, information technology, annual reporting, and office matters; and three secretary associate legal staffers, who handled all new complaint filings, early case processing, case closures, and Commission meeting matters. The Commission’s Executive Director handled finance/budget, operations, and personnel supervision, along with most agency outreach activity and public/Legislative information-sharing, among various other things.

## **BUDGET**

The Commission’s FY 2023 budget appropriation was \$1,878,516. Approximately 32% of the total agency budget ( $\cong$  \$599,728) was anticipated revenue from federal work-sharing agreements with the U.S. Equal Employment Opportunity Commission and the U.S. Department of Housing & Urban Development. Due to the highly personnel-intensive nature of investigating, resolving, and litigating complaints, about 93% of the agency’s General Fund budget<sup>2</sup> (\$1,084,091) was allocated to fixed personal service costs such as salaries and benefits. Just under 7% of the agency’s General Fund budget (\$86,833) was allocated to “all other” operating expenditures to support program activities.

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<sup>2</sup> Special revenue funds accounted for \$107,864.



## CASE ACTIVITY

As in past years, the Commission continued to devote most of its resources to processing discrimination complaints filed with it. During FY 2023, 683 new complaints were filed (up from the prior year) and the Commission closed 654<sup>3</sup> cases. By the end of FY 2023, the Commission's pending inventory of cases increased from the prior year.

### HISTORICAL CASE ACTIVITY DATA 2014 - 2023

FISCAL YEAR	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014
ACTIVE CASES FY START	760	863	842	768 <sup>4</sup>	710	795	726	756	684	713
+ CASES FILED	683	614	760	775	715	709	687	611	739	654
- CASES CLOSED	654	717	713	701	748	755	615	621	667	683
ACTIVE CASES FY END	789	760	863	842	677	749	798	723	756	684

### Complaints Filed

Many Commission complaints involve protected classes that vary depending on the distinct areas of jurisdiction under which each case arises. Very often, a single complaint will contain multiple separate allegations of discrimination, or "claims", that require different factual and legal analyses and complex investigations. These more complex investigations require substantially increased Commission work and staff. While the overall number of case filings was lower than it had been in years, cases continue to be more complex than ever, with multiple complainants, respondents, and legal claims, and mixed areas of jurisdiction.

In FY 2023, the Commission received exponentially more housing complaints than it had ever received before. Such complaints are time- and resource-intensive, and their substantial increase had noteworthy impacts on all aspects of the Commission's operations in FY 2023.

AREA of JURISDICTION Fiscal Year	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014
EMPLOYMENT	389 (57%)	291 <sup>5</sup>	435	554	508	492	482	480	548	518
HOUSING	145 (21%)	98	133	124	106	113	103	60	92	73
PUBLIC ACCOMMODATION	107 (16%)	123	172	110	128	104	105	71	98	63
EDUCATION	16 (2%)	31	21	18	17	14	5	5	8	3
CREDIT EXTENSION	-	-	-	-	2	-	-	2	2	-
OFFENSIVE NAMES	-	-	-	-	-	-	-	-	-	-
MHRA Retaliation/Intimidation	38	-	-	-	-	-	-	-	-	-
TOTALS	683 <sup>6</sup>	614	760	806	761	723	695	618	748	656

<sup>3</sup> The data presented in this report may not include all decisions actually made in the time period, as the data collection relies on a computerized case system that presents data given certain defined parameters. Cases in which the Commissioners found reasonable grounds to believe discrimination occurred continued through a conciliation process and therefore may not have been closed and reported within the same year the Commission decision occurred. The figures cited in this section of the report represent cases considered by the Commission and closed in Fiscal Year 2023.

<sup>4</sup> After updating inventory data, the FY 2020 beginning inventory was adjusted up from 677 to 768 due to case consolidations and coding corrections.

<sup>5</sup> The Commission is aware that the reported data identifying 291 employment discrimination complaints in FY 2022 deviates significantly from prior years' data on employment discrimination complaint filings. While this data certainly raises substantial concerns about overall data reliability, this data is what is available to the Commission at the time of its FY 2022 report.

<sup>6</sup> A number of complaints filed in FY 2023 contained allegations in more than one area of jurisdiction, for example employment and housing, or education and public accommodations.



## **Cases Closed**

The MHRA itself provides only for two statutory results in cases: a finding of “reasonable grounds” (or cause) or a finding of “no reasonable grounds”. Since cases that are withdrawn related to settlement or which end administratively are not cause findings, they actually are dismissed pursuant to the Act as “no reasonable grounds” findings. This can leave our cause rate statistics to be less than fully informative, so we report in more detail the various ways in which Commission cases close.

### ***Before Commission Determination***

- *Voluntary Resolutions.* Parties to a case often agree to resolve their dispute, either on their own (leading to a complainant request to withdraw their complaint) or with the assistance of a Commission investigator or mediator (leading to a settlement agreement shared with the Commission). During the period, 131 cases resolved voluntarily, with 42 cases resolved by settlement agreement and 89 by withdrawal of complaint (with benefits to the complainant) before the Commission issued a determination; complainants obtained approximately \$3,334,804 in monetary relief in these closures. In addition to monetary awards, resolutions often include non-monetary, equitable relief such as an offer of a job or housing unit, modifications providing accessibility, reinstatement, cleared personnel records, policy changes, recommendation letters, and non-retaliation provisions.
  - Our Third-Party Neutral Mediation Program, available for a small fee, is very successful in resolving claims. In FY 2023, Commission staff referred 77 cases to mediators. Commission mediators facilitated settlement in 46 out of 75 mediations actually held during the same time period, a 61% success rate.<sup>7</sup>
- *“Right-to-Sue” letters.* If the Commission does not complete investigating a case within 180 days of the complaint’s filing, a complainant may ask the agency to end its investigation and authorize them to go to court with MHRA remedies intact. Complainants requested 100 right-to-sue letters in FY 2023.
- *Administrative Dismissals.* The Commission’s Executive Director has authority to dismiss a complaint for a variety of reasons, including (among other reasons) a complainant’s failure to timely file a complaint, file a complaint over which the Commission has jurisdiction, substantiate a discrimination claim, or cooperate with the Commission process. During FY 2023, 137 cases were administratively dismissed: 36 for lack of jurisdiction; 47 due to complainant’s failure to cooperate/proceed with the investigation; and 54 for other administrative reasons including untimely filing, death of a complainant, duplicate charges, and/or a failure to substantiate claims).
- *Withdrawals without benefits.* Before the Commission issues an investigator’s report, a complainant may withdraw their complaint of discrimination. After a report has been issued, the Commission may allow a complaint to be withdrawn. Complainants withdrew 45 complaints during FY 2023.

### ***Hearings Determinations***

If a case is not resolved as described above, a Commission investigator prepares a report summarizing their investigation, setting out the legal framework applicable to each claim, and recommending a finding as to

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<sup>7</sup> The date mediations were performed may differ from the date of the actual settlement and may fall outside the reporting period. The Mediation Program is funded entirely via a fee-for-service model by which each party to a mediated case pays \$225 toward mediation, with those funds flowing through the Commission’s State of Maine Mediation Program account to be paid out to a mediator at a rate of \$400/case. The Commission is approved to utilize its State Mediation Program account to receive and pay out up to \$44,000 for mediation activities. The differential in what is paid in per case (\$450) and what is paid out per case (\$400) is dedicated to paying mediation fees for parties who are indigent, and on occasion interpreter fees if needed for mediation. In FY 2023, the Commission referred 77 cases to its program mediators; in the same time frame, the Commission’s program mediators held 75 mediations, with 46 successfully reaching agreement. The agency approved two indigency applications in FY 2023, and also handled paperwork and refunds associated with seven canceled mediations.

whether cause exists to believe that unlawful discrimination occurred. The Commission sets these reports for public hearing. If no party submits a written objection to the recommended findings, the Commission places the report on its Consent Agenda and at public hearing adopts the recommendations in all Consent Agenda reports without argument. If one party does submit a written objection to the recommendations, the Commission hears oral argument on the case at a public meeting and then votes on each recommendation. In FY 2023, the Commission issued approximately 166 investigator's reports.

- Approximately half the time (54% of cases with investigator's reports), no party objected to the recommended findings. Those cases were decided on the Consent Agenda in FY 2023.
- In FY 2023, Commissioners voted to find cause to believe discrimination occurred in 24 out of 166 cases decided after an investigator's report (14.5% of cases decided). The overall cause rate for all cases processed in FY 2023 was 3.7%, a statistic that includes the many cases closed with a no-cause finding even though benefits flowed to complainants via settlements and right-to-sue letters.

### ***Post-Cause Activity***

Some of the 654 cases the Commission closed in in FY 2023<sup>8</sup> were resolved in cases in which the Commission had previously found cause. If the parties reach a conciliation resolution including public interest remedies sought by the Commission, there is a formal agreement by the Commission, complainant and respondent, with the Commission monitoring implementation of terms. The Commission participated in at least 14 such conciliations in FY 2023. If complainant and respondent resolve a post-cause case but do not include the Commission in the agreement, or there is no resolution at all, the Commission determines whether to pursue relief in the public interest on its own. During FY 2023, the Commission Counsel closed 10 post-cause cases, with two successfully resolved via conciliation agreements with public interest and private relief, including significant monetary and non-monetary public interest relief in the form of improved policies, training, postings, and monitoring.

## **LITIGATION**

When post-cause conciliation fails, the MHRA authorizes the Commission to file a lawsuit in court (in the name of the agency and in the public interest, but also for the use of the complainant) to address unlawful discrimination and prevent its recurrence. Commission Counsel makes recommendations to the Commissioners in each cause case with failed conciliation, to assist Commissioners in deciding whether to file a lawsuit in each case. When Commissioners vote to file a lawsuit, Commission Counsel directs these legal efforts and represents the agency. When FY 2023 started, there were 17 Commission enforcement actions pending in court. During FY 2023, Commission filed 3 new complaints, litigated a court complaint filed against the agency, and resolved at least 7 cases that had been referred for litigation. At the end of FY 2023, there were 13 Commission enforcement lawsuits pending in court.

## **CONCLUSION**

This Annual Report has outlined the Commission's activities for FY 2023, including: investigating 683 new complaints; continuing investigative work on 760 complaints pending from FY 2022; closing 654 cases; participating in/delivering 65 trainings; and providing testimony at the Maine Legislature. Given all of this, and our extremely small staff, the volume of the Commission's work in FY 2023 was daunting (and accomplished with very limited resources). Each Commissioner and staff member at the agency feels responsible to the public to enforce the MHRA in Maine in the manner in which that law was written and intended. We appreciate the opportunity to have done that in the fiscal year, and look forward to doing so in the next.

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<sup>8</sup> As noted above, data presented in this report may not include all decisions actually made in the time period, as the data collection relies on a computerized database system that presents data given certain defined parameters. There were additional case closures that occurred in FY 2023 but which were not counted in as closures in the available database system for technical reasons.