



Maine Human Rights Commission

2022 Annual Report

July 1, 2021 - June 30, 2022

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

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January 13, 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 2022 (“FY 2022”) Annual Report.

Throughout FY 2022, the Commission experienced tremendous challenges in technology, staffing, and otherwise that made it difficult to conduct business as usual, all of which delayed our ability to produce and analyze the data typically included in our annual reports. Additionally, the federal database that the Commission used for many years to produce and analyze data regarding complaints and claims therein has been abolished, and its successor does not provide all data typically reported on herein. 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 continued in FY 2022 to uphold our statutory charge to enforce Maine’s anti-discrimination laws. A few highlights are as follows:

- The Commission received 614 new complaints in FY 2022, a notable decrease from the prior two years.
- Of new complaints filed, 47.4% were based on employment, 16% were based on housing, 20% were based on public accommodations, and 5% were based on education.ⁱ
- Investigators wrote reports after completed investigations in 155 cases during FY 2022.
- In approximately half the cases with investigator’s reports, there was no disagreement by parties with the recommended findings.
- Commissioners found “reasonable grounds” to believe unlawful discrimination occurred in 18% of cases with investigator’s reports.
- At the end of FY 2022, 760 cases remained pending, a 12% decrease in pending cases from the prior year.
- Commission staff delivered or participated in or delivered more than 59 training forums during FY 2022.

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 2022, 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 2022, 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. In the second half of the fiscal year, after a dedicated Intake staffer departed the agency, the investigators also reviewed hundreds of Intake Questionnaires to screen out non-jurisdictional matters or draft complaints in jurisdictional matters. 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; and three secretary associate legal staffers, who handled all new complaint filings, early case processing, case closures, and Commission meeting matters. During part of the fiscal year, two investigators took on additional tasks, including assisting Commission Counsel with litigation and assisting 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 2022 budget appropriation was \$1,873,308. Due to the highly personnel-intensive nature of investigating, resolving, and litigating complaints, about 79% of the agency’s total budgetⁱⁱ (\$1,487,355) was allocated to fixed personal service costs such as salaries and benefits. Just under 6% of the agency’s budget (\$107,864) was allocated to “all other” operating expenditures to support program activities. Approximately 32% of the total agency budget (\cong \$599,728) 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 2022, 614 new complaints were filed, which represents a significant drop from the prior two years. The Commission closed 717ⁱⁱⁱ cases in the same time period. By the end of FY 2022, the Commission had decreased its pending inventory of cases by 10% since the prior year.

HISTORICAL CASE ACTIVITY DATA 2013 - 2022

FISCAL YEAR	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013
ACTIVE CASES FY	863	842	768 ^{iv}	710	795	726	756	684	713	746
+ CASES FILED	614	760	775	715	709	687	611	739	654	651
- CASES CLOSED	717	713	701	748	755	615	621	667	683	684
ACTIVE CASES FY END	760	863	842	677	749	798	723	756	684	713

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. As was the case in FY 2021, high numbers of time- and resource-intensive housing complaints had substantial impacts on all aspects of the Commission’s operations in FY 2022 and thereafter.

HISTORICAL CASES FILED BY JURISDICTION FY 2013 - 2022

AREA of JURISDICTION Fiscal Year	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013
EMPLOYMENT	291 (47.4%)*	435	554	508	492	482	480	548	518	483
HOUSING	98 (16%)	133	124	106	113	103	60	92	73	104
PUBLIC ACCOMMODATION	123 (20%)	172	110	128	104	105	71	98	63	64
EDUCATION	31 (5%)	21	18	17	14	5	5	8	3	3
CREDIT EXTENSION	-	-		2	-	-	2	2	-	-
OFFENSIVE NAMES	-			-	-	-	-	-	-	-
TOTALS	614	760	806	761	723	695	618	748	656	654

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 statutory basis (such as differentiating between how many complaints were filed alleging retaliation under the Maine Whistleblowers’ Protection Act versus another statute), or by claim (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, 138 cases resolved voluntarily, with 53 cases resolved by settlement agreement and 85 by withdrawal of complaint (with benefits to the complainant) before the Commission issued a determination; complainants obtained approximately \$4,107,770 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 2022, Commission staff referred 72 cases to mediators. Commission mediators facilitated settlement in 47 out of 64 mediations actually held during the same time period.^{vi}

- *“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 121 right-to-sue letters in FY 2022.
- *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 2022, 181 cases were administratively dismissed: 22 for lack of jurisdiction; 61 due to complainant’s failure to cooperate/proceed with the investigation; 38 for failure to substantiate claim(s); and 60 for other administrative reasons (including but not limited to 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 12 complaints during FY 2022.

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 2022, the Commission issued 155 investigator’s reports.

- Approximately half the time (52% of cases with investigator’s reports), no party objected to the recommended findings. Those cases were decided on the Consent Agenda in FY 2022.
- In FY 2022, Commissioners voted to find cause to believe discrimination occurred in 28 out of 155 cases decided after an investigator’s report (18% of cases heard). The overall cause rate for all cases processed in FY 2022 was 3.9%, 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 717 cases the Commission closed in in FY 2022^{vii} 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 2022, the Commission Counsel closed 16 post-cause cases, with seven 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 2022 started, there were seven Commission enforcement actions pending in court. During FY 2022, Commission filed nine new complaints, litigated a court complaint filed against the agency, and resolved at least one case that had been referred for litigation. At the end of FY 2022, there were 15 Commission enforcement lawsuits pending in court.

CONCLUSION

This Annual Report has outlined the Commission’s activities for FY 2022, including: investigating 614 new complaints; continuing investigative work on 863 complaints pending from FY 2021; closing 717 cases; participating in/delivering 59 trainings; and providing testimony at the Maine Legislature. Given all of this, the ongoing worldwide pandemic, and our extremely small staff, the volume of the Commission’s work in FY 2022 was overwhelming (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 The data presented on complaints filed in FY 2022 may not include all allegations made under a given jurisdictional basis (housing, employment, etc.). The database traditionally used by Commission was taken out of service by its provider as of 12/31/2021, and the process of obtaining data (particularly reliable data) from the successor database has been extraordinarily challenging. Verifying data on complaints filed in FY 2022 – and the statutory bases, claims, and issues therein – has been particularly difficult. Available data reporting does not reliably provide information identifying complaints, especially those alleging mixed jurisdictional basis (housing *and* employment, or public accommodations *and* education, as just two possible examples) or complaints filed based on “other” jurisdictional bases.

ⁱⁱ Special revenue funds accounted for \$107,864.

ⁱⁱⁱ 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 2022.

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

^v 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 this report.

^{vi} 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 2022, the Commission referred 72 cases to its program mediators; in the same time frame, the Commission’s program mediators held 64 mediations, with 47 successfully reaching agreement. The agency approved one indigency applications in FY 2022, and also handled paperwork and refunds associated with two cancelled mediations.

^{vii} 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.