

Annual Report FY2011-2012

A Message from the New York State Division of Human Rights

The New York State Division of Human Rights (“the Division”) is honored to present to Governor Andrew M. Cuomo, the Legislature and the people of its Annual Report for Fiscal Year 2011-2012.

Despite the many challenges faced by our State and the nation last year, the Division was able to achieve many of its goals. The agency made great strides in streamlining the complaint process and putting innovative measures in place to decrease the number of aged cases thereby adhering to time frames suggested by the Legislature for case completion. The Division also initiated the process of reviewing its branding and message. As a result, the agency’s website will be revamped and we will maximize our presence in social media.

Moreover, the Division will more aggressively use its statutory authority to investigate alleged systematic forms of discriminatory conduct with the goal of vigorously enforcing the New York State Human Rights Law (NYSHRL).

Finally, an essential part of the Division’s work is building foundations for new partnerships to ensure success in advancing human rights. This year, we worked with communities as well as other state and federal agencies to make sure the protections afforded by the NYSHRL are enjoyed by all New Yorkers. We are committed to strengthening our existing partnerships and creating new ones in the years to come.

The Division is resolute in its goal to fight all forms of discrimination as outlined in our great law.

Mission

The New York State Division of Human Rights is the agency in charge of enforcing the New York State Human Rights Law. The Law ensures equal opportunity in employment, housing, credit, places of public accommodation, volunteer firefighting and non-sectarian educational institutions.

The Division of Human Rights enforces this law through, among other things, the investigation, hearing and resolution of complaints filed by individuals against alleged discriminators; the creation of studies, programs, and campaigns designed to inform and educate the public on the effects of discrimination and the rights and obligations under the law, and the development of human rights policies and proposed legislation for the State.

History

The present New York State Division of Human Rights can trace its history back to the State War Council of the State of New York Temporary Committee on Discrimination in Employment, created in 1942. One of the main accomplishments of the Committee was the passage of the 1945 Ives-Quinn Anti-Discrimination Bill. Signed on March 12, 1945 by Governor Thomas E. Dewey, the law effectively made New York the first state in the nation to enact legislation prohibiting discrimination in employment based on race, creed, color, and national origin. In doing so, New York also became the first state to establish a permanent agency to enforce such legislation, the State Commission against Discrimination (SCAD). Federal institutions were not introduced until nearly 17 years later.

In 1968, the Ives-Quinn Anti-Discrimination Law was renamed the Human Rights Law, and the State Commission against Discrimination was renamed the New York State Division of Human Rights.

In its inception SCAD had jurisdiction only over employment issues and dealt strictly with discrimination based on race, color, creed and national origin. Through the years, the Law has been expanded to stay current with the changing culture and needs of New Yorkers. For example, in 1974, the Law was broadened to protect people with disabilities; in 1991, the Law was amended to protect families in the area of housing; in 1997, the Law was changed to include an express provision requiring reasonable accommodations in employment for persons with disabilities; in 2002, the Law was amended to protect both religious practices and religious observances; in 2003, the Sexual Orientation Non-Discrimination Act was passed so to include sexual orientation among the protected traits/characteristics; and in 2003, the Law was extended to encompass military status. In 2009, the Law was amended to provide protections for domestic violence victims from employment discrimination, and in 2011 it was amended to protect domestic workers from sexual harassment and discrimination based on gender, race, religion or national origin.

Complaint Process

Filing a Complaint

If an individual feels he or she has been the victim of illegal discriminatory behavior, a complaint can be filed at any of our 11 offices throughout the state within one year of the date the last discriminatory incident occurred. Complaints can be filed in person in any of our offices, or they can be downloaded from the Division's website at www.dhr.ny.gov, completed as instructed, signed before a notary public and mailed to our offices. Complaint forms can also be obtained by requesting them from any of the Division's offices.

The Investigation

Once a complaint is filed, an investigator will be assigned to investigate the complaint. This may be done through, among other methods, written correspondence, telephone interviews, and visits to the site where the alleged discrimination took place. Based on the evidence collected during the investigation, a determination will be made as to whether there is probable cause that unlawful discrimination occurred. A determination of no probable cause will result in the dismissal of the case. If the Division determines that there is probable cause that illegal discrimination took place, the case will advance to the hearing process.

The Administrative Hearing

An Administrative Law Judge will conduct a hearing based on the allegations in the complaint. During the hearing both sides will be able to present evidence to support their positions. The Division will provide an attorney free of charge to present the case in support of the complaint. Complainants may also bring their own attorneys.

Resolution

Based on the evidence presented at the hearing, the Administrative Law Judge will issue a recommended order advising the parties and the Commissioner how they believe the case should be resolved. The Commissioner will review the allegations, evidence and the recommended order and will issue a final Commissioner's Order. If the ruling is in favor of the complainant, the Order will specify a remedy. In housing cases, remedies may include a change of policy or practice, provision of services, compensation for emotional distress, punitive damages, and/or civil fines and penalties, among others. In employment cases, remedies may include change in policies and practice, back pay with interest or benefits lost due to the discriminatory practice and/or compensation for emotional distress.

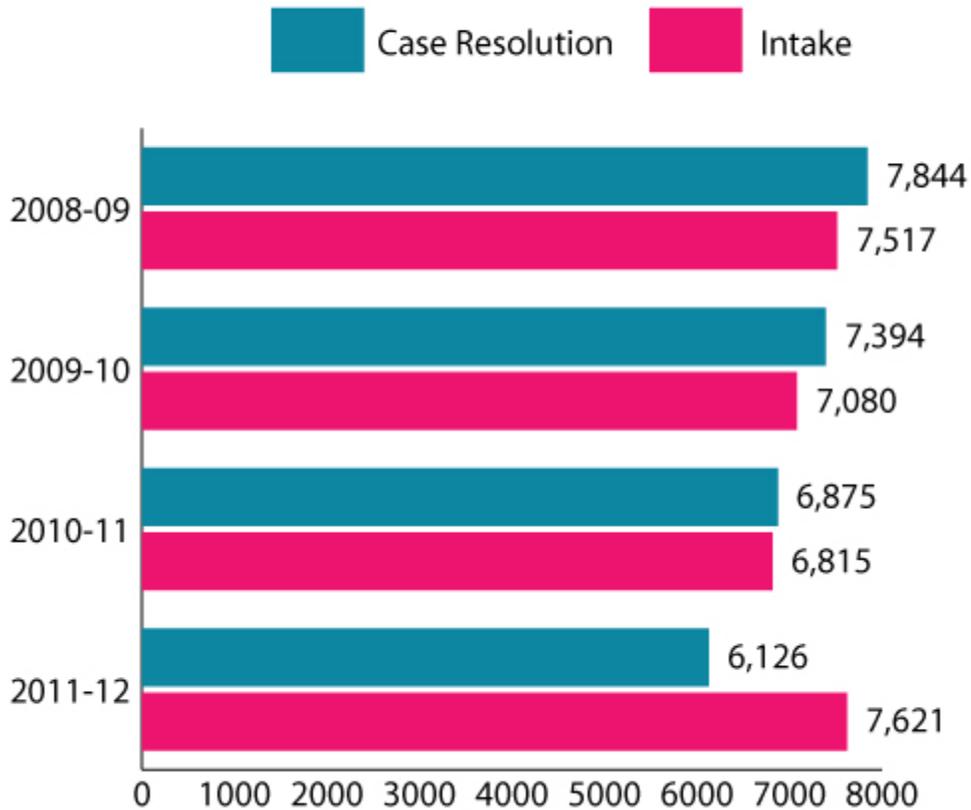
Appeals

A Commissioner's Order can be appealed to the New York State Supreme Court within 60 days after it is issued.

Division Operating Statistics

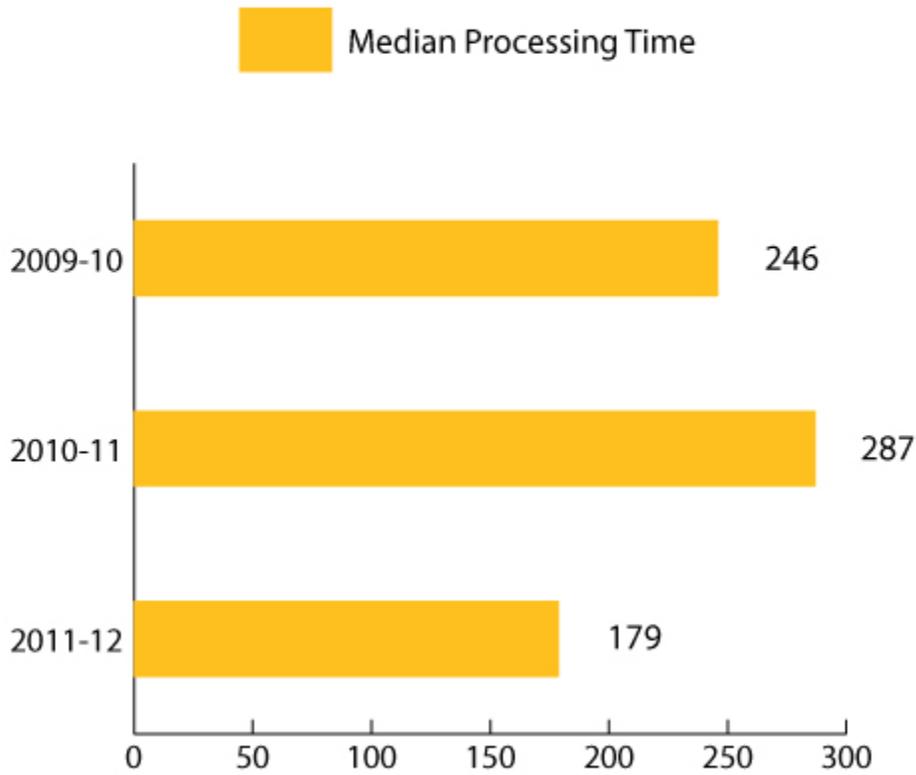
There were 6,126 complaints filed with the Division in FY11-12, a decrease of just over 11% from FY10-11. During this same time period, the Division resolved 7,621 complaints (See Table 1-A).

TABLE 1-A Intake v. Case Resolutions
(as of March 31)



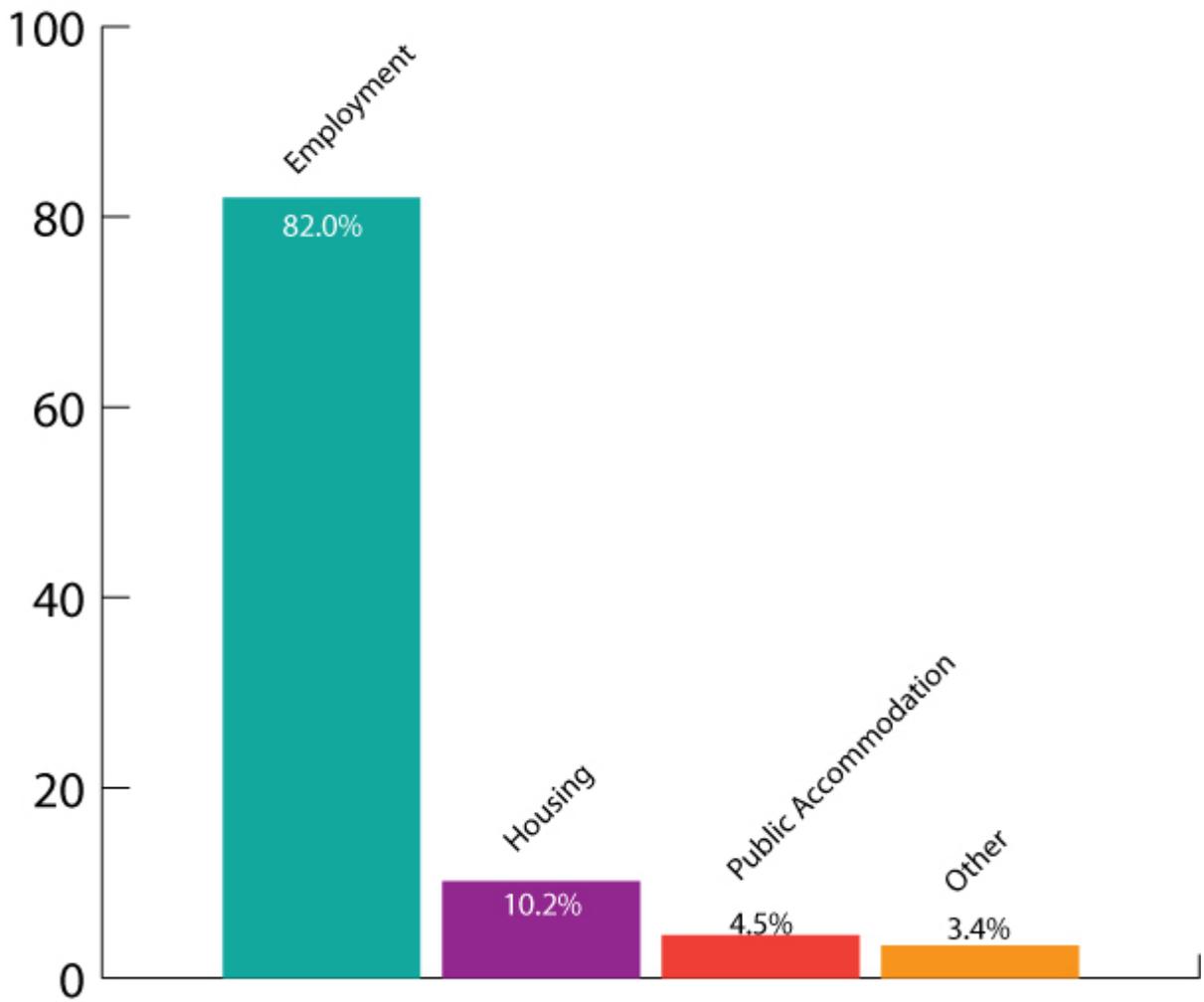
There were remarkable changes in case processing at the Division. The median processing time decreased by 38% from 287 days in FY10-11 to 179 days in FY11-12. This means 50% of the Division's cases were resolved in less than 179 days (see Table 1B).

**TABLE 1-B Median Processing Time in Days
(as of March 31)**



In FY11-12, the majority of complaints filed were in the area of Employment (approximately 82%), followed by Housing (approximately 10.2%), Public Accommodation (approximately 4.5%), with the sum of all other areas comprising approximately 3.4% of all cases filed. (see Figure 1).

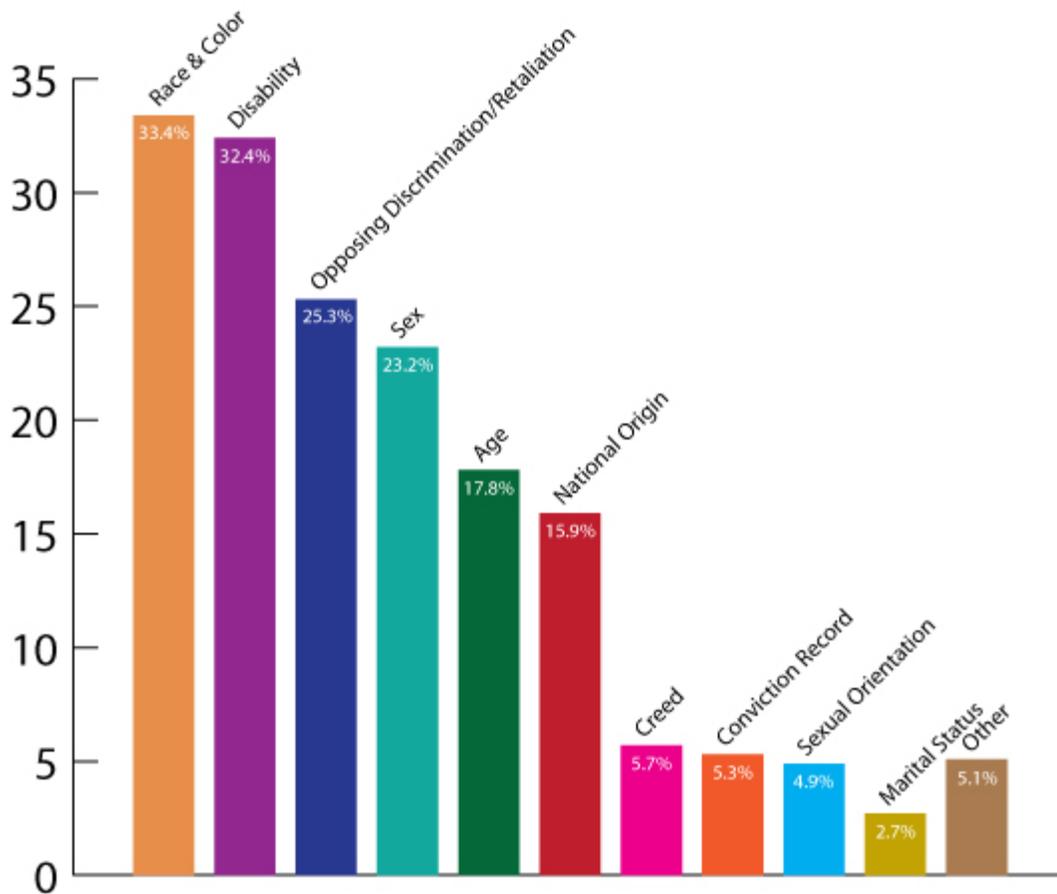
Figure 1 Jurisdiction of Cases Filed
FY 2011-12



*Percentages do not equal 100% due to rounding.

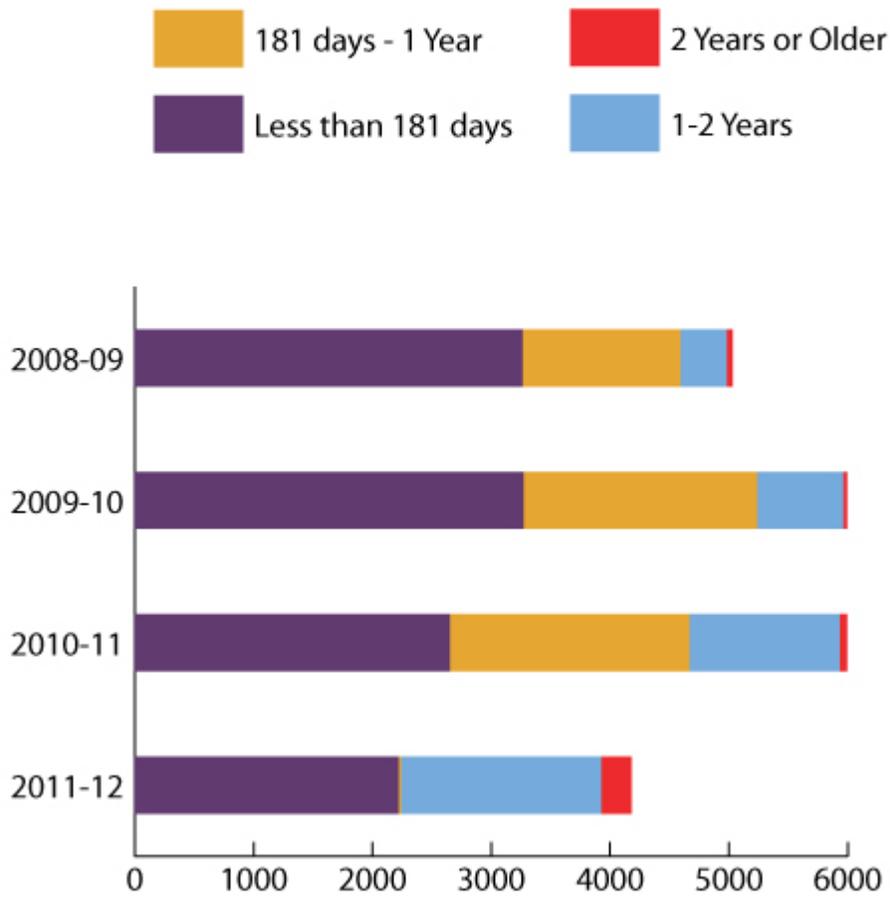
The most frequently cited basis of complaints filed in FY11-12 was Race/Color (33.4%), followed by Disability (32.4%) and Opposed Discrimination/Retaliation (25.3%). It is important to note some complaints allege more than one basis; therefore, the total percentage of bases cited will be more than 100% (see Figure 2).

Figure 2 Bases of Cases Filed
FY 2011-12



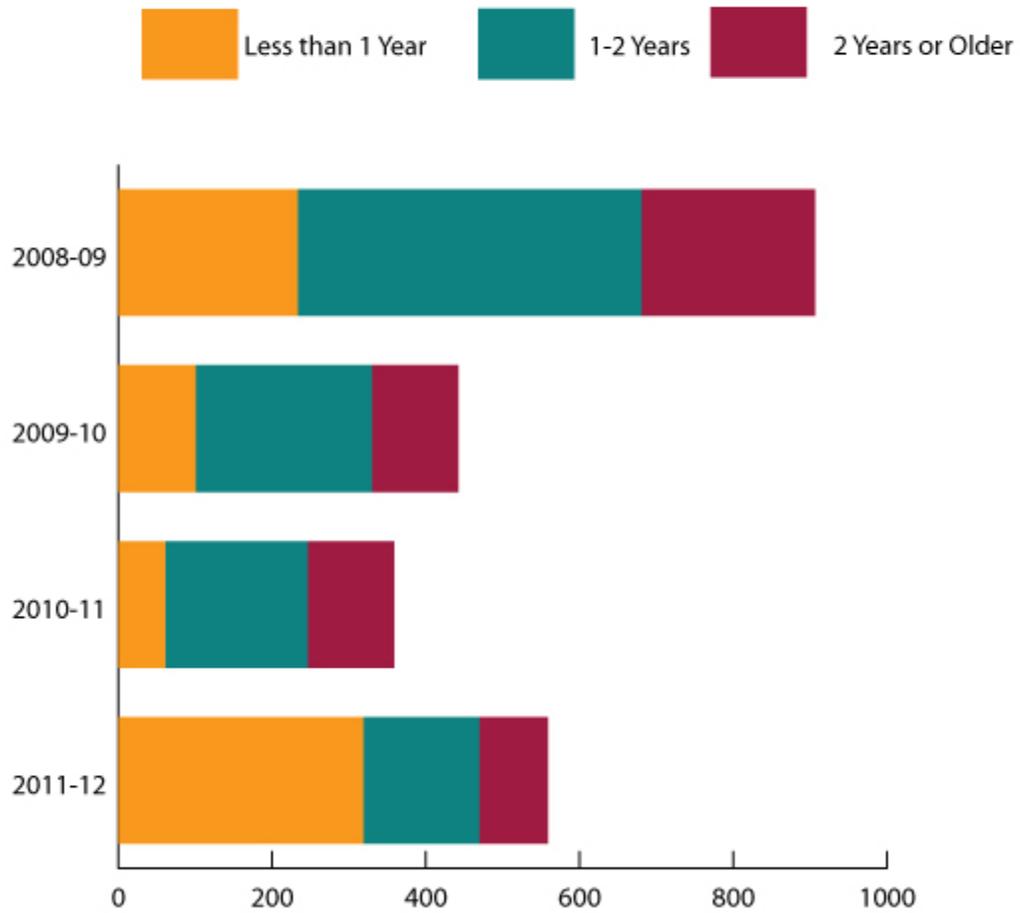
As of the end of FY11-12, 53% of cases under investigation were less than 181 days old, 1% were between 181 days and one year old; 40% were between one and two years old, and 6% were over two years old (See Table 2A).

**TABLE 2-A Age of Investigations Caseload
(as of March 31)**



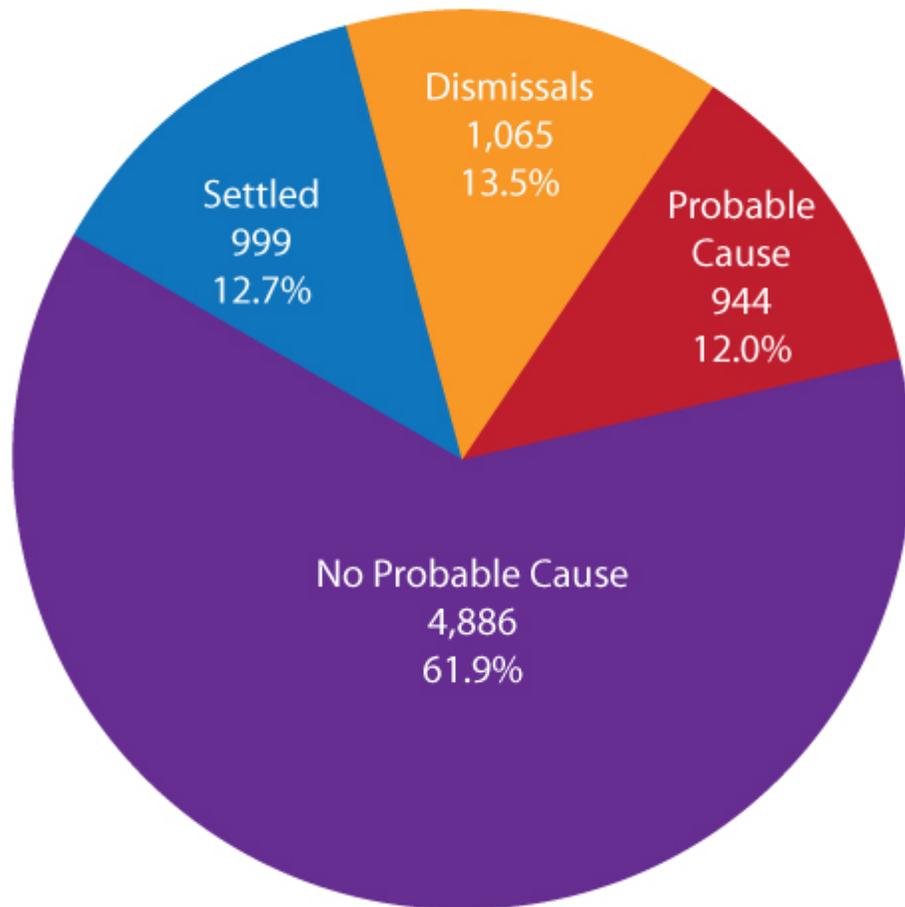
Of the cases in the Hearing Process that received investigative determinations of Probable Cause, 57% were less than one year old, 27% were between one and two years old, and 16% were two years old or older at the end of FY11-12 (See Table 2B).

TABLE 2-B Age of Hearings Caseload
(as of March 31)



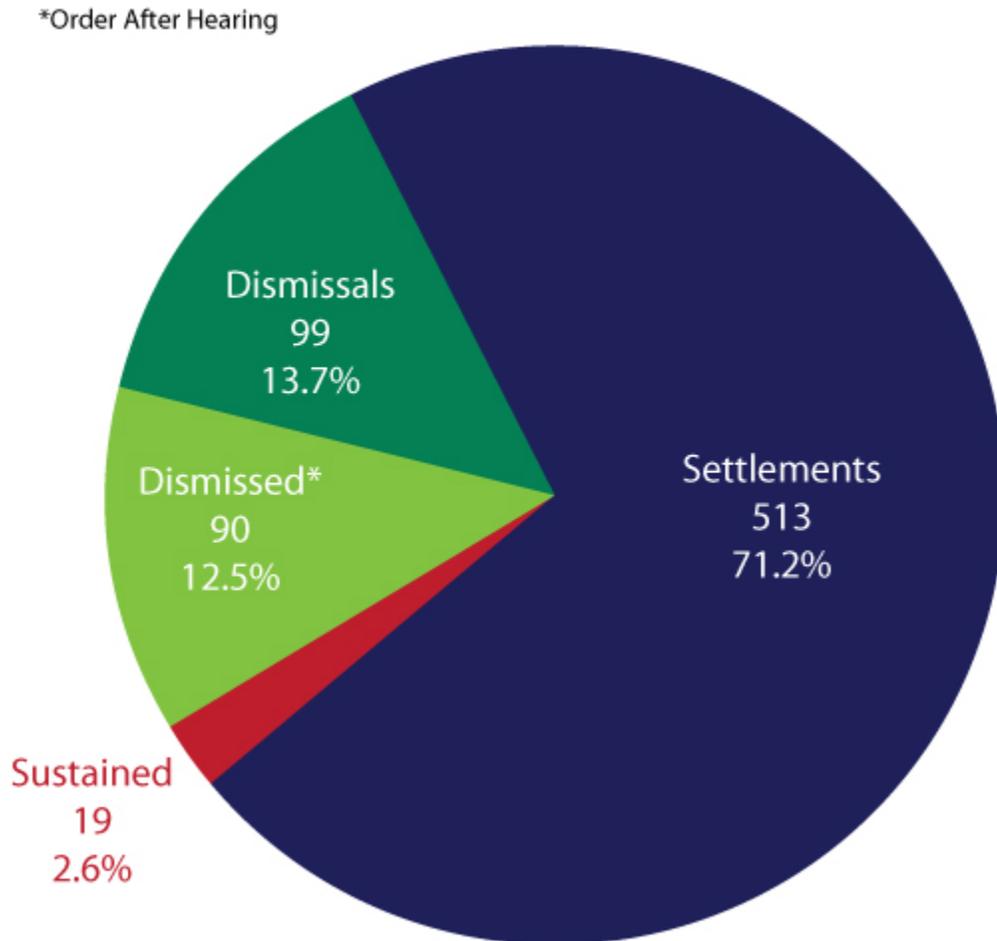
During FY11-12, the Division issued 7,894 investigative determinations (see Figure 3). Of these, 61.9% were No Probable Cause, 13.5% were Dismissals and 12.7% were settlements; 12% were Probable Cause determinations, which resulted in those cases advancing to the hearing process

**Figure 3 Investigation Outcomes
FY 2011-12**



In FY11-12, the Commissioner issued 721 Commissioner's Orders (see Figure 4). Of these, 71.2% were settlements, 13.7% were dismissals prior to the completion of the Hearing process, 12.5% were dismissed after hearing, while over two percent were sustained after hearing.

Figure 4 Hearing Outcomes
FY 2011-12



Commissioner's Orders

The following is a sampling of cases adjudicated during Fiscal Year 2011-2012. All cases can be found in the Division's website at www.dhr.ny.gov.

Disability

10134033 Elaine A. Vanderbush v Iqbal A. Samad, P.C.; Iqbal A. Samad, individually

Respondent was found liable for discriminating against the complainant based on her disability. The Complainant was awarded \$15,000 for mental anguish and \$4,584 for lost wages.

Pregnancy Discrimination

10131548 Dawn M. Kulach v Advanced Cardiac Surgical Associates PLLC

Respondent terminated Complainant's employment after being notified that the Complainant was pregnant. Complainant was awarded \$2,500 for mental anguish. Respondent was ordered to establish a written policy to prevent unlawful discrimination including a formal reporting mechanism. Further, the respondent was ordered to provide training to all employees.

Race

10135821, 10138674 Howard E. Porter v Danzer's German & American Restaurant Inc. and Egon K. Heil

Complainant, an African American restaurant employee, was subjected to unlawful discrimination based on his race. Complainant was awarded \$20,000 for mental anguish.

Sexual Harassment

10132607 Maria Miranda v Twelfth Street Corp. d/b/a Village Den Restaurant; Hector Vasquez as Aider and Abettor; Konstantinos Danalis, Individually

Complainant, a restaurant waitress, was subjected to severe and pervasive sexual harassment which created a hostile work environment. Complainant was awarded \$50,000 for mental anguish. Respondent was ordered to establish a written policy to prevent unlawful discrimination, and to provide training to all employees.

Notable Court Decisions in which the Division was a Party

Appellate Divisions

Sex

10107527-Genise Benson v Nancy Potenza Design & Building Services, Inc.; HealthNow New York, Inc., d/b/a BlueCross BlueShield of Western New York; Potenza Services, Inc., as successor-in-interest; Potenza Service, Inc., as successor-in-interest; Rocco Potenza, individually

N.Y.State Div. of Human Rights (Benson) v. Nancy Potenza Design & Building Services, Inc.
87 A.D.3d 1365, 930 N.Y.S.2d 151 (4th Dept. 2011)

The fact that the sexual harassment did not take place on the employer's premises does not relieve the employer of liability under the Human Rights Law. Individual owner and president, who condoned the sexual harassment, may be held individually liable. Award of \$10,000 for mental pain and suffering confirmed.

Race

10120123-LaRosa Carson v Grove Roofing Services, Inc. Robert Embow, Individually

Grove Roofing Services, Inc. v. N.Y. State Div. of Human Rights (Carson)

89 A.D.3d 1405, 932 N.Y.S.2d 397 (4th Dept. 2011)

The Commissioner's Final Order, which found a severely racially hostile work environment, including egregious and frequent racial harassment by complainant's supervisors, confirmed by the Court. Respondent ordered to pay \$50,000 to complainant for mental pain and suffering, and further required to establish anti-discrimination policies and procedures, along with an appropriate training program.

Sex, Retaliation

10112394-Mary Rocco v Jeffrey L. Goldberg; Eric Sanders; Jeffrey L. Goldberg, P.C.

Goldberg v. N.Y. State Div. of Human Rights (Rocco)

85 A.D.3d 1166, 927 N.Y.S.2d 123 (2d Dept. 2011)

Commissioner's Order, with award for mental pain and suffering (\$20,000) and back pay (\$155,000), is confirmed in a case finding pregnancy discrimination and retaliation. There was substantial evidence to support the award for back pay, and the petitioners did not carry their burden of showing that Rocco failed to mitigate her damages. Commencement of one's own business after an inability to find employment is considered a form of mitigation.

Retaliation

10110840-Ronald Maher v Alliance Mortgage Banking Corp.; and John Murphy, individually

Murphy v. Kirkland (Maher)

88 A.D.3d.795. 930 N.Y.S.2d 285 (2d Dept. 2011)

Substantial evidence supports Commissioner's determination that employer and its president retaliated against employee for opposing a supervisor's sexual harassment of another employee. The company president was liable based on his ownership interest. Awards of \$79,827 for back pay and \$50,000 for mental anguish, both with interest, confirmed.

Age, Retaliation

10112745-Norman Parnass v Jack Jaffa; en Rottenstein Associates Inc.

N.Y. State Div. of Human Rights (Parnass) v. Ben Rottenstein Associated, Inc.
89 A.D.3d 852, 932 N.Y.S.2d 519 (2d Dept. 2011)

Commissioner's Final Order finding age discrimination and retaliation for having opposed discrimination is supported by substantial evidence. Awards confirmed as follows: \$188,750 for back pay, \$26,192 in compensatory damages for unused sick and vacation days, \$7,067 in compensatory damages for the Complainant's share of profits, as provided by an employment agreement, and \$15,000 in compensatory damages for mental anguish.

Outreach and Education

During this year, the External Affairs unit developed and executed a series of events to educate the public about their rights under the Human Rights Law. Among them:

- "Moving Forward: Advancing Civil Rights through Collaboration between Government and the Advocacy Community." This event was the result of collaboration between the Division and other federal and state agencies that are members of the Civil Rights Roundtable. Division staff moderated and participated in several workshops including protections for people with disabilities and the rights of people with arrest and conviction records.
- "The Unique Challenge of Domestic Violence in Immigrant Communities." This panel discussion was hosted by the Division in collaboration with the NYS Office for the Prevention of Domestic Violence and OTDA's Human Trafficking Unit. A survivor of domestic violence was part of the panel which targeted representatives of community based organizations and students.

In an effort to maximize the agency's presence in social media the DHR Facebook page was revitalized to include more robust and educational posts, information about the Human Rights Law and statistics. It was also made interactive to allow the general public to comment and participate in discussions related to posts. The result was an increase in fans of over 100% to the agency's page. In addition, the agency now has a presence on YouTube, Twitter and LinkedIn. Content for all accounts are under development. A complete redesign of the agency website is pending approval. The agency expects to launch its new website early next year.

Division-Initiated Investigations

The following Division-Initiated Investigations are underway:

Oyster Bay: The Housing Investigations unit is investigating the DIC against Oyster Bay and developers. The complaint against the Town of Oyster Bay and developers alleges the Town's Next Generation and Golden Age housing program's residency preferences (for residents and children of residents of Oyster Bay and its school districts, who are overwhelmingly white) discriminate on the basis of race and national origin and perpetuate residential segregation: they

prevent persons of color from having any real opportunity to obtain such affordable housing and lock in the present racial composition of the Town. As complainant, the Division has reviewed extensive information provided by respondents Long Island Housing Partnership and developers, and has submitted information and rebuttal to the investigator. The Town sued to enjoin the Division from investigating and lost in the trial court and Appellate Division; the Court of Appeals dismissed its appeal on constitutional grounds. *Town of Oyster Bay v. Kirkland*, 2011 WL 2473269 (June 23, 2011). To date, during November of 2011, the Court of Appeals granted leave to appeal on jurisdictional grounds.

Collegiate Village/Western New York: The Division initiated an investigation to determine if the developers of a new student housing complex were disproportionately impacting the availability of housing for families and minority communities in the region. After the developer broke off negotiations regarding failure to comply with the Division settlement agreement, it sued the Division in Erie County Supreme Court, seeking a judgment that the settlement agreement was void and unenforceable. The Division moved to dismiss; the court denied the motion; the Division answered the complaint; and the developer has noticed certain discovery. The Division, represented by the Attorney General, will continue to litigate the matter. To date, litigation continues and the Division appealed a Motion to Dismiss, for which a brief is currently being drafted by the Attorney General.

The Division is pursuing other confidential investigations that involve discrimination against people with disabilities, discrimination in hiring persons with criminal records, and housing discrimination based on race.