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Idaho Human Rights Commission – Administrative Law Agency



**PREVENTiON**

**PROTECTiON**

**RESOLUTiON**

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Idaho Human Rights Commission – Administrative Remedy

- **Administrative Remedy**
  - Required before filing in District Court
  - Coordination with federal EEOC for federal Notice of Right to Sue, federal filings
- **Timelines**
  - Filing: 300 days (federal claims) and 365 days (state claims)
  - Requesting Notice of Right to Sue
    - Federal – 180 days from filing
    - State – 365 days from filing
    - State-federal coordination and deference to federal timelines

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IHRC Updates & Key Trends

Intakes	FY2018	FY2019	FY2020	FY2021
Total number of contacts	1,588	1,156	2,080	2,621
Average per month	132	96	173	218
Total number of charges drafted	468	301	313	360
Average per month charges drafted	39	28	26	30
Percentage of drafts per month	29.5%	29.2%	15%	13.8%



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<b>Case Resolutions</b>	<b>FY2018</b>	<b>FY2019</b>	<b>FY2020</b>	<b>FY2021</b>
<b>Total of administrative cases resolved</b>	<b>392</b>	<b>489</b>	<b>358</b>	<b>309</b>
No probable cause findings	74.5%	77.1%	84.9%	72.2%
Mediations, settlements, successful conciliations	17.4%	12.3%	9.8%	7.8%
Conciliation failures	1.0%	2.3%	4.5%	4.5%
Non-jurisdictional; Notice of Right to Sue without findings; other	6.9%	8.4%	8.4%	15.5%

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### Reactions to the #MeToo Movement

- Anecdotal, but also reflected in data
- Decrease in sexual harassment claims; increase; return to earlier levels
- Increase in counter-claims related to internal investigations, sanctions
- Concerns and claims reported:
  - Sexual harassment of all types, but females disproportionately impacted
  - Internal investigation is a form of sex-based discrimination
  - Claims of overreaction; excessive penalties or sanctions



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IHRC Updates & Key Trends



Cases & Key Issues	FY2018	FY2019	FY2020	FY2021
Total cases filed with the IHRC	502	398	309	238
Issues most frequently raised				
Discharge (actual or constructive)	71%	69%	70%	66%
Sexual harassment	14%	11%	18%	13%
Harassment/Intimidation**	33%	32%	24%	27%
Failure to accommodate a disability	29%	22%	15%	20%
Terms & conditions of employment	23%	26%	18%	19%

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IHRC Updates & Key Trends

<b>Disability</b>	<b>FY2021</b>	<b>88 (37%)</b>	<b>26 (30%)</b>	<b>4 (5%)</b>	<b>63 (72%)</b>	<b>46 (52%)</b>	
	FY2020	112 (36%)	24 (21%)	1 (1%)	74 (66%)	44 (39%)	
	FY2019	165 (42%)	45 (27%)	3 (2%)	122 (74%)	87 (53%)	
	FY2018	252 (50%)	29 (12%)	8 (3%)	192 (76%)	133 (53%)	
<b>Sex</b>	<b>FY2021</b>	<b>86 (36%)</b>	<b>54 (63%)</b>	<b>16 (19%)</b>	<b>10 (12%)</b>	<b>5 (6%)</b>	<b>1 (1%)</b>
	FY2020	107 (35%)	77 (72%)	8 (7%)	16 (15%)	4 (4%)	2 (2%)
	FY2019	156 (40%)	89 (57%)	18 (12%)	65 (42%)	2 (1%)	0 (0%)
	FY2018	165 (33%)	104 (63%)	19 (12%)	33 (20%)	6 (4%)	3 (2%)
<b>Retaliation (all bases)</b>	<b>FY2021</b>	<b>65 (27%)</b>					
	FY2020	88 (28%)					
	FY2019	100 (25%)					
	FY2018	180 (36%)					



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## COVID-19 and Employment Discrimination Claims

- **Number of Claims**
  - 6 month period from approximately October 2021 to March 2022
  - 30% of all charges (not total *inquiries*)
- **Commission's Approach**
  - Neutral stance as arbiter and administrative review agency
  - Focus on jurisdictional claims, areas of enforcement
  - Analysis of each legal element, independent of political or other considerations
    - Depends on the allegations and bases/issues raised

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## COVID-19 and Employment Discrimination Claims

- **Nature of Claims**
  - #1: Failure to accommodate a sincerely held religious belief due to vaccines
  - #2: Failure to accommodate a disability due to vaccines
  - #3: COVID-related illnesses as a disability that should be accommodated:
    - COVID symptoms
    - COVID diagnoses
    - Long-COVID
  - #4: Accommodations as segregation

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## COVID-19 and Employment Discrimination Claims

- **Common Complainant Issues**

- Failure to articulate a *religious* belief that is sincerely held
  - Complicated interactions between religious and political or social beliefs
- Failure to demonstrate a disability (per ADA, IHRA)
- Failure to state a claim (accommodation as segregation)

- **Common Respondent Issues**

- Failure to recognize sincerely held religious beliefs OR prohibitive requirements
- Barring access to the interactive process or avoiding the process all together

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## COVID-19 and Employment Discrimination Claims

- **Commission's Observations**

- Many robust systems in place to evaluate requests;
- Focal point:
  - Some focus more on whether a belief is religious and/or sincerely held;
  - Others emphasize undue hardship on the business
- Other considerations:
  - Requested v. granted accommodations
  - Accommodation v. adverse employment action

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## COVID-19 and Employment Discrimination Claims

- **Commission's Analysis**

- Baseline: Existing law applied in novel context
  - Evaluate *prima facie* showing
  - Examine the interactive process: is there a system in place to evaluate requests for reasonable accommodations?
    - Is there a genuine effort to engage in the interactive process? (RP)
    - Are requirements prohibitive or punitive? (RP)
    - Are requests truly based on religious belief or disability? (CP)
  - Evaluate *accommodation v. adverse employment action*

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RESOLUTION

Questions?

humanrights.idaho.gov

or

(208) 334-2873

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