



# Maine Human Rights Commission

# 51 State House Station, Augusta, ME 04333-0051

*Physical location: 19 Union Street, Augusta, ME 04330*

Phone (207) 624-6290 ▪ Fax (207) 624-8729 ▪ TTY: Maine Relay 711

[www.maine.gov/mhrc](http://www.maine.gov/mhrc)

**Amy M. Sneirson**  
EXECUTIVE DIRECTOR

**Barbara Archer Hirsch**  
COMMISSION COUNSEL

March 1, 2021

The Honorable Catherine Breen, Senate Chair  
The Honorable Teresa Pierce, House Chair  
Joint Standing Committee on Appropriations and Financial Affairs  
5 State House Station, Augusta, ME 04333-0005

The Honorable Anne Carney, Senate Chair  
The Honorable Thom Harnett, House Chair  
Joint Standing Committee on Judiciary  
100 State House Station, Augusta, ME 04333-0100

*Re: LD 221, the 2022-2023 Biennial Budget*

To the Joint Standing Committees on Appropriations and Financial Affairs and on the Judiciary:

The Maine Human Rights Commission ("Commission") appreciates the opportunity to comment on the initiatives regarding the Commission within LD 221, "An Act Making Unified Appropriations and Allocations for the Expenditures of State Government... for the Fiscal Years Ending June 30, 2021, June 30, 2022 and June 30, 2023."

The Commission is a non-partisan, quasi-independent entity with a single program (Human Rights Commission – Regulation 0150). Established in 1971, the Commission is charged with attempting to prevent discrimination in employment, housing, access to public accommodations, education, extension of credit and offensive names, and serves the public interest by providing an administrative body to evaluate discrimination complaints in lieu of direct court filings. The Commission investigates, conciliates and at times litigates discrimination cases under the Maine Human Rights Act ("MHRA") and enforces the Maine Whistleblowers' Protection Act ("MWPA"). The Commission also provides guidance to entities and individuals on interpretations of the law and makes recommendations for further legislation of executive action concerning infringements on human rights in Maine. 5 M.R.S. §§ 4566(7), (11). The Commission operates via five Governor-appointed volunteer Commissioners of diverse political parties who hire an Executive Director and a Commission Counsel to perform the agency functions.

Our agency's baseline biennial budget, and the Governor's four proposed initiatives for our agency, can be found on pages 325-327 of Part A.<sup>1</sup>

<sup>1</sup> Part P (page 19 of General Fund Bill language) also impacts the Commission's attrition rate.

## ***The Agency's FY 2020-2021 Biennium Funding, and Curtailment.***

The Commission's FY 2020-2021 Biennial Budget - prepared in Fall 2019 - reflected the first major increase in General Fund ("GF") monies that the agency was to receive in many years.<sup>2</sup>

Heading into the 2020-2021 Biennium Budget, the Commission had 14 full-time positions, with nine funded by the GF and the others funded by federal partnership agreements with two federal anti-discrimination agencies, the U.S. Equal Employment Opportunity Commission ("EEOC") and the U.S. Department of Housing and Urban Development ("HUD"); on average, we receive ~\$400,000-500,000 per year in funding – about 40% of our annual budget – from our federal worksharing contracts, amounts dependent upon our production and availability of federal funds in a given year. At the start of FY 2020, the Commission's staff consisted of five Investigators and one Investigative Supervisor, three case processing staffers, two Paralegals, a Commission Counsel, a Director of Operations, and an Executive Director. In a given year, the Commission receives approximately 1200 intake questionnaires submissions and 700-800 new complaint filings<sup>3</sup>, issues 300 or more investigator reports, and processes/closes 700 cases. Under the MHRA, the Commission must complete investigation within two years of receiving a complaint; in housing cases investigation must be complete within 100 days.

Every one of our staff positions is of critical importance, but Investigators are elemental to our mission. The Commission experienced unrelenting Investigator turnover for number of years, leading the agency in March 2019 to seek reclassification for the Investigator position so as to more accurately acknowledge and compensate the complex legal analysis, independence, and discretion required to function in the position. At around the same time, one MHR Investigator submitted their own employee-initiated reclassification request, which was approved on June 27, 2019 (retroactive to August 2018). Soon thereafter, the other MHR Investigators' positions were reclassified, effective when a permanent source of funding was identified. Both Investigator reclassifications (employee-initiated and management-initiated) were included in the FY 2020-2021 Biennial Budget, with other initiatives as well.

When the COVID-19 pandemic hit halfway through FY 2020, and the Office of the Governor required state agencies to find 10% savings in their GF monies, the Commission was able to avoid cutting positions or its program by managing vacancies, reorganizing how supervisory duties from three positions were performed, and having one Paralegal voluntarily determine to reduce work to part-time. In the public health crisis that shortened the Legislative session, the stripped-down FY 2020-2021 Biennial Budget understandably did not include the approved reclassifications for Investigators. The

<sup>2</sup> The increase in MHRC funds may have been prompted, at least in part, by the recommendations issued by a multi-stakeholder review panel appointed in September 2016 by then-Governor Paul LePage to assess MHRC operations, resources, challenges, and neutrality ("Panel Report"). The Panel Report noted that "[a] thorough review of the statistics in the Annual Reports of the Commission from 2008 through the present makes it clear that a very hard working staff is running in place just to continuously fall behind." Panel Report at 4 (<https://www.maine.gov/mhrc/sites/maine.gov/mhrc/files/inline-files/MHRCReportFinal.PDF>).

<sup>3</sup> For each signed, notarized complaint received, our staffers: review it (and what may be many claims within it) for jurisdiction; prepare requests for information/documents; notify the respondent, receive their answers and send them to the complainant; receive complainant information/documents supporting the complaint; review for administrative dismissal; and consider or offer mediation. Typically, by the end of this initial case processing (every step of which is logged into at least one database), the case has been with our agency for 5-6 months.

Office of the Governor's curtailment decreased the Commission's GF monies with a \$12,000 reduction of "All Other" funds for Commission meetings (renting meeting space for, and providing security at, monthly public meetings) and with a \$37,550 reduction of "Personal Services" funds which had been allotted as part of salary and benefits payments for the Paralegal who voluntarily reduced their hours.

Post-curtailment, the Commission has 13.5 staff positions, ten of which (equivalent to about 8.5 FTE positions) are funded in whole or part by the GF. Our other positions are funded via our HUD and EEOC federal partnership agreements.<sup>4</sup> During this time period, the Commission has done what other State agencies have: work more, remotely, with fewer resources. Our agency received an 8% increase in complaints as compared to the prior year; this represents more new complaints than any other year in the past decade. The Commission's dedicated staffers received, reviewed, processed, investigated, analyzed, helped resolve, and sometimes litigated 775 new complaints and 1225 intake submissions. Our most recent annual report (attached here) outlines our staff, programs, and activities.

### ***FY 2022-2023 Initiatives***

The Commission's baseline Part A budgets, which serve as the starting point for discussion today, are \$1,776,295 for FY 2022 and \$1,778,006 for FY 2023. There is a summary chart on the next page here.

The first two initiatives: These decrease GF monies in the Commission budget, due to changes made at the time of curtailment (and then in the FY 2021 Supplemental Budget) in reorganized position supervisory duties and hours. The reorganized Paralegal position, still at part-time, represents a reduction in the agency's GF budget of \$48,915 in FY 2021-2022 and \$49,428 in FY 2022-2023. The reorganized MHR Investigator represents a reduction to the GF budget of \$9,381 (and \$3,125 in federal expenditures) in FY 2021-2022 and \$12,122 (and \$4,038 in federal expenditures) in FY 2022-2023.

The third initiative: This would increase the GF budget for technology and general operating costs the amounts of \$13,572 in each of the two fiscal years in the biennium; the federal expenditures line would also increase for this purpose by the amount of \$3,823 in FY 2021-2022 and \$4,038 in FY 2022-2023.

The fourth initiative: This would increase the GF budget to fund the Investigator reclassifications that have been approved but not implemented since 2019. The Biennial Budget contains a GF increase in FY 2021-2022 of \$42,131 (with a parallel federal expenditure increase of \$26,726), and in FY 2022-2023 of \$24,482 (with a parallel federal expenditure increase of \$17,492) to achieve this.

- While the 2020-2021 Biennial Budget included separate initiatives for the one retroactive employee-initiated Investigator reclassification and the management-initiated reclassification for the other Investigator positions, it appears that the present Biennial Budget initiative here put them together.
- Since the preparation of the Biennial Budget, the Commission has revised downward its projected federal revenues for the FY 2022-2023 biennium; we no longer anticipate receiving sufficient federal funds to implement this initiative. ***Accordingly, the Commission is seeking for the Legislature to provide additional GF monies to make the Investigator reclassifications effective: an increase to the GF initiative for FY 2021-2022 from \$42,131 to \$68,857 and the GF initiative for FY 2022-2023***

<sup>4</sup> In this current budget year, we project we will receive \$563,813 in federal funds to support current fiscal year operations. These funds are based on work completed (cases closed) during a prior federal fiscal year, which each of HUD and EEOC define using different dates and criteria.

from ~~\$24,482 to \$66,456~~. With this increase, the Commission can finally implement the 2019 reclassifications for all Investigators.

- Even if the Legislature is unable to increase the GF monies necessary to make this initiative happen for all Commission Investigators, *it is crucial that funding for the retroactive employee-initiated Investigator reclassification (which we believe represents \$15,412 of the \$42,131 GF line for FY 2021-22) be included in the Biennial Budget, as interest retroactive to August 20, 2018 continues to accrue.*

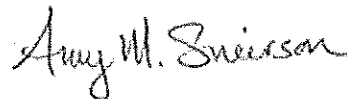
Fund	Biennial Base		Part A		Biennial Request	
	2022	2023	2022	2023	2022	2023
General Fund - PS	\$ 1,003,534	\$ 1,028,263	\$ (16,165)	\$ (37,068)	\$ 987,369	\$ 991,195
General Fund - AO	\$ 44,117	\$ 44,117	\$ 13,572	\$ 13,572	\$ 57,689	\$ 57,689
<b>GF Total</b>	<b>\$ 1,047,651</b>	<b>\$ 1,072,380</b>	<b>\$ (2,593)</b>	<b>\$ (23,496)</b>	<b>\$ 1,045,058</b>	<b>\$ 1,048,884</b>
EEOC - PS	\$ 213,390	\$ 215,584	\$ 11,590	\$ 8,802	\$ 224,980	\$ 224,386
EEOC - AO	\$ 98,145	\$ 98,145			\$ 98,145	\$ 98,145
<b>EEOC Total</b>	<b>\$ 311,535</b>	<b>\$ 313,729</b>	<b>\$ 11,590</b>	<b>\$ 8,802</b>	<b>\$ 323,125</b>	<b>\$ 322,531</b>
HUD - PS	\$ 172,307	\$ 177,930	\$ 12,011	\$ 4,652	\$ 184,318	\$ 182,582
HUD - AO	\$ 112,107	\$ 112,107	\$ 3,823	\$ 4,038	\$ 115,930	\$ 116,145
<b>HUD Total</b>	<b>\$ 284,414</b>	<b>\$ 290,037</b>	<b>\$ 15,834</b>	<b>\$ 8,690</b>	<b>\$ 300,248</b>	<b>\$ 298,727</b>
<b>SUBTOTAL FED FUND</b>	<b>\$ 595,949</b>	<b>\$ 603,766</b>	<b>\$ 27,424</b>	<b>\$ 17,492</b>	<b>\$ 623,373</b>	<b>\$ 621,258</b>
Seminar - AO	\$ 62,024	\$ 62,024			\$ 62,024	\$ 62,024
Publications - AO	\$ 1,840	\$ 1,840			\$ 1,840	\$ 1,840
Mediation - AO	\$ 44,000	\$ 44,000			\$ 44,000	\$ 44,000
<b>Other - 014 Total</b>	<b>\$ 107,864</b>	<b>\$ 107,864</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 107,864</b>	<b>\$ 107,864</b>
<b>All Funds</b>	<b>\$ 1,751,464</b>	<b>\$ 1,784,010</b>	<b>\$ 24,831</b>	<b>\$ (6,004)</b>	<b>\$ 1,776,295</b>	<b>\$ 1,778,006</b>

INITIATIVES	STATE FUNDS		FED		TOTAL ALL FUNDS	
	F22	F23	F22	F23	F22	F23
(PS) Paralegal Reorg	\$ (48,915)	\$ (49,428)			\$ (48,915)	\$ (49,428)
(PS) Invest.Sup. Reorg	\$ (9,381)	\$ (12,122)	\$ (3,125)	\$ (4,038)	\$ (12,506)	\$ (16,160)
(PS) Invest. Reclass	\$ 42,131	\$ 24,482	\$ 26,726	\$ 17,492	\$ 68,857	\$ 41,974
(AO) Technology	\$ 13,572	\$ 13,572	\$ 3,823	\$ 4,038	\$ 17,395	\$ 17,610
<b>TOTAL</b>	<b>\$ (2,593)</b>	<b>\$ (23,496)</b>	<b>\$ 27,424</b>	<b>\$ 17,492</b>	<b>\$ 24,831</b>	<b>\$ (6,004)</b>

### Summary

We appreciate the consideration of these GF initiatives for the Commission. Thank you for allowing the Commission the opportunity to provide this testimony, and please do not hesitate to ask us to provide additional information as needed.

Sincerely,



Amy M. Sneirson  
Executive Director

Cc: Commissioners



# Maine Human Rights Commission

## 2020 Annual Report

July 1, 2019 - June 30, 2020

Maine Human Rights Commission  
51 State House Station, Augusta, Maine 04333

[www.maine.gov/mhrc](http://www.maine.gov/mhrc)

## TABLE OF CONTENTS

Letter of Transmittal.....	3
Origin, Jurisdiction and Members of the Commission .....	4
Process .....	5
Staffing .....	5
Investigators.....	5
Legal .....	5
Administration.....	5
Budget .....	5
Case Activity .....	5
Complaints Filed.....	5
Historical Case Filed Activity by Fiscal Year Chart .....	6
Historical Case Filed by Jurisdiction Chart.....	6
Before Commission Determination.....	8
Settlements .....	Error!
<b>Bookmark not defined.</b>	
Right-to-Sue.....	8
Administrative Dismissals.....	Error!
<b>Bookmark not defined.</b>	
Withdrawals .....	8
Public Hearings Determinations.....	8
Uncontested.....	8
Contested .....	9
Reasonable Grounds Rates.....	9
Post Reasonable Grounds Conciliations .....	9
Cases Closed .....	9
Litigation.....	10
Conclusion .....	10



# 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](http://www.maine.gov/mhrc)

Amy M. Sneirson  
EXECUTIVE DIRECTOR

Barbara Archer Hirsch  
COMMISSION COUNSEL

February 25, 2021

The Honorable Janet Mills, Governor  
The Honorable Troy Jackson, President of the Maine Senate  
The Honorable Ryan Fecteau, Speaker of the Maine House of Representatives  
State House, Augusta, Maine 04333

Dear Governor Mills, President Jackson and Speaker Fecteau:

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 2020 ("FY 2020") Annual Report. As you will see, the Commission continued to uphold its statutory charge to enforce Maine's anti-discrimination laws, which was particularly challenging when a worldwide COVID-19 pandemic forced nearly all Commission activity to occur – and almost all Commission staff to work – remotely for half of FY 2020. A few highlights are as follows:

- The Commission received 775 new complaints in FY 2020, an 8% increase from last year's 715 filings.
- Of new complaints filed, 69% were based on employment, 15% were based on housing, 14% were based on public accommodations, and 2% were based on education.
- With respect to type of allegation, the top four most frequently alleged protected classes were *disability discrimination* (alleged in 48.5% of complaints filed), *Maine Human Rights Act ("MHRA") retaliation* (alleged in 39.4% of complaints filed), *Maine Whistleblowers' Protection Act ("WPA") retaliation* (alleged in 31.2% of complaints filed), and *sex discrimination* (alleged in 19.1% of complaints filed, and with *sexual harassment* included in 44.6% of those).
- A significant portion of cases processed last year (65%, or 460 of 697 cases) resolved prior to public hearing.
- Investigators wrote reports after completed investigations in 34% of cases processed (238 of 697).
- Commissioners found "reasonable grounds" to believe unlawful discrimination occurred in 17.6% of cases with investigator's reports (42 of 238), a slight increase from last year's 16.8% rate. Commissioners considered argument in 117 of the cases with investigator's reports; the investigator's recommendations in the remaining 121 cases with investigator's reports were uncontested by the parties.
- The reasonable grounds rate for all cases processed in FY 2020 was 6% (42 of 697) cases determined).
- At the end of FY 2020, 742 cases remained pending, a 10% increase in pending cases from the prior year.
- Commission staff delivered or participated in or delivered more than 58 training forums during FY 2020.

The Commission continues to promote diversity and tolerance, and 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 MHRA.

Sincerely,

Deborah L. Whitworth, Acting Commission Chair

## THE COMMISSION

Established in 1971, the Commission is a quasi-independent state agency charged with responsibility of enforcing Maine's anti-discrimination laws, which are encompassed in the MHRA at Title 5 of the Maine Revised Statutes ("M.R.S."), Sections 4551-4636. Some of the Commission's powers and duties are:

- 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.

The MHRA provides that the Commission "or its delegated commissioner or investigator shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has 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 complaints of retaliation under the WPA, 26 M.R.S. §§ 831 - 834-A.

The Commission has 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	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	X	X	X	X	X	2005

As required by the MHRA, the Commission provides an opportunity for parties to a complaint to try to resolve the dispute by agreement prior to a determination of whether there are reasonable grounds to believe that unlawful discrimination has occurred. 5 M.R.S. § 4612(1)(A). The MHRA authorizes the Commission to pursue remedies for unlawful discrimination in court when necessary to enforce the MHRA. The Commission also 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 proposed statutes and rules under consideration that might affect human rights in the State.

Commission policy is formulated by five volunteer Commissioners appointed by a Governor for staggered five-year terms, and the Commissioners appoint a Commission Counsel and an Executive Director. The MHRA ensures that the Commission is not political in nature, with requirement that no more than three Commissioners may be from any political party. Commissioners make final determinations on all discrimination complaints investigated by Commission staff that are not otherwise resolved administratively or settled. A Governor designates the Chair of the Commission from among its members.



## PROCESS

The Commission receives either an intake (which it drafts into a complaint to assist the complainant, if jurisdiction exists under the MHRA) or a complaint. Complaints must be received within 300 days of the alleged discrimination for a complaint to be timely. The Commission notifies the respondent of the complaint and receives its answer to the complaint, which the Commission then shares with the complainant in order to get his/her reply supporting the complaint. After that, a complaint may be administratively dismissed for certain reasons, withdrawn by the complainant, or resolved by the parties, or the complainant may elect to proceed directly to court. If none of these occur, the case is assigned to an investigator for a preliminary investigation and the investigator prepares a written report outlining the claims made, applicable laws, and recommended findings on each claim as to whether there are "reasonable grounds" to believe discrimination violating the MHRA occurred. The Commission staff provides reports with summaries of investigation, legal analysis, and recommendations to Commissioners for decision at public meetings. After a reasonable-grounds 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 is ultimately responsible for all agency activity and has authority to hire and supervise Commission staff, which is as follows:

- **Investigators:** Our six Investigators, supervised by the Commission Counsel and Executive Director, conduct fact-finding as to whether allegations of discrimination are at least as likely as not to be substantiated, and to write Investigator's Reports that analyze facts, apply legal principles, and to recommend specific findings to the Commission.
- **Legal:** The Commission Counsel is responsible for agency litigation in the public interest and providing legal advice to the Commission and its staff. Counsel reviews all investigator reports for legal sufficiency, provides legal frameworks to investigators and legal opinions to the Executive Director or Commission, drafts proposed regulations, and advises the Executive Director on legislative and contract matters. Our Commission Counsel has the assistance of one paralegal, who also: assists the Executive Director in negotiating, implementing and monitoring agreements to settle post-decision resolutions; monitors implementation of some pre-decision resolutions; and addresses public record requests.
- **Administration:** The Executive Director conducts most agency outreach activity and Legislative information-sharing. The agency's Operations Director manages personnel, budget/fiscal, information technology, annual reporting, and office matters. Three secretary associate legal staffers handle all new complaint filings, early case processing, and Commission meeting matters; one of these positions was vacant for most of FY 2020. A second paralegal serves as the agency Intake Officer, and in that capacity reviewed 1226 Intake Questionnaires and either screened out non-jurisdictional matters or drafted complaints in each.

## BUDGET

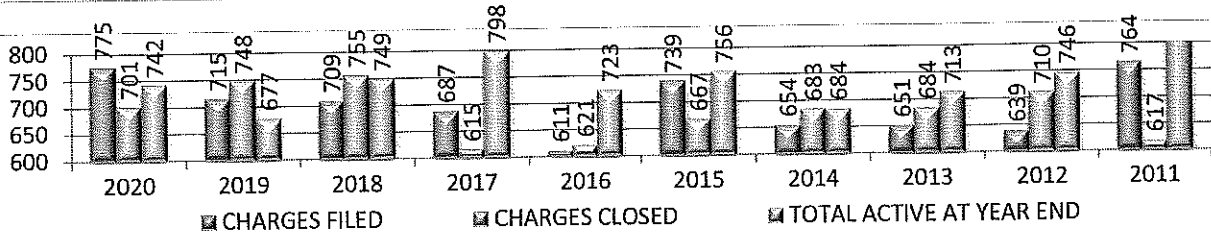
The Commission's Fiscal Year 2020 revised budget appropriation was \$1,705,818. Approximately \$1,247,721, slightly over 73% of the agency's total budget<sup>i</sup>, was allocated to fixed personal service costs such as salaries and benefits. This is due to the highly personnel-intensive nature of the Commission's work in investigating, resolving, and litigating complaints. Just under 27% of the Commission's budget (\$458,097) was allocated to "all other" operating expenditures to support program activities. Of the total Commission budget, approximately 33% (\$563,813) were anticipated revenues 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 the majority of its resources to the processing of complaints of discrimination filed with it. During FY 2020, 775 new complaints were filed, which represents an increase from the previous year. The Commission closed 701<sup>ii</sup> cases in the same time period. The pending inventory of cases has increased by 10% since FY 2019.

## HISTORICAL CASE ACTIVITY DATA 2011 - 2020

FISCAL YEAR	2020	% +/-	2019	2018	2017	2016	2015	2014	2013	2012	2011
ACTIVE CASES FY START	768 <sup>iii</sup>	- 6%	710	795	726	756	684	713	746	817	670
+ CASES FILED	775	8%	715	709	687	611	739	654	651	639	764
- CASES CLOSED	701	- 6%	748	755	615	621	667	683	684	710	617
ACTIVE CASES FY END	742	10%	677	749	798	723	756	684	713	746	817

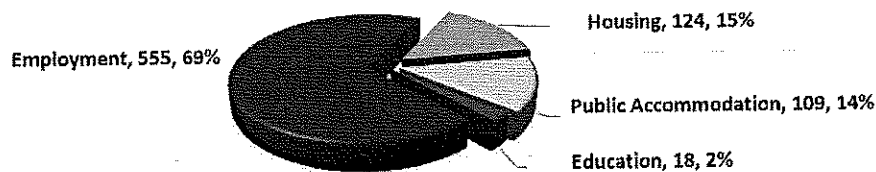


As usual, in FY2020, the vast majority of complaints filed (69%) alleged employment discrimination.

## HISTORICAL CASES FILED BY JURISDICTION FY 2011 - 2020

JURISDICTION	FY	2020	% +/-	2019	2018	2017	2016	2015	2014	2013	2012	2011	
EMPLOYMENT		554	69%	9%	508	492	482	480	548	518	483	528	618
HOUSING		124	15%	17%	106	113	103	60	92	73	104	74	78
PUBLIC ACCOMMODATION		110	14%	-14%	128	104	105	71	98	63	64	37	72
EDUCATION		18	2%	6%	17	14	5	5	8	3	3	4	4
CREDIT EXTENSION		-			2	-	-	2	2	-	-	-	-
OFFENSIVE NAMES		-			-	-	-	-	-	-	-	-	-
TOTALS		806 <sup>iv</sup>			761	723	695	618	748	656	654	643	772

### FY 2020 CHARGES FILED BY JURISDICTION



775 New Cases Filed (31 Cases Dual Jurisdiction)  
806 Cases by Jurisdiction

### COMPLAINTS FILED

In FY 2020, 775 new complaints were filed with the Commission. Many Commission complaints involve protected classes that vary depending on the unique areas of jurisdiction under which each case arises. Very often, a single complaint will contain multiple distinct allegations of discrimination, or "claims", that require different factual and legal analysis. A total of 3,185 claims were named in FY 2020 complaints, representing complex investigations in many cases. These more complex investigations require substantially increased staff and Commission work. The Commission tracks both cases and the details of each claims identified in each case in order to accurately reflect the nature and depth of our work and resources required.

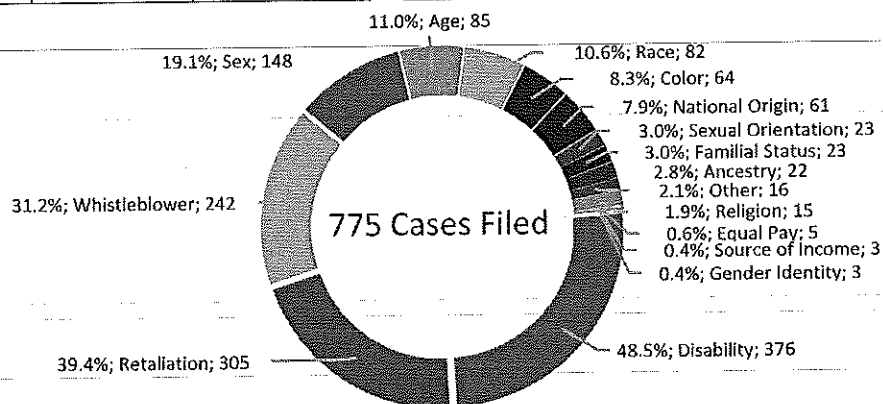
Within the 775 cases newly filed in FY 2020, disability discrimination was the protected class most often invoked, at 48.5% of cases (376 cases). The second and third bases most frequently alleged protected classes were MHRA

retaliation, at 39.4% of cases (305 cases), and whistleblower retaliation, alleged in 31.2% of cases (242 cases). The fourth most common allegation asserted in cases was sex discrimination, in 19.1% of cases (148 cases); it is disappointing to note that sexual harassment was alleged in 44.6% of sex discrimination filings (66 out of 148 sex discrimination cases filed). The protected classes next most often invoked in complaints were: race or color discrimination, at 10.6% and 8.3% of cases respectively (82 and 64 cases); national origin, in 7.9% of cases (61 cases); religion, in 3% of cases (23 cases); and sexual orientation, in 3% of cases (23 cases). The remaining protected classes, which were invoked collectively in fewer than 6.1% of cases (48 cases), include ancestry in 2.8% of cases; source of income in 1.9% of cases, equal pay in .6% of cases, familial status in .4% of cases, gender identity in .4% of cases.

When a complaint filed with the Commission does not fall under the jurisdiction of the MHRA, it is dismissed for lack of jurisdiction. In the fiscal year, 45 cases contained allegations identified systemically as “other” bases.

### FY 2020 New Case Filings - Type of Protected Class Allegations

ALLEGED BASES	2020	F19 – F20 Change +/-	2019	2018	2017	2016	2015	2014	2013	2012	2011	
Disability	376	48.5%	1.2%	47.3%	48.7%	51.8%	44.6%	52.0%	48.9%	45.6%	43.1%	39.5%
Retaliation	305	39.4%	0.7%	38.7%	36.5%	36.7%	28.0%	30.9%	29.6%	22.2%	25.8%	16.2%
Whistleblowers'	242	31.2%	-3.2%	34.4%	37.8%	29.1%	31.5%	36.3%	37.5%	31.3%	40.9%	31.6%
Sex	148	19.1%	-5.2%	24.3%	21.9%	18.5%	21.0%	22.4%	22.0%	23.9%	23.8%	20.1%
Age	85	11.0%	-2.1%	13.1%	11.0%	12.6%	15.8%	12.0%	15.4%	14.5%	13.3%	14.2%
Race	82	10.6%	4.2%	6.4%	9.2%	6.3%	6.3%	9.7%	9.3%	8.1%	7.0%	9.6%
Color	64	8.3%	0.5%	7.8%	5.9%	5.4%	4.1%	8.2%	7.5%	7.0%	5.0%	8.2%
National Origin	61	7.9%	1.7%	6.2%	4.4%	5.4%	4.1%	5.7%	6.3%	5.4%	3.0%	5.5%
Religion	23	3.0%	-0.2%	5.5%	1.4%	1.7%	2.1%	2.8%	3.2%	2.0%	1.9%	3.0%
Sexual Orientation	23	3.0%	2.3%	3.2%	4.8%	0.9%	2.1%	3.1%	3.4%	5.4%	3.9%	5.8%
Ancestry	22	2.8%	0.6%	2.2%	1.6%	1.7%	1.1%	2.0%	2.9%	2.8%	2.3%	1.6%
Source of Income	15	1.9%	-3.6%	1.4%	0.8%	2.0%	0.7%	0.5%	0.6%	1.7%	0.3%	1.4%
Equal Pay	5	0.6%	-0.4%	1.0%	0.0%	0.0%	0.2%	0.1%	0.3%	0.0%	0.2%	0.0%
Familial Status	3	0.4%	-1.0%	0.7%	1.1%	0.7%	2.1%	1.2%	1.8%	3.1%	3.3%	2.7%
Gender Identity	3	0.4%	0.0%	0.4%	0.1%	0.3%	0.8%	0.7%	0.3%	0.0%	0.5%	0.3%
Workers' Comp	0	0.0%	-0.3%	0.3%	0.0%	0.1%	0.3%	0.4%	1.5%	0.3%	0.5%	0.3%
<b>CASES FILED</b>	<b>775</b>		<b>715</b>	<b>709</b>	<b>701</b>	<b>615</b>	<b>741</b>	<b>656</b>	<b>654</b>	<b>640</b>	<b>770</b>	



This chart describes what protected classes were alleged in the 775 cases filed with the Commission; cases often allege discrimination in more than one protected class.

### CASES CLOSED

The Commission closed 701 cases in the FY 2020<sup>o</sup>. Of the 701 cases, 45 cases were from post reasonable grounds cases activities. It is worth noting that the MHRA itself provides only for two statutory results in cases: a finding of “reasonable grounds” or a finding of “no reasonable grounds”. Since cases that are withdrawn related to settlement or which end via a right-to-sue letter are not “reasonable grounds” findings, they actually are dismissed pursuant to the Act as “no reasonable grounds” findings. This can leave our “reasonable grounds” 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**

- *Settlements (196)*. The Commission encourages voluntary settlement and works with the parties to achieve a resolution that is mutually acceptable. Cases may be resolved at any time while they are before the Commission by means of a settlement; a pre-determination agreement can be one which the parties work out on their own (usually resulting in a request by complainant to withdraw the complaint) or one which a Commission investigator or neutral mediator facilitated (usually resulting in a settlement agreement shared with the Commission). During the period, 196 cases resolved voluntarily, with 105 cases resolved by settlement agreement and 91 by withdrawal of complaint with benefits to the complainant before the Commission issued a determination; complainants obtained \$4,160,696 in monetary relief in these closures.
  - Our Third Party Neutral Mediation Program, available for a small fee, is very successful in resolving claims; in FY 2020, our skilled mediators facilitated settlement in 44% (40 out of 90) cases mediated.<sup>v</sup> In addition to monetary awards, settlements 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.
- *“Right-to-Sue” letters (132)*. If the Commission has not completed its investigation within 180 days of a complaint’s filing, a complainant may request that the Commission issue him/her a right-to-sue letter, which terminates the Commission’s investigation and authorizes the complainant to proceed to court with MHRA remedies intact. Complainants requested 132 right-to-sue letters in FY 2020.
- *Administrative Dismissals (108)*. The Commission’s Executive Director has authority to dismiss a complaint where a complainant has failed to substantiate a claim of discrimination, the Commission lacks jurisdiction, the complaint is untimely, a complainant fails to cooperate, or a respondent declares bankruptcy. See Commission Procedural Rule, 94-348 Code of Maine Regulations Ch. 2, § 2.02(H). During FY 2020, the Executive Director dismissed 108 cases: 41 for lack of jurisdiction; 50 due to complainant’s failure to cooperate/proceed with the investigation; 16 for other administrative reasons; and one due to Respondent bankruptcy.
- *Withdrawals without benefits to complainant (23)*. At any time before the Commission issues a report summarizing its investigation, a complainant may choose to withdraw a complaint of discrimination. After a report has been issued, the Commission may allow a complaint to be withdrawn. Withdrawals most often occur when complainants, after reviewing the respondents’ written answers to the complaint or hearing the facts presented by respondents at a conference, decide that they do not wish the Commission to continue processing their case any longer. Complainants withdrew 23 complaints during FY 2020.

### **Public Hearings Determinations (238)**

If a case is not administratively resolved as described above, an investigator prepares a report summarizing their investigation and the legal framework applicable to each claim, and recommending a finding as to whether reasonable grounds exist to believe that unlawful discrimination occurred. The Commission sets these reports for public hearing. If neither 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 2020, Commissioners received and voted on 238<sup>vii</sup> cases resulting in 258 determinations. Before looking into this data in closer detail, it is worth noting that not every claim of discrimination leads to a distinct determination by the Commission – many claims are grouped together (or subsumed) in one determination. In the final analysis, the Commission found reasonable grounds to believe unlawful discrimination occurred in 42 cases; this equates to a reasonable-grounds rate of 17.7% of cases decided. Out of the 42 reasonable grounds cases voted on in the period, 34 cases were closed and 8 cases remained open at the end of the period.

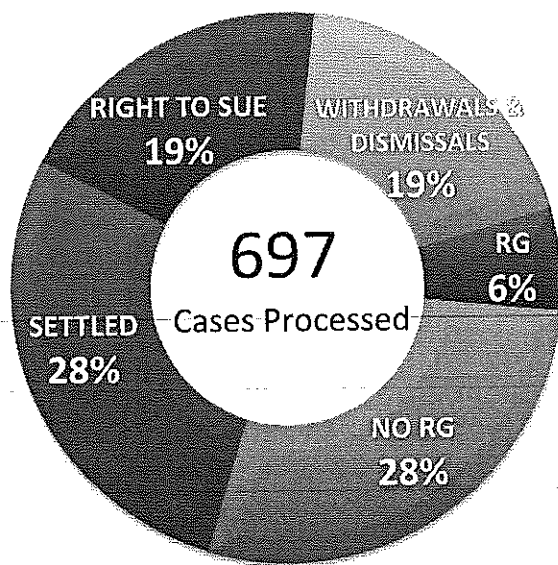
- *Uncontested cases (121)*. A majority of recommended determinations by Commission staff were not contested by the parties. In 121<sup>viii</sup> of the 238 cases voted on (51%), neither party contested the recommended decisions; these

cases appeared on the Commission’s Consent Agenda. For uncontested cases listed on our Consent Agenda, Commissioners made no-reasonable-grounds findings in 113 cases, and reasonable-grounds findings in 11 cases.

- **Contested cases (117).** In 117 of the 238 cases voted on by Commissioners (49%), one party or both contested the recommended decision. These 117 contested cases were scheduled for hearing. After our hearings ended, Commissioners found no reasonable grounds to believe that discrimination occurred in 103 contested cases, and reasonable grounds to believe that discrimination occurred in 31 contested cases<sup>x</sup>.

**REASONABLE-GROUNDS RATES**

Given the 697 new cases determined in FY 2020, and the fact that there were reasonable-grounds findings in 42 cases, the Commission’s reasonable-grounds rate for all cases processed in FY 2020 was 6%. This could be interpreted to mean that 94% of cases processed were in the respondent’s favor, but that would not be truly accurate, as so many cases which technically had to be closed with a no-reasonable-grounds finding actually resulted in benefits flowing to complainants via settlement agreements and right-to-sue letters. A more relevant statistic that reflects the Commission’s actual rate of finding reasonable grounds (or not) in cases is to look at cases decided after full pleading and argument: cases in which an investigator’s report was issued. In FY 2020, the Commission’s overall rate of finding reasonable grounds to believe discrimination occurred in cases where an investigator’s report was issued was 17.6%.<sup>x</sup> It is worth noting that 51% of cases with investigator’s reports (121 of 238 cases) were not contested. When recommended decisions were contested (117 out of 238 cases), the reasonable-grounds rate was much higher: 26% of cases (31 of 117). Viewed conversely, this means that in FY 2020, a respondent in a fully contested Commission matter decided on its merits stood a 74% chance of prevailing in the case<sup>xi</sup>.



**FY 2020 Summary of Case Activity**

Action	# Cases (%)
Withdrawals & Dismissals	131 (19%)
NO RG Determinations	196 (28%)
Right to Sue	132 (19%)
Settlements	196 (28%)
RG Determinations	42 (6%)

**CASES CLOSED**

The Commission closed 701 cases in FY 2020<sup>xii</sup>. Of the 701 cases, 45 cases were from post-reasonable-grounds cases activities. It is worth noting that the MHRA itself provides only for two statutory results in cases: a reasonable-grounds finding or a no-reasonable-grounds finding. Since cases that are withdrawn related to settlement or which end via a right-to-sue letter are not reasonable-grounds findings, they actually are dismissed pursuant to the Act as no-reasonable-grounds findings. This can leave our reasonable-grounds rate statistics to be less than fully informative, so we report in more detail the various ways in which Commission cases close.

***Post-Reasonable-Grounds Conciliations***

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-reasonable grounds 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 2020, **15 post-reasonable grounds cases were successfully resolved via conciliation agreements**

with public interest and private relief; the monetary value of these benefits was \$61,485, and significant non-monetary relief in the form of improved policies and training, postings, and monitoring also was achieved.

## LITIGATION

The Act authorizes the Commission to file a lawsuit in court in the name of the Commission, for the use of the complainant and in the public interest to address unlawful discrimination and prevent its recurrence, in reasonable-grounds cases in which post-decision conciliation has failed. The Commission Counsel makes recommendations to the Commission in each post-reasonable-grounds case in which conciliation has failed, to assist the Commission in deciding whether to file a lawsuit in each of the cases. Where the Commission votes to file a lawsuit, Commission Counsel directs these legal efforts and represents the Commission. During FY 2020, Commission Counsel filed seven new complaints and one amicus brief on behalf of the Commission. Three cases that had been referred to Counsel for litigation or amicus filings were resolved. The Commission was a party in one court case throughout the year, and an amicus in one case. At the end of the Fiscal Year, there were three cases pending in court in which the Commission was a party.

## CONCLUSION

This Annual Report has outlined the Commission's activities for FY2020, including: investigating 775 new complaints (with 3,185 distinct claims of discrimination); continuing investigative work on 710 complaints pending from FY 2019; closing 748 cases; participating in/delivering 58 trainings; and providing testimony at the Maine Legislature. Given all of this, and our extremely small staff of 14, and the fact that half of FY 2020 was during a worldwide pandemic forcing all agency activity to occur remotely, the sheer volume of the Commission's work in FY2020 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.

---

<sup>i</sup> Special revenue funds account for \$215,728.

<sup>ii</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 section of the report represent cases considered by the Commission and closed in Fiscal Year 2020.

<sup>iii</sup> After updating inventory data, the FY 2020 beginning inventory was adjusted up from 677 to 668 due to case consolidations and coding corrections.

<sup>iv</sup> Because 31 of the 775 new complaints filed fell under dual jurisdictions, there were a total of 806 complaints filed by jurisdiction.

<sup>v</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 case system that presents data given certain defined parameters. There were additional case closures that occurred in fiscal year but which were not counted in as closures in our computer system for technical reasons

<sup>vi</sup> The date mediations were performed may differ from the date of the actual settlement and may fall outside the reporting period. The Commission's FY 2020 approved mediation budget was \$44,000 (which is entirely self-funded). In the fiscal year, the Commission received \$36,380 in program fees (\$225 by each of party in a case) from parties for mediations. In FY2020 mediators were paid \$24,333 (a set fee of \$400/case) to for completing 61 mediations. The Controller of the State of Maine collected \$132 in STA-CAP tax (or 7.6%) of expenditures; STA-CAP tax is a mandatory tax for non-exempt accounts administered by the State of Maine, the Mediation program was granted an exemption to STA-CAP in early FY 2020 after legislative approval.

<sup>vii</sup> The disparity between these two rates is because 20 of the 238 cases voted on contained a split finding - one claim in the case led to a finding of reasonable grounds but another claim in the case led to a finding of no reasonable grounds.

<sup>viii</sup> 3 uncontested cases resulted in a split finding vote of both reasonable grounds and no reasonable grounds.

<sup>ix</sup> There were 258 hearing case outcomes; of the 238 individual cases, 20 cases had split reasonable grounds and no reasonable grounds findings.

<sup>x</sup> There were 697 hearing case outcomes; of the 748 individual cases, 20 cases had split reasonable grounds and no reasonable grounds findings.

<sup>xi</sup> 31 out of 117 cases contested were reasonable grounds cases.

<sup>xii</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 case system that presents data given certain defined parameters. There were additional case closures that occurred in fiscal year but which were not counted in as closures in our computer system for technical reasons