



Dora

Department of Regulatory Agencies

Office of Policy, Research and Regulatory Reform

2008 Sunset Review: Colorado Civil Rights Commission and the Colorado Civil Rights Division

October 15, 2008





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Department of Regulatory Agencies

Executive Director's Office
D. Rico Munn
Executive Director

Bill Ritter, Jr.
Governor

October 15, 2008

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Colorado Civil Rights Commission (Commission) and the Colorado Civil Rights Division (Division). I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2009 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the enforcement of the protections provided under Parts 3 through 8 of Article 34 of Title 24, C.R.S. The report also discusses the effectiveness of the Commission and staff of the Division in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

D. Rico Munn
Executive Director





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Summary

What Is Regulated?

Colorado's anti-discrimination laws seek to redress cases of discrimination in employment, housing or public accommodations.

Why Is It Regulated?

To protect the civil rights of Colorado residents and the public welfare in general by allowing those who believe they have been discriminated against to have an independent third party conduct an investigation and make a determination as to whether discrimination occurred, all outside of the court system.

Who Is Regulated?

Individuals, such as employers, housing providers, owners/operators of places of public accommodations, who may be in a position to discriminate against a member of one or more of the following protected classes: ancestry, age, color, creed, familial status, marriage to a co-worker, national origin, mental or physical disability, race, religion, sex and sexual orientation.

How Is It Regulated?

The Colorado Civil Rights Commission (Commission) and the Colorado Civil Rights Division (Division) are located in the Department of Regulatory Agencies. The Division investigates charges of discrimination, mediates and conciliates settlements, issues findings of probable cause and right to sue letters, and refers cases to the Attorney General. The Commission, among other duties, acts as the appellate body of the Division. The Division works collaboratively with the U.S. Equal Employment Opportunity Commission and the U.S. Department of Housing and Urban Development.

What Does It Cost?

During fiscal year 07-08, the Division received \$1,523,866 from the state General Fund and \$659,519 from the federal government, and there were 29 full-time equivalent employees dedicated to the Division.

What Disciplinary Activity Is There?

Between fiscal years 06-07 and 07-08, the Division investigated 1,563 cases. Of these, Division staff mediated or conciliated 140 settlements, found no probable cause in 631 cases, and found probable cause in 75 cases. In total, the Division potentially prevented the filing of 771 law suits, and may have assisted 215 victims of discrimination obtain redress.

Where Do I Get the Full Report?

The full sunset review can be found on the internet at: www.dora.state.co.us/opr/oprpublications.htm.

Key Recommendations

Continue the Colorado Civil Rights Commission for nine years, until 2018.

The process administered by the Commission and the Division is one that serves the public interest by allowing those who believe they have been discriminated against to have an independent third party conduct an investigation and make a determination as to whether discrimination occurred, all outside of the court system. This system grants to such individuals, a low cost, easily accessible system to redress their grievances. Similarly, respondents, too, benefit from this system in terms of reduced legal expenses and expeditious resolution of charges. Since the Commission continues to review appeals, set cases for hearing and engage in education and outreach efforts, it is reasonable to conclude that the Commission should be continued.

Continue the Division for nine years, until 2018.

Although many of the points in favor of continuing the Commission are equally applicable to the continuation of the Division, the Division merits continuation on several independent grounds. The Division is, first and foremost, the investigatory arm of the Commission. Without it, the Commission would have no appeals to review, no cases to set for hearing, and no staff to assist in its education, outreach and enforcement efforts. Therefore, if the Commission is to be continued, the Division, too, must be continued.

Continue the Director's subpoena powers in employment cases, expand such power to include all settings of discrimination, and repeal the separate sunset review provision for employment cases.

Since the subpoena power is a vital component of administrative enforcement, the General Assembly should continue the power with respect to employment cases and expand it to encompass all areas that fall within the Division's jurisdiction. Since the subpoena power will be reviewed as a part of any future sunset review of the Division and since the subpoena power with respect to housing is not subject to repeal and individual sunset review, the General Assembly should repeal the sunset clause on the Director's subpoena power.

Authorize the Commission to initiate complaints on its own motion.

Since it is reasonable to conclude that the General Assembly's original intent was for the Commission to initiate complaints on its own motion, and since the Colorado Supreme Court has limited that intent, the General Assembly should clarify that the Commission has the authority to file charges on its own motion in those cases that can reasonably be construed to have societal or community-wide impact and where the authorized remedy is solving the issue, rather than monetary damages.

Major Contacts Made During This Review

AARP	Cortez Chamber of Commerce
American Civil Liberties Union of Colorado	Denver Anti-Discrimination Office
American Jewish Committee	Fair Employment for Cancer Patients and Survivors
Anti-Defamation League, Mountain States Region	Ft Collins Human Relations Commission
Aurora Asian Pacific Community Partnership	Ft Collins Not in Our Town Alliance
Aurora Neighborhood Services Department	Gay, Lesbian, Bisexual & Transgender Community Center of Colorado
Boulder Pride	Gender Identity Center of Colorado, Inc.
Boulder Shelter for the Homeless	Governor's Minority Business Office
Center for People with Disabilities	Greater Metro Denver Ministerial Alliance
Civil Justice League	Latin American Research and Service Agency (LARASA)
Colorado AIDS Project	League of Women Voters of Colorado
Colorado Anti-Violence Program	Longmont Community Neighborhood Resources
Colorado Association of Commerce and Industry	Metro Denver Apartment Association
Colorado Association of Mortgage Brokers	Mountain States Employers Council, Inc.
Colorado Association of Mortgage Lenders	National Association for the Advancement of Colored People-Denver Branch
Colorado Association of Realtors	National Federation of Independent Business
Colorado Attorney General's Office	Rocky Mountain Resource Center
Colorado Bar Association	Rocky Mountain SER Jobs for Progress, Inc.
Colorado Catholic Conference	San Juan Citizen's Alliance
Colorado Children's Campaign	Senior Housing Options
Colorado Cross Disability Coalition	Southwest Intertribal Voice
Colorado Council of Churches	Tribal Employment Rights Office
Colorado Defense Lawyers Association	U.S. Department of Education
Colorado Department of Education	U.S. Department of Housing and Urban Development
Colorado Department of Higher Education	U.S. Department of Justice
Colorado Department of Labor and Employment	U.S. Department of Labor
Colorado Hospital Association	U.S. Equal Employment Opportunity Commission
Colorado Interfaith Alliance	9 to 5, National Association of Working Women
Colorado Muslim Society	
Colorado Plaintiff Employment Lawyers Association	
Colorado Restaurant Association	
Comunidad Integrada	

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:
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Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

¹ Criteria may be found at §24-34-104, C.R.S.

Employment

An employer is:

[T]he State of Colorado or any political subdivision, commission, department, institution, or school district . . . and every other person employing persons within the state; but it does not mean religious organizations or associations, except such organizations or associations supported in whole or in part by money raised by taxation or public borrowing⁴⁴

Although not employers, employment agencies,⁴⁵ labor organizations⁴⁶ and apprenticeship programs⁴⁷ are also, in general, subject to the anti-discrimination laws as if they were employers.

In general, it is a discriminatory employment practice for an employer to refuse to hire, to discharge, to promote or demote, to harass or to discriminate in a matter of compensation because of disability, race, creed, color, sex, sexual orientation, religion, age, national origin or ancestry.⁴⁸ It is also a discriminatory employment practice to retaliate against an employee for filing a charge of discrimination or for opposing a discriminatory employment practice.⁴⁹

It is also a discriminatory employment practice for an employer to advertise or to make any inquiry in connection with prospective employment that expresses any limitation as to eligibility because of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry, unless such limitation is based upon a *bona fide* occupational qualification.⁵⁰

"Sexual orientation" means a person's orientation toward heterosexuality, homosexuality, bisexuality, or transgender status, or an employer's or another person's perception of such.⁵¹

With regard to harassment, an employee is harassed when he or she works in a hostile work environment based upon his or her race, national origin, sex, sexual orientation, disability, age or religion. Harassment cannot serve as the basis for a charge of discrimination unless the employee notifies the employer of the harassment, and the employer fails to investigate the complaint and fails to take the appropriate remedial action.⁵²

⁴⁴ § 24-34-401(3), C.R.S.

⁴⁵ § 24-34-402(1)(b), C.R.S.

⁴⁶ § 24-34-402(1)(c), C.R.S.

⁴⁷ § 24-34-402(1)(f), C.R.S.

⁴⁸ § 24-34-402(1)(a), C.R.S.

⁴⁹ § 24-34-402(1)(e)(IV), C.R.S.

⁵⁰ § 24-34-402(1)(d), C.R.S.

⁵¹ §§ 24-34-301(7) and 24-34-401(7.5), C.R.S.

⁵² § 24-34-402(1)(a), C.R.S.

With regard to sex, it is a discriminatory employment practice to exclude from employment, applicants or employees because of pregnancy, or their gender in general.⁵³

With regard to disability, a charging party must show that he or she has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or being regarded as having such an impairment.⁵⁴

It is not a discriminatory employment practice for an employer to refuse to hire, to discharge, or to promote or demote because of the disability if:⁵⁵

- There is no reasonable accommodation that the employer can make;
- The disability actually disqualifies the person from the job; or
- The disability has a significant impact on the job.

However, an employer must allow a disabled employee with a service dog to keep the service dog with the employee at all times.⁵⁶

With regard to age, the anti-discrimination provisions apply to those between 40 and 69 years old.⁵⁷

It is not a discriminatory employment practice for an employer to refuse to hire, to discharge, or to promote or demote because of age.⁵⁸

- If age is a *bona fide* occupational qualification;
- To observe the terms of a *bona fide* seniority system; or
- To compel an employee to retire who is between 65 and 70 years old, and who is employed in a *bona fide* executive or high policy-making position.

With regard to religion and creed, these terms are defined as, "a religious, moral or ethical belief which is sincerely held and includes all aspects of religious observance and practice."⁵⁹

It is also a discriminatory employment practice for an employer with more than 25 employees, to refuse to hire a person solely because he or she is married to, or plans to marry, an employee of the employer.⁶⁰

⁵³ Commission Rule 80.8.

⁵⁴ § 24-34-301(2.5), C.R.S.

⁵⁵ § 24-34-402(1)(a), C.R.S.

⁵⁶ § 24-34-803(3)(a), C.R.S.

⁵⁷ § 24-34-301(1), C.R.S.

⁵⁸ § 24-34-402(4), C.R.S.

⁵⁹ Commission Rule 50.1.

⁶⁰ § 24-34-402(1)(h)(i), C.R.S.

However, it is not a discriminatory employment practice for an employer, regardless of size, to refuse to hire or to discharge a person who is married to, or plans to marry, an employee of the employer where one spouse would:⁶¹

- Exercise supervisory authority over the other spouse;
- Audit, verify, receive or be entrusted with money received or handled by the other spouse; or
- Have access to the employer's confidential information, including payroll and personnel records.

Finally, it is a discriminatory employment practice for an employer to discharge, discipline, discriminate against, coerce, intimidate, threaten or interfere with an employee, regardless of whether the employee is a member of a protected class, for inquiring about, disclosing, comparing or otherwise discussing the employee's wages.⁶²

Included in the anti-discrimination statutes are several provisions that are defined as constituting discriminatory employment practices, but over which neither the Commission nor the Division have jurisdiction. Rather, an employee impacted by one of these practices must bring a civil suit in a state district court, if the employee desires to hold the employer legally accountable.⁶³ These include terminating an employee because the employee:

- engages in a lawful activity off the premises of the employer during nonworking hours;⁶⁴ or
- takes more than three days off from work, with or without pay, to protect himself or herself where the employee is the victim of domestic abuse, stalking, sexual assault, or any other crime the basis of which includes an act of domestic violence.⁶⁵

The remedies available to the victim of a discriminatory employment practice depend upon whether the practice was committed by an employer, an employment agency or a labor organization. In general, these remedies include.⁶⁶

- Receiving back pay;
- Being hired to the position, with or without back pay;
- Being reinstated, with or without back pay;
- Receiving the promotion, with or without back pay;
- Receiving the referral for employment from the employment agency;
- Having membership in the labor organization restored;

⁶¹ § 24-34-402(1)(h)(II), C.R.S.

⁶² § 24-34-402(1)(i), C.R.S.

⁶³ §§ 24-34-402.5(2) and 24-34-402.7(4), C.R.S.

⁶⁴ § 24-34-402.5(1), C.R.S.

⁶⁵ § 24-34-402.7(1), C.R.S.

⁶⁶ § 24-34-405, C.R.S.

-
- Being admitted to, or being allowed to continue in, the apprenticeship program; and
 - Receiving the training that was previously denied.

Additionally, a respondent to a charge of employment discrimination may be ordered to post notices and to make reports as to the manner of compliance.⁶⁷

Although state and federal law are remarkably consistent in many respects, some important differences include,

- Size of employer – While Colorado law covers all employers, regardless of size, federal law applies only to those employers with 15 or more employees.⁶⁸
- Protected classes – While Colorado law includes sexual orientation and marriage to a co-worker as protected classes, federal law does not.⁶⁹
- Deadlines for filing charges of discrimination – While Colorado law requires charges to be filed within six months of the alleged discriminatory act, federal law requires charges that fall under the EEOC's and the Division's joint jurisdiction to be filed with EEOC within 300 days of the alleged discriminatory act.⁷⁰
- Deadlines for findings – While Colorado law requires findings of probable cause to be issued "as promptly as possible," all findings must be issued within 270 days (up to 450 days if extensions have been obtained).⁷¹ Federal law requires the EEOC to issue such findings "as promptly as possible," with a stated goal of 120 days.⁷²
- Remedies – While the remedies available under Colorado law are essentially limited to actual damages (i.e., back pay), federal law authorizes actual damages,⁷³ reinstatement,⁷⁴ compensatory damages,⁷⁵ punitive damages,⁷⁶ attorney fees and reasonable expert witness fees.⁷⁷
- Disparate impact – While Colorado law essentially applies to actions that impact the pay, tenure or status of an employee, federal law also applies to those actions that have a disparate impact⁷⁸ as well as to training opportunities.⁷⁹

⁶⁷ § 24-34-405, C.R.S.

⁶⁸ 42 U.S.C. § 2000e(b).

⁶⁹ 42 U.S.C. § 2000e-2(a).

⁷⁰ 42 U.S.C. § 2000e-5(e) and U.S. Equal Employment Opportunity Commission. "Filing a Charge of Employment Discrimination." Retrieved July 8, 2008, from www.eeoc.gov/charge/overview_charge_filing.html

⁷¹ § 24-34-306(2)(b), C.R.S.

⁷² 42 U.S.C. § 2000e-5(b).

⁷³ 42 U.S.C. § 2000e-5(g)(1).

⁷⁴ 42 U.S.C. § 2000e-5(g)(1).

⁷⁵ 42 U.S.C. § 1981a(b).

⁷⁶ 42 U.S.C. § 1981a(b)(1).

⁷⁷ 42 U.S.C. § 2000e-5(k).

⁷⁸ 42 U.S.C. § 2000e-2(k).

⁷⁹ 42 U.S.C. § 2000e-3.

One Program Manager oversees the Outreach and Education unit (1.0 FTE General Professional IV), the Alternative Dispute Resolution unit (1.0 FTE Compliance Investigator I) and the head of the Intake unit (1.0 FTE Compliance Investigator Intern).

The Alternative Dispute Resolution unit is responsible for conducting all mediations and conciliations within the Division.

Reporting to the head of the Intake unit are those responsible for drafting charges (2.0 FTE), case control (1.0 FTE), data entry, scanning (1.0 FTE) and reception (1.0 FTE).

Another Program Manager oversees an investigations unit that focuses primarily on those charges of discrimination over which the Division has exclusive jurisdiction and housing complaints. This unit is staffed by four Investigators and a Housing Specialist.

The final Program Manager also serves as the Chief of Investigations and Enforcement and oversees the Director's Assistant (1.0 FTE Administrative Assistant III) and four Investigators in the Division's Denver office (4.0 FTE Compliance Investigator I).

Additionally, this Program Manager oversees the Division's two regional offices: one each in Pueblo and Grand Junction. The Pueblo office opened in spring 2008, and the Grand Junction office opened in summer 2008.¹²⁰

The Pueblo office is staffed by an Assistant (0.5 FTE Program Assistant I) and an Investigator (Compliance Investigator II). The Grand Junction office is staffed by an Assistant (0.5 FTE Program Assistant I) and an Investigator (General Professional III).

Finally, as of this writing, the Division has four vacant positions.

Charges of Discrimination

The process for filing a charge of discrimination, as well as for investigating such a charge, is relatively consistent across the settings under which a charge can be filed: employment, housing, public accommodations, and advertising.

Generally, the process begins when a person believes that he or she has been discriminated against and initiates contact with the Division. This initial contact most often comes in the form of a telephone call. Division staff estimates that it receives between 30 and 50 such telephone calls per day. However, the initial inquiry may also come by letter or email, or the individual may simply walk into one of the Division's offices.

¹²⁰ Previously, the Division maintained five offices, one each in Denver, Colorado Springs, Grand Junction, Greeley and Pueblo. The Colorado Springs office closed in May 2003. The Grand Junction office closed in March 2004, before reopening in summer 2008. The Greeley office closed in November 2003. The Pueblo office closed in April 2003, before reopening in spring 2008.

Regardless of the form this initial inquiry takes, Division staff screens the information provided for jurisdictional purposes only. Charges of discrimination must be filed with the Division within the following time limits, or they are barred:

- Employment – charge must be filed within six months of the alleged discriminatory conduct.
- Housing – charge must be filed within one year of the alleged discriminatory conduct.
- Public Accommodations – charge must be filed within 60 days of the alleged discriminatory conduct.
- Advertising – charge must be filed within 60 days of the alleged discriminatory conduct.

If the jurisdictional time limits are satisfied, then the inquiry is sent to the Intake unit, which will send an intake packet to the individual.

The intake packet solicits basic information so that a charge of discrimination may be drafted and filed. Once the intake packet is received by the Division, Intake staff drafts the charge of discrimination, which provides the basis for the charge.

The charge of discrimination is then sent to the individual to be signed and returned. Table 3 illustrates, for the five years indicated, the number of charges drafted and mailed out relative to the number of charges that are ultimately filed.

**Table 3
Inquiry and Cases Information**

Fiscal Year	Employment		Housing		Public Accommodations		Total	
	Inquiries Not Resulting In Charge	Charges Filed	Inquiries Not Resulting In Charge	Charges Filed	Inquiries Not Resulting In Charge	Charges Filed	Inquiries Not Resulting In Charge	Charges Filed
03-04	219	760	10	73	4	37	233	871
04-05	210	695	20	94	7	42	237	831
05-06	135	584	25	128	15	53	175	765
06-07	170	593	11	85	13	55	194	733
07-08	212	492	27	96	14	48	253	636
TOTAL	946	3,124	93	476	53	235	1,092	3,835

Although the vast majority of inquiries result in charges that are signed and returned, a substantial number are not.

On average, then, the Division receives and investigates approximately 767 charges of discrimination each year.

Importantly, Table 3, and throughout this sunset report, numbers regarding charges of discrimination in advertising are omitted due to the fact that fewer than five such charges have been filed during the review period.

The number of charges filed by county can be found in Appendix A, on page 59.

Furthermore, the number of charges filed, by setting and basis, can be found in Appendix B, on page 61.

Importantly, each charge may allege multiple bases of discrimination. As a result, the numbers reported in Table 3 above do not equate to the numbers reported in the tables in Appendices A and B beginning on page 59.

Depending on the type of charge, the Division may share jurisdiction with either EEOC or HUD. In employment cases, the Division and EEOC have joint jurisdiction over all cases except those over which the Division has exclusive jurisdiction. These cases are limited to those that:

- Allege discrimination because of marriage to a co-worker, regardless of the size of the employer;
- Allege discrimination because of sexual orientation, regardless of the size of employer;
- Allege discrimination because of age by an employer with 19 or fewer employees;
- Allege discrimination because of an employee's status as a member of any protected class by any employer with fewer than 15 employees;
- Allege discrimination in housing based on marital status; and
- Allege discrimination in housing based on sexual orientation.

Additionally, EEOC has exclusive jurisdiction over those cases in which the Division and EEOC would ordinarily have joint jurisdiction, but which are not filed within the Division's jurisdictional time limit of six months, but which are filed within EEOC's jurisdictional time limit of 300 days.

Other examples of situations in which EEOC would have exclusive jurisdiction include, in very general terms, those that involve:

- Federal employees;
- Certain issues related to airlines;
- Religious organizations that receive public funds;
- Age claims where the charging party is older than 70 years; and
- Equal Pay Act claims.

The number of cases filed with EEOC, by basis and type of jurisdiction, can be found in Appendix C on page 62.

Once the Division receives the signed charge, it is deemed to have been filed. In those cases in which the Division and EEOC have joint jurisdiction, Division staff enters information regarding the charge into a computer database maintained by EEOC. Both EEOC and Division staff monitor the database and take steps to avoid having a charge filed by the same charging party at both the Division and EEOC.

With limited exceptions, under the terms of the Division's contract with EEOC, in those cases in which the two agencies have joint jurisdiction, the agency that takes the charge investigates it. In other words, if the charging party files with EEOC, EEOC will investigate the case. If the charging party files with the Division, the Division will investigate the case.

Table 4 illustrates, for the fiscal years indicated, the number and types of Colorado charges filed with and investigated by EEOC.

Table 4
Number of Colorado-Based Cases Investigated by EEOC

Type of Jurisdiction	FY 03-04	FY 04-05	FY 05-06	FY 06-07	FY 07-08	Total
Exclusive	422	716	1,770	1,779	1,920	6,607
Joint	102	103	79	86	48	418
Total	524	819	1,849	1,865	1,968	7,025

Importantly, the data reported in Table 4, like the data reported in Table 3, represent the number of cases investigated, not the number of allegations. Each case may allege discrimination on multiple bases. Data related to the bases of discrimination may be found in Appendices A, B and C beginning on page 59.

The data in Tables 3 and 4 reveal a number of interesting facts. First, EEOC continues to investigate a substantial number of charges over which it has exclusive jurisdiction. During the five-year period reported here, EEOC investigated 6,607 cases in Colorado over which it had exclusive jurisdiction.

Perhaps more importantly, during the five-year period reported, EEOC investigated 418 cases in which it had joint jurisdiction with the Division. This is important, because when added with the 3,835 cases investigated by the Division during the same period, several issues become apparent.

First, the vast majority of joint jurisdiction cases are filed with and investigated by the Division. Second, the two figures taken together reveal that during the five-year period under review, 4,253 joint jurisdiction cases were investigated by the two agencies.

More telling, however, is the fact that 10,860 Colorado cases were investigated by the two agencies in just five years. Combined with the data in Appendices A, B, and C, it becomes apparent that discrimination continues to be an issue in the state.

The computer database maintained by EEOC allows EEOC to monitor the Division's cases so that payment can be made to the Division under the terms of the contract, and to ensure that charging parties do not file their respective charges with both agencies.

For this later reason, both EEOC and the Division send the charging party in each case a letter stating that in filing with either agency, the charge is deemed to have been dually filed with the other agency.

In those cases that involve housing, the Intake unit enters information regarding the charge into a computer database maintained by HUD. Importantly, HUD typically does not investigate cases of housing discrimination in Colorado under the Fair Housing Act. All such cases are investigated by the Division.

Regardless of the type of charge, once the Division receives the signed charge, the charge is served on the respondent and the case is assigned to an investigator. In general, the respondent has 30 days within which to respond to the charge.

The Division's Alternative Dispute Resolution unit then offers mediation to both parties. This is an entirely voluntary process, and both parties must agree to it. Table 5 illustrates, for fiscal years 06-07 and 07-08, the number of mediations conducted and the results thereof.

**Table 5
Mediations**

Fiscal Year	Number of Mediations Held	Number of Mediations Settling a Charge	Percent of Mediations Settling a Charge	Total Value of All Mediated Settlements	Average Value of Mediated Settlements
06-07	75	55	73.33	\$392,530	\$7,137
07-08	77	46	59.74	\$1,025,527	\$22,294

This mediation process was implemented during fiscal year 06-07. As a result, data for mediations conducted prior to fiscal year 06-07 are not available. Additionally, this helps to explain the drastic increase in monetary values from one year to the next, as Division staff became more comfortable and effective at mediating settlements.

Additionally, due to recordkeeping practices, the data for fiscal year 07-08 are more reliable than those for fiscal year 06-07. The data reported for fiscal year 07-08 are based on actual records, whereas the data reported for fiscal year 06-07 are based on the memory of Division staff.

Regardless, the data that are available demonstrate the success of this mediation process in resolving charges of discrimination early, before the Division has invested its limited resources in investigating such charges.

If the respondent fails to submit a response to the charge within 30 days, or within 21 days if the parties went to mediation and it failed, the Division will issue a demand letter that informs the respondent that the Division will either issue a subpoena or issue a letter of determination based on the charging party's allegations alone. Additionally, the Division's investigator may call the respondent to see if there are some extenuating circumstances that would warrant giving the respondent additional time.

Once the respondent's position statement is received, the charging party has 30 days to rebut it. Upon receipt of the rebuttal, the investigator determines whether additional investigation is necessary. Such an investigation could include, but is not limited to:

- Production of documents;
- Identifying and interviewing witnesses; and
- On-site visits.

At anytime during this process, the Director can subpoena documents and witnesses, so long as the charge of discrimination pertains to housing or employment. Table 6 illustrates, for the fiscal years indicated, the number of subpoena's issued and the types of cases for which they were issued.

**Table 6
Subpoenas**

Fiscal Year	Number of Subpoenas Issued		
	Employment	Housing	Total
03-04	0	2	2
04-05	2	0	2
05-06	3	0	3
06-07	1	0	1
07-08	2	3	5

Given the number of charges filed with the Division each year, it is clear that the Director has used the subpoena power sparingly. This is both a positive reflection on Division staff, in that it is able to obtain necessary information without resorting to issuing a subpoena, as well as of respondents, who clearly provide requested information far more often than not.

Once the investigation is complete, the investigator drafts the letter of determination for review by, and signature of, the Director. The letter of determination notifies the parties as to the Division's findings in the case, which become the Director's findings, and whether there is probable cause.

Table 7 illustrates, for the fiscal years indicated, the number and types of cases in which the Director found probable cause.

**Table 7
Probable Cause Findings**

		Probable Cause	No Probable Cause
FY 03-04	Employment	21	433
	Housing	5	49
	Public Accommodations	1	28
	Total	27	510
FY 04-05	Employment	38	635
	Housing	5	114
	Public Accommodations	2	23
	Total	45	772
FY 05-06	Employment	52	439
	Housing	2	84
	Public Accommodations	1	25
	Total	55	548
FY 06-07	Employment	49	322
	Housing	9	70
	Public Accommodations	2	38
	Total	60	430
FY 07-08	Employment	12	129
	Housing	5	100
	Public Accommodations	3	19
	Total	20	248

If there is no probable cause, the letter of determination includes a notice that the charging party may appeal the decision to the Commission, or if it is an employment case, to EEOC. This appeal must be filed within 10 days, and may include any new information that was not presented to the Division during the investigation, as well as an explanation as to why the charging party believes the finding of no probable cause was made in error.

If the appeal is to EEOC, EEOC conducts a "substantial weight review" of the case. If EEOC finds that the Director was in error in finding no probable cause, the EEOC can then conduct its own investigation. Data regarding the number of Division-investigated cases in which EEOC has conducted such a review are not available.

If the appeal is to the Commission, the members review the case file and it can uphold the Director's finding of no probable cause, overturn the Director and issue a probable cause finding, or it may send the case back to the Division for further investigation.

Table 8 illustrates, for fiscal years 04-05 through 07-08, the number of such appeals reviewed by the Commission and the number of instances in which the Commission reversed the Director's finding of no probable cause.

**Table 8
Appeals to the Commission and the Results**

Fiscal Year	Number of Cases Appealed to the Commission	Number of Reversals
04-05	63	1
05-06	94	0
06-07	80	2
07-08	95	1
Total	332	4

Clearly, in the vast majority of cases, the Commission upholds the Director's findings.

In the case of a probable cause finding, the process that comes next depends, in part, on the nature of the case. Employment and public accommodations cases follow one path, and housing cases follow another path.

Regardless of whether the case is an employment case, a housing case or a public accommodations case, if the Director finds probable cause, the Division's Alternative Dispute Resolution unit schedules a mandatory conciliation conference to try to resolve the matter. If the conciliation is successful, the charging party withdraws the complaint and waives his or her right to pursue any further legal action and the Division closes the case.

Table 9 illustrates, for the fiscal years indicated, the number of conciliations held, the success rate and the monetary results of those conciliations.

**Table 9
Conciliations**

Fiscal Year	Number of Conciliations Held	Number of Conciliations Settling a Charge	Percent of Conciliations Settling a Charge	Total Value of all Conciliated Settlements	Average Value of Conciliated Settlements
06-07	60	26	43.33	\$398,710	\$15,335
07-08	54	13	24.07	\$311,118	\$23,932

As with the mediations offered on the front end of the process, data regarding conciliations conducted prior to fiscal year 06-07 are not available. Additionally, due to recordkeeping practices, the data for fiscal year 07-08 are more reliable than those for fiscal year 06-07. The data reported for fiscal year 07-08 are based on actual records, whereas the data reported for fiscal year 06-07 are based on the memory of Division staff.

If conciliation is unsuccessful in an employment or public accommodations case, Division staff convenes an informal review panel consisting of several investigators who did not investigate the case. One investigator advocates the position of the charging party and one advocates the position of the respondent to a panel of five other investigators. The panel then discusses the merits of the case and recommends to the Director whether the Director should recommend to the Commission that the case should be set for hearing.

Unlike in housing cases, where the Commission must set the case for hearing if there is a probable cause finding, in employment and public accommodations cases, the Commission has discretion as to whether to set the case for hearing.

If the case is not set for hearing, the Director issues a "right to sue" letter to the charging party and the case is closed. The "right to sue" letter represents an exhaustion of administrative remedies and enables the charging party to file a civil suit in any court of competent jurisdiction.

If the Commission elects to set the case for hearing, it is formally referred to the Attorney General's Office (AGO) and the case is heard by an administrative law judge in the Office of Administrative Courts in accordance with the Administrative Procedure Act.

Between January 1, 2007 and June 30, 2008, the Commission set a total of 25 cases for hearing: 19 employment cases and 6 housing cases.

Regardless of whether the Director finds probable cause, once the letter of determination is issued, the charging party may request from the Division a "right to sue" letter. If the Director found probable cause, the Commission elected to set the case for hearing, and the charging party requests a "right to sue" letter, the Commission will terminate its efforts to take the case to hearing.

The charging party may request the "right to sue" letter at any time 180 days after the charge is filed. Prior to issuing the letter of determination, the Director has discretion as to whether to issue the "right to sue" letter, but after the letter of determination is issued, the Director must issue the "right to sue" letter upon request, so long as the Division still has jurisdiction over the case.

Table 10 illustrates the number of "right to sue" letters issued by the Division during the years indicated.

**Table 10
Right to Sue Letters**

Type of Action	FY 03-04	FY 04-05	FY 05-06	FY 06-07	FY 07-08
Early Right to Sue	6	26	1	2	1
Right to Sue	8	71	28	30	40

As these figures indicate, remarkably few "right to sue" letters are issued, relative to the overall number of charges filed. This seems to indicate that charging parties prefer the Division to investigate their charges rather than proceeding directly to court. This makes sense since the charging party must bear the total cost of litigation:

Division jurisdiction, in general, expires 270 days after the charge is filed. Each party is entitled to extensions up to 90 days, so that the Division may retain jurisdiction for up to 450 days. Final agency action, whether it be a no probable cause finding or setting the case for hearing, must occur within these jurisdictional time limits.

Table 11 illustrates, for the fiscal years indicated, the percentage of cases closed by the Division within the 270-day jurisdictional time limitation, as well as the percentage of cases that took longer than 270 days to close.

**Table 11
Case Closure Information**

Fiscal Year	Percentage of Cases Closed within 270 Days	Percentage of Cases Closed after 270 Days
03-04	41.9	58.1
04-05	39.2	60.8
05-06	49.0	51.0
06-07	49.1	50.9
07-08	79.1	20.9
Five Year Average	51.7	48.3

On average, then, for the period indicated, the Division closes approximately half of its cases within the jurisdictional 270-day time limitation. Division staff attributes the improvement in fiscal year 07-08 to increased staffing levels, the quality of staff recently hired and more effective management.

If a case cannot be closed within the 270-day jurisdictional time limitation, an extension of time must be obtained. Table 12 illustrates, for the fiscal years indicated, the number of cases in which motions for extensions of time (METs) were granted, as well as the number of cases in which the Division failed to take final agency action before losing jurisdiction.

**Table 12
Timeliness**

Fiscal Year	Number of Motions for Extension of Time Granted	Number of Cases in Which Division Jurisdiction was Lost
03-04	Not Available	2
04-05	192	6
05-06	669	1
06-07	516	2
07-08	326	1

Although METs are technically made by the parties to the case, in practice, it is Division staff that typically approaches either party with a request to file a MET. This is often done when time is running short and further investigation remains to be done. As a result, it is not surprising to see a correlation between a high number of METs and a low number of cases in which jurisdiction is lost. However, substantially fewer METs were granted in fiscal year 07-08.

Unfortunately, reliable data regarding the average amount of time it takes to completely investigate and close a case are not available.

In employment cases that are dually filed with EEOC, EEOC staff reviews a random sample of 10 percent of the cases closed by the Division each month. The EEOC can deny payment if they determine that the Division's investigation was in any way inadequate or that the Director's finding was not supported by the facts.

In housing cases, once final agency action has been taken, Division staff sends the case file to HUD for review and eventual payment under the terms of the Division's contract with HUD. Although HUD reviews all of the Division's cases, and can deny full payment if HUD finds that the Division's investigation was in any way inadequate or that the Director's findings were not supported by the facts, HUD cannot overturn the Division's final disposition of the case.