

Vermont

HUMAN RIGHTS

Commission

MISSION STATEMENT

The mission of the Vermont Human Rights Commission is to promote full civil and human rights in Vermont. The Commission protects people from unlawful discrimination in housing, state government employment and public accommodations.* The Commission pursues its mission by:

- **Enforcing laws**
- **Mediating disputes**
- **Educating the public**
- **Providing information and referrals**
- **Advancing effective public policies on human rights**

* A public accommodation is an establishment such as a school, restaurant, office or store that offers facilities, goods or services to the general public.

INTRODUCTION

MANDATE

The Vermont Human Rights Commission is the state agency having jurisdiction over claims of unlawful discrimination in housing, state government employment, and public accommodations. Public accommodations involves the provision of goods and services by businesses to the public (including but not limited to stores, restaurants, professional offices, and hospitals) and by state and local governments (including schools). The Commission has three statutorily mandated roles: enforcement, conciliation, and education.

The Commission is charged with enforcing Vermont's civil rights laws. It investigates allegations of discrimination and determines whether there are reasonable grounds to believe that unlawful discrimination occurred in a case. The Commission's staff seeks to resolve charges prior to a determination through conciliation, and if appropriate formal mediation. If the Commission finds reasonable grounds to believe that an entity discriminated against a person, the Executive Director then engages in post-determination conciliation efforts. If a settlement cannot be reached the Commission is authorized to file suit in court to obtain remedies for violations of the state's civil rights laws.

The Commission is also charged with increasing "public awareness of the importance of full civil and human rights for each inhabitant of this state;" examining "the existence of practices of discrimination which detract from the enjoyment of full civil and human rights;" and, with recommending "measures designed to protect those rights." 9 V.S.A. §4552. In furtherance of these goals, the Commission's staff speaks with and provides training to individuals and groups about their rights and responsibilities under state and federal civil rights laws, works with individuals, agencies, and groups to combat bias and bigotry, and supplies information, legal analyses, and advice to the Legislature.

By its enabling statute, the Human Rights Commission is an enforcement agency rather than a legal services or advocacy organization. The Human Rights Commission does not represent either party in a complaint.

JURISDICTION

The Vermont Human Rights Commission has jurisdiction over allegations of unlawful discrimination in the following areas:

	PUBLIC	STATE
<u>HOUSING</u>	<u>ACCOMMODATIONS</u>	<u>EMPLOYMENT</u>
Race	Race	Race
Color	Color	Color
Sex	Sex	Sex
Religion	Religion	Religion
National Origin	National Origin	National Origin
Disability	Disability	Disability
Sexual Orientation	Sexual Orientation	Sexual Orientation
Marital Status	Marital Status	
Age		Age
Minor Children		
Public Assistance		Ancestry
		Place of Birth
		HIV related blood test
		Workers' Compensation Family/Parental Leave
	Breastfeeding mothers	
Gender Identity	Gender Identity	Gender Identity

Strategies to Achieve the Mission

- Complaints alleging violations of anti-discrimination laws are investigated impartially and decided in a timely manner by the Human Rights Commission.
- Complainants and respondents are offered timely and meaningful access to mediation services or informal means of conciliation that promote mutually satisfactory resolution of their dispute.
- Commission staff offers information, referrals, educational programs and educational training to those who request these services. A small fee may be charged to cover expenses.
- The Commission provides leadership in public policy developments with respect to civil and human rights issues in Vermont, and provides testimony to the Legislature on such issues.
- Commission staff engages in coalition and community activities that address the needs of members of protected categories; for example, working with the Interpreter Task Force to ensure equal access to services for new Vermonters who are limited in their English proficiency, or with the ADA Coalition to address accessibility issues in housing and places of public accommodation.

STATUS of HRC PROGRAM of OPERATIONS

VHRC Contact Information

Office hours: 7:45 a.m. - 4:30 p.m. Monday - Friday

Telephone number: (800) 416-2010 (Toll Free Voice Line)
(802) 828-2480 (Voice/TTY)
(877) 294-9200 (Toll Free TTY Line)

Fax number: (802) 828-2481

Mailing address: 14-16 Baldwin Street
Montpelier VT 05633-6301

E-mail address: human.rights@state.vt.us

Website: hrc.vermont.gov

Staffing

There are five Human Rights Commissioners appointed by the governor for five-year terms with the advice and consent of the Senate. Commissioners may be re-appointed. The Commissioners meet monthly to discuss and decide the merits of individual discrimination complaints, as well as to set the overall policy of the organization.

The Commission also has a staff of six state employees. The Commissioners hire, supervise and direct the organization's executive director who also acts as the Commission's legal counsel and legislative liaison. The executive director hires, supervises and directs two part-time case managers, and three investigators/trainers.

Current Enforcement Priorities

Enforcement priorities not only inform the Commission's planning of educational and outreach activities, but is also one of the criteria considered by the Commissioners in making their decisions on potential litigation. The priority areas for the Commission's work for 2012 were

- Persons with "hidden" disabilities*;
- School harassment;
- Persons with Limited English Proficiency and,
- Racial profiling.

*Hidden disabilities included not only psychiatric conditions but also learning disabilities, seizure disorder, traumatic brain injury, chronic fatigue syndrome and the like.

Phone Contacts

In FY12, the VHRC's records indicate it received 740 calls for assistance from the general public.¹ The vast majority of these calls do not result in formal complaints being filed. Many of the calls are citizens seeking assistance for issues beyond VHRC's jurisdiction - - those are referred to other appropriate organizations. Some of the calls result in informal cases² (26 informal cases and 69 formal complaints accepted in FY12.) Other calls require a VHRC staff person to answer basic questions regarding Vermont's various discrimination laws. VHRC does not provide legal counsel or advice. Finally, many calls involve citizens who merely want someone at the State level to listen to their situation.

¹ This number is less than the actual amount, a part-time temporary administrative person failed to keep accurate track of all the calls VHRC received for a short period of time. In addition, it does not reflect the number of calls handled directly by investigatory staff.

² An "informal case" is a situation, many times an accessibility issue, that can be resolved easily and does not require a full investigation.

COMPLAINTS

Enforcement Programs

Vermont's anti-discrimination laws protect people from discrimination based on race, color, sex, sexual orientation, religion, national origin, mental or physical disability, age, marital status and as of July 1, 2007, gender identity (though the categories apply differently to housing, employment, and public accommodations, see chart on page 3). In addition, a person may not be denied housing because of the presence of minor children or due to receipt of public assistance.

A "complaint" as used in the annual report refers to those citizen contacts that result in a formal VHRC investigation. For an allegation of discrimination to become a formal investigation, a citizen must allege the *prima facie*³ elements of a violation of Vermont's discrimination laws in one of VHRC's areas of jurisdiction - - housing, public accommodations or State employment.

The staff receives and impartially investigates allegations of unlawful discrimination only after an individual has signed a complaint under oath. At the conclusion of the investigation, staff investigators write Investigation Reports that are reviewed and approved by the Executive Director before they are distributed to the parties and to the Commissioners who consider these reports at their monthly meeting for their review and determination in executive session. The parties to the complaint (the complainant and the respondent) are invited to attend and present why they agree or disagree with the staff recommendation, and answer questions from the Commissioners about the circumstances surrounding the complaint.

Only if the Commission determines that there is sufficient evidence to show that illegal discrimination occurred does the Investigative Report become a public record. In addition, by statute, all settlements entered into by the Commission become public record. If the Commission issues such a cause finding, the staff will actively pursue settlement negotiations for a period of up to six months. The Commission will attempt, either through its staff or by providing a professional mediator, to bring the parties to agreement on a settlement to resolve the matter. Past settlements have included agreements not to discriminate in the future, modification of inaccessible premises or discriminatory policies, anti-discrimination education, letters of apology, compensation for damages and modest civil penalties

³ A *prima facie* case lists the facts that if proven to be true would be a violation of the specific law. (e.g., in a housing discrimination case the complainant must allege that she is a member of a protected class; that she experienced an adverse housing action and that the adverse action was due to her membership in the protected class.)

to the VHRC.

If the Commissioners determine that there are no reasonable grounds to believe that discrimination occurred, that case is closed and remains confidential as far as VHRC is concerned. The parties are free to make the information about the case public if they so desire. Additionally, the complaining party may decide to pursue legal or other administrative action, but VHRC would not be part of those actions.

The Commission does not have authority to impose any remedies or fines. The Commission only has legal authority to investigate complaints, negotiate and enforce anti-discrimination provisions in settlements, and to bring an action in court after a cause finding and failed efforts to resolve the dispute informally. If illegal discrimination is proven to a judge or jury, the court may impose fines or monetary damages, costs and attorney’s fees against the Respondent as well as require remedial measures to avoid further violations of law.

Complaints Filed & Investigated

In FY11, VHRC identified a need to resolve some of the complaints that were brought to the Commission in a more informal and quicker manner. During FY12, VHRC implemented a new “informal” resolution process in an effort to help resolve citizens’ issues more efficiently. As noted in the chart below in FY11 VHRC accepted 81 complaints while in FY12 it accepted only 69 complaints. These numbers reflect the formal complaints accepted/filed. In FY11 VHRC helped resolve 9 informal cases. However, in FY12 VHRC resolved 26 informal cases.

VHRC believes this new approach provides better service to the citizens of Vermont and has resulted in VHRC being able process more issues in a shorter period of time.

Types of Complaints Filed & Disposition

FY12 v FY11

	Housing '12	<i>Housing '11</i>	Public Accom. '12	<i>Public Accom. '11</i>	Employ. '12	<i>Employ. '11</i>	Total '12	<i>Total '11</i>
Accepted during yr	32	<i>30</i>	29	<i>38</i>	8	<i>13</i>	69	<i>81</i>
Closed during yr	30	<i>24</i>	31	<i>17</i>	12	<i>6</i>	75	<i>47</i>
Open @ close of yr	6	<i>6</i>	19	<i>21</i>	8	<i>6</i>	33	<i>34</i>

Informal cases	3	<i>0</i>	23	<i>8</i>	0	<i>0</i>	26	<i>8</i>
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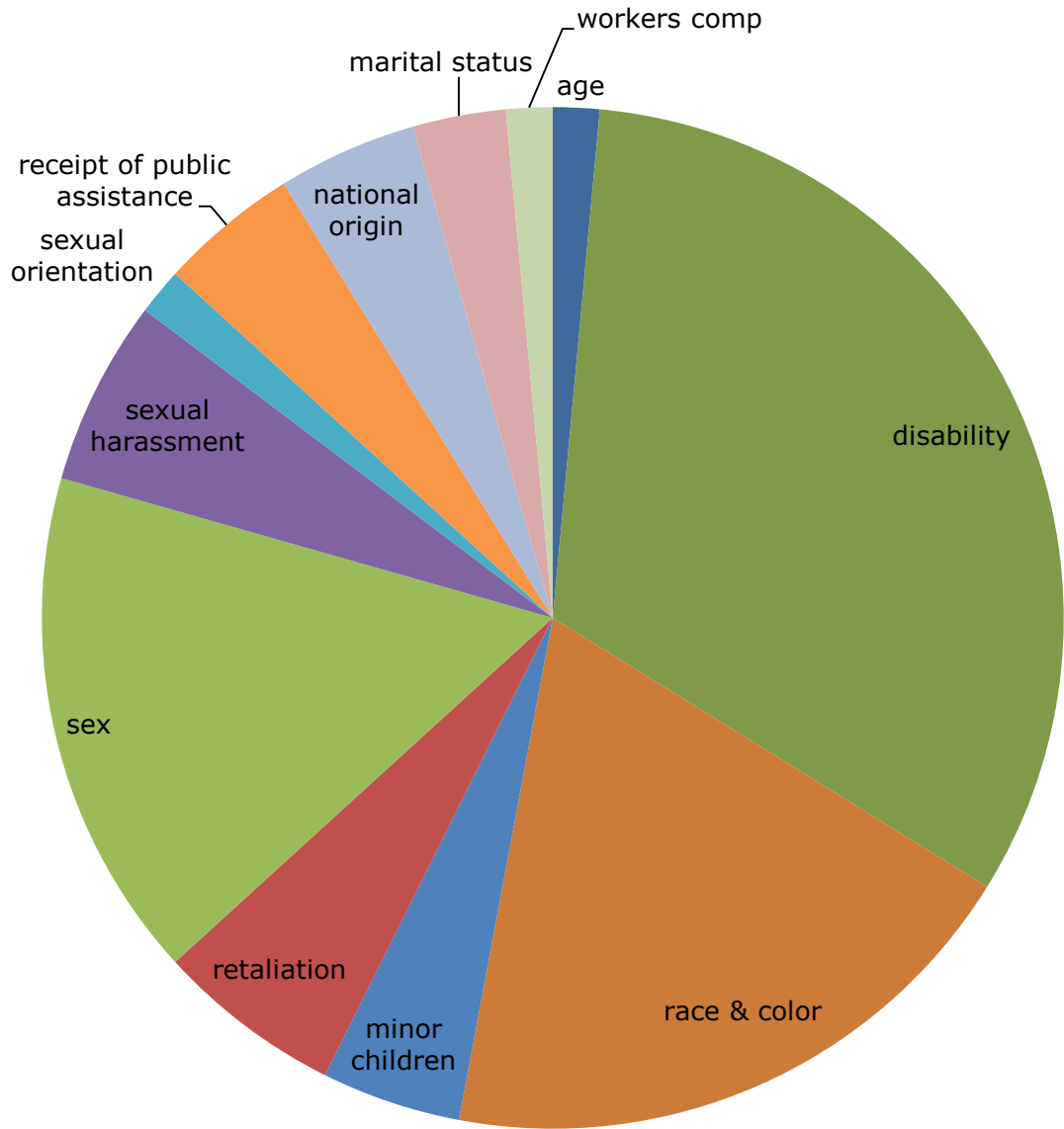
Discrimination issues involving the protected class of disability continue to account for the largest portion of complaints that the VHRC addresses. Informal complaints are almost 100% disability related and most of those involve accessibility issues. In the area of formal complaints, disability was a factor 44% of the time, followed by 14% and 12% for race/color and sex, respectively. These three protected categories accounted for 70% of the VHRC investigations during FY12 and accounted for 67% in FY11. VHRC had eight (8) State employment complaints this past year and five (5) of those eight (8) complaints involved the protected category of sex.

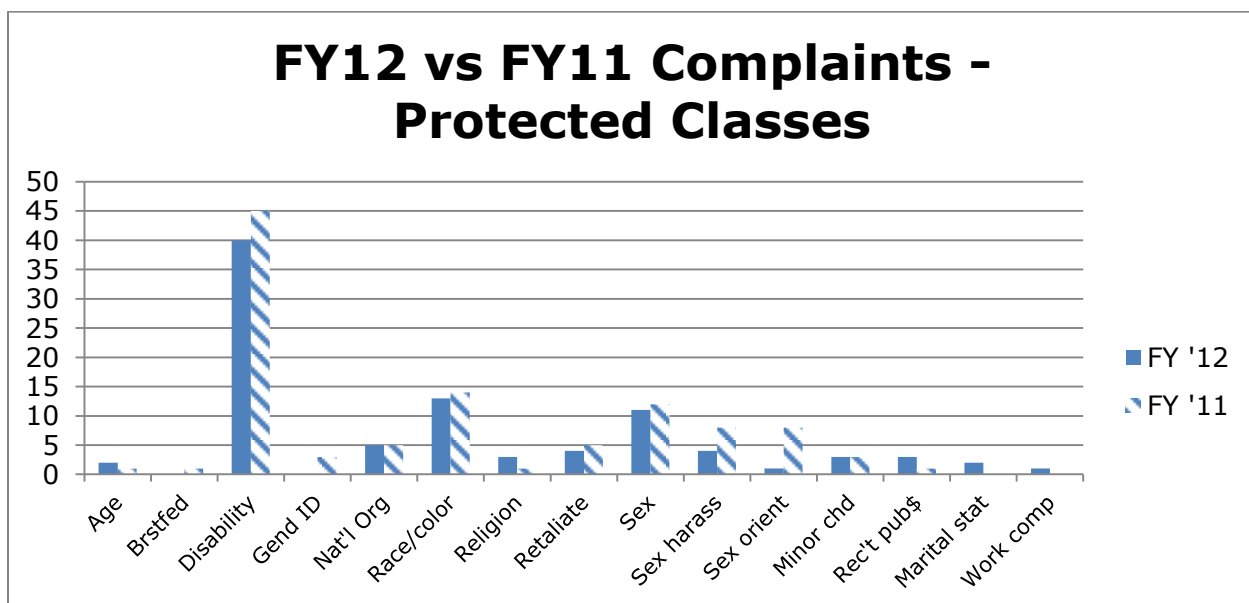
Protected Classes in Complaints Filed in FY12*

Protected Class	Housing	Public Accommodations	State Employment	Total
Age	1	n/a	1	2
Breastfeeding	n/a	0	0	0
Disability	22	17	1	40
Gender Identification	0	0	0	0
National Origin	0	5	0	5
Race/Color	5	8	0	13
Religion	2	1	0	3
Retaliation	2	1	1	4
Sex	4	2	5	11
Sexual Harassment	2	2	0	4
Minor Children	3	n/a	n/a	3
Receipt of Public Assistance	3	n/a	n/a	3
Marital Status	2	0	n/a	2
Workers Comp	n/a	n/a	1	1

*Totals will not equal total number of actual complaints because many cases allege discrimination based on more than one protected class.

Protected Categories of Complaints





Closure of Complaints

In FY12, seventy-five (75) formal complaints were closed (see chart above). Twenty-seven (27) of the complaints or 36% were resolved pre-determination through VHRC’s conciliation/mediation process (56% of the housing cases, 29% of the public accommodation cases and 8% of the employment cases). In eight (8) cases or 11% the Commission found that there were reasonable grounds to believe that illegal discrimination had occurred and in twenty-three (23) cases or 31% the Commission found there were no reasonable grounds to believe that illegal discrimination had occurred.⁴ The remaining 12% of the cases were either dismissed for various administrative reasons or withdrawn by the complainant. Four of the cases withdrew with settlement and resulted in a total of \$42,561 in payments to four complainants. These dismissals or withdrawals can take place at any point in the investigative process.

⁴ A no reasonable grounds determination does not mean necessarily that there was no illegal discrimination - - many times it means there was not enough evidence to prove the allegation by a preponderance of the evidence.

Summary of Some Reasonable Grounds Cases

When the VHRC finds reasonable grounds in a case the executive director of VHRC will for six (6) months attempt to settle the case through conciliation efforts or formal mediation. If this process is not successful, VHRC can and many times does file a lawsuit against the responding party. (See section below for more specific information.) Many times the mediation process results in a settlement with the complainant withdrawing the VHRC complaint. More often than not a reasonable grounds case is not resolved in the same fiscal year as the determination was made.

Housing:

Brier v. Duclos – (disability) The tenant made a reasonable accommodation request for an assistance animal and the Duclos', the property owners, denied her request and attempted to evict her.

Stone v. Border Motel – (disability) The tenant made a reasonable accommodation request for a parking space closer to his front door because of his mobility disability. The staff at Border Motel instead moved his parking space further away from his front door.

Tilton v Porta – (presence of minor children – neighbor-on-neighbor harassment) The parties resided in condominium units that share a common wall. The Tiltons have a young child. The Portas for various reasons felt the child made too much noise and disturbed the quiet enjoyment of their condo unit. There was evidence to support the Tiltons' allegations that the Portas retaliated against them and made life difficult by pounding on the common wall and other disruptive actions. Additionally, the Portas expressed displeasure with the fact that the Tiltons had minor children living in a condominium unit.

Employment:

Lavalley v. VT Dept. of Health/VT Reasonable Accommodation Comm. – (disability) Lavalley, a State employee, made a reasonable accommodation request to relocate where equipment she was responsible for was kept so she would not have to walk as far to retrieve the equipment. Her supervisor denied this reasonable accommodation request.

Silloway v VT Dept. of Corrections – (Equal Pay Act) Ms. Silloway, a DOC employee, earned approximately \$10,000 a year less than the male worker even though the work they do is essentially the same and she has

more seniority. The State argued that the positions were not comparable and that the male was originally "hired into range" which justified the pay discrepancy.

Public Accommodations:

Mesa-Sandoval v VT Dept of Public Safety - (national origin/race/color – racial profiling)

During a traffic stop where Mr. Mesa and Mr. Sandoval were passengers and a white male was the driver, the State Trooper quickly changed his focus from the traffic violation of the white male to the legal status of two Latino male passengers. The actions by the trooper were motivated by the passengers' appearances. The two men were handed over to the Border Patrol.

Post determination cases -

During FY12 VHRC had twenty-four cases in various post-determination settlement stages. Fourteen of those cases closed during FY12. Two post-determination settlement agreements, both housing cases, resulted in payments of \$30,000 to three charging parties and \$1000 to the VHRC. Various forms of settlement were reached in eight other cases and four cases were dropped because the VHRC determined it did not want to either begin or continue additional litigation. The remaining 10 cases included four cases in litigation and six cases in mediation or settlement discussions.

HRC et al v. Hartford Elks (Public Accommodations – sex) – filed in 7/98, jury verdict 4/05. Awaiting a VT Supreme Court ruling on the most recent appeal of a related foreclosure action. Case was argued 4/11.

"Cedar" v. AOT (Employment – disability) - filed 4/11, oral argument was made to the VT Supreme Court in 4/12. Awaiting decision.

HRC & "Lemon" v. Town of Cabot School District/Washington NE Supervisory Union (Public Accommodations – sexual harassment) discovery is ongoing – pretrial mediation has not occurred.

HRC & Stanley v. AOT (Employment – Family Medical Leave) – Trial court granted States motion for summary judgment.

HRC v Drown (Housing – minor children) – An ancillary foreclosure proceeding in Windsor County owned by Drown has not concluded. A so small exists that VHRC can recover more of the \$20,000 still owed it by Drown.

HRC v. Wildflower Inn (Public Accommodations – sexual orientation) – Discovery is ongoing. The case is trial ready for 10/12. Mediation is set for 8/12.

PUBLIC EDUCATION ACTIVITIES

VHRC staff members serve on a number of state-wide committees/task forces including but not limited to the interpreter task force, racial profiling committee, immigration/migrant farmers committees and fair housing committees. Membership on these various committees helps VHRC fulfill its mandate to advance effective public policy on human rights for the Vermont public. Staff also attend public meetings such as school board meetings, legislative hearings and other public forums where issues of human rights are discussed. Attendance at these meetings provides another opportunity to advocate for human rights and to educate the public about anti-discrimination laws in the State of Vermont.

The VHRC staff is also involved in formal trainings on various and relevant discrimination issues. Some of the trainings provided by VHRC in the past year by the staff include:

- Five workshops for Chittenden County Transit Authority personnel regarding the ADA
- Fair Housing training for realtors in West Lebanon
- Several Fair Housing trainings for residents of senior and disability housing projects – specifically on neighbor-on-neighbor harassment
- Workshop for Vermont Legal Aid on school bullying and harassment
- Two workshops on implicit bias for the Burlington School District
- 3-day statewide training for school personnel on investigating harassment and cyberbullying complaints
- Cross cultural training for Champlain Valley Head Start staff
- “Reading to End Racism” at the Montpelier Union Elementary School
- Fair Housing Training for the resident assistants at Landmark College
- Multi-day training for Caledonia North Supervisory Union administrators on bullying and harassment
- Training for the Network Against Sexual and Domestic Violence on school harassment and bullying
- Accessibility site visit with the director and board member at Elks Camp Silver
- Several one-on-one fair housing trainings for respondents in fair housing complaints

RECOMMENDATION for IMPROVED HUMAN RIGHTS ADVOCACY & ACTIVITIES

Given the amount of training that is requested and needed in the state, the VHRC believes a position dedicated to providing training, in particular bullying and harassment training to schools, would greatly improve VHRC's ability to provide this important resource. Additionally, money to better advertise VHRC's role as a neutral investigative agency with limited jurisdiction and powers would help the Vermont citizenry when it seeks help with discrimination problems encountered in their day-to-day lives.