

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)



Maine Human Rights Commission

2021 Annual Report

July 1, 2020 - June 30, 2021

Maine Human Rights Commission
51 State House Station, Augusta, Maine 04333
www.maine.gov/mhrc

TABLE OF CONTENTS

Letter of Transmittal	3
Origin, Jurisdiction and Members of the Commission	4
Process.....	5
Staffing.....	5
Budget	5
Case Activity	5
Complaints Filed.....	6
Cases Closed Before Commission Determination	6
Hearings Determinations.....	7
Reasonable Grounds Rates.....	8
Post Reasonable Grounds Conciliations.....	8
Cases Closed	8
Litigation	8
Conclusion.....	8



Maine Human Rights Commission

51 State House Station, Augusta, Maine 04333

Phone (207) 624-6290 • Fax (207) 624-8729 • ME Relay 711

www.maine.gov/mhrc

Amy M. Sneirson
EXECUTIVE DIRECTOR

Barbara Archer Hirsch
COMMISSION COUNSEL

December 2, 2022

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 2021 (“FY 2021”) Annual Report.

The Commission regrets that it was not able to issue this FY 2021 Annual Report until now, long after the reporting period ended; this was a direct result of the onset of the first full year of the COVID-19 worldwide pandemic, which overlay all of the fiscal year. Throughout FY 2021, the Commission experienced tremendous challenges in technology, staffing, remote work, and otherwise that made it impossible to conduct business as usual, all of which delayed our ability to produce and analyze the data typically included in our annual reports. Once the Commission was able to prepare reporting, the federal database needed had been abolished. Although this report is issued with a note of caution about reliability of the available data herein, the Commission is pleased to demonstrate that our agency did not falter in FY 2021 in upholding our statutory charge to enforce Maine’s anti-discrimination laws. A few highlights are as follows:

- The Commission received 760 new complaints in FY 2021, approximately the same as last year.
- Of new complaints filed, 57% were based on employment, 17.5% were based on housing, 23% were based on public accommodations, and 2.8% were based on education. Increases in housing public accommodations, and education cases were notable.
- A significant portion of cases resolved in FY 2021 (57%, or 403 of 713 cases) did so prior to the Commission completing investigation and issuing an Investigator’s Report.
- Investigators wrote reports after completed investigations in 180 cases during FY 2021.
- Commissioners found “reasonable grounds” to believe unlawful discrimination occurred in 28% of cases with investigator’s reports.
- In approximately half the cases with investigator’s reports, there was no disagreement by parties with the recommended findings.
- At the end of FY 2021, 853 cases remained pending, a 6% increase in pending cases from the prior year.
- Commission staff delivered or participated in or delivered more than 56 training forums during FY 2021.

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.

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 2021, 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

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. With that in hand, if 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 is 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, holds authority to hire and supervise Commission staff. In FY 2021, nearly half of the agency’s staff were investigators, who 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. 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. Other staffers included: the agency’s Operations Director, who managed personnel, budget/fiscal, information technology, annual reporting, and office matters; three secretary associate legal staffers, who handled all new complaint filings, early case processing, case closures, and Commission meeting matters (one of these positions was vacant for most of FY 2021); a paralegal who served as the agency Intake Officer during FY 2021, reviewing hundreds of Intake Questionnaires to screen out non-jurisdictional matters or draft complaints in jurisdictional matters; and another paralegal who assisted Commission Counsel with litigation and who assisted the Executive Director in negotiating, implementing and monitoring agreements to settle post-cause resolutions and addressed public record requests. The Commission’s Executive Director conducted most agency outreach activity and Legislative information-sharing, among various other things.

BUDGET

The Commission’s FY 2021 revised budget appropriation was \$1,764,689. Due to the highly personnel-intensive nature of investigating, resolving, and litigating complaints, about 78% of the agency’s total budgetⁱ (\$1,379,017) was allocated to fixed personal service costs such as salaries and benefits. Just under 22% of the agency’s budget (\$385,672) was allocated to “all other” operating expenditures to support program activities. Approximately 41% of the total agency budget (\cong \$730,548) was anticipated revenue from federal worksharing agreements with the U.S. Equal Employment Opportunity Commission and the U.S. Department of Housing & Urban Development.

CASE ACTIVITY

As in past years, the Commission continued to devote most of its resources to processing discrimination complaints filed with it. During FY 2021, 760 new complaints were filed, which is about the same as the prior year. The Commission closed 713ⁱⁱ cases in the same time period. The pending inventory of cases increased by 2.5% since FY 2020, a year in which the pending inventory had grown by 10%.

HISTORICAL CASE ACTIVITY DATA 2012 - 2021

FISCAL YEAR	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012
ACTIVE CASES FY START	842	768 ⁱⁱⁱ	710	795	726	756	684	713	746	817
+ CASES FILED	760	775	715	709	687	611	739	654	651	639
- CASES CLOSED	713	701	748	755	615	621	667	683	684	710
ACTIVE CASES FY END	863	842	677	749	798	723	756	684	713	746

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 percentage of FY 2021 complaints alleging employment discrimination (57.1% of complaints filed) was lower than in prior years, complaints alleging discrimination in housing, places of public accommodation, and educational institutions all were at record levels in FY 2021. As was the case in FY 2020, housing complaints continued to increase to new levels, with 133 in FY 2021 (17.5% of complaints filed); these time- and resource-intensive cases have impacted all aspects of the Commission’s operations in FY 2021 and thereafter. Complaints related to places of public accommodation also were at unusually high, with 172 in in FY 2021 (22.6% of complaints filed), as were those related to educational institutions, with 21 in FY 2021 (2.8% of complaints filed).

HISTORICAL CASES FILED BY JURISDICTION FY 2012 - 2021

AREA of JURISDICTION Fiscal Year	2021		2020	2019	2018	2017	2016	2015	2014	2013	2012
EMPLOYMENT	435	57%	554	508	492	482	480	548	518	483	528
HOUSING	133	17.5%	124	106	113	103	60	92	73	104	74
PUBLIC ACCOMMODATION	172	22.6%	110	128	104	105	71	98	63	64	37
EDUCATION	21	2.8%	18	17	14	5	5	8	3	3	4
CREDIT EXTENSION	-	-		2	-	-	2	2	-	-	-
OFFENSIVE NAMES	-	-		-	-	-	-	-	-	-	-
TOTALS	760		806	761	723	695	618	748	656	654	643

Due to changes in availability of federal funders’ data, the Commission is not able to provide reliable statistical analysis of the prevalence of claims by statute (such as differentiating between how many complaints were filed alleging retaliation under the Maine Whistleblowers’ Protection Act versus another statute), or claims (hostile environment, pay, eviction, denial of reasonable accommodations, etc.).

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 assistance of Commission investigator or mediator (leading to a settlement agreement shared with the Commission). During the period, 154 cases resolved voluntarily, with 30 cases resolved by settlement agreement and 124 by withdrawal of complaint (with benefits to the complainant) before the Commission issued a determination; complainants obtained approximately \$4,500,000 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 2021, Commission staff referred 78 cases to mediators. Commission mediators facilitated settlement in 50 out of 82 mediations actually held during the same time period.^{iv}
- *“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 134 right-to-sue letters in FY 2021.
- *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 2021, 140 cases were administratively dismissed: 16 for lack of jurisdiction; 70 due to complainant’s failure to cooperate/proceed with the investigation; and 54 for other administrative reasons (including but not limited to 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 23 complaints during FY 2021.

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 whether cause exist 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 2021, the Commission issued 180 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 2021.
- In FY 2021, Commissioners voted to find cause to believe discrimination occurred in 51 out of 180 cases decided after an investigator’s report (28% of cases heard). The overall cause rate for all cases processed in FY 2021 was 6%, 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 713 cases the Commission closed in in FY 2021^v 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. 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 2021, 15 post-cause cases were 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 votes to file a lawsuit, Commission Counsel directs these legal efforts and represents the agency. When FY 2021 started, there were three Commission enforcement actions pending in court. During FY 2021, Commission filed six

new complaints and one amicus brief, litigated a court complaint filed against the agency, and resolved at least two cases that had been referred for litigation. At the end of FY 2021, there were seven Commission enforcement lawsuits pending in court.

CONCLUSION

This Annual Report has outlined the Commission's activities for FY 2021, including: investigating 760 new complaints; continuing investigative work on 806 complaints pending from FY 2020; closing 713 cases; participating in/delivering 56 trainings; and providing testimony at the Maine Legislature. Given all of this, the worldwide pandemic forcing all agency activity to occur remotely, and our extremely small staff – which was not fully staffed at any point during FY 2021 – the sheer volume of the Commission's work in FY 2021 was staggering (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.

ⁱ Special revenue funds accounted for \$107,684.

ⁱⁱ 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 2021.

ⁱⁱⁱ After updating inventory data, the FY 2020 beginning inventory was adjusted up from 677 to 768 due to case consolidations and coding corrections.

^{iv} 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 2021, the Commission referred 78 cases to its program mediators; in the same time frame, the Commission's program mediators held 82 mediations (two of which represent cases that had second mediation sessions before completion), with 50 successfully reaching agreement. The agency approved three indigency applications in FY 2021, and also handled paperwork and refunds associated with seven cancelled mediations.

^v 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 the fiscal year but which were not counted in as closures in the available database system for technical reasons.