STATE OF NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS



$\frac{\text{BIENNIAL REPORT}}{2020-2021}$

July 1, 2020 - June 30, 2021

Pursuant to RSA 354-A:5-X

NH COMMISSION FOR HUMAN RIGHTS 2 INDUSTRIAL PARK DR—BLDG 1 CONCORD NH 03301 603-271-2767 https://www.nh.gov/hrc

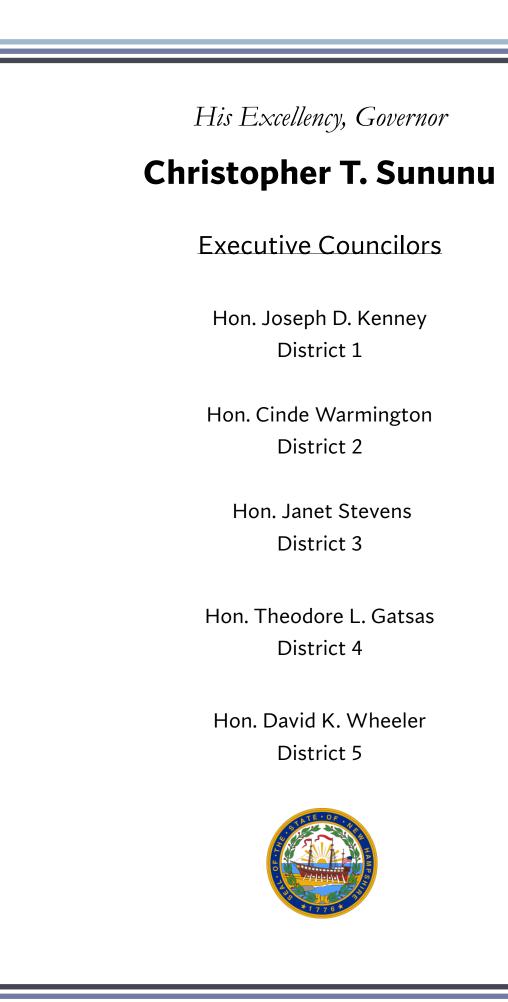


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November 1, 2023

His Excellency, Governor Christopher T. Sununu And Honorable Council

Dear Governor Sununu and Honorable Councilors,

It is my pleasure to present the 2020-2021 biennial report for the New Hampshire Commission for Human Rights ("NHCHR"). This report is intended to provide readers with essential information on the agency's operations, including charge intake, investigation, administrative hearings and case dispositions. In addition, this report offers an update on education/outreach efforts and highlights legislative updates and activity. Despite the challenges presented by the Covid-19 pandemic and staff vacancies, the agency realized significant achievements during the 2020-2021 biennium. During each year, the number of cases processed by the NHCHR exceeded the number of new cases taken in, thereby decreasing the number of open cases carried forward into a new fiscal year. The agency subsequently received additional federal revenues throughout the biennium.

I hope that you find the enclosed informative and helpful as you contemplate the resources to be devoted to this vital agency in the future. I thank you for your continued support of the NHCHR.

Sincerely, ahri Malachi

Ahni Malachi Executive Director

NHCHR BIENNIAL REPORT 2020-2021

The New Hampshire Commission for Human Rights ("NHCHR") is a state agency established by RSA 354 -A for the purpose of enforcement of the law against discrimination in employment, places of public accommodation, public education and the sale or rental of housing or commercial property, because of **age**, **sex (includes pregnancy), sexual orientation, gender identity, race, creed, color, marital status, familial status, physical or mental disability or national origin.** The Commission has the power to receive, investigate and make findings on complaints of illegal discrimination and to hold public hearings. In addition, the Commission is committed to eliminating discrimination through outreach, training, research and education. The Commission consists of 7 commissioners with the powers and authority described in RSA 354-A:5. The Commissioners are appointed by the Governor, with the consent of the Executive Council, for terms of five years. The Commissioners meet on the first Thursday of each month.

Commissioners

Christian Kim - Chair Hillsborough, New Hampshire 03/25/2020 - 01/01/2023

Douglas J. Palardy New Castle, New Hampshire 02/07/2018 - 01/01/2023

Nancy G. LeRoy Laconia, New Hampshire 12/19/2018 - 11/01/2023

Basra Mohamed, Esq. Manchester, New Hampshire 03/25/2020 - 11/01/2024 **Elizabeth A. Asch** Hanover, New Hampshire 05/05/2021 – 11/01/2025

Adrienne Evans Concord, New Hampshire 05/04/2022 – 11/01/2026

Melissa Moriarty Manchester, New Hampshire 02/—/2023—01/01/2028

Harvey Keye Nashua, New Hampshire 02/07/2018—01/01/2023

<u>Staff</u>

Ahni Malachi Executive Director

Sarah E. Burke Cohen, Esq. Assistant Director

Katrina E. Taylor Investigator/Mediation Coordinator

Nicole Lemelin Investigator Daniel Deyermond Investigator

Joyce J. Samuel Investigator

Erica Rosignol Intake Coordinator

Lara Phillips-Ramovic Secretary

<u>NH RSA 354-A</u>

<u>Areas of Coverage:</u>

Employment (6+ employees)

Places of Public Accommodation

<u>Basis</u>

Age (covers individuals of all ages)

Sex (includes pregnancy, sexual harassment)

Sexual Orientation

Color

Marital Status

Physical/Mental Disability

Housing

Public Education (K-12)

Religion

Gender Identity

Race

National Origin

Familial Status

Retaliation*



*NH RSA 354-A:19 provides: 'It shall be an unlawful discriminatory practice for any person engaged in any activity to which this chapter applies to discharge, expel, or otherwise retaliate or discriminate against any person because he/ she has opposed any practices forbidden under this chapter or because he/ she has filed a complaint, testified or assisted in any proceeding under this chapter."

In addition to the powers vested in the NHCHR by RSA 354-A to enforce New Hampshire's law against discrimination, the NHCHR also partners with the U.S. Equal Employment Opportunity Commission ("EEOC") to enforce federal laws prohibiting discrimination in employment. Pursuant to a workshare agreement with the EEOC, a majority of employment cases are dually filed under both RSA 354-A and one or more of the following applicable federal statutes:

Age Discrimination in Employment Act, of 1967 ("ADEA")

Area of Coverage:	Em
	(20-
Basis:	Age

Employment (20+ employees, individuals 40+) Age; Retaliation

Title I of the Americans with Disabilities Act of 1990, as amended ("ADA")

Area of Coverage:

Employment (15+ employees)

Basis:

Physical Disability; Mental Disability; Regard As/Perceived As Disabled; Associated With; Retaliation

Title VII of the Civil Rights Act of 1964, as amended ("Title VII")

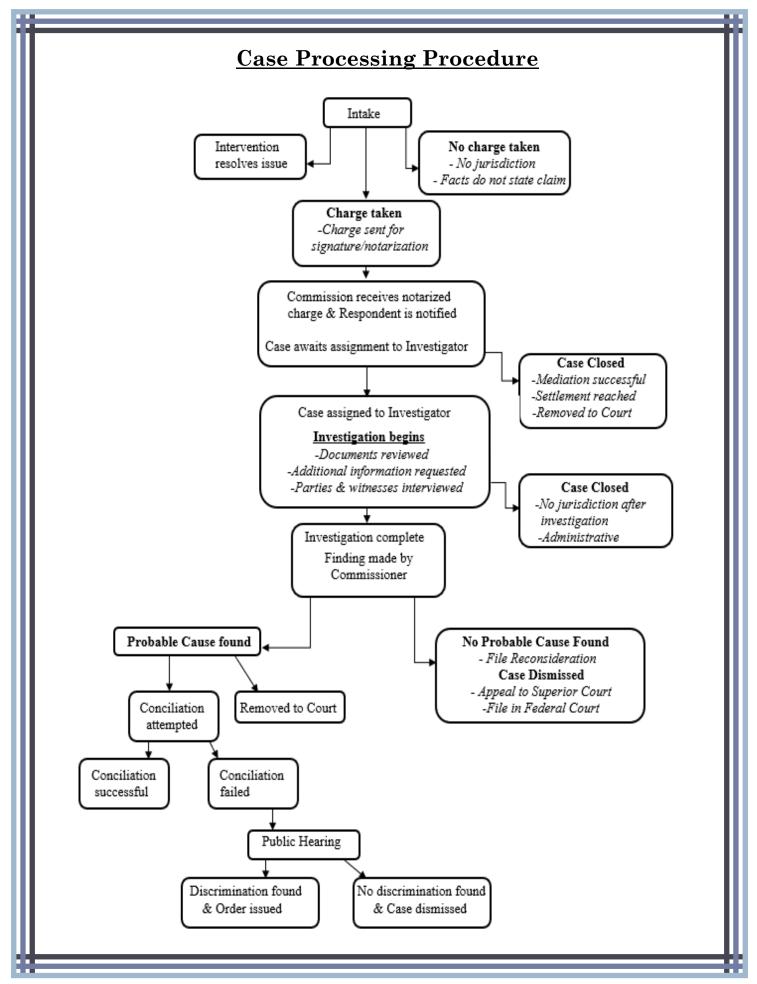
Area of Coverage:

Basis:

Employment (15+ employees) Sex (includes pregnancy; sexual harassment); Sexual Orientation; Gender Identity; Race; Color; National Origin; Religion; Retaliation

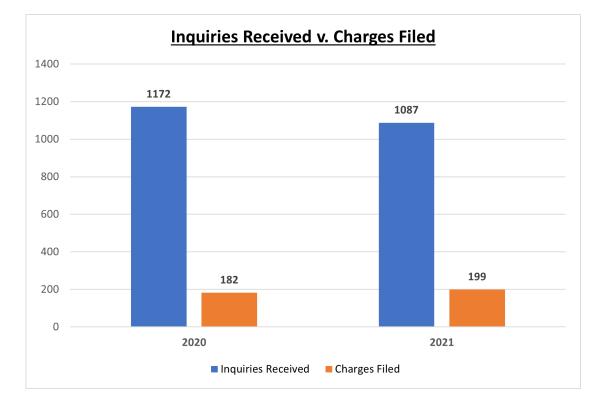


The NHCHR receives approximately 15% of its annual funding from the EEOC. The NHCHR is paid \$830.00 per case processed and \$100.00 per intake/waiver. The EEOC also provides additional funding for collaborative outreach events and trainings.



<u>Intake</u>

The intake process usually begins with a telephone call, e-mail, or visit to the NHCHR. Each year, the agency receives several hundred inquiries per year from individuals requesting information or wanting to pursue a charge of discrimination. Many of these inquiries do not fall within the jurisdiction of the NHCHR and these are referred to other agencies and organizations. In instances which the inquiry presents a claim within the NHCHR's jurisdiction, the Intake Coordinator assists the individual in filing a formal charge of discrimination. The NHCHR also accepts formal charges of discrimination submitted by licensed New Hampshire attorneys.



As referenced above, the NHCHR receives numerous inquiries outside its' jurisdiction. The number of charges filed per year is less than 20% of the inquiries received and reviewed by the NHCHR.

Docketing & Notice of Service

Upon receipt of an original, verified charge of discrimination from an aggrieved party or his/her legal representation, the NHCHR dockets the case under the applicable statutes. The NHCHR then serves notice on the responding party/entity ("Respondent") and establishes a deadline for the Respondent to provide a verified response to the allegations of discrimination outlined in the charge. The case is placed in the NHCHR's pending file to be assigned for investigation. While awaiting investigation, the parties are afforded the opportunity to participate in the Commission's no-cost mediation program (see page 19), and/ or an aggrieved party has the right to remove the case after 180 days of the docketing of the charge.

Investigation

If the case is not resolved during mediation or private resolution, and is not removed to court by the aggrieved party, the case is assigned to an investigator. Upon assignment, an investigator conducts an impartial investigation of the allegations of the aggrieved party and the defenses set forth by the Respondent. Investigations are comprised of requesting and reviewing written documentation, analysis of statistical data, identifying the applicable legal standards and obtaining testimony from interested parties and/or witness. Upon completion of an investigation, the investigator writes an investigative report culminating in a recommendation to an Investigating Commissioner.

No Probable Cause

A finding of No Probable Cause indicates there was insufficient evidence to show the aggrieved party was subjected to discriminatory conduct which violated state and/or federal law. When a finding of No Probable Cause is issued, an aggrieved party has 30 days to file a Motion for Reconsideration with the NHCHR or an appeal with the superior court. If the case was dually filed with the EEOC, an aggrieved party may request a Substantial Weight Review be conducted by EEOC.

Probable Cause

A finding of Probable Cause indicates there was sufficient evidence presented to show the aggrieved party may have been subjected to discriminatory conduct which violated state and/or federal law. When a finding of Probable Cause is issued, the case is docketed for a public hearing. At any time after notice of Probable Cause is issued, and prior to the public hearing, either party may remove the case from the NHCHR to state court. If the case is dually filed, the aggrieved party may remove to federal court if he/she first obtains a Notice of Right to Sue request from the EEOC.

Pre-Hearing/Conciliation

If a case is not removed from the NHCHR following a finding of Probable Cause, the NHCHR schedules a pre-hearing conciliation. The pre-hearing/conciliation serves as a mandatory settlement conference in an attempt to resolve the issues presented in the case. If the case does not settle during the pre-hearing/ conciliation, the matter will move forward to a public hearing.

Public Hearing

A public hearing is comprised of a panel of three (3) Commissioners, not including the Investigating Commissioner who made the initial Probable Cause determination. The panel reviews the case *de novo* and both sides present evidence and testimony to support their allegations and defenses. At the conclusion of the public hearing, the panel will affirm or dismiss the Probable Cause finding. If the decision is affirmed, the panel has the authority to award damages as applicable.

During the 2020-2021 biennium, the NHCHR held one public hearing. After a review of the evidence, the panel overturned the finding of Probable Cause and dismissed the complaint.

Cases Statistics

Due to the workshare agreement with EEOC, the NHCHR's contract year follows the federal fiscal year from October 1 through September 30.

Case statistics are currently sorted by statute; due to database software changes by the EEOC, the NHCHR is currently unable to retrieve statistics relative to the specific basis(s) for each case filed or closed. It is important to note that a case may be filed under one or more statutes, and/or cover several various basis(s). [For example, an employment case could allege age and disability discrimination, subsequently filing a charge under NH RSA 354-A, the ADA and the ADEA.] "State" cases are filed under the sole jurisdiction of NH RSA 354-A and include all housing, public accommodation and public education charges.

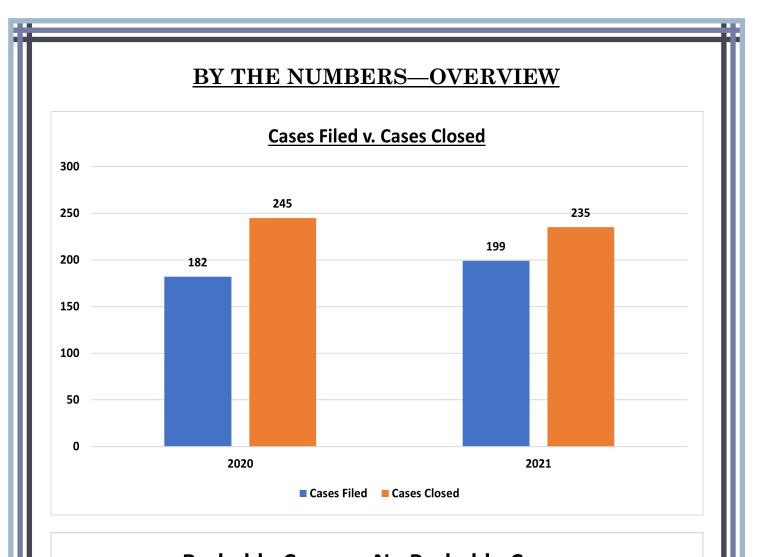
If an aggrieved party seeks to file a charge of discrimination outside of NH's 180 day statute of limitations, the NHCHR may facilitate the filing of the charge if it is determined to be within the EEOC's 300 day statute of limitations. The intake, processing and transfer of these cases are referred to as "Waivers".

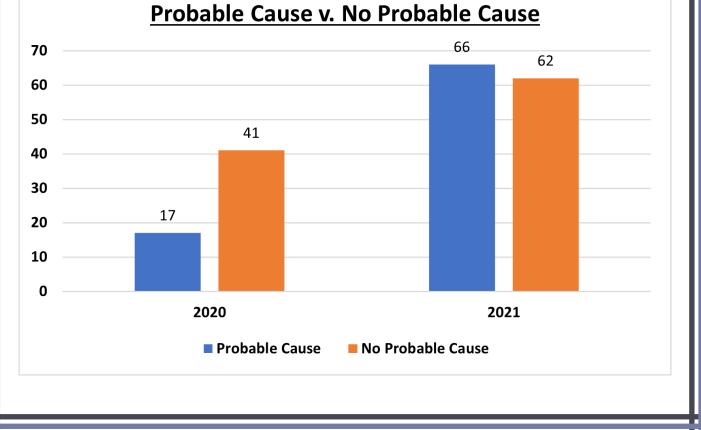
For each year of the 2020-2022 biennium, the NHCHR has closed more cases than it received, resulting in a continued decreased in the number of cases carried forward to the next fiscal year.

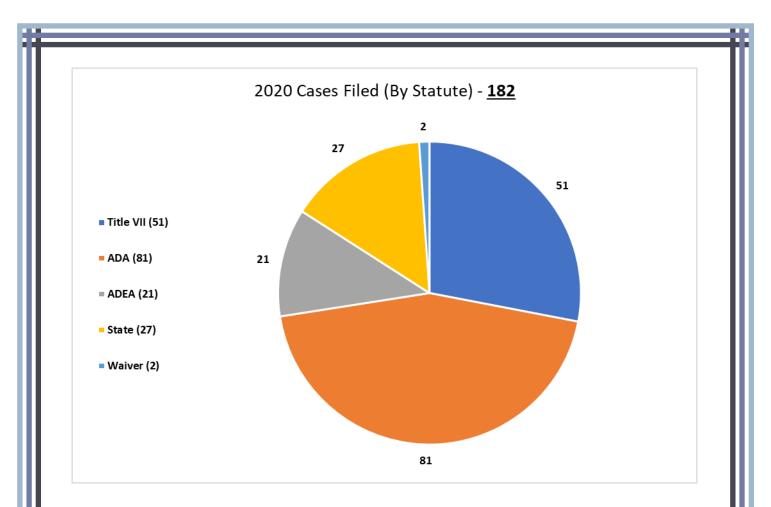
Furthermore, due to the increased number of cases processed, the NHCHR received an upward contract modifications in 2020 and 2022 from the EEOC resulting in the receipt of increased federal funds.

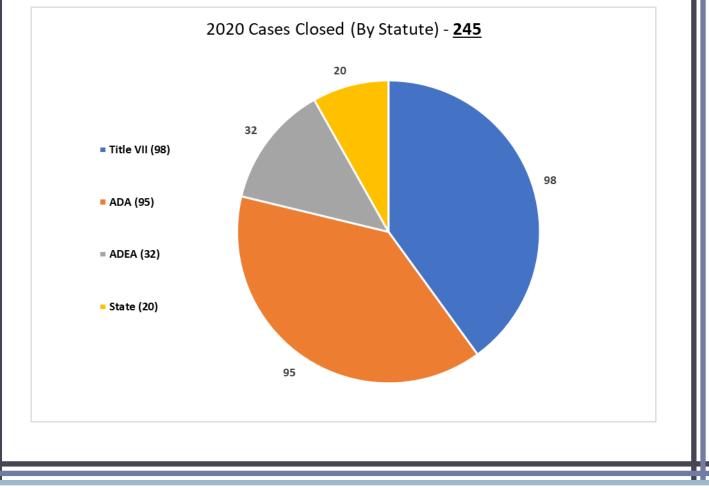
Glossary of Terms

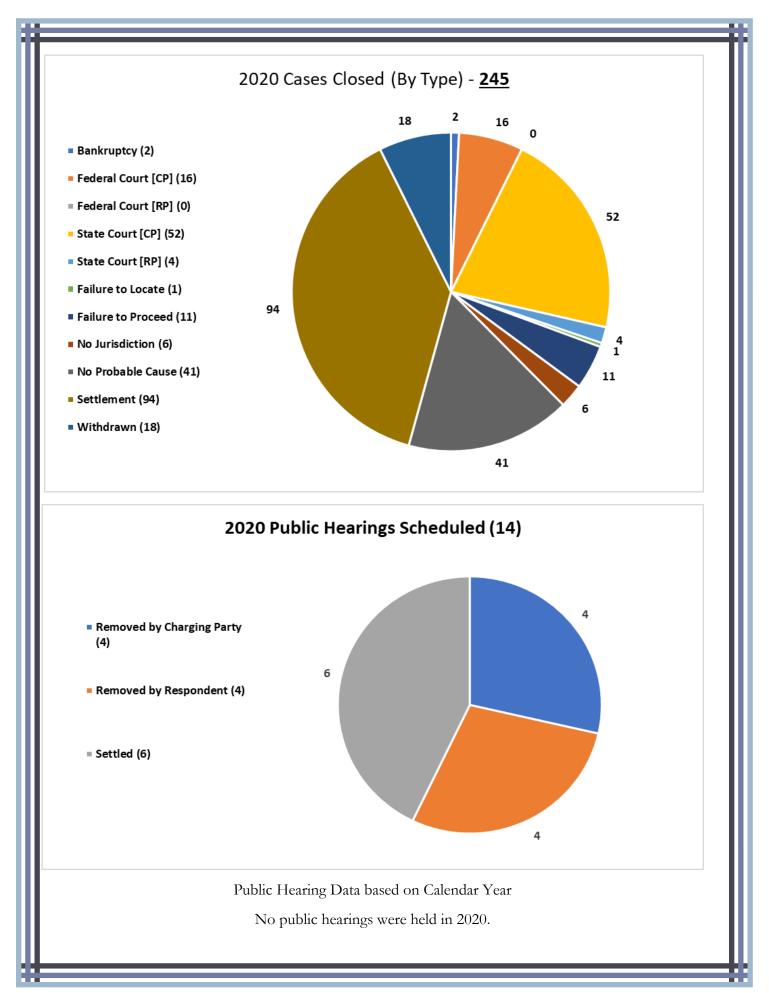
"ADEA"	Age Discrimination in Employment Act of 1967
"ADA"	Americans with Disabilities Act
"Title VII"	Title VII of the Civil Rights Act of 1964
"State"	Charges filed <u>only</u> under RSA 354-A
"Waiver"	Intake processed by NHCHR and sent to EEOC for credit
"СР"	Complaining Party
"RP"	Responding Party
"NPC"	No Probable Cause
"РС"	Probable Cause

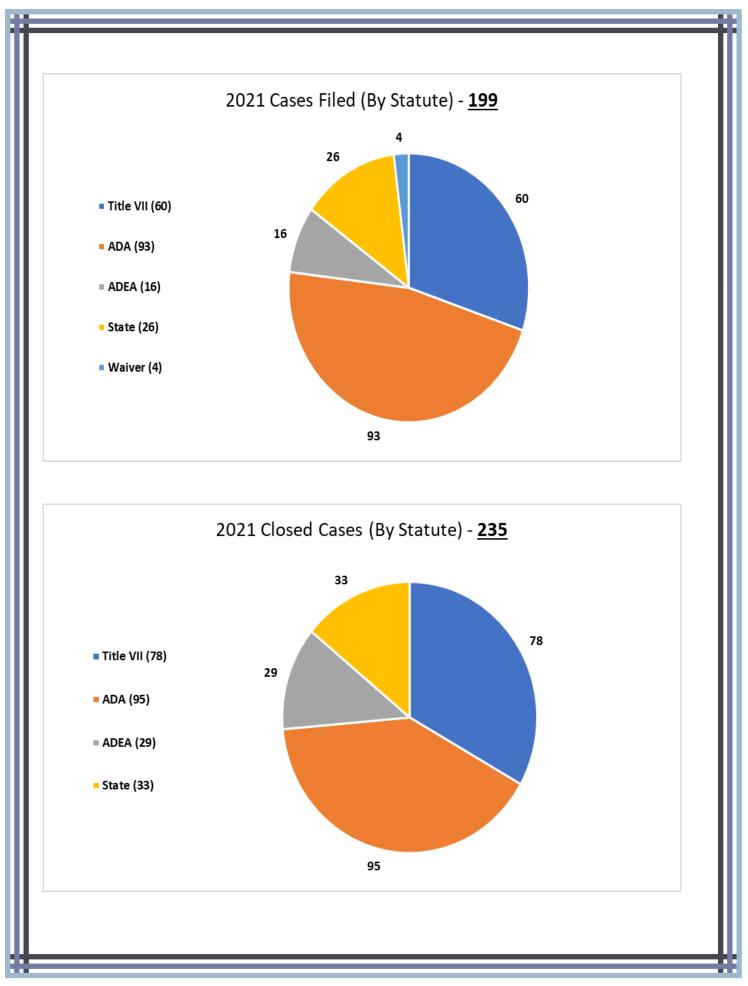


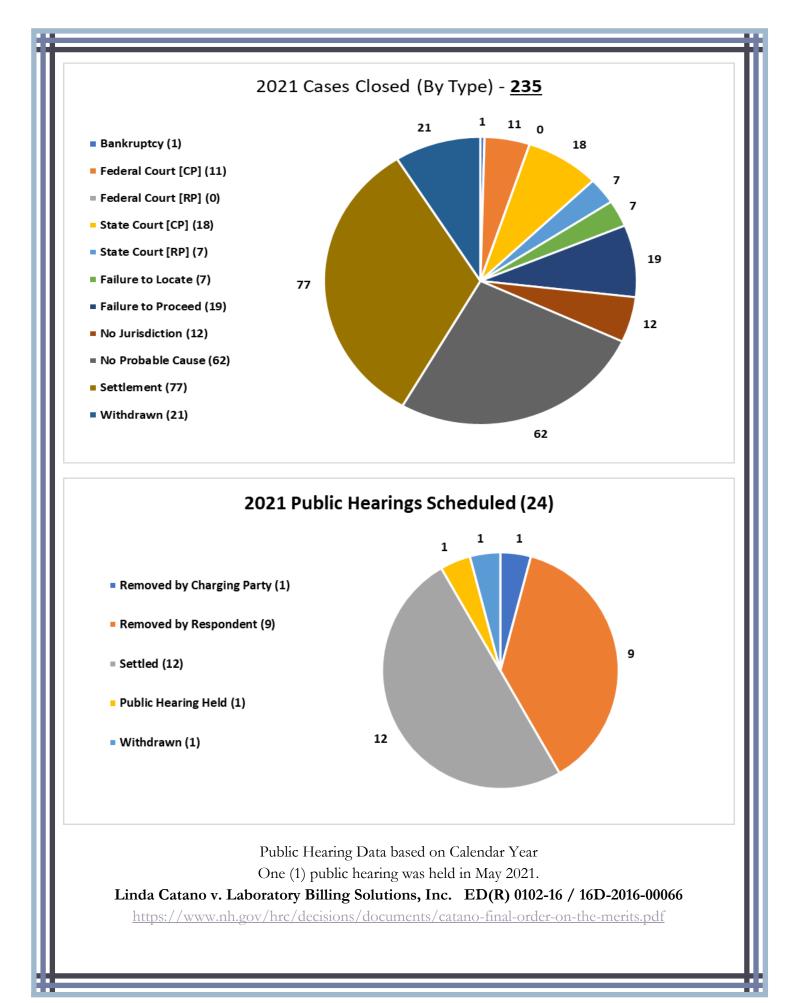






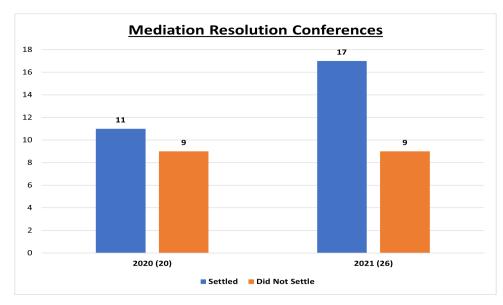






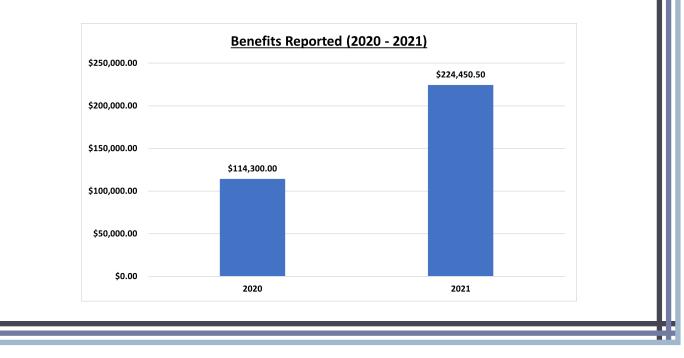
Mediation

Since 1995, the NHCHR has offered a free, voluntary and confidential mediation program as a method of alternative dispute resolution. The program utilizes a combination of both Commission and volunteer mediators who help facilitate communication and negotiations, in an effort of reaching a mutually agreeable resolution. Mediation is available to the parties at all stages of the investigative process and can be conducted in-person, and/or via Zoom or another virtual platform. Mediation has continued to be an effective tool in the resolution of cases.



Settlement

The NHCHR works with parties in all stages of the investigative process to work towards resolution of disputes. Through mediation, private settlement negotiations, or conciliation following a probable cause finding, the NHCHR reported the following settlement benefits for 2020-2021:



Legislative Updates & Activity

House Bill 383 (2020)

Prohibits discrimination on the basis of sex, gender identity, race, color, marital status, physical or mental disability, religious creed, or national origin in any public school, nonpublic school, or approved school tuition program. House Status: Passed/Adopted with Amendment, March 7, 2019; Senate Status: Interim Study, January 8, 2020.

House Bill 1391 (2020)

Proposed amendment to NH RSA 354-A by adding the prohibition of discrimination in housing against persons with pets. First introduced on January 8, 2020, this bill died on the table on March 11, 2020.

Senate Bill 509 (2020)

Proposed amendment to NH RSA 354-A by removing Respondents' ability to remove the case to court following notice of probable cause. Following a hearing on March 10, 2020, the Senate Judiciary voted to lay the bill on table on June 16, 2020.

Senate Bill 759 (2020)

Proposed amendment to NH RSA 354-A to require employers to provide reasonable accommodations to an employee related to the employee's pregnancy or childbirth and makes the failure to provide accommodations an unlawful discriminatory practice. Senate Status: Passed/Adopted with Amendment, March 12, 2020; House Status: Died on the Table, June 30, 2020.

RSA 354-A:29-34

Effective June 25, 2021, NH RSA 354-A was amended to provide for the **Right to Freedom from Discrimination in Public Workplaces and Education.** Specifically, the amendment prohibits the teaching, advocacy, instruction or training of any individual that people of a protected No charges were filed under RSA 354-A:29 in 2021.

House Bill 359 (2021)

HB 359, "creating a private cause of action for discrimination based on hairstyles relative to a person's ethnicity." HB 359 was first introduced in January 2021 and a public hearing was held on February 10, 2021. The bill was retained in committee and a Subcommittee work session was held on September 21, 2021. On November 12, 2021, the Minority Committee Report voted Ought to Pass with Amendment while the Majority Committee Report voted Inexpedient to Legislate.

<u>Governor's Advisory Council on Diversity & Inclusion</u> <u>("GACDI")</u>

GACDI was established by Executive Order 2017-09 on December 14, 2017. The Council is charged with working cooperatively with the New Hampshire Commission for Human Rights, the Civil Rights Unit of the New Hampshire Department of Justice, and any other relevant state entities to:

- Review and analyze New Hampshire laws, regulations, and agency policies and procedures, and recommend changes or amendments, where necessary, to further combat discrimination and advance the ends of diversity and inclusion;
- Identify and recommend ways in which the State can support local and community efforts, through educational programs or otherwise, to combat discrimination and advance diversity and inclusion;
- Identify and recommend ways in which the State can partner with non-governmental organizations to combat discrimination and advance diversity and inclusion; and
- Identify and recommend revisions to RSA 354-A and the scope of the duties of the Commission for Human Rights to combat discrimination and advance diversity and inclusion.

All meetings of GACDI are open to the public. GACDI meetings are held on the third Tuesday of each month. Current members of the council are:

Ahni Malachi, Chair Sean Connor, Vice Chair Sean Locke, Secretary Aida Cerundolo Dina Michael Chaitowitz Sarah Burke Cohen Sheriff Chris Connelly Jeremey Denlea Chief Charlie Dennis Adrienne Evans Reuben Hampton Karyl Martin

Mark Rubenstein

Staff Trainings

Each year, the investigative staff is provided the opportunity to attend the annual Fair Housing & Civil Rights Conference sponsored by Massachusetts Fair Housing, EEOC, the US Department of Labor, Wayfinders, Western New England University and the Boston Fair Housing Commission. The three-day conference is held in Springfield, MA each year however as a result of the Covid-19 pandemic, the conference was held virtually for the both 2020 and 2021.

The Executive Director and Assistant Director also attend annual EEOC conferences. In 2020 and 2021, management attended the conferences virtually.

All staff annual complete the Department of Information Technology's ("DoIT") Cyber Security training as well as Respect In the Workplace training as required by Executive Order 2020-01.

Education & Outreach

As part of the NHCHR's mission to eliminate discrimination, the NHCHR offers a variety of trainings which include, but are not limited to:

- Employment Law
- Sexual Harassment
- Disability Discrimination
- NH Housing Law
- Ethnic & Cross Cultural Skills Development

While trainings were limited in the biennium due to the Covid-19 pandemic, the NHCHR still conducted several trainings for organizations which included, but were not limited to, the UNH School of Law, the NH Real Estate Commission, labor unions, housing providers, state agencies and various businesses throughout New Hampshire.

The NHCHR's Executive Director annually attends the Business & Industry Association ("BIA") NH Leadership Summit and was a presenter at the 2021 NH Municipal Association's annual meeting. Both Executive Director Malachi and Assistant Director Sarah Burke Cohen, Esq., also presented at the New Hampshire Bar Association's annual Employment Law Seminar in

Staffing

For the 2020-2021 biennium, the NHCHR was budgeted for the following positions:

\Rightarrow	Executive Director	(Full-Time, Classified)
\Rightarrow	Assistant Director	(Full-Time, Classified)
\Rightarrow	Anti-Discrimination Investigator I	(Full-Time, Classified)
\Rightarrow	Anti-Discrimination Investigator I	(Full-Time, Classified)
\Rightarrow	Anti-Discrimination Investigator I	(Full-Time, Classified)
\Rightarrow	Anti-Discrimination Investigator I	(Full-Time, Classified)
\Rightarrow	Anti-Discrimination Investigator I	(Full-Time, Classified)
\Rightarrow	Intake Coordinator [Program Specialist II]	(Full-Time, Classified)
\Rightarrow	Paralegal I	(Part-Time)
\Rightarrow	Secretary II	(Part-Time)

Position Vacancies:

The NHCHR experienced significant staff turnover during the previous biennium(s). In addition, the full-time Administrative Assistant position was unfunded during the 2020-2021 budget year. Subsequently, several of these duties were reassigned to the Executive Director and Senior Investigator.

The Intake Coordinator position was vacant for a significant period of time, between August 2020 and May 2021. Investigators were subsequently required to take on additional tasks related to Intake and the processing of new cases in addition to maintaining their regular caseload.

In 2021, of the 5 (five) Investigators, one left for the private sector (February 2021) and one transferred to another state agency (April 2021). The Paralegal was internally promoted to an Investigator position.

Each summer the NHCHR recruits the services of volunteer law students to serve as legal interns. Legal interns provide vital administrative support to the investigative staff while gaining on-thejob legal experience. Interns are often charged with legal research and writing, intake, interviewing parties or witnesses, and facilitating settlement negotiations.

With the addition of new staff in the next budget cycle, the NHCHR can continue to satisfy its mission to eliminate discrimination throughout New Hampshire.

Expenditures for the Biennium by Class

2020

Class	Expend.	<u>Rev.</u>
000-FEDERAL FUNDS	0.00	162,369.50
009-AGENCY INCOME	0.00	1,498.61
009-AGENCY INCOME	0.00	5,000.14
010-PERSONAL SERVICES PERM CLASS	375,193.07	0.00
018-OVERTIME	0.00	0.00
020-CURRENT EXPENSES	10,993.12	0.00
022-RENTS-LEASES OTHER THAN STAT	47,978.00	0.00
027-TRANSFERS TO DOIT	15,671.19	0.00
030-EQUIPMENT NEW REPLACEMENT	2,133.64	0.00
037-TECHNOLOGY-HARDWARE	0.00	0.00
038-TECHNOLOGY-SOFTWARE	935.38	0.00
039-TELECOMMUNICATIONS	6,963.13	0.00
040-INDIRECT COSTS	3,993.00	0.00
041-AUDIT FUND SET ASIDE	163.00	0.00
049-TRANSFER TO OTHER STATE AGEN	229.00	0.00
050-PERSONAL SERVICE TEMP APPOIN	47,014.70	0.00
057-BOOKS PERIODICALS SUBSCRIPTI	1,473.73	0.00
060-BENEFITS	171,147.33	0.00
061-UNEMPLOYMENT COMPENSATION	5,334.00	0.00
066-EMPLOYEE TRAINING	190.00	0.00
069-PROMOTIONAL MARKETING EXP	2,023.02	0.00
070-IN STATE TRAVEL REIMBURSEMEN	2,594,8	0.00
080-OUT OF STATE TRAVEL REIMB	911.58	0.00
102-CONTRACTS FOR PROGRAM SERVIC	0.00	0.00
103-CONTRACTS FOR OP SERVICES	2,105.00	0.00
230-INTERPRETER SERVICE	396.00	0.00
233-LITIGATION EXPENSE	43.50	0.00

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Expenditures for the Biennium by Class

2021

Class	Expend.	<u>Rev.</u>
000-FEDERAL FUNDS	0.00	162,660.00
009-AGENCY INCOME	0.00	767.87
009-AGENCY INCOME	0.00	1,613.13
00D-FED REV XFERS FR OTH AGENC	0.00	1,034.70
010-PERSONAL SERVICES PERM CLASS	398,406.81	0.00
018-OVERTIME	141.42	0.00
020-CURRENT EXPENSES	11,959.49	0.00
022-RENTS-LEASES OTHER THAN STAT	50,272.00	0.00
027-TRANSFERS TO DOIT	8,728.66	0.00
030-EQUIPMENT NEW REPLACEMENT	1,262.43	0.00
037-TECHNOLOGY-HARDWARE	1,742.00	0.00
038-TECHNOLOGY-SOFTWARE	0.00	0.00
039-TELECOMMUNICATIONS	9,086.65	0.00
040-INDIRECT COSTS	2,195.00	0.00
041-AUDIT FUND SET ASIDE	141.00	0.00
049-TRANSFER TO OTHER STATE AGEN	248.00	0.00
050-PERSONAL SERVICE TEMP APPOIN	14,865.31	0.00
057-BOOKS PERIODICALS SUBSCRIPTI	1,409.73	0.00
060-BENEFITS	174,599.06	0.00
066-EMPLOYEE TRAINING	0.00	0.00
069-PROMOTIONAL MARKETING EXP	0.00	0.00
070-IN STATE TRAVEL REIMBURSEMEN	0.00	0.00
080-OUT OF STATE TRAVEL REIMB	543.84	0.00
102-CONTRACTS FOR PROGRAM SERVIC	0.00	0.00
103-CONTRACTS FOR OP SERVICES	4,445.00	0.00
230-INTERPRETER SERVICE	156.60	0.00
233-LITIGATION EXPENSE	0.00	0.00

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2022-2023 Goals / Outlook

The NHCHR will continue to satisfy its mission to eliminate discrimination through enforcement and education. Additional staffing will provide the agency with additional, necessary resources to eliminate the pending backlog and (focus on) compliance and education through training and outreach.

In 2022-2023, the NHCHR respectfully requests:

- \rightarrow Reinstated funding for FT Administrative Assistant
- \rightarrow Addition of 5 (five) FT Anti-Discrimination Investigator I
- \rightarrow Addition of 1 (one) FT Training Coordinator
- → Increase funding of PT Paralegal and PT Secretary to Full-Time, Classified positions

In addition to NHCHR's yearly collaboration with EEOC, new outreach events will be hosted with various community partners to provide invaluable information to those throughout New Hampshire.

