

## **Annex I**

### **Examples of State Civil Rights Programs**

1. State civil rights laws and programs fill a critical role in U.S. implementation of the International Convention on the Elimination of All Forms of Racial Discrimination. Information on state laws, enforcement mechanisms, and outreach programs is contained in appropriate sections throughout this report. Because of the large number of states in the United States, however, it would be unwieldy to include full descriptions of each state program. Nonetheless, in order to provide a general idea of the types of enforcement and other programs run by states, this Appendix describes the programs from four states: Illinois, New Mexico, Oregon, and South Carolina. The states were chosen to provide information on programs in different geographic areas, in states with varying population mixes, and in states with varying types of programs and organizational structures.

#### **Illinois**

2. Illinois is in the northern Midwest United States, bordering on Lake Michigan. Its 2005 population was the largest of the states surveyed for this appendix (12,763,371), and it contains a very large, diverse city – Chicago. Although the population of Illinois has grown at a slightly lower rate than the population of the U.S. as a whole since 1990, the composition of the Illinois population in many respects mirrors the composition of the U.S. population overall. In 2000, Whites made up 79.5 percent of the population in Illinois, compared to 80.4 percent of the U.S. as a whole. African Americans constituted a slightly larger proportion of the Illinois population (15.1 percent compared to 12.8 for the U.S.). Hispanics comprised 14.0 percent of the Illinois population, compared to 14.1 percent for the U.S., and Asian Americans made up 4.0 percent of the population, compared to 4.2 overall. American Indians were a relatively small part of the population, at 0.3 percent, and Native Hawaiians and other Pacific Islanders were also small at 0.1 percent. The foreign born population was 12.3 percent, slightly higher than the U.S. overall (11.1 percent). The educational status of Illinois residents was slightly higher than the U.S. overall – 81.4 percent of Illinois residents 25 and older had graduated from high school (compared to 80.4 percent for the U.S.), and 26.1 percent had bachelors degrees or higher (compared to 24.4 percent for the U.S. overall).

3. The population of Chicago is more ethnically diverse than that of the State of Illinois overall. In 2000, for example, Chicago's population was 36.8 percent African American, 26.0 percent Hispanic, and 4.3 percent Asian.

4. As noted in the report, a number of human rights entities operate in Illinois. Under the Illinois Human Rights Law, the Illinois Department of Human Rights administers human rights programs for the state as a whole, working with the Illinois Human Rights

Commission, which is the adjudicatory body that hears complaints of aggrieved residents. In addition, Cook County (which includes the City of Chicago), other counties in the state, as well as some cities, such as the City of Chicago, also have human rights or civil rights entities. Thus, a resident of Chicago may have four possible venues in which to complain of discriminatory behavior – federal agencies such as the EEOC, HUD, the Department of Education, or the Department of Justice; the Illinois Department of Human Rights; the Cook County Human Rights Commission; and the Chicago Commission on Human Relations. The state, county and city bodies are described below.

### Illinois Department of Human Rights

5. The mission of the Illinois Department of Human Rights (IDHR) is “to secure for all individuals within the State of Illinois freedom from unlawful discrimination; and to establish and promote equal opportunity and affirmative action as the policy of this State for all its residents.” The Department is organized into five divisions: Administration (including fiscal, legislative affairs, management operations, and research, planning and development); Legal (including public contracts and liaison), Charge Processing (including mediation, intake, investigations, and operations); Fair Housing (including intake, investigations, and community relations); and the Governor’s Commission on Discrimination and Hate Crimes (which incorporates a training institute). The Department had a staff of 138 persons in fiscal year 2005, and a budget of \$9.7 million, including \$7.2 million in general revenue funds and approximately \$2.5 million in federal dollars from claims handled for the EEOC, HUD, and work on a housing study funded by HUD. Further information can be obtained at [www.state.il.us/dhr](http://www.state.il.us/dhr).

6. Illinois Human Rights Act. The Department implements the 1979 Illinois Human Rights Act. This act makes it illegal to engage in discrimination against a person because of his or her race, color, religion, national origin, ancestry, age, sex, marital status, handicap, military status, sexual orientation, or unfavorable discharge from military service. It covers employment, real estate transactions, financial credit, public accommodations, sexual harassment in higher education, and acts of retaliation. The act also requires public contractors to refrain from unlawful discrimination and discrimination based on citizenship status in employment, and to undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination. In 2005, the scope and enforcement of the Human Rights Act was expanded when the Illinois State Legislature passed legislation making it unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of any right granted or protected by the Illinois Human Rights Act, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of any such rights). This provision became effective on January 1, 2006. The protection for sexual orientation, which includes gender identity, also became effective on January 1, 2006.

7. Outreach. In 2005, the Research, Planning, and Development Unit of the IDHR completed a “New Immigrants Outreach” grant project under a contract with the U.S. Department of Justice Office of Special Counsel. As part of this outreach program, a

project team under the Institute of Training and Development reached 10,957 persons and distributed 22,390 brochures, leaflets, posters, and other information. During the same period, the Fair Housing Division administered a Housing Discrimination Testing Study Project. In addition, during fiscal year 2005, the Illinois Department of Human Rights also acted as, and completed, the role of surrogate webmaster for the International Association of Official Human Rights Agencies, which held its conference in Chicago in August of 2004.

8. The Liaison Unit of the Legal Division provides training programs for new Equal Employment and Affirmative Action officers and other relevant offices in state agencies. This unit also enforces the requirement that State agencies must submit timely quarterly reports on their EEO and affirmative action programs and progress. The Public Contracts Unit, in turn, enforces the Human Rights Act with regard to public contractors and eligible bidders. Specifically, that unit provides technical assistance to public contractors and eligible bidders, conducts audits to ensure that these entities refrain from unlawful discrimination and undertake required affirmative action in employment, and ensures that public contractors and eligible bidders have developed written sexual harassment policies. During fiscal year 2005, the Public Contracts Unit responded to 5,907 inquiries, processed more than 7,000 forms from current and prospective bidders, and maintained statewide eligibility status records for approximately 26,000 contract bidders. Staff members also conducted 47 desk audits of selected public contractors and eligible bidders, 27 of which were completed in 2005.

9. In fiscal year 2005, the Fair Housing Division conducted a special project, federally funded by HUD, to address discrimination against Hispanic homebuyers and renters in the Chicago area. The need for the project became evident from HUD's Housing Discrimination Study in 2000, in which testing revealed statistically significant instances of discrimination against Hispanics in both rental and sales in the Chicago area. The Fair Housing Division's project was divided into two parts. The first, testing, was subcontracted to a non-governmental entity – HOPE Fair Housing Center of Wheaton. The second part involved education and outreach. This included a campaign to inform Hispanic residents of their fair housing rights and what they could do if those rights were violated. In fiscal year 2005, a number of outreach events were held in Hispanic communities, and Fair Housing Division staff members worked with organizations serving Hispanic communities.

10. In April 2005, the Department of Human Rights also presented its Second Annual Fair Housing Month event. This seminar, in Elgin, Illinois, was underwritten by the League of United Latin American Citizens (LULAC). During 2005, Department of Human Rights staff also distributed information and gave presentations about fair housing in a number of venues across the state. The Department collaborates with numerous organizations, including the Illinois Migrant Council, the Fair Housing Center of Lake County, Latinos United, and others. It also networks with other state agencies and non-profit advocacy groups through meetings coordinated by the Office of Housing Coordination Services of the Illinois Housing Development Authority.

11. Charge Processing. The IDHR takes and investigates charges of discrimination with regard to employment, financial credit, public accommodations, and housing on the basis of race, color, religion, sex, sexual orientation, national origin, ancestry, military status, age (40 and over), marital status, unfavorable military discharge, and physical and mental handicap. Under the Human Rights Act, IDHR staff members also investigate cases involving discrimination because of citizenship status in employment, sexual harassment in employment and higher education, and discrimination based on arrest record in employment.

12. Complaints involving employment, financial credit, and public accommodations can be filed with the Intake Unit within 180 days of the discriminatory incident. By law, the Department has 365 days from the date a perfected charge of discrimination is filed to investigate and determine whether or not substantial evidence of discrimination exists. Parties may mutually agree to extend this time period for investigation. During this period, parties can voluntarily participate in mediation, conducted by DHR mediators. Mediation is free to the parties. In fiscal year 2005, the Mediation Unit held 184 mediation conferences, in which 150 cases were settled (82 percent). The total monetary recovery for complainants in these cases was \$333,643.

13. If the investigation reveals substantial evidence of discrimination, and the matter has not been resolved through mediation, attorneys from the Legal Division will conduct conciliation between the affected parties. If successful, the terms of a settlement agreement are drafted and signed. If not, a formal legal complaint is filed with the Illinois Human Rights Commission – a separate adjudicatory agency. On the other hand, if the investigator finds lack of substantial evidence, the charge is dismissed and the complainant has 30 days to file a Request for Review (appeal) of that dismissal with the Chief Legal Counsel. If the Chief Counsel denies the appeal, the complainant may appeal to the appropriate State Appellate Court. In fiscal year 2005, the Legal Division completed 565 Requests for Review. Thirty-seven of them were appealed to the Illinois Appellate Court, which sustained the IDHR decision in 95 percent of the cases.

14. The process for housing cases, which are handled by the Fair Housing Division, is different from the process for the other cases, and mirrors the process in the federal Fair Housing Act. Complainants may file charges within one year of the offending action, and the Human Rights Act requires that charges involving real estate transactions be completed within 100 days of filing unless it is impracticable to do so. The investigation process and the process concerning findings of substantial evidence, and appeal of those findings, are the same as for other claims. Where substantial evidence is found and conciliation is not successful, however, the complainant and respondent can elect to have the case heard administratively before the Illinois Human Rights Commission or in Circuit Court. In the latter case, the Illinois Attorney General's Office represents the Department.

15. In fiscal year 2005, charges filed with the IDHR fell into the following categories:

### Charges Docketed

| <u>Type</u>                    | <u>Number</u> | <u>Percentage</u> |
|--------------------------------|---------------|-------------------|
| Employment                     | 3,672         | 90                |
| Housing                        | 264           | 7                 |
| Public accommodations          | 112           | 3                 |
| Financial credit               | 1             | 0                 |
| Sexual harassment in higher ed | <u>6</u>      | <u>0</u>          |
| Total                          | 4,055         | 100               |

### Investigations Completed

| <u>Manner of resolution</u>  | <u>Number</u> | <u>Percentage</u> |
|------------------------------|---------------|-------------------|
| Settlement                   | 1,238         | 33                |
| Lack of substantial evidence | 1,201         | 31                |
| Withdrawn by complainant     | 503           | 13                |
| Failure to proceed           | 381           | 10                |
| Substantial evidence         | 270           | 7                 |
| Lack of jurisdiction         | 143           | 4                 |
| Administrative closure       | <u>86</u>     | <u>2</u>          |
| Total                        | 3,822         | 100               |

### Charges by Basis

| <u>Type of charge</u> | <u>% Race</u> | <u>% Nat'l Origin</u> | <u>% Color</u> |
|-----------------------|---------------|-----------------------|----------------|
| Employment            | 18            | 14                    |                |
| Public accommodations | 52            | 9                     | 1              |
| Housing               | 37            | 10                    | 1              |

### Employment Charges by Respondent Type

| <u>Type of employer</u>           | <u>Number</u> | <u>Percentage</u> |
|-----------------------------------|---------------|-------------------|
| Private employers                 | 2,918         | 79                |
| Local governments                 | 197           | 5                 |
| State government                  | 111           | 3                 |
| Individuals                       | 245           | 7                 |
| Elem & sec public schools         | 56            | 2                 |
| Colleges and universities-public  | 32            | 1                 |
| Elem & sec private schools        | 11            | 0                 |
| Colleges and universities-private | 31            | 1                 |
| Unions                            | 32            | 1                 |
| Private employment agencies       | 32            | 1                 |
| Jt. apprenticeship programs       | 1             | 0                 |

16. By far the largest number of the complaints filed in Illinois grew out of the Chicago metropolitan area – 2,805 of the 4,055 charges were filed in Cook, DuPage, and Lake Counties – the counties comprising the Chicago metropolitan area.

17. Governor's Commission on Discrimination and Hate Crimes. This Commission helps ensure that state and local governments respond to incidents of discrimination and hate crimes in a swift, appropriate, and effective manner. During fiscal year 2005, the Governor appointed 26 new members to the Commission, and the Commission focused a major part of its resources on training and outreach events. One hundred and ninety law enforcement personnel and prosecutors were trained, and more than 11,500 persons were affected by outreach activities. The Training Institute held 41 training sessions, training 1,120 Illinois workers in areas including diversity awareness, sexual harassment prevention, and hate crimes law enforcement. Entities trained were both public and private. Examples include the Aronson Furniture Company of Chicago, the Calumet City Police, the First Northern Credit Union, the Illinois State Toll Highway Authority, the Illinois Department of Transportation, the Lincoln National Home, and the National Black Police Association. Further information can be obtained at [www.state.il.us/cdhc](http://www.state.il.us/cdhc).

Cases Adjudicated – the Illinois Human Rights Commission.

18. As noted above, when the Illinois Department of Human Rights finds evidence of a violation, it files a complaint with the Human Rights Commission. This begins the Commission's official involvement in reviewing and hearing the complaint. The Commission consists of a staff and 13 Commissioners. The staff includes an Executive Director, a General Counsel and Assistant General Counsel, a Chief Administrative Law Judge, Administrative Law Judges, and administrative operations staff. In 2004, the Commission had 17 staff members including a Chief Administrative Law Judge and five other administrative law judges, and a budget of approximately \$1.5 million. Further information can be obtained at [www.state.il.us/ihrc](http://www.state.il.us/ihrc).

19. The Commission, through its appointed Administrative Law Judges, conducts administrative hearings. After both parties provide evidence, including witnesses' sworn testimony at a public hearing, the presiding Administrative Law Judge issues a recommended order and decision. If either party wishes, it may request a review of the hearing by the Commission. In that case, a panel of three Commissioners will hear arguments of law, based on the record of the sworn testimony and pleadings filed by the parties, and may accept the Judge's recommendation or issue its own Order and Decision in the case. The Commission considers exceptions in approximately 100 cases per year, leading to issuance of approximately 40 Orders and Decisions. After the three-Commissioner panel has issued an Order and Decision, the parties may also seek further review by the full Human Rights Commission, with all 13 Commissioners sitting *en banc*. This happens approximately three times per year. Finally, once a final order has been issued by either the three-Commissioner panel or the full Commission, a party may seek review of that final decision by the Illinois Appellate Court.

20. Settlements or Commission orders usually resolve cases. When they do not, however, the Commission does not hesitate to take further action. For example, in the case of Danika Crump v. Fedex, the respondent settled a race discrimination claim with a former employee and was ordered to pay damages. When the complainant alerted the Commission that the agreement had not been honored, the Commission filed a lawsuit through the Attorney General, and the respondent made good on the agreement.

21. Parties have a right to be represented by an attorney in bringing their claims, but are not required to obtain counsel. Although the Commission does not appoint attorneys to represent those appearing before it who cannot afford a lawyer, it does maintain a list of legal service organizations that provide free or low cost legal assistance to those who qualify.

22. Examples of a few cases brought before the Commission follow:

- In the Matter of Carmen Martinez and Botinquen Restaurant. In this case, the claimant charged that the respondent had discharged her due to her gender and her national origin (Mexican). After a hearing, the Commission's August 10, 2006 order awarded the complainant back pay in the amount of \$40,000, plus prejudgment interest on the back pay in accordance with the Illinois Human Rights Act and its implementing rules. Respondent was also ordered to pay claimant's attorney's fees of \$2,720, and respondent was ordered to cease and desist from any discrimination based on gender and national origin in the future.
- In the Matter of Johnny Littleton and Overnight Transportation Company. The complainant in this case argued that the respondent had discriminated against him on the basis of his race (Black) in the assignment of a desirable truck-driving route. On appeal, the Commission found that claimant was entitled to an award for the period of time when he was unlawfully denied a desirable truck route because of his race, and ordered the respondent to pay back pay of \$27,483.41, plus interest. The respondent was also ordered to cease and desist in discriminatory actions and to attend training to prevent future violations. The decision in this case was May 6, 2005.
- In the Matter of Leonard Trejo v. University of Illinois Board of Trustees. In this case, Leonard Trejo had been hired as a non-tenured assistant professor in the Department of Psychology. However, the University elected not to renew the contract, stating that the decision was based on his untrustworthy and unprofessional behavior. The complainant, Trejo, alleged that the University had discriminated against him on the basis of national origin and ancestry (Mexican). The Administrative Law Judge found that record did not contain any evidence linking his national origin and ancestry to the investigation of charges against him or the decision not to reappoint him. Trejo appealed the case to a three-Commissioner panel, and also to the Commission sitting *en banc*, which held another oral hearing in the case. Both of those bodies, however, sustained the

Law Judge's finding and dismissed the case. The final order was issued December 21, 2005.

23. Relationships with Federal Authorities. Illinois has work sharing agreements with both the EEOC and HUD under which Illinois authorities may process and hear cases that meet the standards of both state and federal law. A more detailed description of such work sharing arrangements is contained in the section on Oregon, below. Illinois also works closely with federal agencies, as is evidenced by its completion of the HUD Housing study in 2005.

24. Other Human Rights Bodies. As noted above, a number of other Human Rights Commissions and bodies also exist in Illinois. Two of them are described here.

25. The Cook County Commission on Human Rights enforces the Cook County Human Rights Ordinance, adopted in 1993. The ordinance is designed to protect all people who live and work in Cook County from discrimination and sexual harassment in employment, public accommodations, housing, credit transactions, county services, and county contracting. The ordinance prohibits these forms of discrimination when they are based on race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, source of income, housing status, or gender identity. The Cook County Commission enforces the Ordinance by investigating, conciliating, and conducting hearings on complaints of discrimination. In addition, the Commission develops and conducts educational programs designed to prevent discrimination before it occurs and to promote better relations among the county's diverse racial, ethnic, religious, cultural, and social groups.

26. The Cook County Commission hears the same types of cases as are heard by the Illinois Human Rights Commission. For example, in Rush v. Ford Motor Company, a 1996 case, the Commission found that the complainant presented a *prima facie* case of disparate treatment based on race by coming forward with evidence that he is African American, that he suffered the adverse action of a two-week disciplinary suspension, and that at least one Caucasian supervisor who had committed a similar act with respect to the authorization of overtime pay was not similarly disciplined. Rush v. Ford Motor Company, 1996EO13, 9-13-00, CDO.

27. The Chicago Commission on Human Relations (CCHR) enforces the Chicago Human Rights Ordinance and the Chicago Fair Housing Ordinance. The Commission investigates complaints to determine whether discrimination may have occurred, and uses its enforcement powers to punish acts of discrimination. Under the city's Hate Crimes Law, the agency also aids hate crime victims. The Chicago Human Rights Ordinance and the Chicago Fair Housing Ordinance prohibit discrimination within the City of Chicago in the following areas – housing, employment, credit, bonding, and public accommodations – and on the following bases – race, sex, color, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, source of income, and gender identity. It is noteworthy that the areas of coverage for the City of Chicago and for Cook County are different; charges based on

discrimination because of use of a housing choice voucher (Section 8) are specifically excluded from coverage by Cook County, but are included in the City of Chicago's jurisdiction. The city and county have a work sharing agreement, such that Cook County refers to the city any charges over which both agencies have jurisdiction that occur within the City of Chicago; Cook County's investigations therefore are focused on Cook County outside of the Chicago city limits.

28. The Chicago Commission on Human Rights also has an active outreach program. The Commission employs pro-active programs of education, intervention, and constituency-building to discourage bigotry and bring people from different groups together. With the support of a far-reaching network of community volunteer task forces across the city, Commission staff work actively to identify and resolve potential inter-group conflicts, in order to reduce tensions before trouble occurs. CCHR also takes its educational and youth programs to schools, providing standard or customized programs, forums, and cross-cultural activities in order to reach students, teachers, administrators, and parents, religious institutions, youth programs, agencies, and community groups.

29. The Commission has eight advisory councils which are representative of a wide array of constituency groups across the city. The eight councils include the following constituency groups of relevance to the CERD: African Affairs, Arab Affairs, Asian Affairs, Immigrant and Refugee Affairs, Latino Affairs, and Women. The Councils work with the CCHR to identify and address practices that have a discriminatory impact on their respective constituency groups. In addition, the councils serve as liaisons between the city government and the community to promote cooperation and enhance services. Councils also provide assistance in designing educational and enforcement programs for the CCHR.

30. Since 1945, the City of Chicago has recognized outstanding contributions to human relations through awards. In addition, it holds citywide events to bring human rights issues to the consciousness of the population. These include the Annual Citywide Seventh Grade Essay Contest, Unity Month (September), and Annual celebrations of African, Arab, Asian, and Latino heritage.

### **New Mexico**

31. New Mexico is located in the Southwestern United States, and although it is the least populated state surveyed in this appendix, it is one of the most diverse in terms of the proportions of Hispanic and American Indian population. The overall population of New Mexico in 2005 was 1,928,384, and the state has grown at a slightly higher rate than the population of the U.S. as a whole (20.1 percent compared to 13.1 percent from 1990 to 2000, and 6.0 percent compared to 5.3 percent from 2000 to 2005). New Mexico's population is markedly more heavily Hispanic and American Indian than the population of the U.S. as a whole. For example, in 2000, although White persons constituted 84.7 percent of New Mexico's population (compared to 80.4 for the U.S. as a whole), only 43.5 of those were non-Hispanic; by comparison, for the U.S. as a whole, 67.4 of Whites

were not Hispanic. In New Mexico, 43.3 percent of the population (of any race) was Hispanic in 2000, compared to only 14.1 percent for the U.S. as a whole. Likewise, the New Mexico population was 10.1 percent American Indian and Alaska Native, compared to only 1.0 percent for the U.S. as a whole. Concomitantly, the African American population in New Mexico was smaller than that for the U.S. as a whole – 2.4 percent in New Mexico, compared to 12.8 percent overall. In 2000, females resided in New Mexico in the same proportion as in the U.S. overall (50.8 percent).

32. In 2000, New Mexico residents fell just slightly short of the national average in terms of education. Of residents 25 and over, 78.9 percent of New Mexicans had high school degrees or higher (compared to 80.4 for the U.S.), and 23.5 percent had bachelors degrees or higher (compared to 24.4 percent for the U.S. overall). The proportion of people who spoke a language other than English at home was much larger in New Mexico than in the U.S. as a whole – 36.5 percent, compared to 17.9 percent.

33. Like Illinois, New Mexico at the state level has two human rights bodies – the New Mexico Human Rights Division, which investigates complaints and provides education and training, and the New Mexico Human Rights Commission, which hears and adjudicates cases.

#### New Mexico Human Rights Division

34. Human rights issues in New Mexico are handled by the Human Rights Division of the New Mexico Department of Labor (NMHRD). This Division enforces the New Mexico Human Rights Act, a comprehensive anti-discrimination statute, as well as state executive orders affecting civil rights issues in the state. Pursuant to the Human Rights Act, the Division investigates complaints of discrimination in the areas of employment, housing, public accommodation (e.g., hotels, restaurants, and stores), and credit. The Division accepts complaints of discrimination based on national origin, race, religion, age, ancestry, sex, serious medical condition, sexual orientation, gender identity, and retaliation. In addition, the Division has a work sharing agreement with the EEOC to investigate complaints under Title VII of the Civil Rights Act, the Age Discrimination in Employment Act (ADEA), and the Americans with Disabilities Act (ADA).

35. The Division has an Alternative Dispute Resolution (ADR) section, which mediates and conciliates claims of discrimination statewide in order to resolve cases. The program is successful and can save the parties and the state the time and expense of an investigation and a full-blown hearing in the event probable cause is found.

36. The Division also has a full time trainer/educator who provides free training on issues involving the Human Rights Act, the Civil Rights Act, and best practices in the workplace. Further information can be obtained at [www.dol.state.nm.us/dol\\_hrd.html](http://www.dol.state.nm.us/dol_hrd.html).

37. New Mexico Human Rights Act. The New Mexico Human Rights Act, NMSA, 28-1-1 to 28-1-15, was enacted in 1969 to ensure that all New Mexicans are protected from discrimination in employment, housing, credit, and public accommodation. Among

other things, the act created the Human Rights Division in the New Mexico Department of Labor and the Human Rights Commission. The act covers employment, housing, credit, and public accommodations. The bases of discrimination covered under the act are race, color, national origin, ancestry, religion, sex, age, physical or mental handicap, serious medical condition or, if an employer has fifteen or more employees, sexual orientation or gender identity. Awards authorized include actual damages, e.g., back pay, front pay, compensatory damages, and attorney's fees. The act also requires that state agencies, departments, and institutions of higher learning prepare affirmative action plans.

38. Training and Outreach. The Division has provided training and outreach to numerous private and public employers as well as the State Bar of New Mexico, the Human Resource Professional Organization, high schools, and advocacy groups. On November 18, 2006, for example, the Human Rights Division partnered with the League of United Latin American Citizens (LULAC), the NAACP and several other organizations to provide a large training on "workplace issues" that focused on civil rights, wages, union issues, and other topics.

39. The NMHRD also invites sister organizations to provide training to its staff. Such trainings in 2006 have been provided by Equality New Mexico (a gay/lesbian/transgender organization), Somos Un Pueblo (an immigrant organization), Albuquerque Human Rights Office (which focuses on housing), EEOC, and Disability Connection.

#### Complaint Processing.

40. Complaints can be filed with the NMHRD by phone, fax, mail, or walk-in. An intake investigator is assigned daily to speak to anyone wishing to file a complaint or discuss an issue that may amount to discrimination. On average, the Division receives 100-200 intake calls/walk-ins/mailed complaints per week. Approximately 30-45 of these complaints result in the filing of formal charges each week. The vast majority of the complaints received (90 percent) are complaints of discrimination based on employment. Public accommodation and housing constitute the remaining proportion of cases.

41. During the intake process, the investigator discusses whether a claim falls within the Division's jurisdiction. In order for the Division to have jurisdiction, a complaint must be filed within 300 days of the last harm (consistent with EEOC rules). If the complaint involves employment discrimination, the employer must have four or more employees (in contrast to the EEOC, which requires 15 or more employees). Once a complaint is determined to meet the jurisdictional standards, the investigator drafts a formal charge and affidavit for the complainant's signature. When the formal charge is returned to the Division, the Division notifies the respondent and offers mediation to the parties.

42. If mediation is not accepted, or if it is unsuccessful, the case is assigned to an investigator who asks the Respondent to provide a written response and various

documents and data. The investigator also interviews witnesses and allows the complainant to provide a rebuttal to the response. Finally, the investigator writes a summary of evidence and recommendation to the Director. The Director reads the file and reviews the evidence, and issues a determination of probable cause or no probable cause. If no probable cause is found, the case is dismissed with appeal rights to the New Mexico District Court. If probable cause is found, the case is sent to the Human Rights Commission for hearing.

43. The Division has seven investigators and investigates an average of 600-800 cases per year. In fiscal year 2006, the Division investigated 635 complaints of discrimination.

44. The Division has one mediator and mediates an average of 190-250 cases per year. In FY 06, the division mediated 194 cases, 149 of which were successful (a 77 percent success rate). The Division is hoping to increase the number of mediators when funding becomes available.

45. The Division has one trainer/educator, and has averaged 150 trainings per year. These trainings are provided to employers, employees, advocacy groups, and students. In fiscal year 2006, the Division provided 92 trainings.

46. Complaints by Basis and Resolution. Of the 1,304 complaints filed in fiscal year 2006, 170 (13 percent) were based on national origin, 109 (8 percent) on race, and 283 (22 percent) on retaliation. The other two largest groups were sex (29 percent) and disability (14 percent).

47. Of the 635 cases resolved during fiscal year 2006, 135 (21 percent) were resolved through settlement, 404 (63.6 percent) involved no probable cause findings, and 82 (13 percent) were resolved through the administrative hearing process. For the cases resolved in favor of claimants, monetary awards varied from a few hundred dollars to over \$40,000 per case. Overall, the monetary awards for fiscal year 2006 totaled \$1,051,237.

#### New Mexico Human Rights Commission.

48. The New Mexico Human Rights Commission consists of 11 members appointed by the Governor. The Commission hears cases in panels of three Commissioners. Full evidentiary hearings are conducted with the assistance of the New Mexico Attorney General's Office. The Commission has the same authority as a court in that it may issue Temporary Restraining Orders (TROs), and award relief including damages and attorneys fees. A decision by the Human Rights Commission can be appealed to the District Court. The NMHRD administratively supports the Commission by issuing subpoenas in its name, and by maintaining the hearing docket and the official hearing record.

49. The Human Rights Commission averages 50-75 hearings annually. In fiscal year 2006, the Commission conducted 62 formal hearings statewide. As noted above, over \$1

million dollars were awarded to aggrieved parties through the Commission and the mediation process.

50. Case Examples. The following are examples of some recent cases heard and decided by the New Mexico Human Rights Commission.

- Dolly Begay v. Gallup Schools. Ms. Begay, a Native American, was the Programs Coordinator for a school in Gallup and had 23 years experience in education, with a focus on Native Americans. Her position was eliminated and, when it was reinstated, the position was given to a White female with significantly less experience who had actually been trained by Ms. Begay. The Commission awarded Ms. Begay \$32,478.29. The school district has appealed the case to the District Court.
- Marcos Escobedo v. City of Albuquerque. Mr. Escobedo, who was born in Mexico, alleged that his co-workers called him derogatory names for Mexicans (“mojado” and “wetty”). He also indicated that he was disciplined for minor infractions, while native born Hispanics and Anglo employees were not disciplined for more serious infractions. The Commission awarded Mr. Escobedo \$10,000 for national origin discrimination. The city has appealed the case to District Court.
- Elizabeth Jasson v. 1<sup>st</sup> State Bank. Ms. Jasson was the only Hispanic underwriter at the bank, and was paid less than her similarly situated Anglo counterparts. When she complained, the employer began to harass her. The Commission awarded her \$13,604.13 for national origin discrimination and retaliation. The bank did not appeal the decision.
- Jorge Serrano v. Starbucks and Daniel Mattos v. Starbucks. Jorge Serrano, who is Mexican, and Daniel Mattos, from Uruguay, both applied for management positions with Starbucks. Despite the fact that both of these applicants had advanced degrees and experience in the company, others without degrees and with less time in the company were promoted. Additionally, both complainants stated that they had been instructed by management to speak only English. The manager said, “This is America and you speak English.” The Division found probable cause, at which point the complainants asked for a hearing waiver to go straight to District Court. Thus, these cases were removed to District Court.
- Angelit Gonzales v. Monarch Properties, the complainant alleged discrimination based on national-origin (Hispanic). That case found for the complainant, with an award of \$25,000.

#### Relationships with Federal Authorities.

51. The NMHRD has a work sharing agreement with the EEOC, which allows the Division to have jurisdiction over complaints that meet federal as well as state standards.

The work sharing agreement provides that cases filed with either agency are considered to be “dual filed.” This means that complaining parties ultimately have the right to pursue their cases in either state or federal court. It also allows the NMHRD, on a contract basis with the EEOC, to investigate complaints that fall under the jurisdiction of both the NMHRD and the EEOC. Because the NMHRD–EEOC relationship is an active and productive one, the NMHRD and the EEOC also often undertake joint investigations of complaints in the state and provide joint trainings to interested parties.

52. In order to negotiate a work sharing agreement with HUD, New Mexico will need a statutory amendment to revise its penalty structure in order for its law to be considered “substantially equivalent” to applicable federal law. Work is in progress toward that goal.

53. The NMHRD also works closely with HUD, the Mexican Consulate, the NAACP, LULAC, and several other Civil Rights agencies and organizations. The Division is part of the Human Rights Coalition, which consists of numerous statewide organizations.

### **Oregon**

54. Oregon is in the Northwest corner of the United States, and borders the Pacific Ocean. In 2005, its population was 3,641,056. The population had grown at a slightly higher rate than the U.S. population overall (6.4 percent since 2000, compared to 5.3 percent for the U.S., and 20.4 percent from 1990 to 2000, compared to 13.1 percent for the U.S.). In 2000, Oregon’s population was predominately White non-Hispanic (82 percent). However, the state had an increasingly large Hispanic population (9.5 percent), as well as an Asian population of 3.4 percent. African Americans represented only 1.8 percent of the population, and Native Americans and Alaska Natives only 1.4 percent.

55. In 2000, 8.5 percent of Oregonians were foreign born, and 12.1 percent of Oregonians over the age of 5 said that they spoke a language other than English at home. The educational achievement of Oregonians tended to be slightly above the national average; in 2000, 85.1 percent of Oregonians age 25 and above were high school graduates or higher (compared to 80.4 percent for the US as a whole), and 25.1 percent had Bachelors Degrees or higher (compared to 24.4 percent for the US as a whole).

### **Bureau of Labor and Industry Civil Rights Division.**

56. Civil rights laws in Oregon are administered by the Civil Rights Division of the Bureau of Labor and Industries (BOLI). The mission of the Civil Rights Office is to protect the rights of workers and citizens to equal, non-discriminatory treatment; to encourage and enforce compliance with state laws relating to wages, hours, terms, and conditions of employment; and to advocate policies that balance the demands of the workplace and employers with the protections of workers and their families. The Civil Rights Division handles investigations as well as adjudication of claims (in differing units) and has three main functions:

- Enforcing civil rights laws
- Investigating civil rights complaints
- Advising and educating workers about their civil rights

57. Oregon civil rights laws include Oregon Statute Ch. 659, which covers discrimination in education; and Oregon Statute Ch. 659 (a), which covers discrimination in employment, and discrimination with regard to housing, access to public accommodations, and real property transactions. BOLI handles cases under the latter section, but does not handle education cases, which are dealt with directly through the court system. Further information can be obtained at [www.oregon.gov/BOLI/CRD/index.shtml](http://www.oregon.gov/BOLI/CRD/index.shtml).

58. Education and Outreach. The Bureau of Labor and Industries has a Technical Assistance staff, whose function is to provide information on civil rights to employers and the public. Employers may contact Technical Assistance staff for assistance in ensuring that their actions are in accordance with civil rights laws and policies. In addition, trainers on the staff conduct more than 120 seminars a year, open to employers throughout the state, and provide customized seminars upon request. The Technical Assistance staff trains on average 5,000 to 6,000 managers, supervisors, and employers each year. It has also published seven employer handbooks, including handbooks on Civil Rights laws, Family Leave Laws, Legal Hiring Practices, Policy Writing Guidelines and Documentation, and Discipline and Discharge.

59. Complaint Process. The Civil Rights Division receives approximately 30,000 inquiries per year, and of those, approximately 2,000 to 2,500 lead to filing of formal discrimination complaints. Approximately 98 percent of the complaints relate to employment, one percent to housing, and one percent to discrimination with regard to public accommodations. The largest proportion of these complaints (approximately 22 percent) is based on race, color, and national origin discrimination. The remaining complaints are based on sex discrimination (18-20 percent), disability (20 percent), and work injury (15 percent).

60. The complaint process works as follows. A prospective complainant's contact with the Civil Rights Division usually begins with a phone call. An Intake Officer returns the call, discusses the issue with the potential claimant and lets the complainant know whether a basis for a complaint appears to exist or not. If a basis appears to exist, a questionnaire is sent to the prospective claimant. Once the prospective claimant has filled out and returned the questionnaire, the Intake Officer to whom the case is assigned drafts a discrimination complaint. In that process the Officer may speak further with the complainant to get additional information. Once the complainant signs the complaint, a case is opened, assigned a number, and assigned to a Civil Rights Senior Investigator.

61. If the basis for filing is covered by both state and federal law, and if the complaint meets federal EEOC guidelines, the complaint is automatically "dual filed" with the EEOC. Under state law, complaints must be filed within one year of discrimination,

while under federal law, the filing must be within 300 days. Likewise, while state law covers employers with one employee or more, federal law covers only employers with 15 or more employees.

62. The Civil Rights Senior Investigator sends a notice to the respondent and complainant, and also interviews both parties. During this process, the complainant must provide substantial evidence to substantiate the claim. If necessary, the Investigator can also use interrogatories, as the Civil Rights Division has subpoena power. If substantial evidence is not found, the Division dismisses the case and notifies both the complainant and the respondent. On the other hand, if substantial evidence of a violation is found, a Substantial Evidence Determination is issued

63. At this point, the Civil Rights Division becomes an advocate for the complainant. The Division normally suggests at this point that the complainant and respondent attempt to reach agreement a voluntary, no-fault settlement through conciliation. If agreement is reached in this manner, a Conciliation Agreement is drafted and signed and the case is closed. If conciliation fails, on the other hand, the Civil Rights Division management reviews the case to decide if it will be forwarded to a case presenter in the Hearing Unit for further action. The file is reviewed, in particular, to see if the evidence meets the higher standard (preponderance of the evidence) required for hearing. If the evidence does meet this standard, then the Civil Rights Division will represent the complainant at an Administrative Hearing. If not, the case is closed and the complainant is issued a Notice of Right to File a Civil Suit, if such a notice has not previously been issued. Thus, if the complaint wishes to do so, he or she may proceed with the case in court.

64. In addition to the offer of conciliation, the Civil Rights Division is in the process of developing a formal mediation program. For this purpose, the Division is training the Senior Civil Rights Investigators through the Department of Justice's 40-hour Mediation Training and Certification Program.

65. Hearings. The Administrative Hearing is conducted by an Administrative Law Judge. Based on the hearing record and recommendation of the Judge, the Commissioner of BOLI issues a final order. If the Commissioner finds for the complainant, the final order will specify a remedy. Remedies in employment cases may include employment, reemployment, back pay or other benefits lost due to the discriminatory practice, out-of-pocket expenses having to do with the practice, or compensation for emotional distress. With regard to housing, remedies may include rental, lease or sale of a property, provision of services, out-of-pocket expenses or benefits lost, and compensation for emotional distress. Once a decision is issued, either party may appeal it to the Oregon Court of Appeals, with possible further appeal to the Oregon Supreme Court.

66. The complainant has the right to withdraw the claim at any point during the process. In that case, the Civil Rights Division will issue a Notice of the Complainant's Right to File a Civil Suit, allowing the complainant to proceed with the case in court if he or she so wishes. In addition, if, at any time during the process, a settlement offer is made by the respondent, the Civil Rights Division discusses the offer with the

complainant. If the offer is deemed to provide an effective remedy, and the complainant nonetheless refuses to accept it, the Division will close the complaint and issue a Notice of Right to File a Civil Suit. In dual filed cases, the EEOC also determines whether the offer constitutes a full settlement of the federal charges. During the claims process, the complainant also has an obligation to mitigate damages.

#### Relationship to Federal Law and Authorities.

67. EEOC. As noted above, Oregon handles cases that are dual filed with the EEOC. This is as a result of a work sharing Agreement between BOLI and the EEOC. In recognition of the common jurisdiction and goals of the two agencies, and to the extent of their common jurisdiction, work sharing agreements are designed to provide individuals with an efficient procedure for obtaining redress for grievances under appropriate state and federal laws. In order to have such an agreement, a state must meet standards set by the EEOC, allowing it to be classified as a Fair Employment Practices Agency (FEPA). The agreement establishes which agencies will process which charges, and when charges will be considered “dual filed.” Under the agreement, both agencies adhere to procedures set out in the EEOC State and Local Handbook, and the EEOC reimburses states for handling dual-filed cases. Each agency informs individuals of their rights to file charges directly with the other and/or to assist complainants to draft charges in a manner that will satisfy the requirements of both agencies. EEOC–state work sharing agreements are entered into each year on a fiscal year basis.

68. HUD. The federal Department of Housing and Urban Development (HUD) also has agreements with a number of states to enforce federal housing laws on HUD’s behalf if the substantive and procedural laws being enforced under local law are “substantially equivalent” to those in federal law, and if the state demonstrates that in practice its laws are applied in a manner that is substantially equivalent to HUD enforcement. This program is called the Fair Housing Assistance Program (FHAP). Originally, the State of Oregon had such a contract with HUD. In 1989, however, changes were made to federal housing laws with regard to penalties and other provisions. For example, penalties were raised. Because Oregon law did not follow suit, it no longer met the criterion of “substantial equivalency;” thus, during the 1990s Oregon lost its FHAP relationship with HUD. This, in part, explains why housing cases are such a small component of the Civil Rights Division’s caseload at the present time. The Civil Rights Division is interested in working with the Oregon Legislature to make the changes necessary to re-join the FHAP program, and, with HUD support, is assessing the needed changes to state law and regulations, and the most effective manner of making them.

#### Relationship to Cities.

69. The Civil Rights Division also has contracts with cities and counties in Oregon to enforce ordinances that specifically cover sexual orientation and gender identity discrimination claims not yet covered under state law. These include the counties of Multnomah and Benton, and the cities of Bend, Corvallis, Eugene, Hillsboro, Lake Oswego, Lincoln City, Portland, and Salem.

## Cases

70. The Civil Rights Division of BOLI settled claims for nearly \$1 million in fiscal year 2005, and \$750,000 in fiscal year 2006. Recent cases being handled by the Division include the following:

- McFarland v. Walsh Construction Company. Complainant, an African American man, alleged that his employer discriminated against him on the basis of disability, race, and retaliation in that he was treated differently from White employees and terminated. According to the Notice of Substantial Evidence Determination, documentation and witness statements established that the respondent tended to treat Black employees differently regarding the terms and conditions of employment, discipline, and termination. Documents produced by the respondent indicated that at least three White employees had been treated more positively under similar circumstances. In addition, the Notice stated that once respondent discovered that complainant suffered from a mental health condition, the company did not engage in the interactive process or wait until complainant's medication could be adjusted as suggested by his doctor. Finally, the Notice noted that if respondent felt complainant was a direct threat, the respondent was responsible under the law to determine whether a reasonable accommodation would either eliminate the risk or reduce it to an acceptable level. During the complaint process, this case was settled for \$20,000.
- Ortiz v. Supreme Northwest, LLC. Complainant, a Hispanic American, alleged that based on her race and national origin, respondent subjected her to different terms and conditions of employment, demoted her, and forced her to resign because of intolerable working conditions. She alleged constructive discharge. The Notice of Substantial Evidence Determination noted that, in addition to the complainant, many other employees were also subjected to different terms and conditions of employment because of their race. Among other things, complainant was demoted to an entry level position, after rising through the ranks to a higher rank. The Notice found that the elements of constructive discharge were present in this case: (1) the respondent intentionally created or intentionally maintained discriminatory working conditions related to complainant's race/national origin; (2) the working conditions were so intolerable that a reasonable person in complainant's circumstances would have resigned because of them; (3) that the respondent desired claimant to leave the employment as a result of those working conditions, or knew or should have known that the complainant was certain, or substantially certain, to leave employment as a result of them; and (4) that the complainant did leave her employment as a result of those working conditions. This case, which fell under both state and federal jurisdiction, was dual filed, and is now in the litigation department of the EEOC.
- SKM v. Large Portland Auto Dealer. The complainant, an African American employee, alleged that racial epithets were flying in the workplace and that the

complainant had been subject to racially-offensive comments by his supervisor and co-workers. The complainant was able to establish substantial evidence that severe and pervasive racial comments were made to and around him, such that it created a hostile work environment. Complainant further established that the harassment continued after management knew of the conduct and had been prevailed upon to stop it. The case is in the conciliation phase of the process.

- AL v. XXX Bar and Grill, Inc. The complainant, an African American, alleged that he was terminated due to his race and/or national origin. Respondent's owners and two former management employees denied any discriminatory motives in complainant's termination. However, another former high-level employee provided a sworn statement indicating he had heard specific intent comments about not hiring African Americans, along with stereotypes about Black men. He also discredited Respondent's reason for terminating complainant. The case is in the conciliation phase of the process.

#### Other Civil Rights Organizations.

71. A number of other civil rights organizations also exist in Oregon. Some are government-funded; others are non-governmental. These include:

- The Coalition against Hate Crimes. The mission of this organization is to give expression to the community conscience as spelled out in the Universal Declaration of Human Rights and its covenants.
- The Oregon Commission on Asian Affairs. Established in 1995, the focus of this organization was expanded in 1999 from trade and economic development to greater emphasis on advocacy. Its function is to facilitate communication and dissemination of information between the state government and a particular segment of Oregon's minority community.
- The Oregon Commission on Hispanic Affairs. This organization works toward economic, social, political, and legal equality for Oregon's Hispanic and Latino population. It monitors programs that affect the Hispanic Community in state government and the private sector, develops and monitors legislation that affects the Hispanic community, advocates Hispanic representation in the state government and promotes the positive aspects of the Hispanic community.
- The Oregon Commission on Black Affairs. This Commission works for implementation and establishment of economic, social, legal, and political equality for African Americans and Blacks in Oregon. Its responsibilities include monitoring existing programs and legislation, identifying research concerns, acting as liaison to the Black and African American communities, and encouraging African American and Black representatives on state boards and commissions.

## South Carolina

72. South Carolina is located in the Southeastern United States, bordering on the Atlantic Ocean. Its population in 2005 was 4,255,083. Since 1990, South Carolina's population has grown at a slightly higher rate than the U.S. as a whole; from 2000 to 2005, it grew by 6.1 percent (compared to 5.3 percent for the U.S.), while from 1990 to 2000 it grew by 15.1 percent (compared to 13.1 percent for the U.S. overall). In 2000, the population was slightly more female (51.3 percent) than the national average (50.8 percent). In addition, the population was significantly more heavily African American than the U.S. as a whole: Whites constituted only 68.3 percent of the South Carolina population compared to 80.4 percent for the U.S. as a whole, while by contrast, African Americans constituted 29.4 percent of South Carolina's population, compared to 12.8 for the U.S. overall. Hispanics accounted for 3.1 percent of the population, and American Indians and Alaska Natives only 0.4 percent. South Carolina had fewer foreign born residents (2.9 percent) than the U.S. as a whole (11.1 percent), and only 5.2 percent of South Carolina residents said that they spoke a language other than English at home. In 2000, 76.3 percent of South Carolina residents 25 and older were high school graduates (compared to 80.4 for the U.S. overall), and 20.4 had bachelors degrees or higher (compared to 24.4 percent for the U.S. overall).

### Governmental Structure and Laws Enforced.

73. Civil rights issues in South Carolina are handled by the South Carolina Human Affairs Commission (SCHAC), in the Executive Branch of the state government. SCHAC was established in 1972 pursuant to the 1972 South Carolina Human Affairs Law. Its mission is "to prevent and eliminate discrimination because of race, religion, color, national origin, age, sex, disability, and (in housing) familial status, and to foster mutual understanding and respect among all people of the state."

74. SCHAC, which is governed by a 15 member Board of Commissioners, currently maintains a staff of 43 full time persons and administers three laws:

- The 1972 South Carolina Human Affairs Law. In addition to establishing the SCHAC, the South Carolina Human Affairs law makes it unlawful for employers, employment agencies, and labor organizations to discriminate based on race, religion, color, sex, age, national origin or disability in various employment actions, including hiring, discharge, and classification of employees. The law excepts businesses or enterprises on or near an Indian reservation with regard to publicly announced employment practices under which preferential treatment is given to an individual because the individual is living on or near the reservation. It also requires state agencies to develop Affirmative Action Plans to assure equitable employment for members of minorities, and requires the agencies to present these plans to the Human Affairs Commission, which approves or disapproves the plans and submits a report each year to the General Assembly.

The primary activities of SCHAC in administering this law include: investigating and attempting to resolve formal and informal charges of discrimination arising in all sectors of the state where unlawful discrimination is alleged; monitoring the employment practices and affirmative action efforts of state government agencies; providing training and technical assistance to employers and others who seek to comply with the law; and studying the problems that threaten the objectives of the law, which are to foster intrastate community relations and racial harmony.

- The 1989 South Carolina Fair Housing Law. This law makes it unlawful to discriminate because of race, color, religion, sex, familial status, national origin, or handicap in the sale or rental of dwellings, the provision or denial of real estate services, and in the terms and conditions of such transactions. It also makes unlawful coercion, intimidation, threats, or interference with any persons for exercising rights under the law. The act gives the Commission jurisdiction, *inter alia*, to investigate all fair housing complaints in the state; to compel compliance with the law; to study housing practices and publish reports of such studies; to cooperate with and give technical assistance to agencies, organizations and institutions within the state; to cooperate with and contract with HUD and other governmental agencies; and to administer programs and activities relating to housing in a manner affirmatively to further the policies of the law.
- The 1990 Equal Enjoyment and Privileges to Public Accommodations Act. This act provides that all persons are entitled to full and equal enjoyment of the goods, services, facilities privileges, advantages, and accommodations of any place of public accommodation without discrimination or segregation on the basis of race, color, religion, or national origin. Examples of the types of public establishments covered by the law include any inn, motel, hotel or other lodging business; any restaurant, cafeteria, lunchroom, lunch counter or soda fountain; any hospital or clinic; any retail or wholesale establishment; and any motion picture house, theater, concert hall, billiard parlor, saloon, bar room, golf course, sports arena, stadium, or any other recreational area. The act exempts private clubs and other establishments not open to the general public. It also protects persons from intimidation, threats, coercion, or punishment for exercising the rights and privileges granted by the law. It further grants authority to the Attorney General to prosecute pattern and practice complaints before a panel of the South Carolina Human Affairs Commission Board members, following investigation by the State Law Enforcement Division.

75. In enforcing these laws, SCHAC has the authority to subpoena witnesses, issue orders, hold hearings and enforce findings. Its jurisdiction covers both the public and private sectors. Further information can be obtained at [www.state.sc.us/schac](http://www.state.sc.us/schac).

#### Commission Structure and Functions.

76. The Commission has three divisions: Compliance Programs (which covers processing of claims and dispute resolution); Administrative Services (which includes

legal services); and Consultive Services (which includes training and community relations). Its basic areas of emphasis are as follows:

77. Outreach. SCHAC has active outreach programs designed to touch all areas of need and provide resources for improving relationships between individuals and communities. The Training and Technical Services Unit of the Division of Staff Development runs training seminars state-wide on equal employment, affirmative action, and communications (how to be ready to deal with diversity). During fiscal year 2005-06, its staff conducted 36 workshops, seminars, and forums during which training was provided to a total of 2,125 participants, representing state government, local government and the private sector. Workshops covered topics ranging from managing affirmative action programs to diversity training. The Technical Services Unit also assists employers throughout the state in developing affirmative action plans and programs and establishing good personnel policies and procedures.

78. In 2003, the agency applied to and was awarded a contract with the federal Department of Housing and Urban Development (HUD) to reach the Hispanic population of the state and address obstacles to fair housing this group might be experiencing. As the project matured, the agency discovered that there were pockets of Hispanic communities that were not identified through the initial census. It was also discovered that many of the Hispanics had experienced housing discrimination, but were reluctant to come forward for fear of deportation or other retaliatory measures. As a result of this outreach effort, complaints initiated by Hispanics based on national origin discrimination dramatically increased.

79. In order to be most responsive to all populations within the state, the Commission is attempting to expand the Spanish language capability of its staff, as well as developing abilities in American Sign Language for deaf constituents.

80. Community Relations. The Community Relations Program is designed to encourage local ownership of the resolution of problems, rather than imposing enforcement on local areas. It is intended to prevent racial conflict and tension by fostering better community relations throughout the state. In this regard, the Community Relations staff has assisted in the establishment and continued operation of Community Relations Councils throughout the state. As of the end of 2006, there were 22 operating councils, with 14 planned in the counties that did not yet have Councils.

81. The Community Relations staff enforces the public accommodations law. In recent years, such enforcement tended to involve food service establishments, health care facilities, and the hotel accommodations industry. Race has been the primary basis for discrimination complaints in these areas.

82. The Community Relations staff also responds to individual and group allegations of race or ethnic disputes that are not unlawful, but that must be addressed in an organized and constructive manner to maintain harmony among citizens. This is a

mission charged to SCHAC by state law, but outcomes are achieved only through successful party conciliation rather than force of law.

83. Compliant Process. South Carolina residents who believe they have been subject to employment discrimination file complaints with the Intake and Referral Division. That division reviews the complaints to determine whether a basis exists to file a charge under the South Carolina Human Affairs Law, Title VII of the Civil Rights Act of 1964, the South Carolina Equal Enjoyment and Privileges to Public Accommodations Law, or the Fair Housing Law. If a basis exists, a formal charge of discrimination is prepared, assigned a charge number, and served. The complaint then may be assigned for mediation or investigation, or (in the case of employment discrimination) transferred to the EEOC if appropriate under the work sharing agreement between South Carolina and the EEOC. Employment complaints must be filed within 180 days from the date of the discriminatory act.

84. Housing complaints are filed similarly. In many cases, the Commission is able to settle such complaints quickly and easily. If necessary, however, the Commission will take the complaint to hearing or to court.

85. Public accommodations cases and cases alleging acts of discrimination not covered by existing laws are received by Intake staff. Such complaints are directed to the Community Relations staff for investigations and resolution. The statute of limitations for filing complaints in this area is three years after the discriminatory act occurred.

86. Under the South Carolina Human Affairs law, South Carolina state agencies have certain specific reporting requirements. South Carolina state agencies must comply by reporting to SCHAC their efforts to achieve a diverse workforce via affirmative action plans that are annually reviewed and approved by SCHAC. Progress reports are then submitted to the Governor and the South Carolina legislative general assembly. Failure by state agencies to comply with affirmative action mandates could result in funding sanctions.

87. In addition, when employment complaints originating from a state agency are received and investigated, the investigator submits to one of the supervisory Commission members a statement of findings and a recommendation for a determination. The agency is authorized to empanel three Commission members to hear the complaint if reasonable cause is found that discrimination was evident and the state agency disagrees with the finding. If a hearing before a three-member panel is held and the panel finds that a discriminatory practice has occurred, it is to issue an order requiring that such practice be discontinued, and requiring such other action as will effectuate the purposes of the act (for instance, in the employment area, actions such as hiring, reinstatement, upgrading or provision of back pay). The Commission may retain jurisdiction of any such case until it is satisfied of compliance, and may also institute a court proceeding for enforcement of an order. If one of the parties files an application for review of the Commission's order, the Commission will review and rehear the case. Parties may appeal from a final order within 30 days to the court of common pleas of the county in which the hearing occurred.

88. Complainants may also decide to file their claims in, or to remove their claims to, state or federal court, depending on the remedies available and other factors. For example, available relief may be greater in federal court than in the state process in some circumstances.

89. Complaint Activity. Since 2000, activity with regard to employment discrimination complaints has been as follows:

| <u>Fiscal Year</u> | <u>Complaints Filed</u> | <u>Final</u> |
|--------------------|-------------------------|--------------|
| 00-01              | 1365                    | 1218         |
| 01-02              | 1718                    | 1209         |
| 02-03              | 1463                    | 1486         |
| 03-04              | 1634                    | 1250         |
| 04-05              | 1647                    | 1453         |
| 05-06              | 1238                    | 1198         |

In 2005-06, 162 of the employment cases went to mediation. Seventy percent (112) of these cases were resolved in mediation, and 30 percent (50) of the cases reached an impasse and continued on to hearing.

Fair housing complaint activity since 2000 has been as follows:

| <u>Fiscal Year</u> | <u>Complaints Filed</u> | <u>Final</u> |
|--------------------|-------------------------|--------------|
| 00-01              | 47                      | 45           |
| 01-02              | 56                      | 46           |
| 02-03              | 70                      | 58           |
| 03-04              | 86                      | 92           |
| 04-05              | 88                      | 89           |
| 05-06              | 88                      | 86           |

Public accommodations complaint activity has been as follows:

| <u>Fiscal Year</u> | <u>Complaints Filed</u> | <u>Final</u> |
|--------------------|-------------------------|--------------|
| 00-01              | 94                      | 92           |
| 01-02              | 246                     | 102          |
| 02-03              | 118                     | 156          |
| 03-04              | 111                     | 131          |
| 04-05              | 75                      | 98           |
| 05-06              | 66                      | 74           |

90. The spike in public accommodations complaints in the 2001-2002 fiscal year was the result of the annual “Black bikers” rally held every Memorial Day weekend in the city of Myrtle Beach, South Carolina. Over the years, SCHAC has worked with

community leaders and the business community to quell racial tensions involving thousands of festival attendees. The number of complaints filed has been reduced due to more attention given to the concerns expressed by festival participants and the local community.

91. In addition to a viable employment mediation program, the agency is augmenting this program by beginning to address housing and public accommodations discrimination through mediation.

92. Relationships with Federal Authorities. South Carolina has work sharing agreements with both the EEOC and HUD. These agreements allow cases to be transferred to federal authorities, where appropriate, and also allow South Carolina authorities to investigate and hear cases that involve violations of both South Carolina and federal law. The existence of these work sharing agreements means that South Carolina state laws have been found to meet the standards set in federal law for both housing and employment discrimination.

93. Examples of Cases involving Race Relations.

- South Carolina Human Affairs Law section 90(e):

While walking to her car after leaving a large upscale retail chain department store, an African American female was approached by an individual who identified himself as a member of store security loss prevention and requested that she come back into the store. The woman asked why and she was told that a sweater was missing and that she was last seen with the sweater in her possession. She agreed to accompany the loss prevention representative back to the store. A brief search revealed that while the sweater was not where the woman thought she had left it, it was located in the department where it was on sale, and had been moved to another location by a sales clerk other than the one who had assisted the woman while she considered purchasing the sweater. The woman filed a race discrimination complaint against the retailer, alleging that the store would not have questioned her if she had been White, but suspected her because she was African American, and did not bother to determine if the sweater was in her possession at the time she was stopped and questioned. While deciding not to challenge the woman's allegation, the retailer settled with her in the amount of \$4,000 and an apology.

- Public Accommodations:

An African American family secured accommodations at a hotel. Unplanned, the family decided to stay an additional night at the hotel. The father advised hotel management of this intent and also advised them that he would pay the additional night's stay the following morning at check-out. The family's entire stay was secured by cash, and on that basis, advance payment was required. However, this was not communicated to the father from the front desk, and later that day, the

hotel management took steps to remove the family from the room and the premises. After the incident, the father filed a complaint of racial discrimination because the hotel's abrupt and sudden handling of the case appeared to him to be racially motivated. Although it was determined that the hotel was following policy for cash payment and had done so consistently, the hotel settled with the complainant for \$5,000.

- Fair Housing:

A husband and wife sought an apartment to rent. The husband is of Hispanic descent. Although the landlord presented several reasons for denying the couple of the opportunity to rent the apartment, it was apparent from statements made ("those people" . . . are "from God knows where") that the reason for denial was an unlawful act of national origin discrimination. A determination was made to that effect. However, the parties resolved the matter by the landlord's paying \$2,450 in damages to the couple.

- Title VII:

Complainant, an African American female, who was employed by a school district as a sign language interpreter for deaf students, was demoted and received a commensurate cut in pay when the district determined that she did not pass a test for her job function. Respondent argued that complainant's position was misclassified in error and that the reclassification to teacher's assistant was more descriptive of her job. A determination was made that the complainant had performed her job as an interpreter as well as two of her White peers, and in fact the three of them often substituted or stood in for one another based on need or scheduling conflicts. The district could not produce evidence that the two White interpreters had undergone testing. The case went to conciliation, through which complainant was awarded back pay at the rate of an interpreter and also recovered the contributions to her life insurance and pension benefits that would have accrued to her if her pay had not been reduced.

94. South Carolina Project Notification Review System. Under federal executive orders, entities seeking federal assistance for projects and/or programs (construction and non-construction), submit proposals to the national contract office in Washington, D.C. Proposals are referred to the appropriate states for detailed review. SCHAC receives and reviews all proposals to ensure compliance with South Carolina guidelines.

Other Civil Rights Entities.

95. A non-profit organization, the South Carolina Indian Affairs Commission, exists in the state to provide leadership in helping to improve the lives of South Carolina's Indian population. The organization's goals include providing assistance, support, and resources to groups attempting to obtain state recognition; learning to use laws affecting illegal possession of American Indian artifacts, disturbances of cultural and burial sites and

repatriation of American Indian human remains; and evaluating and publishing data from tribal needs assessment surveys.