

# Maine Human Rights Commission



## 2013 Annual Report

*July 1, 2012 - June 30, 2013*

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# Maine Human Rights Commission

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EXECUTIVE DIRECTOR

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COMMISSION COUNSEL

November 4, 2013

The Honorable Paul LePage, Governor  
The Honorable Justin Alford, Senate President  
The Honorable Mark Eves, Speaker  
State House, Augusta, Maine 04333

Dear Governor LePage, President Alford and Speaker Eves:

On behalf of myself, my fellow Commissioners, and the staff of the Maine Human Rights Commission, we are pleased to present you with the 2013 Annual Report of the Maine Human Rights Commission. As you will see by the following, the Commission continues to uphold its statutory charge to enforce Maine's anti-discrimination laws. A few highlights are as follows:

- The number of new complaints that were filed increased by 2% from the previous year (from 639 to 651).
- Of new complaints filed, 73.9% were based on employment, 9.8% were based on public accommodations, 15.9% were based on housing, and .5% were based on education.
- With respect to type of allegation, *disability discrimination* represented 35.4% of complaints filed (about the same as last year's 35%). *Whistleblower* allegations decreased to 15.8%. *Sex discrimination* complaints remained at about 12.6% of complaints filed, with sexual harassment claims accounting for 41% of all sex discrimination complaints (a decrease from the prior year's 51%). *Race/color/national origin/ancestry* allegations constituted 11.8% of complaints filed, an increase from last year's 8.6%. *Age* allegations comprised 7.3% of complaints filed and *sexual orientation* allegations were 2.8%.
- 258 cases<sup>1</sup> were listed on Commission agendas; 60% of cases were uncontested and listed on consent agendas. Commissioners heard argument in 103 of the 258 cases. In 24 of the 258 cases determined by the Commission, the Commissioners found reasonable grounds to believe discrimination occurred, a rate of 9.3% (a decrease from the prior year).
- At the end of FY 2013, 713 cases were pending in our inventory. The number of pending cases decreased 4.4% from the previous year (from 746 to 713).

The staff and Commissioners also participated in more than 32 training forums during FY 2013.

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 continuing our strong relationship with the Executive and Legislative branches to assure the citizens of Maine the basic protections afforded under the Maine Human Rights Act.

Sincerely,

Paul K. Vestal  
Chairman of Maine Human Rights Commission

<sup>1</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 find reasonable grounds to believe discrimination occurred continue through a conciliation process and therefore may not be closed and reported within the same year the Commission decision occurred. The figures cited in this report represent cases considered by the Commission and closed in fiscal year 2013.

## THE COMMISSION

The Maine Human Rights Commission is the state agency charged with 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

JURISDICTIONAL BASIS	EMPLOYMENT	HOUSING	ACCESS TO PUBLIC ACCOMMODATION	CREDIT EXTENSION	EDUCATION
Age	X	N/A	N/A	X	N/A
Ancestry	X	X	X	X	N/A
Children (lodging only)	N/A	N/A	X	N/A	N/A
Color	X	X	X	X	N/A
Familial Status	N/A	X	N/A	N/A	N/A
Genetic Information	X	N/A	N/A	N/A	N/A
Marital Status	N/A	N/A	N/A	X	N/A
Mental disability	X	X	X	N/A	X
National Origin	X	X	X	X	X
Physical disability	X	X	X	N/A	X
Race	X	X	X	X	X
Receipt of Public Assistance	N/A	X	N/A	N/A	N/A
Religion	X	X	X	X	N/A
Sex	X	X	X	X	X
Sexual Orientation	X	X	X	X	X
Whistleblower Retaliation	X	N/A	N/A	N/A	N/A
Workers’ Comp Retaliation	X	N/A	N/A	N/A	N/A

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 determination on all discrimination complaints that are investigated by Commission staff and not otherwise settled, withdrawn, administratively dismissed, or subject to a “right to sue” request. 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; and
- to recommend measures calculated to promote full enjoyment of human rights and personal dignity.

## **STAFFING**

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 investigation, which includes fact-finding as to whether allegations are legally sufficient to constitute a claim of discrimination under the Maine Human Rights Act, and writing Investigator’s Reports that analyze facts and apply legal principles to recommend specific findings to the Commission. We have five full-time investigators.

- **Compliance**

The Compliance Division – a division of one – is responsible for all settlement efforts of the agency. Compliance has direct responsibility for negotiating conciliation agreements after Commission findings of reasonable grounds and monitoring of agreements to ensure that terms are met. The Compliance Manager conducts pre-determination resolution efforts herself, and also reviews and monitors pre-determination settlement agreements facilitated by neutral mediators or investigators. The Compliance Manager 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. We have one Compliance Manager who works 2/3 time.

- **Legal**

This Division – also a division of one – is responsible for litigation on behalf of the Commission (and the public interest) as well as providing legal advice to the staff and Commission. The Commission Counsel reviews all Investigator’s Reports for legal sufficiency, provides legal opinions to the Executive Director or Commission, drafts legislation and proposed regulations, litigates cases, and advises the Executive Director on contract matters involving governmental agencies and private parties. We have one Commission Counsel.

- **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. This would include our Executive Director, two Office Associates, an Intake Officer, and a Personnel Specialist (Information Technology, Human Resources, Finance).

## BUDGET

The Maine Human Rights Commission’s fiscal year 2013 budget appropriation was \$932,036.

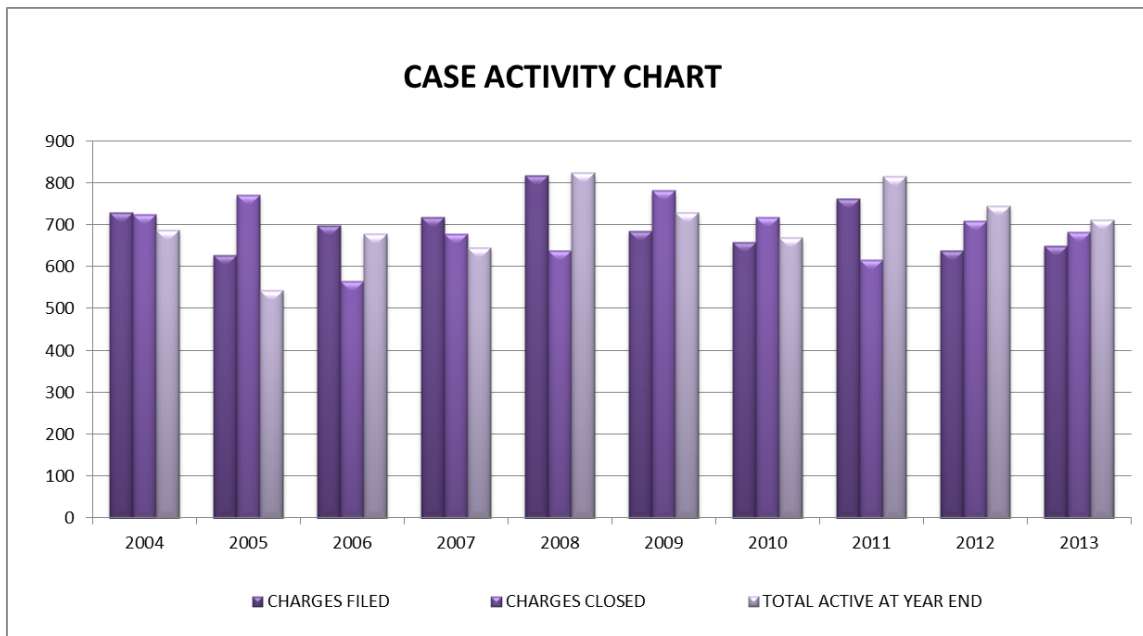
Approximately \$803,609 (86.2%) of the agency’s total budget was allocated to fixed personal service costs such as salaries and benefits. This is due to the highly personnel-intensive nature of the Commission’s work in investigating, resolving, and litigating complaints. \$128,427 (13.8%) of the Commission’s budget was allocated to “all other” operating expenditures to support program activities. Of the total Commission budget, approximately \$434,053 (46.6%) were anticipated revenues from federal worksharing agreements with the Equal Employment Opportunity Commission and the U.S. Department of Housing & Urban Development; these revenues have been decreasing over time and that trend is expected to continue.

## CASE ACTIVITY

During the last fiscal year, six hundred fifty-one (651) new complaints were filed, which represents an increase from the previous year. A total of one thousand two hundred sixty-six (1,266) bases were named in these complaints, representing more complex investigations in many cases. Six hundred and eighty-four (684) cases were closed during the same time period. The pending inventory of cases has decreased by 4.4% since last fiscal year.

### CASE ACTIVITY FY 2004 – 2013

FISCAL YEAR	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
PREVIOUS YEAR TOTAL	683	688	544	679	646	826	729	670	817	746
COMPLAINTS FILED	731	628	700	718	819	685	659	764	639	651
CASES CLOSED	726	772	565	678	639	782	718	617	710	684
TOTAL	688	544	679	646	826	729	670	817	746	713



## COMPLAINTS FILED

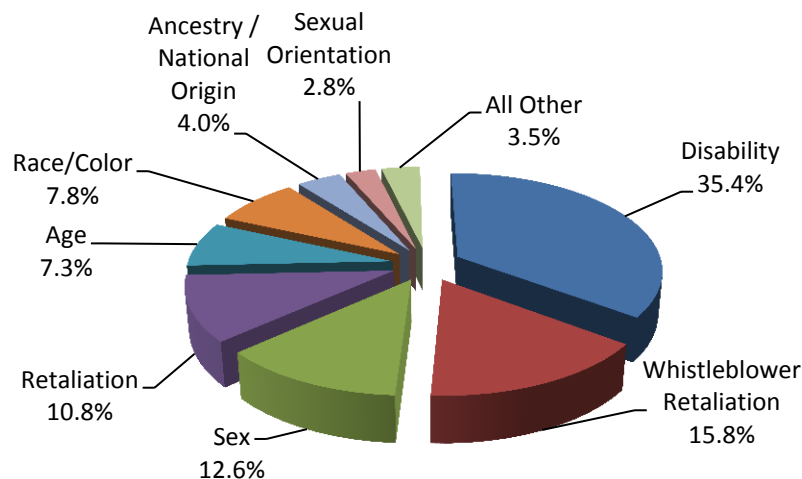
As in past years, the Commission continued to devote the majority of its resources to the processing of complaints of discrimination filed with it.

- 651 new complaints were filed.
- Nearly 73.9% of these new complaints alleged discrimination in employment.
- The largest number of complaints that were filed based on disability (35.4%).
- The second and third largest numbers of complaints filed were based on whistleblower retaliation (15.8%) and sex (12.6%).
- Of the sex discrimination complaints filed, seventy (70) alleged sexual harassment. This number comprised 44% of the total of sex discrimination complaints.
- Disability, sex and whistleblower retaliation discrimination collectively comprised 63.8% of the complaints filed.
- Complaints alleging retaliation were the 4th largest category of complaints (10.8%), followed by
  - Race/Color (7.8%)
  - Age (7.3%)
  - Ancestry / National Origin (4.0%)
  - Other (familial status, source of income) (3.5%)
  - Sexual Orientation (2.8%)

### BASIS OF COMPLAINTS FILED SUMMARY FY 2013

BASIS	# ALLEGATIONS
Disability	448
Whistleblower Retaliation	200
Sex	159
Retaliation	137
Age	93
Race/Color	99
Ancestry / National Origin	51
Sexual Orientation	35
All Other	44
<b>TOTAL ALLEGATIONS</b>	<b>1266</b>

### BASIS OF COMPLAINTS FILED FY 2013

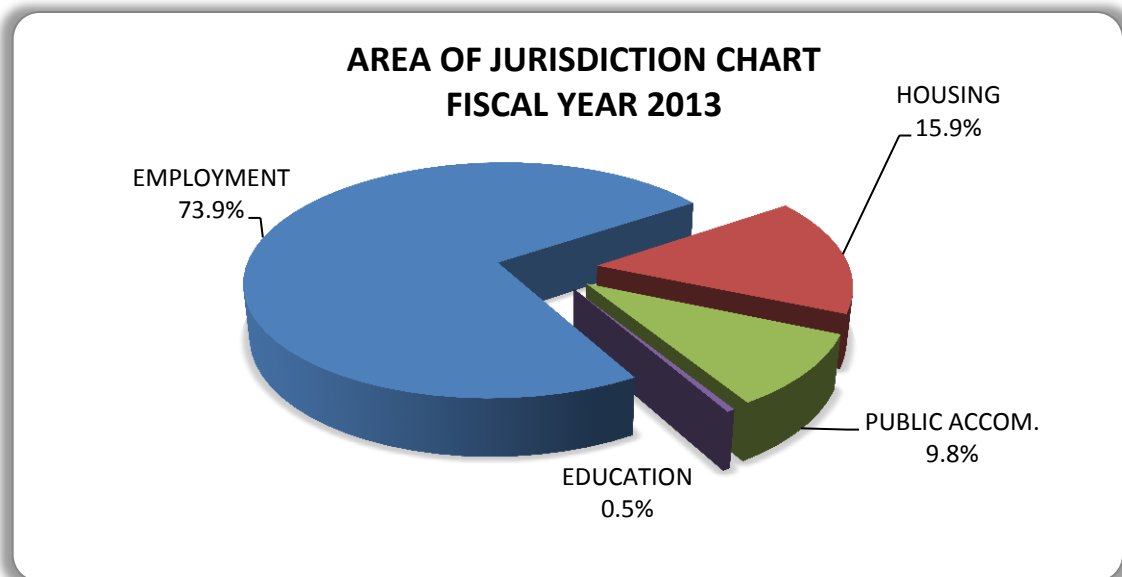


### COMPLAINTS FILED BY BASIS FY 2004 - 2013

BASES	FY:	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
DISABILITY		306	281	308	346	467	450	438	450	445	448
WHISTLEBLOWER		167	138	143	147	201	180	197	235	261	200
SEX		258	201	236	207	196	149	147	152	155	159
RETALIATION		72	68	98	98	147	56	96	109	158	137
RACE / COLOR		64	60	64	88	113	123	101	132	77	99
AGE		95	75	66	94	97	60	75	109	83	93
ANCESTRY / NATIONAL		38	43	40	43	106	51	35	51	32	51
SEXUAL ORIENTATION		N/A	N/A	13	33	32	19	50	45	25	35
FAMILIAL STATUS		6	14	19	13	6	19	22	21	21	20
RELIGION		18	15	10	16	25	15	20	23	13	13
SOURCE OF INCOME		15	10	16	8	9	10	10	10	2	11
MARITAL STATUS (Credit		0	0	0	0	0	0	0	0	0	0
WORKERS' COMP		2	4	1	3	0	0	0	0	0	0
GENETIC INFORMATION		0	0	0	1	0	0	0	0	0	0
TOTAL ALLEGATIONS		1041	909	1014	1097	1399	1132	1191	1337	1272	1266

### COMPLAINTS FILED BY JURISDICTION FY 2004 – 2013

JURISDICTION	FY:	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
EMPLOYMENT		613	516	503	544	604	653	492	618	528	483
HOUSING		69	75	136	114	59	122	113	78	74	104
PUBLIC ACCOMMODATION		43	34	49	54	142	64	52	72	37	64
EDUCATION		7	4	12	6	11	10	9	4	4	3
CREDIT EXTENSION		0	0	1	1	1	0	0	0	0	0
OFFENSIVE NAMES		0	0	0	0	2	0	0	0	0	0
TOTALS		731	628	700	718	819	849	666	772	643	654





## CASES CLOSED

Six hundred and eighty-four (684) complaints of discrimination were 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 benefits accruing to the complainant.

During the last fiscal year, there were two hundred and fifteen (215) 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. Prior to a Commission vote on whether discrimination occurred, voluntary resolutions that are “merit closures” provide a benefit to the complainant via a settlement agreement and/or withdrawal of complaint. The pre-determination agreement can be one which a Commission investigator, Compliance Manager or neutral mediator facilitated, or not. Some parties reach settlements independent of the Commission, in which cases the complainants choose to withdraw their complaints. During the last fiscal year, one hundred and ninety-one (191) cases were settled prior to a finding by the Commission. The monetary value of these settlements amounted to \$3,196,708 for complainants. It should be noted that in addition to monetary awards, settlements often include such non-monetary, equitable 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.

After a Commission finding of reasonable grounds, a resolution that is a “merit closure” can occur by negotiated agreement, either with or without Commission participation. If the parties reach resolution and the Commission also reaches agreement on public interest relief, this is a formal document prepared by the Commission and signed by both parties and a representative of the Commission; terms are monitored by the Commission’s Compliance Division. If the parties reach a resolution of a post-reasonable grounds case, but do not include the Commission in the agreement, the Commission determines whether to pursue relief in the public interest on its own. During the last fiscal year, there were ten (10) successful conciliations of the twenty-four (24) 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 \$606,900. Total monetary relief for merit closures was \$3,803,608.

### Administrative Dismissals

Cases can be administratively dismissed for several reasons prior to a Commission determination. Complainants may choose to **withdraw** their complaints 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 complaint, decide that they do not wish the Commission to continue processing their case any longer. Thirty-nine (39) complaints were withdrawn during the last fiscal year.

Complainants may also obtain “**Right-To-Sue**” letters from the Commission after 180 days from the filing of a complaint. 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 sixteen (116) 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 four (104) cases were closed during the last year for such reasons.

## WITHDRAWALS AND DISMISSALS FOR FY 2013

TYPE	NUMBER
RIGHT TO SUE	116
NO JURISDICTION	43
COMPLAINANT WITHDRAWAL	39
FAILURE TO COOPERATE/PROCEED	50
OTHER <sup>2</sup>	11
<b>TOTAL</b>	<b>259</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 thirty-four (234) cases were dismissed after a finding that no reasonable grounds existed to believe that unlawful discrimination had occurred.

## CASE CLOSING SUMMARY FY 2013

CASES CLOSED FY 13	MERIT CLOSURES: 28%			NO RG DETERMINATIONS 34%	WITHDRAWALS & DISMISSALS 38%
	SETTLEMENTS	SUCCESSFUL CONCILIATIONS	UNSUCCESSFUL CONCILIATIONS		
684	191	10	14	234	259

### 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.

Two hundred and fifty-eight (258) cases were voted on by Commission vote in fiscal year 2013. In one hundred and fifty-four (154) of the 258 cases voted on by the Commission, neither party submitted a written objection to the Investigator's recommendation, and the cases were placed on the Commission's Consent Agenda. In those cases, Commissioners adopted the recommendation of the Investigator without argument. One hundred and four (104) cases were argued to the Commissioners and voted upon.

Of all the 258 cases that went to a vote, the Commission found no reasonable grounds to believe that unlawful discrimination occurred in two hundred and thirty-four (234) cases, and reasonable grounds to believe that discrimination occurred in 24 cases. Overall, the Commission's rate of finding reasonable grounds to believe discrimination occurred in fiscal year 2013 was 9.3%.

### 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 makes recommendations to the Commission in each post-reasonable-grounds cases in which conciliation has failed to assist the Commission in deciding whether to file a lawsuit in each case.

During Fiscal Year 2013, Commission Counsel filed five complaints behalf of the Commission. Five cases were resolved that had been referred to Counsel for litigation or amicus filings. Commission was a party or amicus curiae in nine court cases throughout the year. At the end of Fiscal Year 2013, there were four cases pending in court in which the Commission was a party or amicus curiae.

<sup>2</sup> The Other category includes include complainant filed suit in court, respondent bankruptcies and dismissals for other reasons.