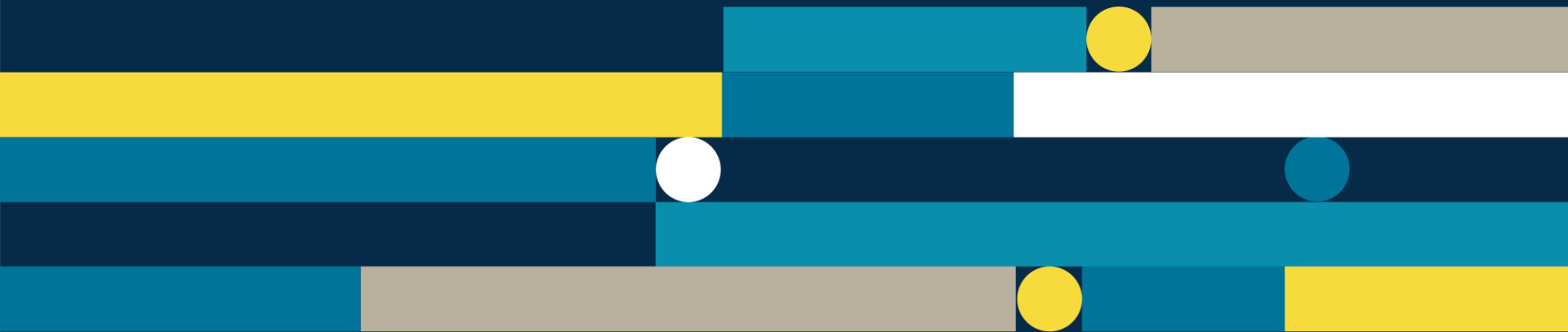


IDAHO

HUMAN RIGHTS  
COMMISSION

Reactions to  
#MeToo, Idaho  
Trends, & House  
Bill 440



## Idaho Human Rights Commission – Administrative Law Agency

**PREVENTiON**

**PROTECTiON**

**RESOLUTiON**

## 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

## IHRC Updates & Key Trends

Intakes	FY2016	FY2017	FY2018	<b>FY2019</b>
Total number of calls to IHRC	1,761	2,031	1,588	<b>1,156</b>
Average per month	147	169	132	<b>96</b>
Total number of charges drafted	383	599	468	<b>301</b>
Average per month charges drafted	32	50	39	<b>28</b>
Percentage of drafts per month	21.7%	29.4%	29.5%	<b>26.0%</b>

<b>Case Resolutions</b>	<b>FY2016</b>	<b>FY2017</b>	<b>FY2018</b>	<b>FY2019</b>
Total of administrative cases resolved	463	418	392	<b>489</b>
No probable cause findings	75.2%	71.3%	74.5%	<b>77.1%</b>
Mediations, settlements, successful conciliations	15.8%	22%	17.4%	<b>12.3%</b>
Conciliation failures	2.1%	1.4%	1.0%	<b>2.3%</b>
Non-jurisdictional; Notice of Right to Sue without findings; other	6.9%	5.3%	6.9%	<b>8.4%</b>

## Reactions to the #MeToo Movement

- Anecdotal, but also reflected in data
- Decrease in sexual harassment claims
- Increase in counter-claims related to internal investigations, sanctions
- Concerns and claims reported:
  - Internal investigation is a form of sex-based discrimination
  - Frivolous or unsubstantiated claims
  - Overreaction; excessive penalties or sanctions
- Examples: Boating excursion; sheriff's departments; janitor & consensual sex with subordinates

## IHRC Updates & Key Trends

Cases & Key Issues	FY2016	FY2017	FY2018	<b>FY2019</b>
Total cases filed with the IHRC	403	485	502	<b>398</b>
Issues most frequently raised				
Discharge (actual or constructive)	70%	73%	71%	<b>69%</b>
Sexual harassment	13%	12%	14%	<b>11%</b>
Harassment/Intimidation**	29%	38%	33%	<b>32%</b>
Failure to accommodate a disability	18%	23%	29%	<b>22%</b>
Terms & conditions of employment	17%	26%	23%	<b>26%</b>

## IHRC Updates & Key Trends

<b>Disability</b>	<b>FY2019</b>	<b>165 (42%)</b>	<b>Harassment</b> <b>45 (27%)</b>	<b>Failure to Hire</b> <b>3 (2%)</b>	<b>Discharge</b> <b>122 (74%)</b>	<b>Accommodation</b> <b>87 (53%)</b>	<b>FY2019</b>
	FY2018	252 (50%)	29 (12%)	8 (3%)	192 (76%)	133 (53%)	FY2018
	FY2017	241 (50%)	62 (26%)	20 (8%)	158 (66%)	111 (46%)	FY2017
	FY2016	171 (42%)	41 (24%)	11 (6%)	135 (79%)	73 (43%)	FY2016
<b>Sex</b>	<b>FY2019</b>	<b>156 (40%)</b>	<b>Female</b> <b>89 (57%)</b>	<b>Pregnancy</b> <b>18 (12%)</b>	<b>Male</b> <b>65 (42%)</b>	<b>Sexual Orientation</b> <b>2 (1%)</b>	<b>Gender Identity</b> <b>0 (0%)</b>
	FY2018	165 (33%)	104 (63%)	19 (12%)	33 (20%)	6 (4%)	3 (2%)
	FY2017	171 (36%)	107 (63%)	21 (12%)	35 (20%)	6 (4%)	2 (1%)
	FY2016	139 (35%)	96 (69%)	15 (11%)	23 (17%)	2 (1%)	3 (2%)
<b>Retaliation (all bases)</b>	<b>FY2018</b>	<b>180 (36%)</b>					
	FY2017	166 (34%)					
	FY2016	107 (27%)					
	FY2015	135 (30%)					



## House Bill 440 – Interpretation, Enforcement, & Impact

- **Purpose and Scope**
  - Amendment to Human Rights Act
  - Prohibit “preferential treatment” in public education, public employment, and public contracting
- **Commission’s Perspective**
  - Neutral stance
  - Focus on impact, enforcement, and interpretation of language in bill

## House Bill 440 – Interpretation, Enforcement, & Impact

### **HO440 BROADENS DEFINITIONS OF THE HUMAN RIGHTS ACT AND EXPANDS THE SCOPE OF ENFORCEMENT BY THE COMMISSION**

- “individual or group”
- Contrast with current language, definitions
- Enforcement in education/employment expanded; new category in contracting

## House Bill 440 – Interpretation, Enforcement, & Impact

### **HO440 CONTAINS UNDEFINED AND AMBIGUOUS TERMS AND INTRODUCES DUPLICATIVE PROVISIONS ALREADY IN STATUTE**

- “preferential treatment”
- “in the operation of”
- “ethnicity” instead of race
- Exclusion of religion, disability, age over 40, retaliation
- Compare with plain, unambiguous language in existing statute



## House Bill 440 – Interpretation, Enforcement, & Impact

- **A Tale of Two Interpretations: Narrow and Broad**
  - Narrow interpretation of “in the operation of”, “preferential treatment
  - Broad definition
- **Model Legislation**
  - California’s Prop. 209 (mid-1990s); constitutional amendment
  - Michigan constitutional amendment, other state statutes
  - Largely upheld – Supreme Court review of Michigan amendment:
    - Schuetz v. Coal. to Defend Affirmative Action, Integration & Immigrant Rights & Fight for Equal. By Any Means Necessary (BAMN), 572 U.S. 291, 299, 134 S. Ct. 1623, 1628, 188 L. Ed. 2d 613 (2014).



To contact the IHRC:

[humanrights.idaho.gov](https://humanrights.idaho.gov)

or

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