DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR

LEONARD HOSHIJO
ACTING DIRECTOR

DEPT. COMM. NO. 261

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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December 28, 2017

The Honorable Ronald D Kouchi,
President and Members of the Senate
Twenty Ninth State Legislature
State Capitol, Room 409
Honolulu, HI 96813

The Honorable Scott K. Saiki, Speaker
and Members of the House of
Representatives
Twenty Ninth State Legislature
State Capitol, Room 431
Honolulu, HI 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

For your information and consideration, I am transmitting two (2) copies of the Department of Labor and Industrial Relations (DLIR) Hawaii Civil Rights Commission Annual Report for the fiscal year ending June 30, 2017, as required by section 37-47, Hawaii Revised Statues (HRS).

In accordance with section 93-16, HRS, I am also informing you that the report may be viewed electronically at http://labor.hawaii.gov/find-a-report/.

Sincerely,

Leonard Hoshijo
Acting Director

Enclosures

HAWAIʻI CIVIL RIGHTS COMMISSION

2016-2017 Annual Report

David Ige, Governor

Linda Chu Takayama, Director
Department of Labor & Industrial Relations

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Commission Chair

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Mission Statement

The mission of the Hawai‘i Civil Rights Commission is to eliminate discrimination by protecting civil rights and promoting diversity through enforcement of anti-discrimination laws and education.

Overview

The State of Hawai‘i’s Constitutional Civil Rights Mandate

Article I, Section 5 of the Hawai‘i Constitution is the foundation of our state civil rights laws. It provides that: “No person shall … be denied the enjoyment of the person’s civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry.” There is no counterpart to this civil rights mandate in the U.S. Constitution.

Looking Forward: Strengthening Civil Rights Law Enforcement

In Fiscal Year (FY) 2017-2018 and going forward, the Hawai‘i Civil Rights Commission (HCRC) will continue to focus its efforts on strategic use of resources to strengthen civil rights law enforcement. To the extent possible, more enforcement resources will be dedicated to investigation, conciliation, and litigation of strong “cause” cases, where there is reasonable cause to believe that unlawful discrimination has occurred.

From 2008-2015, the HCRC focused on rebuilding capacity after losing 8 of 30 permanent positions and 3 of 11 permanent investigator positions due to the recession, budget cuts, and reduction in force (RIF). During this period, loss of staffing directly resulted in loss of capacity to timely and effectively investigate discrimination complaints. The investigation caseload grew from 271 cases at the end of FY 2007 to a high of 527 at the end of FY 2012. The size and age of the investigation caseload had a negative effect on timely and effective investigation and enforcement. Older cases are more difficult to investigate, conciliate, and litigate.

While lost capacity not been restored, an emphasis has been placed on better use of available resources. Concerted efforts have been made to reduce the size of the investigation caseload, to be in a better position to dedicate more resources to strong cases that should be investigated, with issuance of notices of reasonable cause to believe unlawful discrimination has occurred, conciliated, and litigated.

In FY 2017, the HCRC continued efforts focused on strong enforcement, with a strategic emphasis on dedicating resources to priority cases, taking incremental steps toward strengthening civil rights law enforcement, allowing for better use of

finite resources for effective and efficient investigation, conciliation, and litigation of discrimination complaints. Although faced with turnover in staffing, the HCRC worked toward an integrated investigation process, with all investigators able to handle investigations from intake through disposition. This yielded improved efficiency and continuity in investigation, as well as more well-rounded and supported investigators.

This continued emphasis on strengthened enforcement yielded 13 reasonable cause recommendations in FY 2017, down from 25 in FY 2016, and 15 in FY 2015, with 13 conciliation settlement agreements in cause cases in FY 2017 with monetary settlements totaling $590,500. In addition to these conciliation settlements in cause cases, in FY 2017 the HCRC closed a higher number of cases based on settlements prior to an investigative finding (73) with monetary relief totaling $402,468, compared to the number of cases closed in FY 2016 based on settlements prior to an investigative finding (59) with monetary relief totaling $324,615. In addition to monetary relief, the HCRC seeks and obtains non-monetary affirmative relief in all settlements to which the HCRC is a party, to stop discriminatory conduct, prevent future harm, and avoid future violations of law.

Going forward, the HCRC will continue to build on these efforts, to increase, marshal, and dedicate staff time and resources on strong cause cases to the extent possible, in order to strengthen civil rights law enforcement.

Fair and Effective Enforcement – History and Structure of the HCRC

The HCRC was organized in 1990 and officially opened its doors in January 1991. For twenty-seven years the HCRC has enforced state laws prohibiting discrimination in employment (HRS Chapter 378, Part I), housing (HRS Chapter 515), public accommodations (HRS Chapter 489), and access to state and state-funded services (HRS §368-1.5). The HCRC receives, investigates, conciliates, and adjudicates complaints of discrimination.

The HCRC currently has four (4) uncompensated volunteer Commissioners, with one vacancy. They are appointed by the Governor, with the consent of the Senate, based on their knowledge and experience in civil rights matters and commitment to preserve the civil rights of all individuals. The HCRC is attached to the Department of Labor & Industrial Relations (DLIR) for administrative purposes.

An Effective and Uniform Enforcement Scheme

Prior to the establishment of the HCRC, jurisdiction over state anti-discrimination laws was split among several state departments. Enforcement was limited and sporadic. State prosecution of discrimination complaints was virtually non-existent. Nearly all aggrieved were left with litigation of individual lawsuits as their only recourse. For complainants who could not afford private attorneys to seek remedies in court, there was no administrative process to adjudicate their

claims. As a result, few employment discrimination cases were brought to court under state law, and there were few court interpretations of state law.

The intent of the legislature in creating the HCRC was "...to establish a strong and viable commission with sufficient ... enforcement powers to effectuate the State's commitment to preserving the civil rights of all individuals."[1] The cornerstone of the HCRC statutory scheme was the establishment of a uniform procedure "...designed to provide a forum which is accessible to anyone who suffers an act of discrimination." [2]

A Fair Administrative Process

The HCRC is committed to, and its procedures are structured to ensure fairness to both complainants and respondents. The HCRC is divided into two separate and distinct sections: a) the enforcement section, which receives, investigates, and prosecutes discrimination complaints; and b) the adjudication section, which conducts hearings, issues orders and renders final determinations on discrimination complaints filed with the HCRC.

The Commissioners have delegated HCRC enforcement authority to the Executive Director. The Commissioners have authority to adjudicate and render final decisions based on the recommendations of their hearings examiners, and oversee the adjudication section through their Chief Counsel.

The Commissioners, Chief Counsel, and hearings examiners are not involved in or privy to any actions taken by the Executive Director in the investigation and pre-hearing stages of the HCRC process. Likewise, the Executive Director and enforcement section are not permitted to communicate ex parte with the Commissioners, Chief Counsel or hearings examiners about any case in the investigation, conciliation, or contested case hearing stages of the process.

The HCRC investigates discrimination complaints as a neutral fact-gatherer. At the conclusion of an investigation, a determination is made whether or not there is reasonable cause to believe unlawful discrimination has occurred.

The law requires filing of a complaint with the HCRC in most (but not all) cases before filing a discrimination lawsuit in state court.[3] Otherwise, the state courts will dismiss a lawsuit for failure to exhaust administrative remedies. This requirement reduces court caseloads by eliminating claims which are non-jurisdictional, or non-meritorious, or complaints that are closed or settled through the HCRC administrative process. As a result, the great majority of cases filed

[1] 1989 House Journal, Standing Committee Report 372.
[2] *Id.*
[3] Pursuant to HRS § 378-3(10) an employee may file a direct civil action for sexual harassment. Similarly, pursuant to HRS § 515-9(b), an aggrieved person may file a direct civil action for fair housing complaints. While the statutes allow these direct civil actions in these cases, only a small number are filed; the great majority still file complaints with the HCRC.

with the HCRC are resolved, reach disposition, and are closed without resort to the courts.

Civil Rights Law Enforcement: State & Federal Law

Federal fair employment and fair housing laws are enforced by the U.S. Equal Employment Opportunity Commission (EEOC) and U.S. Department of Housing and Urban Development (HUD) Office of Fair Housing and Equal Opportunity (FHEO), respectively. Pursuant to work share and cooperative agreements, both EEOC and HUD rely on the HCRC to investigate complaints filed under both state and federal law ("dual-filed" complaints). Both EEOC and HUD contracts require maintenance of state effort and dedication of state resources for investigation of dual-filed complaints.

While Hawai‘i and federal fair employment and fair housing laws are similar, they are not identical. Hawai‘i has more protected bases than federal law, and there are substantial differences in the definition of "employer" and the statute of limitations for filing charges of employment and housing discrimination. In addition to these jurisdictional differences, Hawai‘i law provides stronger protections against pregnancy discrimination and sexual harassment in employment.

The greater protections in Hawai‘i law are attributable to the strong civil rights mandate contained in the Hawai‘i State Constitution, HCRC statutes, HCRC rules, HCRC Commission and state court decisions. In contrast, federal court interpretations of federal civil rights laws have historically resulted in narrower protections against discrimination. The issue of state versus federal standards is an important one, particularly in states like Hawai‘i that have a strong commitment to equal opportunity and non-discrimination.

Mediation Program

The HCRC's voluntary mediation program completed its eighteenth full year on June 30, 2017. The program enjoyed a productive year, the highlight of which was the launching of a pilot program to explore the expansion of the types of complaints eligible for mediation.

Complainants, respondents and the HCRC, with the strong support of the Commissioners, want prompt and fair resolutions to discrimination complaints. To help accomplish this goal, the HCRC developed its voluntary mediation program, a process in which neutral third persons (often a team of two co-mediators with at least one attorney-mediator) help the parties discuss, clarify and settle complaints.

The HCRC voluntary mediation program uses trained community mediators who are unbiased and do not rule on the merits of the complaint. The HCRC provides the mediators with the basic facts of each case needed to understand the

dispute. The mediators then assist the parties to reach voluntary agreements. These agreements may include apologies, policy changes, monetary settlements, or other appropriate solutions. Mediation can save time, money and resources. It also can eliminate the stress of litigation and allow the parties to explain their side of the case and to control the process of resolving the disputes in a non-adversarial manner.

The HCRC works with trained, senior mediators from a statewide network of community non-profit mediation centers, located in each county including Oʻahu (Mediation Center of the Pacific), Maui (Mediation Services of Maui), East Hawaiʻi (Kuʻikahi Mediation Center in Hilo), the West Hawaiʻi Mediation Center in Kailua-Kona, and Kauaʻi (Kauaʻi Economic Opportunity, Inc. Mediation Program).The centers utilize a facilitative approach to mediation, and mediators receive training on civil rights laws and settling disputes by HCRC and mediation center staff on a regular basis. The HCRC Program Specialist - Mediation Coordinator facilitates the process by explaining, encouraging, referring and reviewing mediation and its benefits to the parties. The centers charge fees on a sliding scale for the sessions, which can be waived or reduced if there is financial hardship.

Private mediation is also available if the parties choose. Private mediations generally utilize an evaluative approach, in which the law and possible damages are emphasized. Private mediation is an important part of the HCRC mediation program. Parties are free to select commercial private mediators who charge market rates or private mediators from the Access ADR program, a reduced fee program of the Mediation Center of the Pacific.

Mediation can occur at any stage of the intake, investigation, conciliation, or hearing process. Mediation is first offered when the complaint is accepted. At this early stage disputes are often easier to resolve because the facts are fresh, damages may not have accumulated, and the positions of the parties may still be fluid. However, parties may voluntarily choose mediation at any time during the HCRC investigative, conciliation or hearing process.

Since the inception of the HCRC's mediation program, all types of complaints have been eligible for voluntary mediation except for housing complaints. After much research and planning, in FY 2017 the HCRC launched a pilot program to offer the mediation of housing complaints for the first time. The initial few housing complaints in this pilot program have been mediated in-house by the Program Specialist - Mediation Coordinator who oversees the HCRC's mediation program. The HCRC will continue to run the pilot program through FY 2018 and evaluate its results.

During FY 2017, 37 cases were referred into mediation, and 38 mediations were completed (dispositions). Of the 38 dispositions, 25 resulted in mediated settlements (65.8%), and 13 cases resulted in no agreement (34.2%). Of the mediated settlements, 24 were in employment cases, and 15 of those were dual-

filed with the EEOC. The one remaining mediated settlement was in a housing case, which was dual-filed with HUD.

The total disclosed monetary value of mediated agreements was $167,080 with a wide variety of affirmative relief as well. During this period the HCRC had 1 settlement in its first in-house mediated housing settlement. Mediation Center of the Pacific had 17 settlements; Kuʻikahi Mediation Services (Hilo) and Mediation Services of Maui each had 2 settlements; and Kauai Economic Opportunity, Inc. had 1 settlement. There were also 2 settlements with private mediators.

The primary bases of discrimination of the 25 settlements were as follows: Disability - 6; Sex - 5 (including 3 based on pregnancy); Ancestry - 4; Arrest and Court Record - 3; Age - 2; Race - 2; Retaliation - 2; and Color - 1. Many of the completed mediations also included charges on other protected bases.

Although monetary settlements were achieved in most agreements, almost all mediated agreements also involved some form of non-monetary affirmative relief. Examples of non-monetary relief include:

1) frank discussion of disputes, which often lay the groundwork for eventual settlement or restoration of the prior employment relationship;
2) reinstatement and/or restoration of employee benefits;
3) formal or informal apologies (by either or both sides);
4) increasing hours for part-time employees;
5) providing neutral or positive references for former employees;
6) removal of inappropriate negative comments in employee records;
7) provision of reasonable accommodations;
8) changing shifts when practicable;
9) policy revisions and postings; and
10) clarification of communications between employer and employee, leading to more productive working environments.

Public Education & Outreach

In addition to enforcing anti-discrimination laws, the HCRC is committed to preventing and eliminating discrimination through public education. The HCRC Commissioners and staff maintained or assisted in a number of civil rights public education efforts, working with civil rights, business, labor, professional, and non-profit organizations, on new and continuing initiatives.

The HCRC, in partnership with the U.S. EEOC Honolulu Local Office and the Hawaiʻi State Commission on the Status of Women, conducted its annual training in May 2017 at the Blaisdell Exhibition Hall, for over one hundred attendees. The theme of the training was “Celebrating Women and Immigrants in the Workplace and EEO” and included remarks by HCRC Commissioner Joan Lewis and former HCRC Chair Dr. Amefil Agbayani. The training featured panels on EEO basics,

legal updates, gender wage gap issues, sex assault in the workplace, coverage of fair employment laws regardless of immigration status, and mediation of HCRC complaints. In addition, the winners of the E ʻOla Pono Campaign, a statewide student contest sponsored by the HCRC and organized by the University of Hawaiʻi Growing Pono Schools Project, were presented by former Commissioner Sara Banks.

During FY 2017 the HCRC continued to be an active participant in the fair housing committee, comprised of representatives from the housing departments of each county and the State, HUD Honolulu Field Office, Hawaiʻi Public Housing Authority, Hawaiʻi Housing Finance and Development Corporation, Legal Aid Society of Hawaiʻi, Hawaiʻi Disability Rights Center, Department of Hawaiian Homelands, and other housing-related private and public entities. The committee met to learn and discuss the latest fair housing cases, legal issues, and recent developments in fair housing from a federal, state and local perspective, to corroborate on local fair housing issues and concerns, and to work together to promote fair housing throughout the islands.

During FY 2017 the HCRC continued to work with HUD, state and county housing agencies, community fair housing organizations, non-profit and for-profit organizations, and businesses to co-sponsor fair housing trainings on the Islands of Hawaiʻi, Kauaʻi, Maui, Molokaʻi, and Oʻahu. Representative trainees in the housing area have included members of the Board of Realtors, Property Managers Association, National Association of Residential Property Managers, Community Associations Institute (CAI) Hawaiʻi, Hawaiʻi Center for Independent Living (HCIL), landlords, tenants, homeless veterans, emergency shelter and transitional housing management/staff, case management staff, housing assistance/referral management/staff, and various property management companies and community associations. An estimated 500+ people took advantage of these informative and free trainings.

During FY 2017 the HCRC also conducted outreach and/or participated in the following:

- Various classes, panels, and programs at the William S. Richardson School of Law, University of Hawaiʻi
- Pro Bono Fair at the William S. Richardson School of Law, University of Hawaiʻi
- Fair housing panel at a Community Associations Institute seminar
- Honolulu Pride Parade and Celebration
- Annual Martin Luther King, Jr. Holiday Parade and Festival
- Statewide Fair Housing Month events, including proclamations by the offices of Governor Ige and Mayor Caldwell
- Local radio, television, and online media appearances

The HCRC website is part of a consolidated website that includes all divisions of the Department of Labor & Industrial Relations. The HCRC relies on the DLIR webmaster for maintenance and updating of the HCRC website, as well as

ongoing efforts to improve user-friendliness of the site. The webmaster's detailed monthly index indicates that the site continues to attract broad public interest, particularly to those pages on administrative rules, case decisions, and the mediation program.

Caseload Statistics

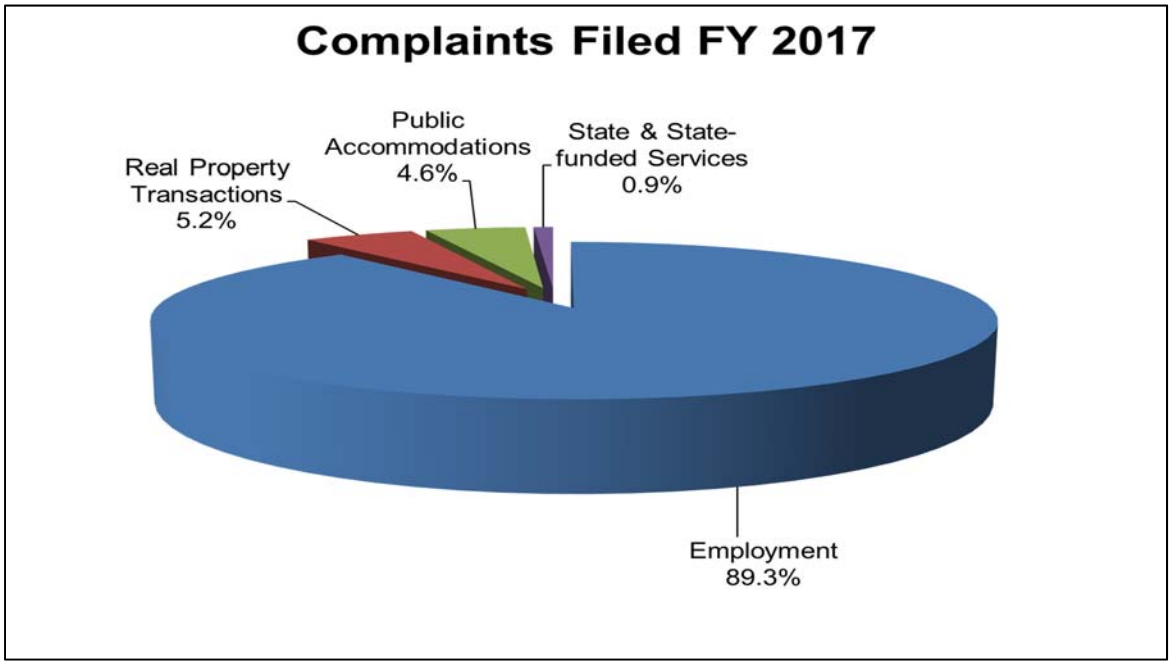
During FY 2017, the HCRC continued its emphasis on improving efficiency without sacrificing effective law enforcement.

Intake

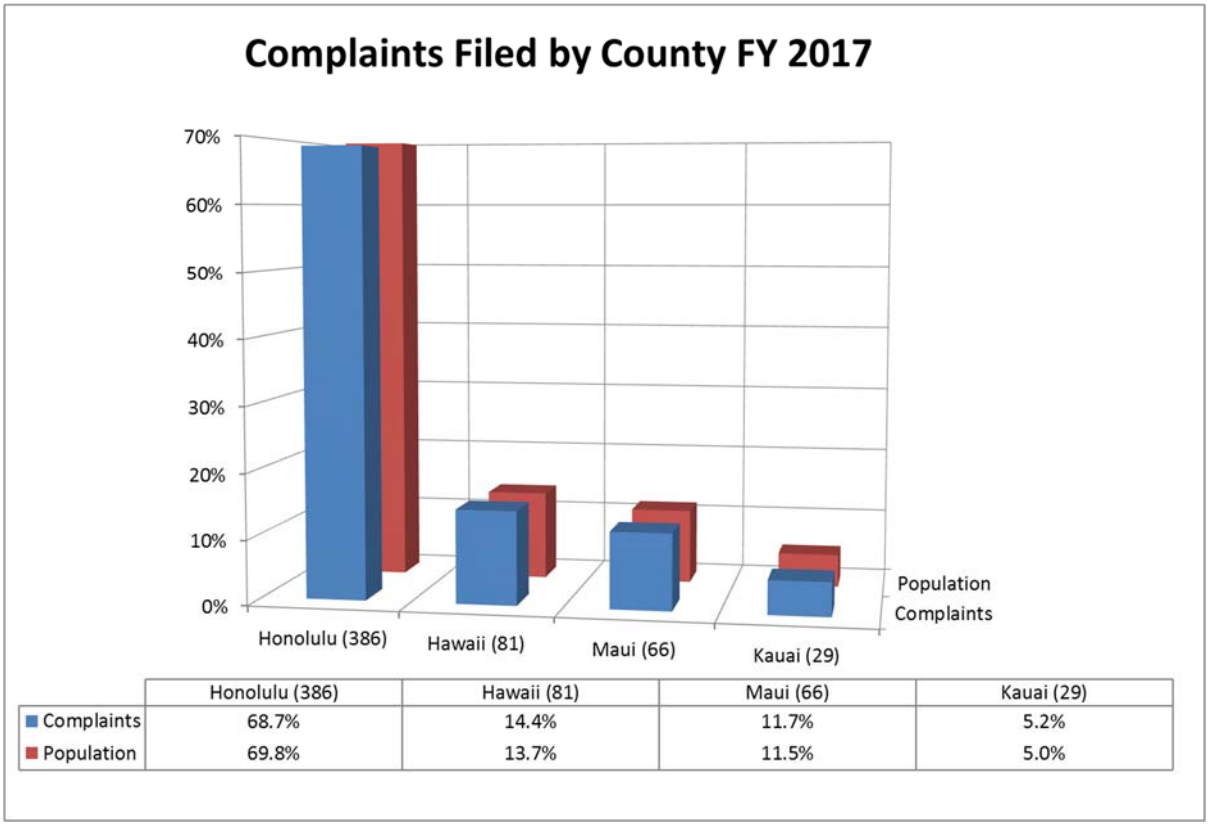
During FY 2017, the HCRC received 2,467 telephone and walk-in inquiries. HCRC investigators completed 596 intakes, and 562 discrimination complaints were filed with the HCRC, an average of 46.8 complaints a month.

Of the 562 complaints that were filed with the HCRC, 323 complaints originated with HCRC investigators (averaging 26.9 per month), and another 239 cases originated with the federal EEOC or HUD. These 239 cases were dual-filed under state law with the HCRC.

The 562 cases included 502 employment cases, 26 public accommodations cases, 29 real property transactions (housing) cases, and 5 access to state and state-funded services complaints. The other inquiries and intake interviews did not lead to filed charges due primarily to: a) lack of jurisdiction; b) failure to correlate the alleged act(s) with the protected bases; or c) the complainant's decision not to pursue the complaint.



The 562 charges accepted by the HCRC consisted of 386 Honolulu County complaints, 81 Hawaii County complaints, 66 Maui County complaints, and 29 Kauai County complaints. The number of complaints filed from each county was consistent with its proportion of resident population in the state (Honolulu County 69.8%; Hawai‘i County 13.7%; Maui County 11.5%; and Kauai County 5.0%).



	Honolulu (386)	Hawaii (81)	Maui (66)	Kauai (29)
Complaints	68.7%	14.4%	11.7%	5.2%
Population	69.8%	13.7%	11.5%	5.0%

Closures[4]

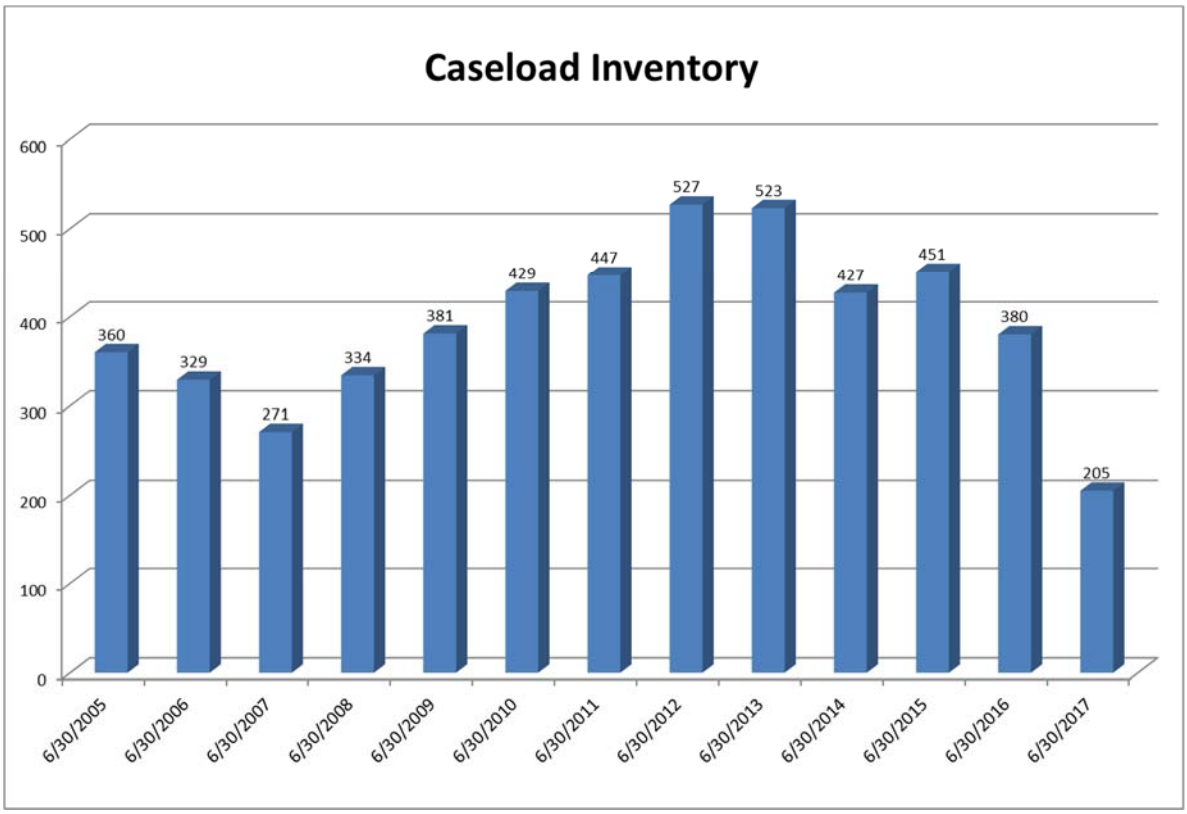
HCRC investigators and attorneys closed 480 cases during FY 2017 (an increase of

[4] **ANALYSIS AND EXPLANATION OF CLOSURE DATA**

This closure data does not reflect the number of completed investigations that result in cause determinations. Generally, the reason for this distinction is that cases are not closed upon issuance of a notice of cause, but are conciliated, and, if conciliation fails, are docketed for hearing.

Historically, there is a relationship between the number of cause cases and predetermination settlements/resolutions between parties—the larger the number of notices of cause, the smaller the number of settlements/resolutions, and vice versa. Typically, cause determinations and settlements/resolutions constitute between 15-25% of the total of those cases that are either

7 cases from FY 2016) for an average closure rate of 40 cases per month, up from 39.4 cases per month in FY 2016. HCRC investigations resulted in cause determinations in 13 cases, down from 25 cause determinations in FY 2016. As of June 30, 2017, there were 205 cases pending with HCRC investigators; on June 30, 2016, there were 380 pending cases.



The average period for case closure by investigators was 405 days, as compared to 473 days for FY 2016, 498 days for FY 2015, and 520 days for FY 2014. A review of this fiscal year shows the following reasons for investigative closures:

Merit Closures	**No. of Cases**	**% of Subtotal**	**% of Total Closures**

investigated to a cause/no cause determination or settled or resolved by predetermination settlement or resolution between the parties.

During FY 2017, HCRC investigations resulted in 13 cause determinations, and 73 cases were closed on the basis of pre-determination settlement or resolution between parties. 331 cases were closed on the basis of no-cause determinations upon completion of investigation. The ratio of cause determinations and predetermination settlements/resolutions (86) to those cases that are either investigated to a cause/no cause determination or settled or resolved by predetermination settlement or resolution between the parties (417) for this fiscal year is 20.6%.

Resolved by Parties	41	9.74%	8.54%
Pre-Determination Settlements	32	7.60%	6.67%
Cases Resolved by Attorneys	17	4.04%	3.54%
No Cause Determinations	331	78.62%	68.96%
Subtotal	**421**	**100.0%**	**87.71%**

Non-merit Closures	**No. of Cases**	**% of Subtotal**	**% of Total Closures**
Complainant Elected Court Action	20	33.90%	4.17%
No Jurisdiction	6	10.17%	1.25%
Complaint Withdrawn	7	11.86%	1.46%
Complainant Not Available	3	5.08%	0.63%
No Significant Relief Available	1	1.69%	0.21%
Complainant Failed to Cooperate	17	28.81%	3.54%
Bankruptcy of Respondent	1	1.69%	0.21%
Administratively Closed	4	6.78%	0.83%
Subtotal	**59**	**100.00%**	**12.29%**
Total Number of Closures	**480**		**100.00%**

Employment Cases

H.R.S. Chapter 378, Part I prohibits discriminatory employment practices based on race, sex (including gender identity or expression), sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record, domestic or sexual violence victim status, credit history or credit report, assignment of income for child support obligations, National Guard participation, and breast feeding/expressing milk. Examples of such practices are outlined in H.R.S. §378-2. A complaint can contain more than one basis for the alleged discriminatory conduct, but for statistical purposes each complaint is identified by only one designated “primary basis”.

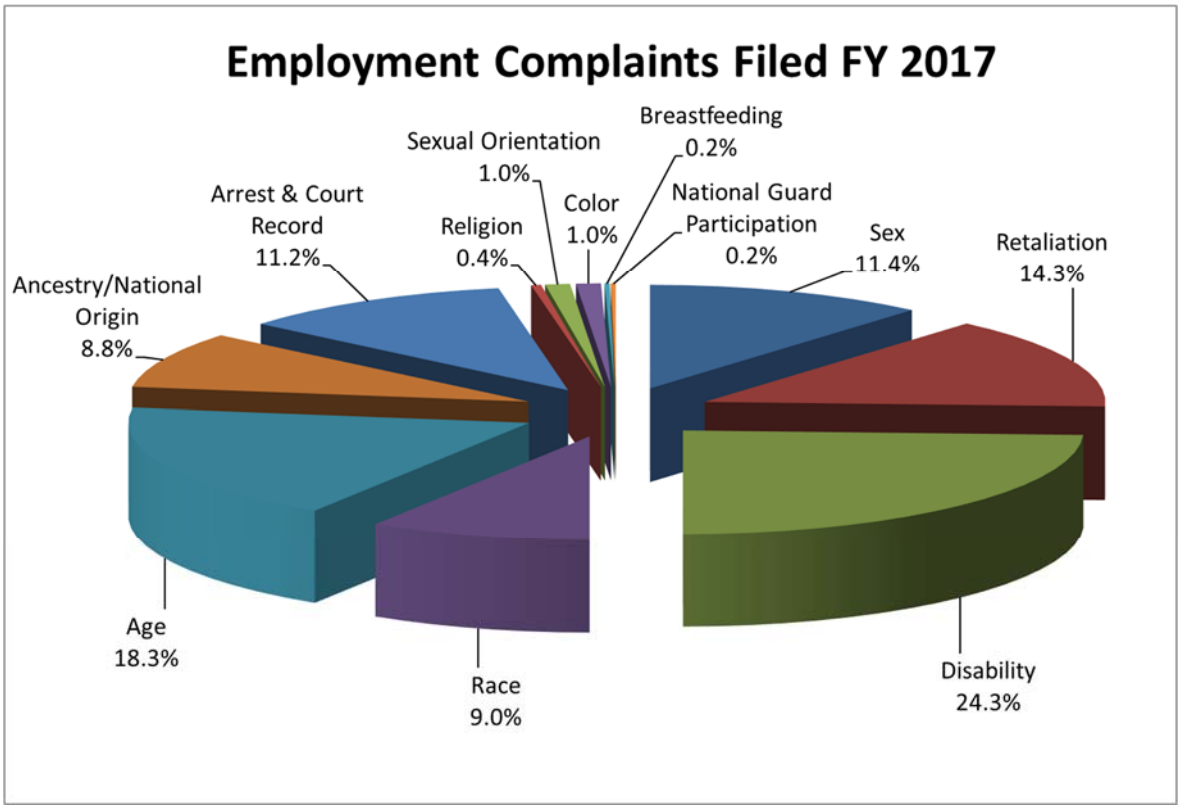
The HCRC has a work-share agreement with the EEOC. Under the work-share agreement, a case is filed with both agencies where there is concurrent jurisdiction. However, only the intake agency conducts the investigation, thereby eliminating duplicate enforcement activity. During the fiscal year a total of 502 employment cases were accepted by the HCRC. The HCRC was the intake

agency for 271 of these cases, and the HCRC dual-filed another 231 cases originating with EEOC. Of the HCRC-originated cases, 81.4% were also filed with EEOC.

Of the 502 employment complaints filed, the primary bases most cited were disability, in 122 cases (24.3%); age, in 92 cases (18.3%); retaliation, in 72 cases (14.3%); and sex, in 57 cases (11.4%). Of the sex discrimination complaints, 9 (15.8% of all sex cases) alleged sexual harassment as the primary basis and 14 (24.6% of all sex cases) were primarily based on pregnancy.

The next most cited primary bases were arrest and court record, in 56 cases (11.2%); race, in 45 cases (9.0%); ancestry/national origin, in 44 cases (8.8%); color and sexual orientation, in 5 cases each (1.0%); religion, in 2 cases (0.4%); and breastfeeding and National Guard participation, in 1 case each (0.2%). There were no cases primarily based on child support obligations, credit history or credit report, domestic violence or sexual violence victim status, or marital status.

The case closure period averaged 422 days for the 383 employment cases that were closed or caused by HCRC investigators during FY 2017.

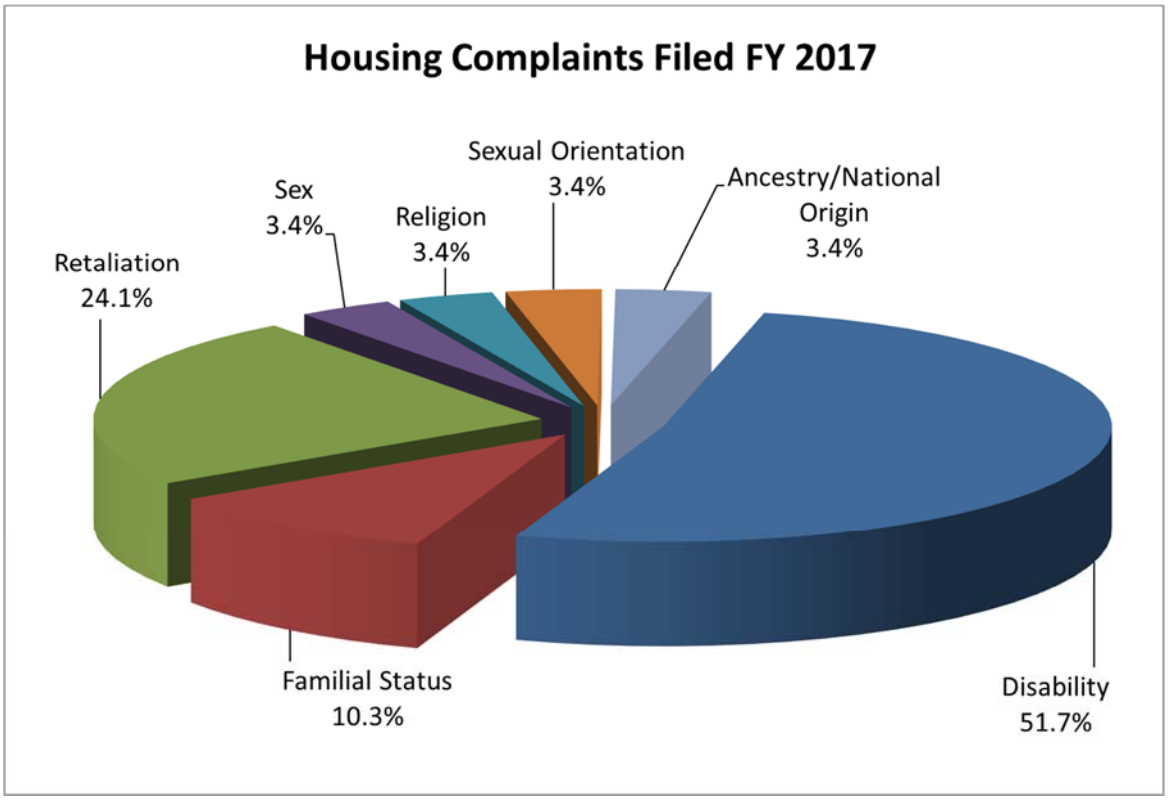


Real Property Transactions (Housing) Cases

During FY 2017, the HCRC accepted 29 cases of housing discrimination. The primary basis most cited was disability, in 15 cases (51.7%); followed by retaliation, in 7 cases (24.1%); familial status, in 3 cases (10.3%); and ancestry/national origin, religion, sex, and sexual orientation, in 1 case each

(3.4%). There were no cases primarily based on age, color, HIV infection, marital status, race, or religion.

Housing case closures averaged 292 days for the 38 cases closed or caused during FY 2017.

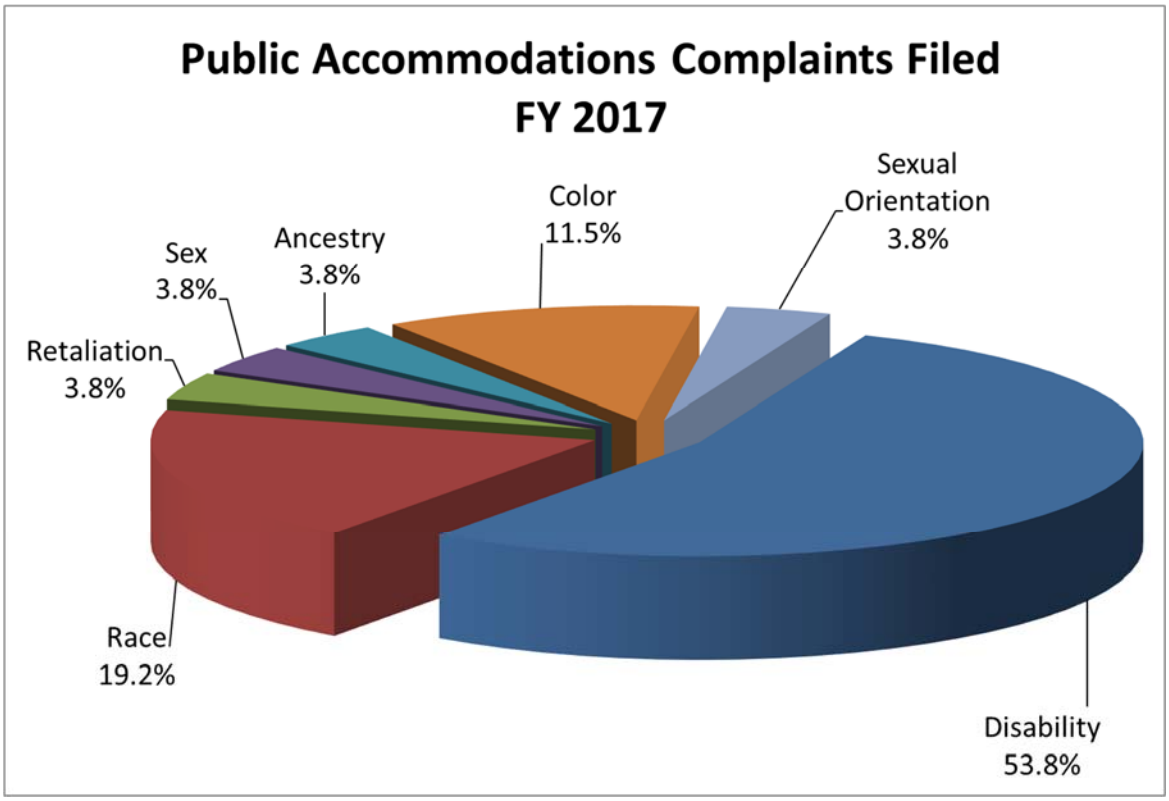


Public Accommodations Cases

H.R.S. Chapter 489 prohibits unfair discriminatory practices that deny, or attempt to deny a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of a place of public accommodation on the basis of race, sex, sexual orientation, color, religion, ancestry, or disability. Public accommodations include retail stores, restaurants, theaters, sports arenas, public transportation, healthcare providers, hotels, and banks.

During the fiscal year, 26 new cases of public accommodations discrimination were accepted. Of these, the primary basis most cited was disability, in 14 cases (53.8%); followed by race, in 5 cases (19.2%); color, in 3 cases (11.5%); and ancestry, retaliation, sex, and sexual orientation, in 1 case each (3.8%). There were no cases primarily based on religion.

Public accommodations case closures averaged 371 days for the 47 cases closed or caused during FY 2017.



Access to State and State-Funded Services Cases

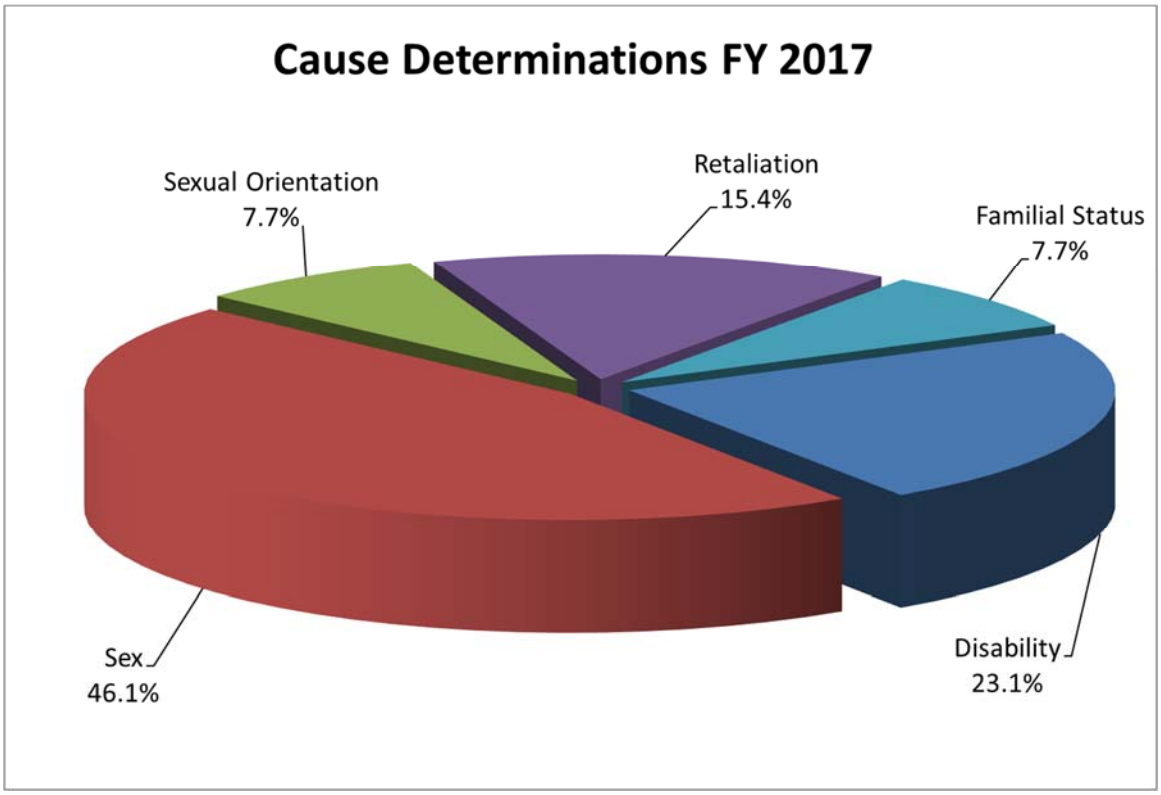
H.R.S § 368-1.5 prohibits state agencies, or any program or activity receiving state financial assistance from excluding from participation, denying benefits or otherwise discriminating against persons with disabilities (the only protected class under this statute).

During FY 2017, there were 5 cases filed under § 368-1.5. There were 8 cases filed under § 368-1.5 that closed during the fiscal year, averaging 326 days per closure.

Cause Cases

When an investigation results in a recommendation that there is reasonable cause to believe that discrimination has occurred, the case is assigned to an HCRC enforcement attorney for legal action. In FY 2017, 13 recommendations for cause were brought forward for legal action. Of these cases, 8 (61.5%) were employment cases, 4 (30.8%) were housing cases, and 1 (7.7%) was a public accommodations case.

Of the 13 investigations with a cause recommendation, the primary basis most cited was sex, in 6 cases (46.1%); followed by disability, in 3 cases (23.1%); retaliation, in 2 cases (15.4%); and familial status and sexual orientation, 1 case each (7.7%).



Case Settlements

The HCRC promotes and encourages settlement during all stages of the complaint process. Through pre-determination settlements, mediation, and conciliation, the HCRC obtains relief and resolves complaints while avoiding unnecessary litigation. These settlements provide closure for the parties and conserve HCRC investigation and litigation resources for complex or precedent setting cases.

During FY 2017 the HCRC continued to successfully obtain monetary relief through settlement of complaints. In the 13 cause cases that were settled, HCRC attorneys obtained monetary settlements totaling $590,500. Of the 73 cases settled prior to an investigative finding, 17 of those cases involved confidential settlements, the terms of which were not disclosed to the HCRC. Of the remaining 56 cases settled prior to an investigative finding, monetary relief totaled $402,468. This figure includes pre-determination settlements obtained through HCRC investigators and settlements between the parties ($235,388), as well as investigative settlements obtained through the HCRC mediation program ($167,080). Collectively the HCRC's known monetary settlements for FY 2017 totaled $992,968. Since the settlement terms are unknown for 17 closed cases, the actual total figure for all monetary settlements in FY 2017 is probably significantly higher than $992,968.

In addition to monetary relief, significant affirmative relief was obtained. The HCRC seeks affirmative relief for four basic reasons: to enforce civil rights laws, stop discriminatory conduct, prevent future harm to complainants, and assist respondents in avoiding future violations. HCRC settlements and conciliation agreements routinely contain various types of affirmative relief including the development and implementation of non-discrimination policies, employee and supervisor training on non-discrimination policies, posting non-discrimination policies, and publishing notices informing the public of the HCRC's role in enforcing state non-discrimination laws.

In some instances, non-monetary relief can be an important element of a settlement. For example, some complainants have received a letter of apology pursuant to the terms of a settlement. A simple apology sometimes goes a long way towards healing the rift between a complainant and respondent, and this form of relief is often not available as a court ordered remedy. Some cases were resolved when an employer, housing provider, or public accommodation corrected an unlawful discriminatory policy or practice after notice of the violation. During FY 2017, a significant number of employers, housing providers, and public accommodations voluntarily agreed to correct unlawful employment applications, leave policies, or house rules.

The following are illustrative of the HCRC cases that were resolved through conciliation or mediation and describe the relief obtained during FY 2017:

- The complainant in an employment case alleged that he was not selected for a position for which he applied due to his arrest and court record. He alleged that the respondent took into account a conviction that was too old to be lawfully considered and that did not bear a rational relationship to the duties of the position. The case was resolved prior to an investigative finding through a pre-determination settlement. The terms included payment of $30,000 to the complainant, a letter of reference, an update of the respondent's non-discrimination policy (including posting and dissemination of the policy), and training for the respondent's managers and supervisors.

- The complainant in an employment case alleged that she was subjected to sexual harassment and other forms of sex discrimination in the workplace. The HCRC investigated the case and issued a Notice of Cause. Thereafter, the case was settled for payment of $150,000 to the complainant, a letter of reference, an update and posting of the respondent's non-discrimination policy, and training for the respondent's managers.

- The complainant in a housing case alleged that she was subjected to disability discrimination, including being denied a reasonable accommodation for her disability in the form of an assistance animal. The HCRC investigated the case and issued a Notice of Cause. Thereafter, the case was settled for payment of $18,500 to the complainant, the respondent's adoption of a non-discrimination policy, and training for the respondent.

- The complainant in an employment case alleged that she was denied a reasonable accommodation for her disability in the workplace, and that she was subsequently terminated due to her age and disability. The case was resolved prior to an investigative finding through a pre-determination settlement. The terms included payment of $55,000 to the complainant, an update of the respondent's non-discrimination policy, and training for all of the respondents' managers and supervisors.

- The complainants in a housing case alleged that they were denied a reasonable modification for their disabilities that would have allowed them the full and equal enjoyment of their residence. The case was resolved prior to an investigative finding through a pre-determination settlement. Through the settlement the parties agreed that for as long as the complainants resided on the property, they would be assigned the exclusive use of two accessible parking stalls in exchange for giving up the use of their two original non-accessible parking stalls. Other terms included payment of $5,000 to the complainants, the respondent's adoption and posting of a non-discrimination policy, and training for the respondent's staff.

- In a housing case the complainant alleged that she was denied a reasonable accommodation for her disability in the form of an assistance animal, and that she was subjected to retaliation because she exercised her fair housing rights. The case was resolved prior to an investigative finding through a pre-determination settlement. Through the settlement the parties agreed that the complainant's assistance animal would be allowed to reside with her, subject to reasonable restrictions. Other terms included payment of $500 to the complainant, the respondent's adoption and posting of a non-discrimination policy, and training for the respondent's staff.

- The complainant in an employment case alleged that the respondent failed to reinstate her to work after taking pregnancy leave and terminated her due to her pregnancy. The HCRC investigated the case and issued a Notice of Cause. Thereafter, the case was settled for payment of $65,000 to the complainant, an update and posting of the respondent's non-discrimination policy, and training for all of the respondent's managers and supervisors.

HCRC Warning Letters

In an effort to prevent future or recurring problems, the HCRC provides respondents with "warning letters" advising them of potentially unlawful practices that the HCRC discovers during the course of its investigation of claims against the respondent. In those instances when the HCRC investigation does not result in a recommendation of reasonable cause on the claims filed, and the HCRC investigator finds evidence of other unlawful practices (such as a discriminatory written policy, employment application, or conduct in the workplace that could rise to the level of unlawful harassment if repeated), the HCRC will advise the respondent of the potential violations and

provide the respondent information about how it can correct the possible violation of the law. Warning letters have resulted in policy and application form changes, as well as discrimination prevention training for employees and managers.

Case Decisions

Contested Cases

During FY 2017 five cases were docketed for contested case hearing and four cases were settled. Two settlements involved discrimination in in housing, and two involved employment discrimination. Settlements ranged up to $30,000.00.

On May 18, 2017 a contested case hearing was held in *Hoshijo on behalf of the complaint filed by Serena Kyi-Yim v. Morning Hill Food, LLC, dba Mana Bu's*, Docket No. 16-002-E-A. Complainant alleged she was denied the opportunity to apply for a job based on her age, in violation of HRS § 378-2(a)(1)(c) and HAR §§ 12-46-131 and 133. HAR § 12-46-133 states in relevant part:

> … it is discrimination on the basis of age for the employer to express or cause to be expressed a preference for individuals of a particular age or range of ages unless there is a BFOQ [bona fide occupational qualification] for the position. Phrases such as "young", "college student", "girl", "boy", "recent college graduate", "retired person", "supplement your pension", or others of a similar nature are prohibited unless there is a BFOQ for the position.

On January 27, 2017 the Executive Director filed a motion for summary judgement. At the hearing on the motion, the parties agreed that during the fall of 2013 Respondent advertised for part time help with an ad in Craigslist that stated in part: "REQUIREMENTS … Active full time undergraduate (BA)…" In winter 2014 Respondent advertised through a sign in its shop window stating, "Winter-Spring 2014 Now Hiring UH (Mānoa) Students." Respondent also admitted its desire to hire college students.

On March 17, 2017 the hearings examiner granted the Executive Director's motion for summary judgement, holding that these advertisements violated HRS § 378-2(a)(1)(c) and HAR §§ 12-46-131 and 133 because being a college student is not a BFOQ for the shop's positions. On May 18, 2017 a hearing was held to determine damages and other relief requested by the Executive Director. The hearings examiner's Proposed Decision and Order granted Complainant $1,080.00 in back wages, and $1,000.00 in compensatory damages. At the end of FY 2017, the Commissioners had not yet issued a final decision in this case.

Appeals

Hawaii Technology Academy v. Elento, SCAP 15-0000520. This appeal of a declaratory relief decision centers on whether the HCRC has jurisdiction over student disability discrimination complaints against public educational institutions, pursuant to HRS § 368-1.5. On October 28, 2014, the Commission issued a final decision and order on a petition for declaratory relief in the case of *In the matter of Linda Elento*, DR No. 14-017. The Commission held that the HCRC has jurisdiction over student complaints of disability discrimination against public schools and public charter schools under HRS § 368-1.5, because they are "state agencies" or "programs and activities receiving state financial assistance."

The Hawaii Technology Academy and the State of Hawai'i Department of Education appealed to the circuit court. The circuit court reversed the Commission decision, holding that the Commission had "... acted in excess of its statutory authority and/or jurisdiction," without further explanation. The Commission filed a notice of appeal, and the case was transferred to the Hawai'i Supreme Court. Oral arguments were held on September 1, 2016 and the Hawai'i Supreme Court's decision remained pending at the end of FY 2017.

Research Institute for Hawaii USA v. Bate, SCAP-15-0000783. This case involves the right to jury trial in a respondent's appeal of a final Commission decision to the Hawai'i Circuit Court. It will be the Hawai'i Civil Rights Commission's first jury trial pursuant to *SCI Management Corp. v. Sims*, 101 Hawai'i 438, 71 P.3d 389 (2003).

On August 26, 2014 the Commission issued a final decision in the underlying contested case and held that Respondents were liable for religious harassment, sexual harassment and retaliation, including termination of employment, against Complainant Kay Lorraine Bate. The Commission awarded damages and fees in excess of $1,500,00: compensatory damages totaling $843,000, attorney fees and costs of approximately $660,000, as well as equitable relief. Respondents appealed to the First Circuit Court, where the scope of Respondents' right to jury trial pursuant to *SCI Management Corp. v. Sims*, *Id.* was at issue. Respondents argued that pursuant to *SCI* they were entitled to a completely new proceeding on all claims and should be allowed to re-open discovery, assert new defenses, call new witnesses and present additional evidence. The Commission and Complainant asserted that pursuant to *SCI* respondents were not entitled to a jury trial on the termination claims because the Commission only awarded equitable relief for those claims. In addition, the Commission and Complainant argued that because the action is an appeal, the parties are not allowed to conduct further discovery and are limited to the same claims, defenses, witnesses and evidence that were presented at the contested case hearing, based on previous decisions regarding judicial economy.

In October, 2015 the First Circuit Court issued a Case Management Order allowing a jury trial only as to the issues in which the Commission granted legal

relief and limiting the action to the same claims and defenses, witnesses, and evidence that were presented at the contested case hearing.

The parties filed cross appeals to the Hawai‘i Intermediate Court of Appeals, and requested that the case be transferred directly to the Hawai‘i Supreme Court. This request was granted, and oral arguments were held on March 9, 2017. On May 10, 2017 the Hawai‘i Supreme Court issued a summary disposition order affirming the lower court's Case Management Order and limited discovery order. Trial is set for October, 2018.

The Supreme Court's decision affirmed and clarified that respondents who appeal a Hawai‘i Civil Rights Commission final decision and request a jury trial are only entitled to a jury trial on the issues for which the Commission granted legal relief, are limited to the same claims and defenses, witnesses, and evidence that were presented at the contested case hearing, and that additional discovery may not generally be permitted or expanded by either party.

Legislation

Five bills and one resolution relating to civil rights were passed during the 2017 Legislative Session and enacted into law.

Act 110, HB 1033, Relating to administrative procedure, amends HRS § 91-1 to include agencies as "persons" eligible to file declaratory relief petitions under HRS § 91-8. The bill addresses the Hawai‘i Supreme Court decision in *RGIS Inventory Specialist v. HCRC*, 104 Hawai‘i 158 (2004) in which the Court held that HAR § 12-46-61, which allowed the Executive Director to file declaratory relief petitions, was invalid pursuant to HRS §§ 91-1 and 91-8 because the Executive Director was an agency, not a person, and agencies were excluded from definition of "persons" who could file declaratory relief petitions. Under the HB 1033 amendments, the Executive Director will be able to file petitions for declaratory relief to the Commission as well as to other agencies for clarification of statutes and rules.

Act 36, HB 1534, Relating to residence requirements for appointed officers, amends HRS §78-1 to clarify that state residents who are COFA (Compact of Free Association) migrants are eligible to serve on state boards and commissions, including the HCRC.

Act 211, HB 475, Relating to movie theaters, amends HRS § 489-9 to reduce the number of open captioned movie showings from two to one showing per week and allows movie theaters to alternatively provide personal light eyewear closed captioning systems. The bill also requires the Department of Business, Economic Development and Tourism to conduct a survey of theaters to determine the economic impact of such accommodations, and extends the sunset date to January 1, 2020. The bill in effect eliminates the previous

requirement that movie theaters provide two open caption showings per week of movies produced with open captioning..

Act 35, HB 942, Relating to Filipino veterans, appropriates $200,000 from the Works of Special Arts Fund to commission an artist to design and build a monument that honors Filipino WWII veterans, at the Filipino Community Center in Waipahu.

Act 105, HB 1420, Relating to Filipino veterans burial assistance, appropriates $50,000 for FY 2017-2018 (with a requirement that matching private funds be made) to fund burial grants for qualified Filipino American veterans living in Hawai**ʻ**i to transport their remains to the Philippines. Burial benefits were provided to Filipino soldiers but only at U.S. national and state cemeteries. Many Filipino veterans have unsuccessfully petitioned for decades to have their relatives granted residence in Hawai**ʻ**i and are dying without family here. This grant enables their remains to be sent to their families in the Philippines for burial.

HR 76, Declaring Hawai**ʻ**i to be a hoʻokipa (welcoming) state, declares that immigration is a federal function and that local law enforcement agencies should decline to work with federal immigration agencies. The resolution also requests the Governor to appoint a Hoʻokipa Commission to ensure a safe, secure and welcoming community for everyone, including immigrants.

In the State Budget, the Legislature also provided for an additional HCRC legal secretary position, to be established and filled during FY 2018.

Appendix

Overview

The Hawai**ʻ**i Civil Rights Commission (HCRC) was established under Act 219, L. 1988, and Acts 386 and 387, L. 1989.

The HCRC's enabling statute, H.R.S. Chapter 368, declares that discrimination because of race, color, religion, age, sex (including gender identity and expression), sexual orientation, national origin, ancestry, or disability in employment, housing, public accommodations, or access to services receiving state financial assistance is against public policy. Certain bases are not protected under all HCRC laws.

The HCRC exercises jurisdiction over Hawai**ʻ**i's laws prohibiting discrimination in employment (H.R.S. Chapter 378, Part I), housing (H.R.S. Chapter 515), public accommodations (H.R.S. Chapter 489), and access to state and state-funded services (H.R.S. § 368-1.5). Under its statutory mandate, the HCRC receives, investigates, conciliates, litigates, and adjudicates complaints of discrimination, providing a uniform procedure for the enforcement of the state's discrimination laws.

The HCRC has five (5) uncompensated volunteer Commissioners (one position is currently vacant) who are appointed by the Governor, with the consent of the Senate, based on their knowledge and experience in civil rights matters and their commitment to preserve the civil rights of all individuals.

The HCRC is attached to the Department of Labor & Industrial Relations (DLIR) for administrative purposes. During FY 2017 the HCRC had 26 positions (22 permanent and 4 temporary), divided into separate enforcement and adjudication sections.

Administrative Procedure

Before the HCRC accepts a complaint of discrimination, a complaining person must allege that:

1) She or he has been subjected to unlawful discrimination[5] because of a protected basis,[6] and,

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[5] "Unlawful discrimination" may occur in any of the following ways:

a. Disparate Treatment – this is the usual form of discrimination; it occurs when individuals are treated in an unequal manner because of a "protected basis." Examples of disparate (unequal) treatment include: firing an employee because of her race, her age, or because she is pregnant; refusing to serve a person because of his race or his disability; refusing to rent to a person because of her race; or refusing to rent to a family because it has young children.
b. Reasonable Accommodation – this is the second most common way that discrimination appears; it occurs when an individual is denied a "reasonable accommodation" designed to allow an individual to have equal access or equal benefits. Examples of failure to accommodate include: refusing to allow a seeing impaired customer into a taxicab because he is accompanied by a seeing-eye dog; refusing to allow a pregnant cashier to sit on a stool so that she can work while pregnant; or refusing to make exceptions to a condominium association's "no pets" house rule to allow a disabled resident to keep a service animal.
c. Disparate Impact -- the least common way that discrimination appears; however, when discrimination occurs in this form, it may impact the greatest number of people. Disparate impact occurs when a policy, practice, or test that has a "disparate impact" on persons with a particular "protected basis." Examples of disparate impact include: a pre-employment test that includes a number of questions that are not job related but have the effect of disqualifying a large number women, or men, or any other protected basis.

[6] "Protected basis" is the criteria upon which it is unlawful for a respondent to discriminate. Protected bases vary depending on the statute involved:

a. State Funded Services (HRS Chapter 368) The only protected basis is disability.
b. Employment (HRS Chapter 378, Part I) The protected bases on which an employer, employment agency, or labor organization may not discriminate are: race, sex (which includes gender identity and expression), sexual orientation, age, religion, color, ancestry, disability, marital status, arrest and court record, domestic or sexual violence victim status, credit history or lactating employees.
c. Public Accommodations (HRS Chapter 489) The protected bases on which a public accommodation may not discriminate are: race, sex (which includes gender identity and expression), sexual orientation, color, religion, ancestry, or disability.
d. Housing (HRS Chapter 515) The protected bases on which an owner, a real estate broker or any person engaging in a real estate transaction, may not discriminate are race,

2) The unlawful discrimination occurred within the previous 180 days.[7]

Where appropriate, after a complaint is filed with the HCRC, the parties are offered an opportunity to voluntarily mediate the complaint through the HCRC Mediation Program. If the parties agree to mediate, the HCRC mediation coordinator refers the parties to a community mediation center, which schedules and holds mediation sessions. Parties may alternatively choose to hire a private mediator.

In cases not referred to mediation, or those in which mediation is unsuccessful, an HCRC investigator conducts an objective, fact-finding investigation. HCRC investigators are impartial and gather evidence to allow the Executive Director to make a determination in each case. The HCRC investigator collects, reviews, analyzes documents, and contacts and interviews witnesses. Some witnesses may be identified by the complainant or by the respondent, and some are independent witnesses, including experts, who are identified by the investigator, by other witnesses, or are discovered during the course of the investigation. In many cases, the investigator also attempts to settle the complaint prior to an investigative determination (pre-determination settlement).

After an HCRC investigation is completed, H.R.S. 368-13(b)-(c) requires the Executive Director to determine whether reasonable cause exists to believe that discrimination has occurred. Where no reasonable cause is found, the Executive Director dismisses the complaint and issues a right to sue letter to the complainant. Where a determination of reasonable cause is recommended, the complaint is assigned to an HCRC enforcement attorney for legal review and final recommendation to the Executive Director.

Upon the issuance of a finding of reasonable cause to believe that unlawful discrimination has occurred, the HCRC enforcement attorney attempts to conciliate or settle the complaint.[8] If conciliation is unsuccessful, the complaint is docketed for a contested case hearing. An HCRC enforcement attorney presents the case in

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sex (which includes gender identity and expression), sexual orientation, color, religion, marital status, familial status, ancestry, disability, age or HIV (human immunodeficiency virus) infection.

[7] Complaints filed with the HCRC usually involve a discrete act, such as termination, eviction, demotion, or involve acts that are ongoing and constitute a continuing violation. An example of a "continuing violation" is sexual harassment that began more than 180 days before the complaint is filed, but continued or ended less than 179 days before the complaint is filed. When discrimination involves a discrete act, such as termination, the HCRC can only accept a complaint within 180 days of that complained action.

[8] During FY 2017, of all 480 investigative and attorney case closures, 4.2% (20) were closed on the basis of the complainant electing court action. The remaining cases (460) were closed on the following bases: in 69.0% of the cases (331), the Executive Director found no cause and dismissed the complaint, 15.2% (73) of the investigation cases were settled prior to a cause determination or were resolved by the parties, 3.5% (17) of the cases were resolved by staff attorneys, and the remaining 8.1% of the cases (39) were closed because there was no jurisdiction, the complaint was withdrawn, the complainant was unavailable and could not be located, the complainant failed to cooperate, no significant relief was available, due to bankruptcy of the respondent, or due to administrative closure.

support of the complaint before an impartial hearings examiner. The respondent (represented by themselves or by counsel or representative of their choice) is also given the opportunity to present his/her case at the hearing. Generally, a complainant may intervene in the contested case process as a party and also be represented by counsel or other representative of their choice.

After the completion of the contested case hearing, the hearings examiner issues a proposed decision based on the evidence. The five-member Commission Board then reviews the proposed decision and the hearing record. The parties may file written exceptions and support statements and present oral arguments to the Board. The Commission Board then accepts, rejects, or modifies the proposed decision, issues a final decision and order, and awards remedies, if appropriate. This decision is legally binding. If any party disagrees with the decision, she/he has 30 days to file an appeal to the State Circuit Court. Furthermore, a Respondent who appeals a decision of the Commission Board is entitled to a jury trial on any claims that form the basis for an award of common law damages.[9]

The HCRC enforcement and administrative hearing process is more cost effective than litigation in court. It provides for the investigation of complaints and access to justice for those who lack the resources to pursue their claims in court. This is particularly important in employment discrimination cases, where employees have often lost their source of income through termination and have little or no control over the evidence needed to prove discrimination.

The HCRC enforcement and adjudication process also funnels cases away from the courts, saving judicial resources and associated costs. Complainants who file suit in court must first exhaust administrative remedies by filing a complaint with the HCRC. The primary reason for this requirement is to prevent the courts from being overburdened with non-jurisdictional or non-meritorious complaints, or with complaints that can be closed or settled in the HCRC's administrative process. In fact, the great majority of complaints filed with the HCRC are resolved or disposed of without resort to the courts.[10]

Although only a small number of cases are brought to administrative hearing and result in final Commission decisions, these cases are important because they create a body of legal precedent. Case law precedents, in Hawai‘i and across the United States, provide the basis for anti-discrimination principles, such as the doctrine of sexual harassment. Case law also establishes standards that define the rights and protections under civil rights laws, and give guidance to employers, landlords, and businesses on how to prevent and eliminate discrimination.

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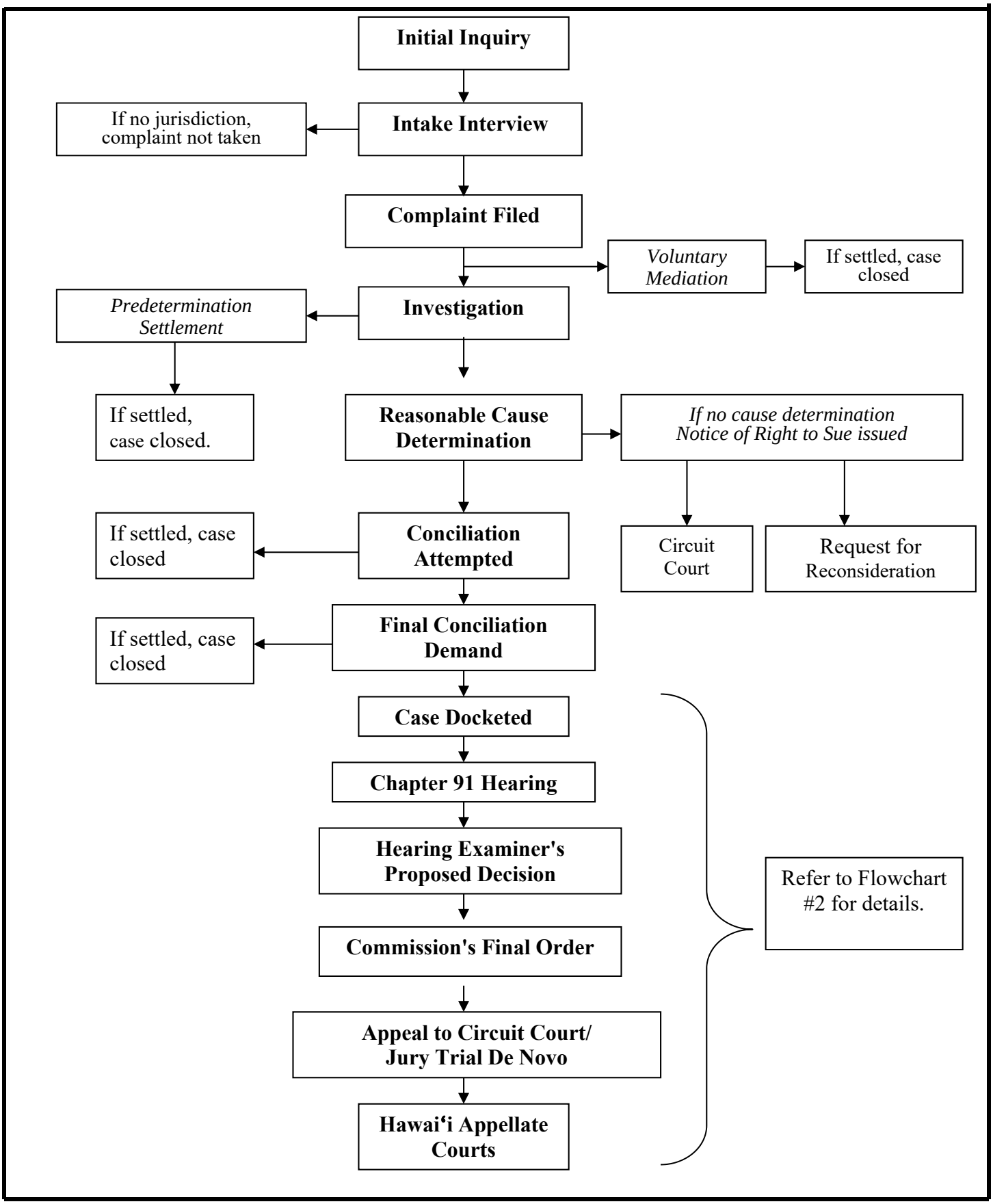
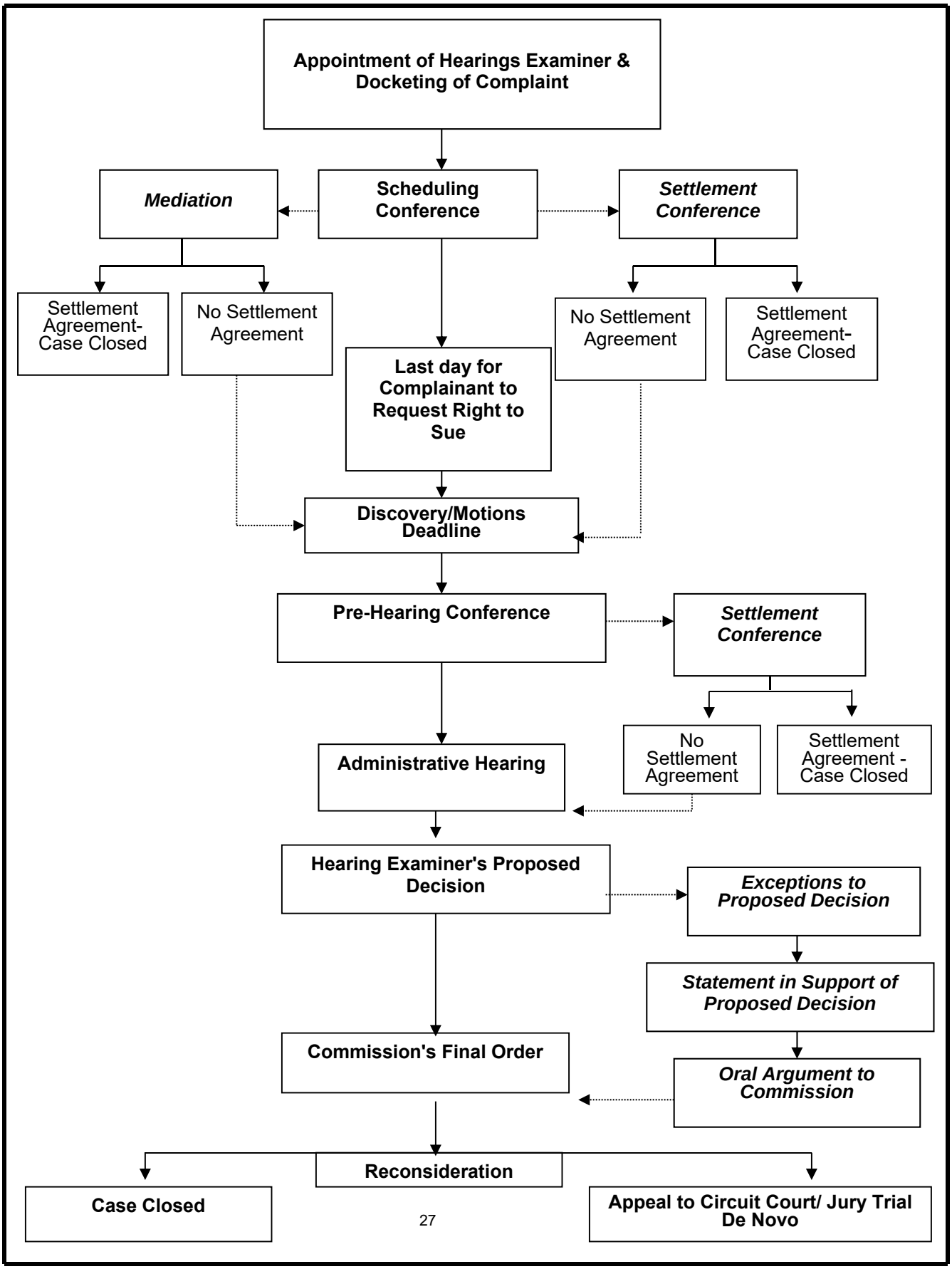
[9] The HCRC enforcement, hearing and appeal procedures are illustrated in Flowchart # 1. In *SCI Management Corporation, et. al. v. Darryllynne Sims, et. al.,* 101 Hawai‘i 438, 71 P.3d 389 (2003), the Hawai‘i Supreme Court held that "a respondent who appeals a final order of the HCRC, pursuant to HRS § 368-16, is entitled to a jury trial on any claims that form the basis for an award of common law damages by the HCRC." This does not apply to respondents in housing cases, who can elect to take the case to circuit court after a finding of reasonable cause under HRS §515-9.

[10] HCRC contested case procedures are illustrated in Flowchart # 2.

HCRC Procedural Flowchart #1



HCRC Contested Case Flowchart #2



HCRC Commissioners

Linda Hamilton Krieger
Chair (term 2011-2019)

Linda Hamilton Krieger grew up in Hawai‘i and returned home in 2007 to join the faculty at the William S. Richardson School of Law as a Professor of Law. Professor Krieger received a BA degree from Stanford University and is a graduate of New York University Law School. Prior to teaching, Professor Krieger worked for 13 years as a civil rights lawyer. From 1980-1986 she was a Staff Attorney and Director of Clinical Programs at the Employment Law Center of the Legal Aid Society of San Francisco, and from 1985-1991 she was a Senior Staff Attorney for the EEOC, San Francisco Regional Office. During that period, she litigated a number of significant state and federal sex and race discrimination cases in the areas of pregnancy discrimination and sexual harassment. She also played a significant role in drafting state and federal legislation in these subject matter areas. Professor Krieger served as an Acting Associate Professor of law at the Stanford Law School from 1992 to 1995, and as a professor of law at the University of California at Berkeley (Boalt Hall) from 1996 to 2009. She has also published numerous articles on Title VII of the Civil Rights Act of 1964, disability discrimination, affirmative action, international comparative equality law and policy, and theories of law and social change.

Liann Ebesugawa (term: 2017-2020)

Ms. Ebesugawa is Assistant General Counsel for Hawaiian Electric Industries, Inc. Previously she served as an Associate General Counsel for Hawaiian Electric Company, Inc. where she provided legal support to personnel and management and advice in obtaining regulatory approvals for various projects. She also served as Executive Director of the Hawai‘i State Board of Education, where she provided legal and administrative services for matters before or involving the Board of Education.

Ms. Ebesugawa is currently the Second Vice President of the Honolulu Chapter of the Japanese American Citizens League's Board of Directors. During her tenure as the JACL's past Board President, she addressed issues related to marriage equality, homelessness, Native Hawaiian self-determination, and other civil rights issues that face the community. She also currently serves on the Board of Directors of the National Asian Pacific American Bar Association and has coauthored several academic publications and presentations regarding privacy in the workplace, Japanese American redress, and racial discrimination.

Joan Lewis (term: 2017-2020)

Joan Lewis is a 29 year Hawai‘i public school teaching veteran and a long time education advocate. Ms. Lewis has been a part of the teaching staffs of Nānākuli High and Intermediate School and Kapolei High School where her work with Native Hawaiian and Pacific Island students shaped her approach to teaching and learning. Ms. Lewis is one of the founders of the Hō’ola Leadership Academy, a 9-12th grade academy within the Kapolei High School community that provides a safe learning space for students that face many obstacles that can undermine their success. Graduation rates for students in this program have been in the upper 90 percentile.

Ms. Lewis has also served as a school, district and state leader for the Hawai‘i State Teachers’ Association. Her work as part of the HSTA has provided culturally sensitive training and support for teachers in the Leeward District of the DOE, the development and delivery of courses to support students of diverse economic backgrounds, and the expansion of the teacher voice in support of Hawai‘i’s students. Ms. Lewis’ other experiences include service as: a foster parent for Hale Kipa Inc.; an educational staff member for Palama Settlement’s In-Community Treatment Program; a house parent for Child and Family Services Ila Humphrey home for girls recovering from sexual assault; and as a trustee for the Hawai‘i Employer-Union Health Benefits Trust Fund. These have been instrumental in developing Ms. Lewis’ belief that we must work together to provide the Aloha that all citizens, but especially the most vulnerable among us, need to survive and thrive. Ms. Lewis earned her Bachelor’s degree at Drake University (B.S. in Education) and her Master’s degree from the University of Hawai‘i at Mānoa.

Joakim Peter (term: 2017-2019)

Joakim “Jojo” Peter is a doctoral student in the Special Education program at the College of Education, University of Hawai‘i at Mānoa (UHM) and community advocate for COFA Community Advocacy Network (COFACAN), Micronesian Health Advisory Coalition (MHAC), and We Are Oceania (WAO). He is from Chuuk in the Federated States of Micronesia and attended Xavier High School. He has two Master degrees UHM in Pacific Islands Studies and History. He served as director and faculty members at the College of Micronesia-FSM Chuuk Campus for 15 years before returning to UHM to pursue his doctorate, which focuses on immigrant families of children with special needs in Hawai‘i.

In 2011, Jojo and fellow community advocates founded COFA CAN, a community advocacy network that provides awareness and support for crucial legislative and legal initiatives that affect the lives of the Freely Associated States citizens living in Hawai‘i and the United States. Jojo has lectured at UHM and Kapi‘olani Community College. In 2012 and 2014, Jojo worked with the Department of Ethnic Studies and the Center for Pacific Islands Studies to

organize two symposia - “Micronesian Connections” and “Oceanic Connections” - that sought to bring together community members, educators, and students to develop strategies for empowerment and sharing among Oceanic peoples. Recently, the Micronesian groups have been conducting outreach to collect stories of healthcare issues and challenges among the COFA populations in Hawai‘i.

HCRC Staff

During FY 2016 the HCRC staff consisted of 26 positions:*

- Enforcement Staff:
  - Executive Director
  - Deputy Executive Director
  - Enforcement Attorneys (4)
  - Program Specialist – Mediation Coordinator
  - Investigator-Supervisors V (2)
  - Investigator IV (8)
  - Investigator III-IV (temporary) (2)
  - Secretary III
  - Office Assistants (III-IV) (4)

- Adjudication Staff:
  - Chief Counsel
  - Secretary II

* Staffing levels reflect permanent (22) and temporary (4) positions which were either filled or vacant during FY 2016.