

# MAINE STATE LEGISLATURE

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# Maine Human Rights Commission



## 2009 Annual Report

*July 1, 2008 - June 30, 2009*

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Patricia E. Ryan  
Executive Director

## Maine Human Rights Commission

# 51 State House Station - Augusta, ME 04333

John P. Gause  
Commission Counsel

### A LETTER FROM THE CHAIRMAN

October 15, 2009

The Honorable John E. Baldacci, Governor  
The Honorable Elizabeth H. Mitchell, Senate President  
The Honorable Hannah Pingree, Speaker  
State House  
Augusta ME 04333

Dear Governor Baldacci, President Mitchell and Speaker Pingree:

On behalf of myself, my fellow Commissioners, and staff of the Maine Human Rights Commission, we are pleased to present you with the 2009 Annual Report of the Maine Human Rights Commission. In 2009 we welcomed Commissioner Fredette to a position that had been vacant for a couple of years. As you can see by the following we are up-holding the charge of the Commission, and handling the challenges to enforce Maine's anti-discrimination laws. The following lays out much data concerning fulfilling our collective responsibilities.

- The number of new charges that were filed increased 4% from the previous year.
- Employment charges comprised the largest category of complaints filed. Housing charges more than doubled from the prior year; while public accommodation charges decreased from the prior year<sup>1</sup>.
- 76.9% of charges filed were employment charges; 14.4% were housing charges; 7.5% were public accommodation charges; and 1.2% were education.
- Disability charges comprised the largest number of complaints filed, with the number decreasing slightly from the previous year (to 450); the percentage of the total number of complaints filed increased slightly to 40%.
- Sex discrimination charges also decreased (from 196 to 149), and the percentage decreased to 13% of the total charges filed.
- The percentage of sexual harassment allegations of the total of sex discrimination charges filed decreased slightly to 47%.
- Whistleblower's complaints decreased in numbers but increased in percentage of total (180 complaints; 16% of total). Whistleblower's charges continue to exceed both number and percentage of sex discrimination charges.
- Disability, sex, and whistleblower's allegations were named in 69% of the new charges filed. Race/Color, Ancestry/National Origin, Age, Retaliation & Sexual Orientation followed, comprising an additional 27% of the total. All other categories comprised the remaining 4%.
- Sexual orientation allegations were filed in 1.7% of the charges.
- The number of charges closed increased by nearly 22.4% from the previous year.

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<sup>1</sup> During FY 2008, 62 Public Accommodation charges were filed by a single Complainant on the same issue.

- 301 cases were listed on Commission agendas. 46% were uncontested and listed on the consent agenda. Commissioners heard argument in 162 cases.
- Reasonable grounds were found in 14% of the cases.
- At the end of FY 2009, 893 cases were pending in our inventory. The number of pending cases increased significantly from the previous year.

In addition to the above, the staff and Commissioners have participated in 32 training forums during this time period both providing and receiving the newest information pertinent to our arena.

On behalf of the Maine Human Rights Commission and Commissioners Jadine O'Brien, Sallie Chandler, Joseph Perry, and Kenneth Fredette 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	--
Worker’s Comp Retaliation	Receipt of public assistance	Children (lodging only)	Marital Status	--
Whistleblower’s Retaliation	Familial Status	--	--	--
Genetic Predisposition	--	--	--	--

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** Worker’s Comp Retaliation (Employment)
- 1988** Whistleblower’s Retaliation (Employment)
- 1998** Genetic Pre-Disposition
- 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 are summarized as follows:

- 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 and apply the law of discrimination and relevant Court decisions and recommending 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 insure that terms are met. The Compliance Officer sets overall negotiation strategy, 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 assures Investigator's Reports are litigation worthy, 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 2009 budget appropriation was \$1,024,076 including \$463,032 in federal funds from the Equal Employment Opportunity Commission and the U.S. Dept. of Housing & Urban Development.

Approximately 86% 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.

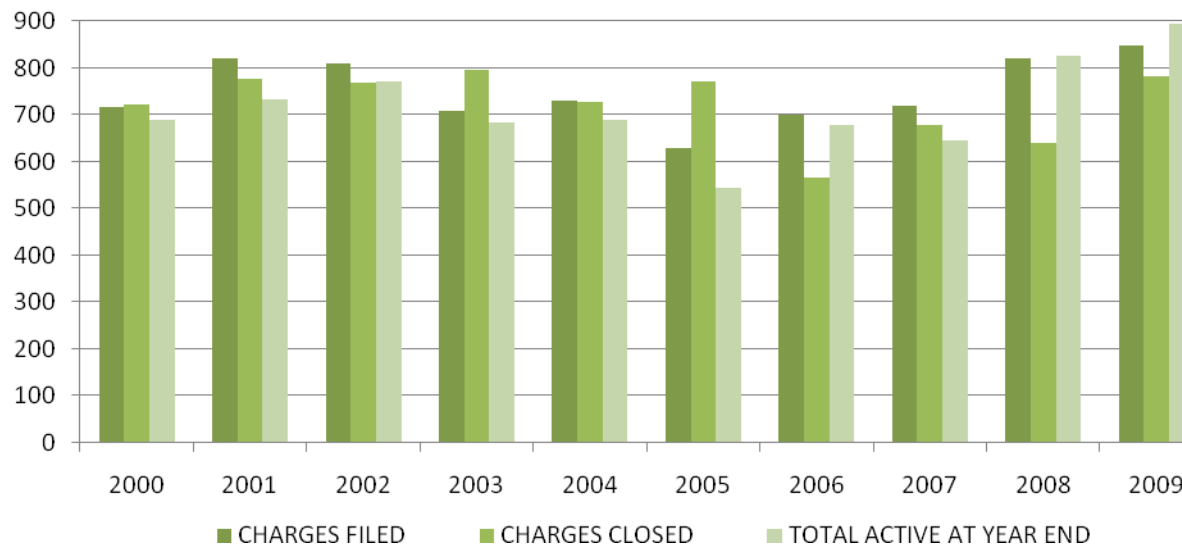
## CASE ACTIVITY

During the last fiscal year, eight hundred and forty-nine (849) new charges were filed, which represents a significant increase from the previous year. Out of these charges, 1,132 bases were named in these charges, representing more complex investigations in many cases. Seven hundred and eighty-two (782) cases were closed during the same time period. The pending inventory of cases has increased by 8% since last fiscal year.

### CASE ACTIVITY FY 2000 – 2009

FISCAL YEAR	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
PREVIOUS YEAR TOTAL	696	689	732	771	683	688	544	679	646	<b>826</b>
CHARGES FILED	716	819	808	708	731	628	700	718	819	<b>849</b>
CHARGES CLOSED	723	776	769	796	726	772	565	678	639	<b>782</b>
TOTAL ACTIVE AT YEAR END	689	732	771	683	688	544	679	646	826	<b>893</b>

### CASE ACTIVITY CHART





## 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.

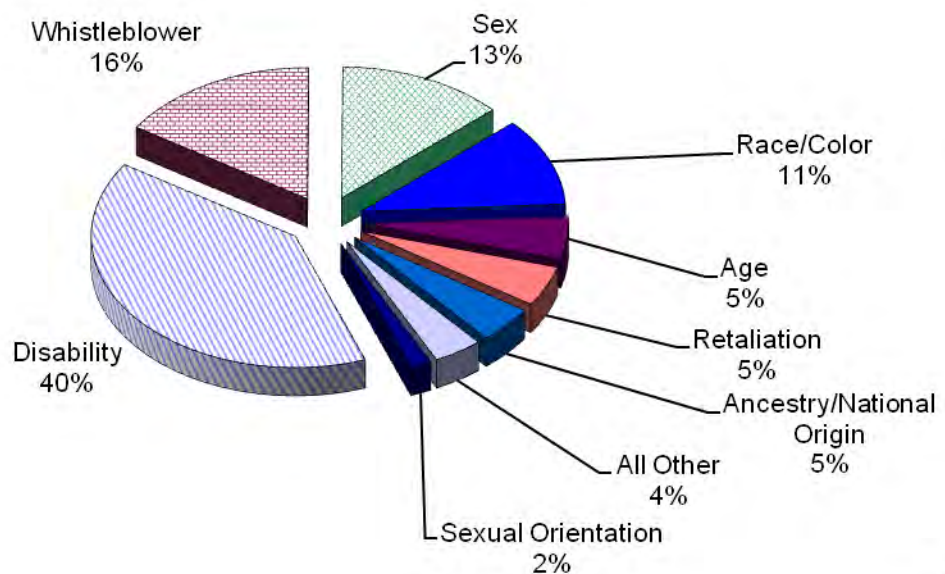
- 849 new charges were filed.
- Nearly 77% of these new charges alleged discrimination in employment.
- The largest number of complaints was filed on the basis of disability (40%).
- The second and third largest number of complaints were based on whistleblower's 16% and sex 13%.
- Disability, whistleblower's and sex comprised 69% of the complaints filed.
- Race/color was the 4th largest category of complaints (11%), followed by
  - Age (5%)
  - Retaliation (5%)
  - Ancestry/national origin (5%)

Of the sex discrimination complaints filed, seventy (70) alleged sexual harassment. This number comprised 47% of the total of sex discrimination complaints.

### BASIS OF CHARGES SUMMARY FISCAL YEAR 2009

BASIS	# ALLEGATIONS
Disability	450
Whistleblower Retaliation	180
Sex	149
Race / Color	123
Age	60
Retaliation	56
Ancestry / National Origin	51
All Other	44
Sexual Orientation	19
<b>TOTAL ALLEGATIONS</b>	<b>1132</b>

### BASES OF CHARGES FY 2009 CHART

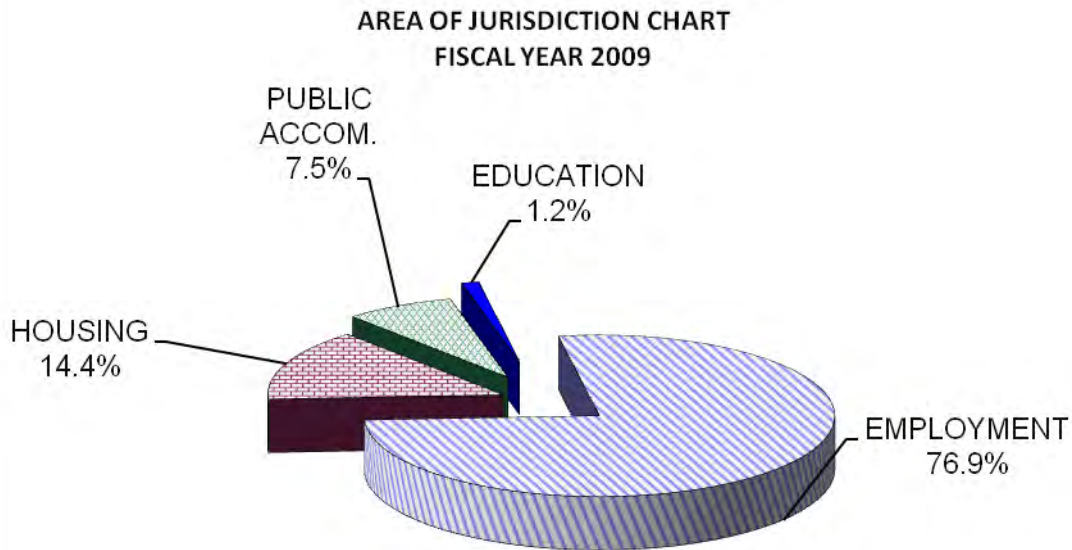


**BASES OF CHARGES FILED FISCAL YEARS 2000 -2009**

BASES	FY:	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
RACE / COLOR		68	73	97	82	64	60	64	88	113	123
SEX		263	316	296	262	258	201	236	207	196	149
PHYSICAL DISABILITY		221	267	223	203	202	201	201	244	370	338
MENTAL DISABILITY		88	81	97	117	104	80	107	102	97	112
RELIGION		14	14	17	13	18	15	10	16	25	15
AGE		99	95	117	82	95	75	66	94	97	60
ANCESTRY / NATIONAL ORIGIN		49	29	54	42	38	43	40	43	106	51
MARITAL STATUS (Credit only)		1	0	1	0	0	0	0	0	0	0
SOURCE OF INCOME (Housing)		2	4	3	7	15	10	16	8	9	10
FAMILIAL STATUS (Housing)		7	5	6	14	6	14	19	13	6	19
WHISTLEBLOWER RETALIATION		119	126	155	151	167	138	143	147	201	180
WORKER'S COMP RETALIATION		8	5	2	5	2	4	1	3	0	0
RETALIATION		43	95	82	91	72	68	98	98	147	56
SEXUAL ORIENTATION		N/A	N/A	N/A	N/A	N/A	N/A	13	33	32	19
GENETIC PRE-DISPOSITION		0	0	0	0	0	0	0	1	0	0
TOTAL ALLEGATIONS		982	1110	1150	1069	1041	909	1014	1097	1394	1132

**SUMMARY OF CHARGES FILED BY AREA OF JURISDICTION  
FISCAL YEARS 2000 – 2009**

FISCAL YEAR	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
EMPLOYMENT	605.0	617.0	680.0	590.0	613.0	515.5	502.5	544.0	604.0	653.0
HOUSING	35.5	69.5	14.0	53.0	69.0	75.0	136.0	114.0	59.0	122.0
PUBLIC ACCOM.	65.5	109.0	94.0	58.0	42.5	34.0	49.0	53.5	142.0	64.0
EDUCATION	10.0	23.5	20.0	7.0	6.5	3.50	11.5	5.5	11.0	10.0
CREDIT EXTENSION	1.0	0.0	0.0	0.0	0.0	0.0	1.0	1.0	1.0	0.0
OFFENSIVE NAMES	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	2.0	0.0
TOTALS	716.0	819.0	808.0	708.0	731.0	628.0	700.0	718.0	819.0	849.0



## CHARGES CLOSED

Seven hundred eighty-two (782) 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 220 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**, and 2) a **withdrawal with settlement**. Settlement agreements are formal documents prepared by the Commission, 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, and the Complainant chooses to withdraw his or her charge. 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-nine (179) cases were settled prior to a finding by the Commission. The monetary value of these settlements amounted to \$1,216,707 for Complainants. It should be noted that in addition to monetary awards, settlements typically include provisions that may include the 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 eighteen (18) successful conciliations of the forty-one (41) 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 \$182,994. Total monetary relief for merit closures was \$1,453,181.

- **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 the Complainant, after hearing the facts presented by a Respondent at a fact finding conference, or reviewing the Respondent's written answers to the charge, decides that they do not wish the Commission to continue processing their case any longer. Forty-three (43) 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 forty-two (142) 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. One hundred and seventeen (117) cases were closed during the last year for such reasons.

#### WITHDRAWALS AND DISMISSALS FISCAL YEAR 2009

TYPE	NUMBER
CHARGE WITHDRAWN	43
RIGHT TO SUE	142
FAILURE TO COOPERATE/PROCEED	74
NO JURISDICTION	33
OTHER	10
<b>TOTAL</b>	<b>302</b>

- **Non merit closures**

In addition to cases closed finding reasonable grounds and/or providing some remedy to the Complainant, and cases administratively dismissed, Two hundred sixty (260) 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.

Three hundred-one (301) cases came before the Commission in fiscal year 2009 for a determination. One hundred and thirty-nine (139) 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-one (41) cases, which was 14% of the cases they considered. The Commission found no reasonable grounds to believe that unlawful discrimination occurred in two hundred sixty (260) cases<sup>2</sup>. 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 2009. The figures following represent cases actually closed during fiscal year 2009.

#### SUMMARY OF CASE CLOSURES FOR FY 2009:

CASES CLOSED FY 09	MERIT CLOSURES: 28%			NO RG DETERMINATIONS 33%	WITHDRAWLS & DISMISSALS 39%
	SETTLEMENTS	SUCCESSFUL CONCILIATIONS	UNSUCCESSFUL CONCILIATIONS		
<b>782</b>	179	18	23	260	302

<sup>2</sup> 62 of the no reasonable grounds cases were filed by one Complainant involving an identical issue. If 61 of those cases are not included in the percentage calculation of reasonable grounds determinations, that percentage is 17%.

## **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 the legal efforts and represents the Commission.

During Fiscal Year 2009, the Commission directed Counsel to file complaints in four cases on behalf of the Commission. Seven cases were resolved that had been referred to Counsel for litigation or amicus filings. The Commission was a party in eight court cases throughout the year. At the end of Fiscal Year 2009, there were six cases pending in court in which the Commission was a party.