

New York State Division of Human Rights



ANNUAL REPORT

Fiscal Year: 2004 - 2005

Website Edition

Sixty Years of Enforcing Human Rights

George E. Pataki
Governor

Michelle Cheney Donaldson
Commissioner

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Message from the Governor

As Governor of the State of New York, I am extremely proud of the accomplishments that have been achieved by the State Division of Human Rights over the past eleven years.

When I first took office in 1995, the Division inherited a backlog of nearly 17,000 cases. Today, that backlog has been virtually eliminated. The installation of a new computerized Case Management System (CMS), additional Hearing Rooms and improved case processing initiatives have all led to increased efficiency and better services to the people of New York.

The Division of Human Rights exists to enforce the State's Human Rights Law which guarantees everyone the right to enjoy a full and productive life. It is my hope that New Yorkers everywhere will continue to cultivate respect for the dignity and rights of others in a society as diverse as ours.

As we look toward the future, I am confident that the Division of Human Rights will continue to be a highly effective force in the fight against unlawful discrimination.

George E. Pataki

Governor

Message from the Commissioner

In my second year as Commissioner of the New York State Division of Human Rights, I am pleased to present the Division's 2005 Annual Report to the Governor, the Legislature and to the general public.

The Division's overall progress continues with a dramatic 70% decrease in total caseload. In addition, the introduction of the agency's new Case Management System in July of 2004 has resulted in increased efficiency in processing cases at the Division.

The Division of Human Rights remains a national leader in human rights enforcement and we will aggressively continue our mission to ensure and protect the rights of all New Yorkers.

Michelle Cheney Donaldson

Commissioner

History

Sixty Years of Enforcing Human Rights...

Upon the recommendations of the State Temporary Committee Against Discrimination, Governor Thomas E. Dewey signed the Ives-Quinn Anti-Discrimination Bill, making New York the first state to enact legislation prohibiting discrimination in employment. In doing so, New York became the first state to establish a permanent commission to enforce such legislation with the inception of the State Commission Against Discrimination (SCAD).

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. The law was expanded over the years to include new jurisdictions and protections. Today, it remains one of the most comprehensive laws in the nation.

March 12, 2005, marked the official Sixtieth Anniversary of the birth of the Human Rights Law in New York State. Fittingly, the Division of Human Rights will host a major celebration in 2005 to honor the significance of the Human Rights Law and the critical role it has played in the fight against unlawful discrimination.

Mission

The Division of Human Rights ensures equal opportunity in employment, housing, public accommodation, education and credit. The Division enforces the Human Rights Law, seeking to:

- . Promote human rights awareness
- . Prevent and eliminate discrimination
- . Investigate and resolve complaints of illegal discrimination fairly; and
- . Develop human rights legislation and policy for the state

NEW YORK STATE HUMAN RIGHTS LAW

The Process

If an individual feels he or she has been the victim of an illegal act of discrimination he or she may file a complaint within one year of the date of the alleged violation with the Division. The complainant communicates with the investigator to give a summary of the alleged unlawful discrimination including:

- the dates on which the alleged discriminatory act occurred;
- a list of the names, titles, business addresses, and telephone numbers;
- of persons charged with committing unlawful discrimination;
- names of witnesses, if any;

- any supporting documentation such as memos, notices, leases, and comparative data; and

- Details of any financial and/or emotional losses suffered as a result of the alleged unlawful discrimination.

If the complaint falls within the Division's jurisdiction, the investigator assists an individual in filing a formal complaint with the help of the Case Tracking System. The complaint is then mailed to the individual or organization charged with committing the discriminatory act and an investigation is conducted to determine whether discrimination has occurred.

Conciliation

The Division emphasizes conciliation whenever possible, since it offers all parties the possibility of a speedy and mutually beneficial resolution. The conciliation process is negotiated by the investigator, who identifies the main issues of the complaint, determines where the complainant and respondent agree and disagree, identifies what may be offered and what may be accepted, and develops an appropriate strategy for resolving the dispute.

If the complaint is not resolved at the conciliation level, or if one or both of the parties are not interested in attempting conciliation, the investigator begins a further investigation of the facts, which may include, but is not limited to: two party conferences, witness interviews, site visits, interrogatories and document requests. As the investigation proceeds, the investigator continues to attempt to settle the case through conciliation efforts. The complainant is free to withdraw the complaint or proceed to court during this process.

Determination

Depending upon the information gathered during the investigation, the Regional Director reviews the investigator's work and a determination of Probable Cause (PC), or No Probable Cause (NPC), to believe that illegal discrimination has taken place is issued. If the determination is no probable cause, the complaint is dismissed, but the complainant has the right to appeal the determination to the State Supreme Court within 60 days.

Pre-hearing Conference

If a probable cause determination is issued, the complainant and respondent meet with an Administrative Law Judge in a pre-hearing conference to once again attempt to conciliate the complaint. If this effort fails, the complaint is scheduled for a formal public hearing before an Administrative Law Judge, other than the one with whom the pre-hearing conference was held.

Public Hearing

If further attempts at conciliation fail, the Division convene a public hearing presided over by an Administrative Law Judge. The Complainant and the Respondent, or their representatives present their respective cases at the hearing. When appropriate, witnesses are called upon to give testimony. Often a conciliation agreement is reached during the course of a hearing, and an Order After Stipulation is issued by the Commissioner, effectively concluding the proceeding.

Recommended Order

If a conciliation agreement is not reached before a hearing concludes, the Administrative Law Judge will prepare a recommended order either supporting the allegations of illegal discrimination or dismissing them. The order will identify what remedy is required for the complainant to be "made whole", as if the act of discrimination had not occurred. This may include employment, promotion, raise,

back pay, letter of reference, housing credit, formal apology, a change in the Respondent's policies and/or cash award in compensation for humiliation, suffering and mental anguish. Under the Human Rights Law punitive damages can be awarded in all cases with the exception of housing. The complainant and respondent may review and comment on the recommended order.

Commissioner's Order after Hearing

The Commissioner reviews the recommended order. If the Commissioner finds that the allegations are not supported by the evidence, the Commissioner dismisses the case. If the Commissioner finds that the allegations are supported by the evidence, the respondent is ordered to cease and desist from the discriminatory practice and to take appropriate action to redress the act of discrimination. Both the complainant and respondent can appeal the Commissioner's Order within 60 days to the State Supreme Court which will transfer the case to its Appellate Division for review.

Compliance Investigation

When the respondent is not in compliance with the Commissioner's Order, the Division takes appropriate action to ensure compliance.

MOST RECENT AMENDMENTS TO THE HUMAN RIGHTS LAW

Sexual Orientation

On December 17, 2002, the Sexual Orientation Non-Discrimination Act ("SONDA") became law. SONDA amended the Human Rights Law to include sexual orientation as a protected class in the areas covered by the Law, including employment, housing, public accommodation, credit and education. SONDA became effective on January 16, 2003.

Sexual orientation is defined by SONDA as "heterosexuality, homosexuality, bisexuality or asexuality, whether actual or perceived." The definition further provides that "nothing contained herein shall be construed to protect conduct otherwise proscribed by law." Human Rights Law section 292.27

SONDA does not amend section 296.11 of the Human Rights Law, which provides that "nothing in this section shall be construed to bar any religious or

denominational institution or organization, or any organization organized for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting employment or sales or rental of housing accommodations or admission or giving preference to persons of the same religion or denomination or from taking such action as is calculated by such organization to promote the religious principles for which it is established or maintained."

Religious Observance

Section 296.10 of the Human Rights Law has been amended to provide that religious practices, as well as religious observances, are covered under the section. The amendment was effective November 16, 2002.

The statute now provides that it is an unlawful discriminatory practice for an employer "to impose upon a person as a condition of obtaining or retaining employment, including opportunities for promotion, advancement or transfers, any terms or conditions that would require such person to violate or forego a sincerely held practice of his or her religion, including but not limited to the observance of any particular day or days or any portion thereof as a Sabbath or other holy day in accordance with the requirements of his or her religion, unless, after engaging in a bona fide effort, the employer demonstrates that it is unable to reasonably accommodate the employee's or prospective employee's sincerely held religious observance or practice without undue hardship on the conduct of the employer's business."

"Undue hardship" is defined in the amendment as meaning "an accommodation requiring significant expense or difficulty (including a significant interference with the safe or efficient operation of the workplace or a violation of a bona fide seniority system)." Among the factors to be considered are identifiable costs (including the costs of loss of productivity and hiring or transferring employees, in relation to the size and operating cost of the employer), the number of individuals involved and specific considerations for employers of multiple facilities relative to whether the geographic separateness and the relationship of the facilities will make the accommodation more difficult or expensive. There is a further provision that "an accommodation shall be considered to constitute an undue

hardship if it will result in the inability of an employee to perform the essential functions of the position in which he or she is employed."

The amendment makes clear that if an employee is working a shift with premium wages or benefits only as an accommodation to religious requirements, that employee will not be entitled to such wages or benefits.

Military Status

Military status was added to the Human Rights Law as a protected class on July 1, 2003. Military status was defined in section 292.28 of the Human Rights Law as meaning "a person's participation in the military service of the United States or the military service of the state, including but not limited to, the armed forces of the United States, the army national guard, the air national guard, the New York naval militia, the New York guard, and such additional forces as may be created by the federal or state government as authorized by law. The terms "reserve armed forces" and "organized militia of the state" are also defined by the amendment, in sections 292.29 and 292.30, respectively of the Human Rights Law.

Discrimination on the basis of military status is prohibited in all areas covered by the Human Rights Law, including employment, housing, public accommodation, credit and education.

OPERATIONS

As part of the Executive Department, The Division of Human Rights is organized into several program areas. The agency is headed by the Commissioner, with an executive staff consisting of an Executive Deputy Commissioner, Chief Administrative Law Judge, General Counsel, and Deputy Commissioner for Regional Affairs, Deputy Commissioner for Federal Programs, Deputy Commissioner for Public Affairs, Deputy Commissioner for Administration, Executive Assistant, Special Assistant, and Directors of Regional Offices and various other departmental units. The Division has approximately 200 employees.

The Bureau of Regional Affairs, the largest of the agency's units, is responsible for the receipt and initial investigation of complaints that are filed in offices throughout the State. Bureau investigators use fact-finding conferences, interrogatories, personal interviews and on-site visits to collect information concerning allegations of illegal

Discrimination. Investigators strive to improve conditions and practices in the workplace, and to help the parties reach a satisfactory resolution without having to go to a public hearing.

The Legal Department serves as in-house counsel to the Commissioner. Legal staff advises regional investigators on the legality of issues arising from complex investigations, attempts conciliation after a Probable Cause finding, and prosecutes cases in public hearings when a conciliation effort fails. Division attorneys also represent the Division in court, and the Legal Bureau prepares legislative proposals to advance the human rights agenda for the State. The Division's Freedom of Information Officer, Appeals, and Compliance Unit are also located in the Legal Bureau.

The Hearing Unit, or Office of Administrative Law Judges, is entrusted with the task of conducting public hearings on Probable Cause cases. Overseen by the Chief Administrative Law Judge, the unit's logistics are coordinated by the Calendar Unit, for hearings throughout the State. The Hearing Unit is kept separate from the rest of the operating units of the Division, ensuring due process and impartiality to both parties to a complaint.

The Bureau of Administration is responsible for all personnel, budget, and finance operations. Management Information Systems is a crucial component of the Division's ability to meet the challenges of the future.

The Public Information Office presents the agency's image and provides information to the media and to the general public with respect to Division operations. This unit is also responsible for the creation and revision of agency publications for public distribution.

TECHNOLOGY

In July of 2004, the Division introduced its new Case Management System (CMS), which successfully upgraded the Division's technology from a DOS-based environment to a Windows environment. The new system was designed to provide immediate access to timely case information, service multiple users at the Division in various units and to seamlessly interface with Microsoft Word, Excel and Outlook applications. Customized for data integrity, CMS not only tracks cases, but improves the quality of case processing by actually assisting in driving the case investigation and hearing process.

In development for many years, CMS effectively utilizes advanced technology to process discrimination complaints more efficiently.

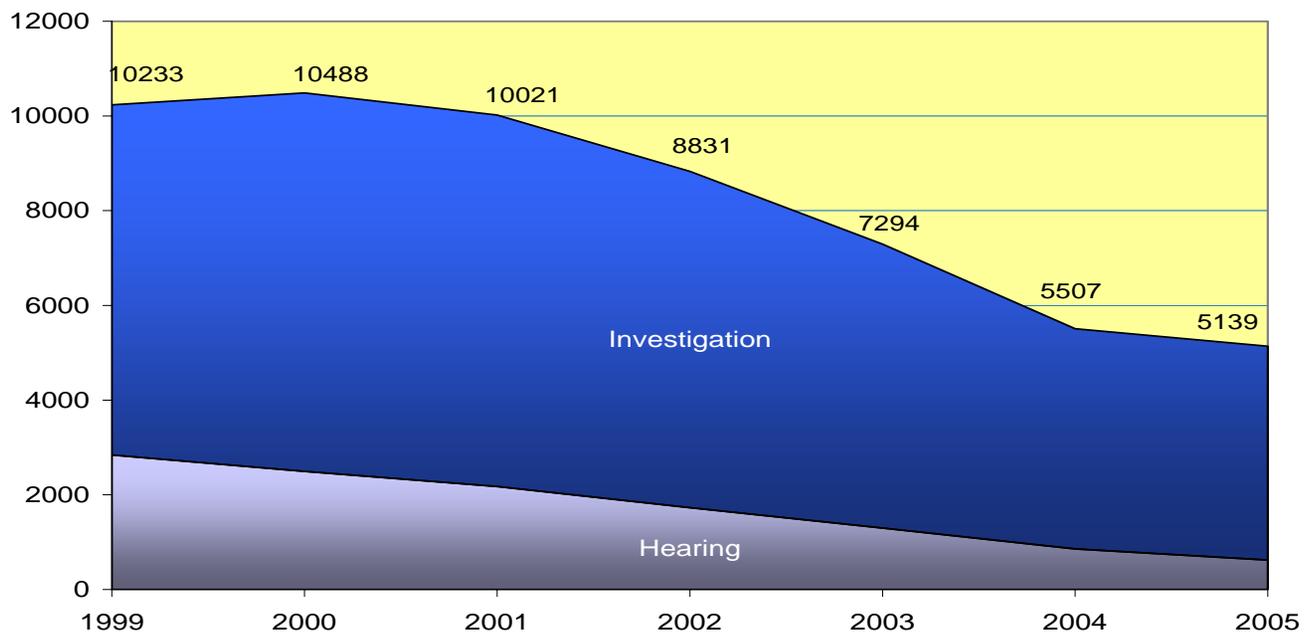
STATISTICS

As of March 31, 2005, the Division's total caseload stood at 5,139 cases which represents a 70% decrease from the backlog of 16,880 cases the Division inherited from the previous administration before Governor Pataki took office in 1995. In recent years, the Division's thrust has been focused on decreasing its caseload while maintaining the integrity of its investigations and hearing processes.

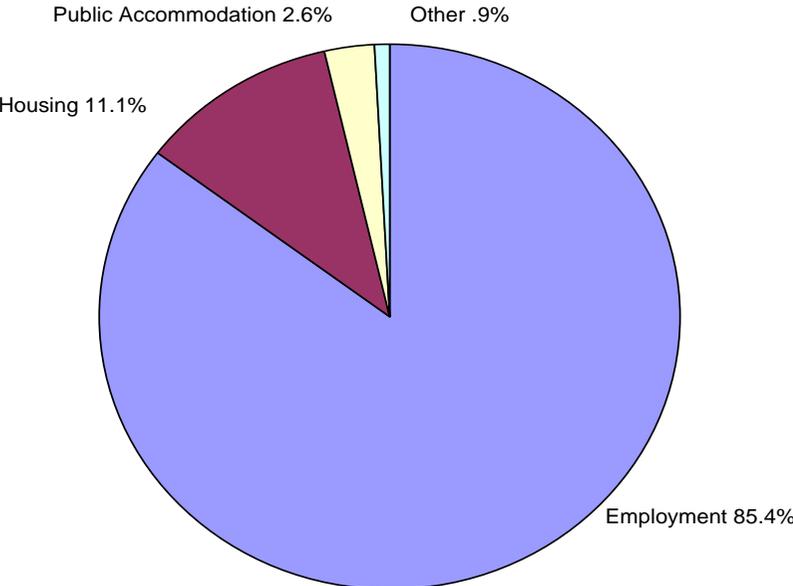
During Fiscal Year 2004 - 2005, there were a total of 5,409 complaints filed at the Division with 6,051 complaints resolved during the same reporting period. Progress at the Division has been evidenced at all levels of case processing. Most notably is the median time it now takes to investigate cases which is 254 days. This is in contrast to the 413 days it formerly took just four years ago.

Source: NYS DHR Annual Statistical Summaries

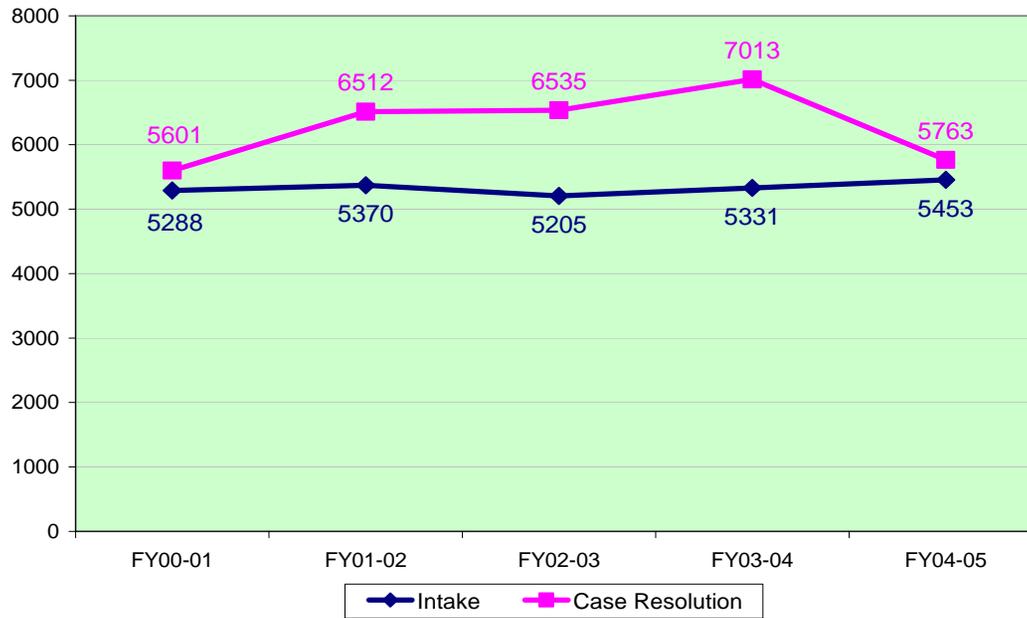
NYS Division of Human Rights Active Caseload as of March 31



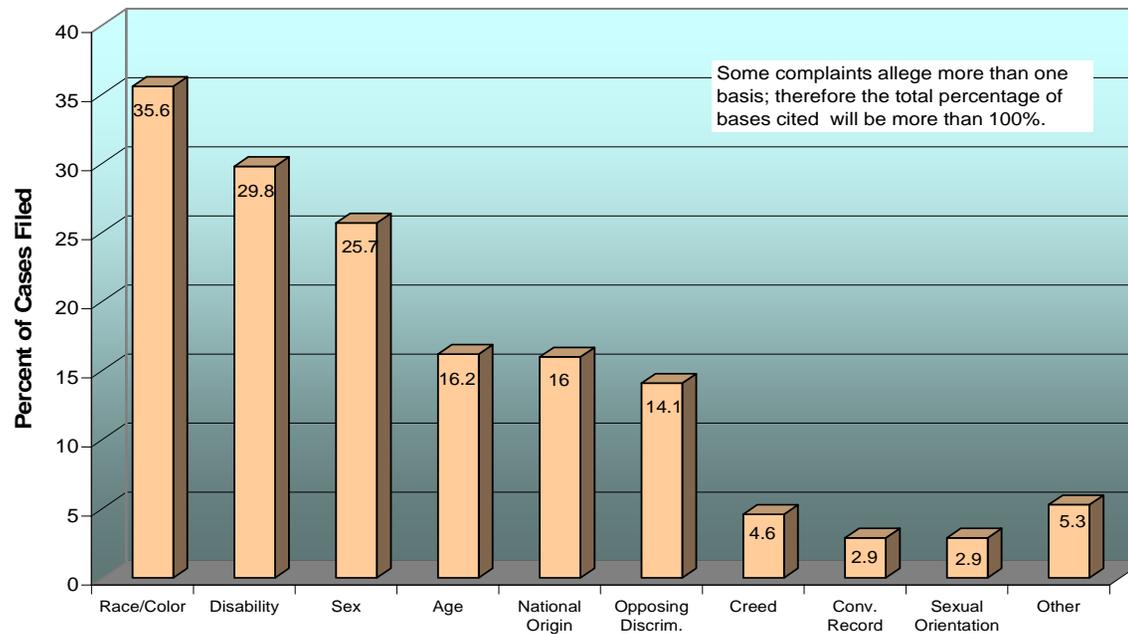
**NYS Division of Human Rights
Jurisdiction of Complaints Filed FY04-05**



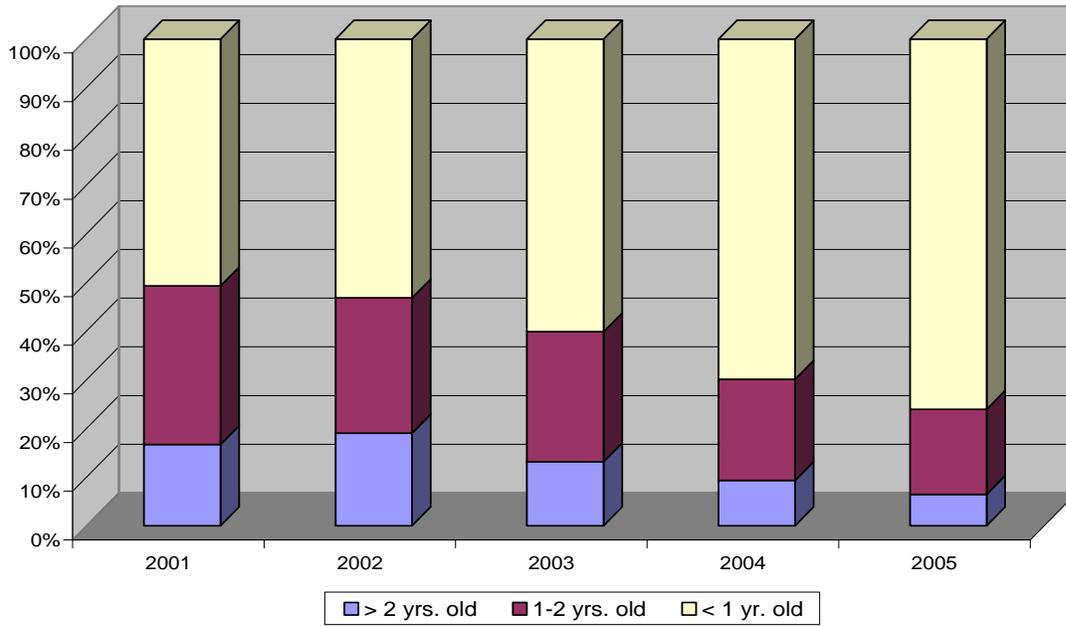
NYS Division of Human Rights Intake & Case Resolution



NYS Division of Human Rights Bases Cited in Complaints Filed FY04-05



NYS Division of Human Rights Regional Caseload Age as of March 31



FINANCE

For Fiscal Year 2004-2005, the Division received an allocation of \$13,054 in state funding, again with a \$100,000 sub-allocation from the New York State Department of Health to be used for the Office of Aids Discrimination Issues (OADI). During this same reporting period, the Division's existing federal case processing contracts with the United States Equal Employment Opportunity Commission and the United States Department of Housing and Urban Development continued to generate additional revenues in excess of \$3 million.

FEDERAL PROGRAMS

The Bureau of Federal Programs is responsible for ensuring the appropriate use of federal contract funds that are issued to the New York State Division of Human Rights. During Fiscal Year 2004-2005, the Division continued to focus on implementing the following key initiatives:

- ❖ The Work Sharing Agreement between the New York State Division of Human Rights and the U.S. Equal Employment Opportunity Commission (EEOC).
- ❖ The Cooperative Agreement for the Fair Housing Assistance Program (FHAP) between the New York State Division of Human Rights and the U.S. Department of Housing and Urban Development (HUD).
- ❖ Conducting educational outreach programs with housing and community based organizations that represent members of protected classes, including local state agencies and the federal U.S. Department of Housing and Urban Development (HUD).

HUD CONTRACT

In 1999, the Division entered into a cooperative agreement with the U.S. Department of Housing and Urban Development (HUD) which is now in its 6th year. Through this agreement and over the last six years, the Division has generated more than \$6,555,153 in contract revenue. These funds are for complaint processing, administrative costs, training, and special enforcement projects.

federal Fiscal Year 2004, the Division completed 568 dual-filed housing cases and for Federal Fiscal Year 2005, the Division completed 606 dual-filed housing cases.

NATIONAL RECOGNITION

The Division has received national recognition from the federal government for its outstanding achievements in the processing of discrimination complaints. The U.S. Dept. of Housing & Urban Development (HUD) acknowledged the Division in 2004, when the federal housing agency presented the agency with its prestigious "Towards Excellence Award". This is HUD'S highest award for excellence in case processing.

EEOC

In the interest of promoting shared goals and similar jurisdictions, the Division maintains an on-going work-sharing agreement with the EEOC in order to minimize the duplication of efforts. Each year, the Division receives substantial contractual funding from the EEOC for the processing and closing of dual-filed employment complaints under Title VII, ADEA and ADA.

For the Federal Fiscal Year, which began on October 1, 2003 and ended on September 30, 2004, the Division processed 4145 cases, which generated \$2,073,700 in federal funds to the Division. For the Federal Fiscal Year 2005, the Division completed 4,201 cases, which produced an additional \$2,100,500 in federal funds to the agency.

ALTERNATIVE DISPUTE RESOLUTION

Considering that a substantial amount of time and effort is required to thoroughly investigate every allegation of discrimination, Alternative Dispute Resolution often provides another effective and viable means of resolving complaints that are brought before the Division.

Conciliation and Mediation also continue to play a vital role in deterring future acts of discrimination. In many negotiated settlements, Respondents are held to agreements that require or adopt new policies against discrimination. In addition, Respondents may also be required to implement employee training programs

that are geared toward eliminating discriminatory practices.

The Division continues to develop and expand its mediation program to further advance this initiative.

JURISDICTIONS

Employment

The New York State Human Rights Law protects employees against discrimination in hiring, firing, and wages, and in terms, conditions, and privileges of employment, including apprentice training programs.

The Law protects individuals from discrimination during interviews for employment, promotion, or transfer. Interview inquiries should be concerned only with a person's ability to do his or her job. Employers should not ask questions such as: How old are you? Have you ever been arrested? Are you now pregnant or planning to have a family in the future? Do you have a disability? Have you ever been treated for any of the following diseases? Are you married, single, or divorced? What is the name and occupation of your spouse?

Unlawful discrimination occurs when a Latino in middle management is denied a promotion after ten years of exemplary service because she has a slight accent, when a single mother is forced to leave her job-without unemployment or health benefits-due to sexual harassment, or when a blind college graduate cannot find a job commensurate with his skills and abilities. Within New York State, employment agencies, labor organizations, joint labor management boards, all agencies of state and local governments, and employers of four or more individuals must comply with the Human Rights Law.

Housing

The Human Rights Law guarantees all New York residents equal opportunity to purchase, rent, or lease housing, land, or commercial space. Sellers, owners, landlords, real estate brokers and salespeople cannot deny a person a housing accommodation or discriminate against any person in the terms, conditions, or privileges of the sale, rental, or lease of housing, or in the furnishing of facilities or services in connection therewith. Racial steering, block busting, and redlining are also illegal.

When a person is turned down by a cooperative board because of age; when a real estate broker refuses to show a house to an Asian couple because of their race or national origin, or when a landlord advertises an apartment as "no children allowed," unlawful discrimination has taken place.

Public Accommodation

Places of public accommodation include hospitals, nursing homes, clinics, doctors' and dentists' offices, hotels, restaurants, public transportation, amusement parks, sports facilities, garages, entertainment and cleaning establishments, and retail and wholesale stores. A doctor or dentist may not refuse to treat a patient because of the patient's HIV/AIDS status. Similarly, a taxi may not refuse a fare because of a person's race or other covered category.

Education

Non-sectarian, tax-exempt educational institutions cannot deny the use of their facilities to any person otherwise qualified.

Credit

Banks, trust companies, savings and loan associations, foreign banking institutions, credit unions, insurance agencies, credit card issuers, mortgage companies, mortgage brokers, wholesale and retail merchants, and any person or institution that extends or arranges for extensions of credit cannot discriminate against applicants. Unlawful discrimination occurs when a person is denied a mortgage due to national origin; is offered different credit terms or conditions due to marital status; or is subject to income discounting due to a disability.

BASES OF DISCRIMINATION

Race & Color

Race and color pertains to a person's racial background or skin color.

Creed

Creed pertains to a person's religious beliefs. The wearing of religious garb and the observance of religious holidays and practices are protected under the Human Rights Law.

National Origin

National origin pertains to one's national group and includes one's ancestry.

Sexual Orientation

Discriminating against an individual based on sexual orientation is prohibited under the New York State Human Rights Law in all areas covered by the Human Rights Law, including public accommodation, housing, educational institutions and credit transactions. The law defines sexual orientation as "heterosexuality, homosexuality, bisexuality or asexuality, whether actual or perceived".

Military Status

A person may not be discriminated against based on his/her military status under the Human Rights Law in all covered areas, including employment, housing, public accommodation, educational institutions and credit transactions. The law defines military status as a person's participation in the military service of the United States or the military service of the State including The Armed Forces of the United States, The Army National Guard, The Air National Guard, The New York Naval Militia, The New York Guard, and other forces as may be created by federal or state government as authorized by law.

Age

The Human Rights Law protects persons age 18 or older. A person cannot be discriminated against on the basis of his or her age in all covered jurisdictions, except public accommodation. Employees cannot be forced to retire except for very limited situations relative to tenured professors and certain highly paid executives.

Sex

Discrimination on the basis of sex includes unequal treatment in the workplace, sexual harassment, and pregnancy discrimination. Under the Human Rights Law, men and women are entitled to equal pay, benefits, working conditions, and seniority rights; men and women are entitled to be free from unwelcome sexual advances, requests for sexual favors, physical or verbal conduct of a sexual nature, and a hostile work environment; and pregnant women are guaranteed the right to work, and to enjoy the same medical, vacation and disability leave policies as non-pregnant co-workers.

Marital Status

A person may not be discriminated against on the basis of whether he or she is married, divorced, single, separated or widowed.

Disability

A disability is a physical, mental, or medical impairment resulting from anatomical, physiological, or neurological conditions that prevent the exercise of a normal bodily function or is demonstrable by clinical or laboratory diagnostics techniques. For the first time, disability was the most frequently cited basis for discrimination in complaints filed. Disability, followed by race & color and sex, constitutes the largest percentage of charges filed during Fiscal Years 2003-2004 and 2004-2005.

If a person has a record of a disability or is perceived by others to have a disability, whether or not that person does, he or she is also protected under the Human Rights Law. Under the jurisdiction of employment, a person is protected when the disability does not interfere with the ability to reasonably perform job duties. It is illegal to discriminate against people who have, are perceived to have, or perceived to be at risk for HIV/AIDS. The definition of disability under New York State's Human Rights Law is much more comprehensive and includes disabilities that are not covered by the Americans with Disabilities Act (ADA).

Familial Status

Discrimination in the rental, purchase, or lease of housing on the basis of familial status is prohibited. Familial status means any person who is pregnant or has a child or is in the process of securing legal custody of any individual under the age of 18; or one or more individuals under the age of eighteen, living with a parent, a legal guardian, or a designee of a parent.

Retaliation

Each time a person makes a charge of discrimination, whether internally, with the Division, or with a third party, that person runs the risk of being retaliated against. Under the Human Rights Law, complainants and their witnesses are protected against retaliation.

Arrest or Conviction Record

It is unlawful for any person, agency, bureau, corporation or association, including the State and any political subdivision thereof, to deny employment because of an individual's conviction record, where such denial is in violation of Article 23-a of the Correction Law. A potential employer cannot make any inquiry about an arrest record, but can inquire if a potential employee has been convicted

of a crime.

Genetic Predisposition or Carrier Status

Employment discrimination on the basis of Genetic Predisposition or Carrier Status is prohibited by the Human Rights Law. The legislature added this protection to the law in 1996.

TRAINING

The Division of Human Rights administers on-going training programs, both within the agency and externally for public entities that seek training and education about the Human Rights Law. All training initiatives fall under the purview of the Division's Training Office, which is responsible for the planning and implementation of a variety of programs.

The Training Office also serves to ensure that Division staff is appropriately advised of any possible amendments to the law; particularly those having an impact on case processing functions; and that Division employees receive instructional updates in computer technology. Prior to the agency's introduction of its new Case Management System in 2004, the Division's training Office totally re-trained all Division employees for proficiency in the use of the new system.

During Fiscal Year 2004-2005, the Training Office administered several training modules for various disciplines of case processing and the Human Rights Law. In October of 2004, an Investigations Training was held for many of the Division's Human Rights Specialists and representatives from affiliated local human rights commissions throughout the State.

On January 2005, the Training Office administered a Sexual Harassment Training Program and provided all Division employees with a copy of the agency's written policy on Sexual Harassment Prevention.

The Training Office also collaborates with federal agencies such as the EEOC in the implementation and development of training modules that have been used by the Equal Employment Opportunity Commission (EEOC) for its Regional Training Taskforce.

PREVENTION & OUTREACH

The Division of Human Rights maintains an extensive prevention and

outreach program in furtherance of its mission to promote and expand human rights awareness throughout the State. The agency currently offers numerous educational and instructional programs that are designed to foster a better understanding of the Human Rights Law. By promoting an understanding of our law, many unnecessary acts of discrimination can be promptly avoided.

Several agency departments are actively involved in administering educational outreach programs throughout the State. The Division's Office of Sexual Harassment Issues (OSHI) for example, hosts training seminars for employers that focus exclusively on the issue of sexual harassment prevention. The agency's Training Office provides public service workshops such as "Discrimination in the Workplace", which deals with discrimination on the job and its Office of AIDS Discrimination Issues (OADI) offers seminars pertaining to HIV/AIDS discrimination. Finally, the agency's Public Information Office offers numerous publications that define the Human Rights Law and discrimination in all its forms.

The Division's educational outreach programs are available to the public free of charge. For more information, please visit our website @ www.dhr.state.ny.us or contact the Division's Training Office for assistance.

INTERNSHIPS

The Division of Human Rights established an internship program that is among one of the finest in the country. It continues to recruit candidates from colleges and Law schools throughout the state who, once selected, are trained by the Division to assist in the area of case processing.

The agency's Internship Program is comprised of two levels; the traditional summer program for college and law school students and the program for high school students. Candidates at the college level serve internships at the Division in departmental areas such as: Legal, Finance and/or the Hearing Unit. The program for High School students assigns candidates to work on a variety of special projects at the Division's Administrative Headquarters located in the Bronx.

In recent years, the program for interns has been expanded to include a special collaboration with Abilities, Inc. This program enables disabled individuals to obtain valuable work experience which may be useful in furthering their career goals. Additional information about the Division's Internship program is available on line at: www.dhr.state.ny.us

COUNCILS & COMMISSIONS

Local Human Rights Commissions and Advisory Councils are groups that aid the Division in its mission to promote and expand human rights awareness throughout the State. These organizations continue to work in tandem with the Division to ensure that every New Yorker is assured "the right to lead a full and productive life ... free from the injustice of illegal discrimination."

The Division wishes to thank all of its Local Human Rights Commissions and Advisory Councils for their unrelenting support and assistance in the continuing fight against discrimination.

SPECIALIZED UNITS

Office of Sexual Harassment Issues

The Division maintains an Office of Sexual Harassment Issues (OSHI) to advocate Governor Pataki's strong stand on issues of sexual harassment in New York State. This unit focuses on instances of sexual harassment in employment, landlord tenant relationships and in places of public accommodation. In addition to investigation and resolving sexual harassment complaints, OSHI staff provides specialized training in the area of sexual harassment and serve as an informational resource for employers, employees and the general public. This office administers sexual harassment prevention seminars and assists others in understanding their rights under the law.

Office of AIDS Discrimination Issues

The Division also maintains the Office of AIDS Discrimination Issues (OADI) which deals specifically with complaints based on HIV infection or AIDS. Individuals perceived to have AIDS are also protected under the Human Rights Law. Complainants with HIV/AIDS often face life threatening situations that are only exacerbated by discriminatory acts that are often based on ignorance and fear. AIDS complaints are prioritized and expedited with an emphasis on resolution at the earliest possible point. This can be critical to individuals who face life threatening health problems.

SELECTED ORDERS AFTER HEARING SUSTAINING COMPLAINT

(For Fiscal Year, 2004 through 2005)

National Origin

In the Matter of Marcial Reeves v. New York State Department of Corrections (3/30/05)

The Division held that the Respondent discriminated against the Complainant by subjecting him to a hostile work environment because of his national origin. The Complainant was subjected to ongoing harassment by his co-workers for a period of years and was subject to offensive name calling and derogatory comments because of his national origin. The Complainant reported the remarks to his supervisor who acknowledged that the Complainant was being verbally harassed and no steps were taken to correct the attitude and conduct of his coworkers. The Division concluded that the supervisor's indifference to the Complaint's allegations and the failure to take any action to correct such an atmosphere was a condonation of the derogatory and discriminatory conduct of Complainant's co-workers.

The Division awarded the Complainant \$50,000.00 in compensatory damages.

Sexual Harassment

In the Matter of Elizabeth Sobczak v. Massapequa Auto Salvage Inc. (3/21/05)

The Division held that Complainant was repeatedly subjected to remarks of a sexual nature on Respondent's premises during working hours, over her continual objections. Respondent owner was present on these occasions and joined in this harassment of Complainant. Respondent owner pressured her to have a relationship with him outside of work on an almost daily basis and subjected her to social invitations that were so numerous as to rise to the level of harassment. Respondent owner followed Complainant, threatened to attack her, grabbed and forced her to dance and later terminated her employment accusing her of theft. The Division found that Complainant suffered mental anguish as a result of this

harassment. As credibly described by Complainant, the actions were frequent and constituted more than isolated remarks or occasional episodes.

The Division awarded the Complainant back pay and \$80,000.00 in compensatory damages.

In the Matter of Merritt, Hudson, Miller-Wilcox, Miller, Rogers and Townsend v. Adams Security, Inc. (4/30/04)

The Division held that the conduct engaged in by Respondent in relation to each Complainant was offensive and pervasive and rose to the level of a hostile work environment. The Respondent engaged in regular and repeated touching, verbal remarks, insinuation and persistent attention that were hostile, abusive, pervasive and severe. In addition, there was quid pro quo harassment with respect to Merritt, Rogers and Townsend when they were terminated after refusing Respondent's advances. The Division found that the remaining Complainants were constructively discharged.

The Division awarded Merritt, Hudson, Rogers and Townsend back pay. Merritt, Rogers, Hudson, Miller and Townsend were each awarded \$25,000 in compensatory damages and Miller-Wilcox was awarded \$2,500 in compensatory damages as she was only employed one day.

Pregnancy

In the Matter of Marleen Hooks v. Geneva B. Scruggs Community Health Care Center, Inc. (2/1/05)

The Division held that the Respondent discriminatorily terminated the Complainant due to her pregnancy. The Complainant was hired in mid-December and within weeks of her hiring she informed her immediate supervisor that she was pregnant. He responded by telling her that she may run into a little problem and that his supervisor would get on him because she was pregnant. He also said that her pregnancy would cost the Respondent more money. The Complainant was terminated shortly thereafter and was given as a reason that the Respondent was not pleased with her typing skills. The Division found that there was a nexus between both her supervisor's comments and the close temporal proximity between the revelation of her pregnancy and the Respondent's decision to terminate her employment.

The Division awarded the Complainant back pay and \$10,000.00 in compensatory damages.

Age

In the Matter of Alvin Lewis v. Wagner Photoprint Company (7/13/04)

The Division held that Respondent was liable for age discrimination when it terminated Complainant's employment and replaced him with a younger employee. The Division found that Respondent's proffered reasons for the Complainant's termination were not credible as the witnesses' testimony was vague, evasive and contradictory. In addition, the Respondent's reason for replacing Complainant, that the Complainant could not operate the new equipment, was belied by the fact that the new employee operated the same equipment as the Complainant operated for at least ten months.

The Division awarded the Complainant back pay and \$15,000.00 in compensatory damages.

Sex

In the Matter of Carol Peets v. Roosevelt Union School District (8/10/04)

The Division held that Respondent was liable for sex discrimination when it failed to hire Complainant as an Attendance Teacher after she applied for the position in response to a job posting. The Respondent hired a male for that position. The Respondent alleges that the male was hired because he was certified as an Assistant Teacher and the Complainant was not. The Division found that when Respondent was faced with Complainant and the male applicant's application it changed the posted position to an Attendance Teacher Assistant position to suit the male candidate's qualifications.

The Division awarded the Complainant back pay and compensatory damages in the amount of \$15,000.00

Court Decisions of Note

Age

In SDHR on behalf of Gus Gadetsakis v. Crown Gourmet Deli Corporation, (Sup Ct. N.Y. Co. 2004), the court granted the Division's motion and directed the Clerk of the Court to enter judgment against Crown Gourmet Deli Corporation based on the Appellate Division, First Department's order confirming the Commissioner's determination that Gus Gadetsakis had been discriminated against on the basis of age. The Commissioner found that Respondent specifically inquired about Complainant's age before terminating him, specifically told him that his employment was being terminated because of his age and had never hired a

permanent employee any individual outside of their twenties.

Familial Status

In SDHR on behalf of Moynihan v. Jenkins. 15 A.D.3d 897; 789 N.Y.S.2d 367 (4th Dep't 2005) the Appellate Division Fourth Department unanimously reversed the lower court's grant of summary judgment to the defendants and reinstated the plaintiff's complaint.

This matter is a housing case in which the Division filed a complaint on behalf of the Moynihans against the Jenkins in State Supreme Court. The complaint alleges that the defendants refused to rent to the Moynihans because they had three children.

The court held that the lower court erred in granting summary judgment as there is a material issue of fact whether defendants' alleged discriminatory reasons for denying rental housing to the Moynihans were pretextual. The court held that the defendant's own submissions either raise an issue of fact directly by showing that a discriminatory reason more likely motivated defendants or indirectly by showing their proffered explanation is unworthy of credence. The defendants allege that they denied the Moynihans housing because of personal references and financial reasons but the court found that evidence existed that the defendants made statements about increased security deposits for families with teenage children and that the defendants offered the rental to someone without children.

Same-Sex Harassment

In Matter of State Div. Of Human Rights v. Dom's Wholesale and Retail Center. 2005 Slip Opinion 04121 (1 st Dep't 2005), the Appellate Division affirmed the Division's determination that the record showed sufficient evidence of a hostile work environment due to same-sex sexual harassment and affirmed the award of \$20,000.00 to the Complainant in compensatory damages. In this case, the crude humor and horseplay targeted Complainant and was gender specific, and the Respondent failed to take corrective action when informed of the problem but instead acquiesced in the offensive conduct.

Procedure

In Anthony Ramirez v. SDHR and Aladdin Laminating, 4 N. Y.3d 789; 795 N.Y.S.2d 164 (2005), the Court of Appeals unanimously reversed the Appellate Division First Department decision which held that the Division did not conduct a meaningful investigation and its determination was lacking a rational basis.

The Court of Appeals held that documents that were part of the

administrative record and part of the appeal, specifically detail conferences between the Division and the Complainant, and demonstrate that a meaningful investigation occurred. The court then stated that the no probable cause finding was not arbitrary, capricious or lacking a rational basis.

In Pathak v. N.Y. State Div. of Human Rights 18 13 A.D.3d 634; 788 N.Y.S.2d 135, (2nd Dep't 2004), the Appellate Division Second Department affirmed the Division's no probable cause determination. The court held that the investigation by the Division was adequate and further that the evidence did not provide any inconsistencies or unresolved questions which required further scrutiny and thus should have been upheld by the Supreme Court.

In New York City Transit Authority v. N.Y. State Div. of Human Rights 18,5 Misc.3d 1021A; 799 N.Y.S.2d 162 (2004), the Supreme Court, Kings County held that the Commissioner did not improperly exercise his authority by issuing the remand order as the Division's Rules of Practice set forth that the Commissioner has the power to direct further hearing sessions for the purpose of taking additional evidence. The court also stated that the Transit's Authority's disagreement with the substance and scope of the remand order does not fall within the exception to the exhaustion of administrative remedies as the Division did not act wholly beyond its grant of power.

In Dudish v. N.Y. State Div. of Human Rights 18 15 A.D. 3d 823; 790 N.Y.S.2d 565 (3d Dep't 2005), the Appellate Division Third Department held that the statute of limitations period is governed by the Executive Law which states that a proceeding must be brought within 60 days after service of the order. The petitioner argued that the time period should be measured from his receipt of the Division's order. The court held the plain language of the statute uses the word service rather than receipt and as the proceeding was not commenced within 60 days of the mailing of the Division's determination, the petition was properly dismissed as untimely.

In Staten Island Alliance for the Mentally Ill (SIAMI) v. Tolbert Commissioner. NYSDHR & MIA,(Sup.Ct. N.Y. Co. 2005) SIAMI made an application for attorneys' fees and expenses of \$412,311.27, pursuant to CPLR 8601, the New York Equal Access to Justice Act which provides in part that "a court shall award to a prevailing party, other than the state, fees and expenses incurred by such party in any civil action brought against the state, unless the court finds that the position of the state was substantially justified. . . ."

In an unpublished opinion, the Supreme Court denied SIAMI's application and found that "the Division's position in this litigation was substantially justified" and that "in light of the complex and novel issues raised here, the Court declines to award attorneys fees."

Enforcement

In SDHR on behalf of Lisa Novick v. Smthe EnL Inc., (Sup Ct. Monroe Co. 2004), the Division successfully sought enforcement of two Orders After Stipulation. The Supreme Court granted the Division's petition and directed the respondent to pay the Complainant the sum of \$1,500.00 and entered judgment.

In SDHR on behalf of Patrick and Claudette Marcellus v. Paul Brown. (Sup Ct. Kings Co. 2005), the Division successfully, sought enforcement of a Commissioner's Order After Stipulation. The Supreme Court granted the action and ordered the Respondent, Paul Brown to pay Mr. and Mrs. Marcellus \$3,500.00 forthwith. The clerk of the court also entered judgment in that amount against Paul Brown.

In SDHR on behalf of Sergio Molina v. Prototech and Michael Winkel; (Sup Ct. Erie Co. 2004), the Division successfully sought enforcement of a Commissioner's Order which was only partially complied with. The Supreme Court granted the enforcement and ordered the Respondents to pay Molina the remaining balance of the settlement in the amount of \$1,430.00. The clerk of the court also entered judgment in that amount against the Respondents.



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LEADERSHIP

New York State Commission Against Discrimination

1945	Henry C. Turner	Chairman
	Charles Garside	Chairman
	Edward W. Edwards	Chairman
	Ward Arbury	Chairman
1955	Charles Abrams	Chairman
1959	Elmer A. Carter	Chairman
1961	Ogden Reid	Chairman

New York State Commission for Human Rights

1962	George Fowler	Chairman
1967	Robert J. Mangum	Chairman

New York State Division of Human Rights

1970	Jack M. Sable	Commissioner
1975	Werner Kramarsky	Commissioner
1982	Robert Shaw	Acting Commissioner
1983	H. Carl McCall	Commissioner
1984	Douglas H. White	Commissioner
1990	Margarita Rosa	Commissioner
1995	Edward Mercado	Commissioner
1999	Jerome H. Blue	Commissioner
2000	Evonne W. Jennings Tolbert	Commissioner
2003	Michelle Cheney Donaldson	Commissioner

General Counsels

1945	Henry Spitz
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1975 Beverly Gross
1977 Ann Thatcher Anderson
1983 Roberto Albertorio
1985 Margarita Rosa
1988 Lawrence Kunin
1999 Gina M. Lopez



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