

Annual Report to the Connecticut Judiciary Committee and Governor



CHRO Report Pursuant to CONN. GEN. STAT. § 46a-82e

FY 2021

Introduction

The Connecticut Commission on Human Rights and Opportunities (Commission) is the chief civil rights law enforcement agency for the State of Connecticut. Pursuant to CONN. GEN. STAT. § 46a-82e(b), the Commission must report the following information annually to the Judiciary Committee of the General Assembly and the Governor:

- (1) The number of cases in the previous fiscal year that exceeded the time frame, including authorized extensions, set forth in subsection (g) of section 46a-83;
- (2) the reasons for the failure to comply with the time frame;
- (3) the number of actions brought pursuant to subsection (d) of this section¹ and the results thereof; and
- (4) the commission's recommendations for legislative action, if any, necessary for the commission to meet the statutory time frame.

This report has been prepared to provide the required information for submission to the Judiciary Committee of the General Assembly and to the Governor.

- 1. The number of cases in the previous fiscal year that exceeded the time frame, including authorized extensions, set forth in subsection (g) of section 46a-83.**

CONN. GEN. STAT. § 46a-83 sets out the timeframes for the Commission to investigate complaints of discrimination. Subsection (g) of that section states,

- (1) Before issuing a finding of reasonable cause or no reasonable cause, the investigator shall afford each party and each party's representative an opportunity to provide written or oral comments on all evidence in the commission's file, except as otherwise provided by federal law or the general statutes. The investigator shall consider such comments before making a finding. The investigator shall make a finding of reasonable cause or no reasonable cause in writing and

¹ CONN. GEN. STAT. 46a-82e(d) states, "(1) If a complaint has been pending for more than two years after the date of filing pursuant to section 46a-82, and if the investigator fails to issue a finding of reasonable cause or no reasonable cause by the date ordered by the executive director pursuant to subsection (c) of this section, the complainant or respondent may petition the superior court for the judicial district of Hartford for an order requiring the commission to issue a finding by a specified date. The petitioner shall submit the petition on forms prescribed by the Office of the Chief Court Administrator."

shall list the factual findings on which it is based not later than one hundred ninety days from the date of the case assessment review, except that for good cause shown, the executive director or the executive director's designee may grant no more than two extensions of the investigation of three months each.

Due to the limitations of the Commission's digital Complaint Tracking System (CTS), the responsive information cannot be directly extracted from the system. Instead, the system can only provide the total length of time a complaint has been pending before the Commission from the date of filing until the final closure of the complaint. To obtain the required information, the following method is used: First, a list of all complaints active during the previous fiscal year are collected into one data source. From there, closed complaints are separated from open complaints. The length of time that closed complaints were pending before the Commission is calculated as are the lengths of time open complaints have been pending as of the end of the fiscal year. Complaints that were/are pending longer than 490 days are considered aged while complaints closed/pending for less than 490 days are considered timely.

The 490 day period is calculated based on the maximum timeframes allowed for processing by statute. These periods are specifically as follows: The Commission has 15 days after the date of filing of any discriminatory practice complaint to serve the complaint on the respondent. The respondent has 30 days from the receipt of the complaint to provide an Answer and may request one 15-day extension.² The Commission then has 60 days from the date of the Answer to conduct a Case Assessment Review. If the case is retained at the Case Assessment Review stage, the Commission has 190 days to mediate and investigate the complaint. This is a maximum total of 310 days from the filing of the complaint to the end of the investigation. In addition to this period,

² Respondents may request a Pre-Answer Conciliation conference within 10 days of the receipt of the complaint. Doing so pauses the timeframes until such time as the matter is resolved or the Commission determines that the conciliation efforts have failed. This will add additional time to the processing of a complaint. As Pre-Answer Conciliation is not often requested and there is no maximum amount of time that this process can take, this time period is not counted for purposes of determining compliance with CONN. GEN. STAT. § 46a-83(g). Some complaints that may appear to be aged, however, may not be due to this process.

investigators may request two 3-month extensions. If authorized, this brings the maximum period for investigation to 490 days.

In fiscal year 2021, the Commission processed 4102 complaints of discrimination. Processing is defined as a case opened, closed, or pending during the fiscal year. Of these, 294 complaints were pending for more than 490 days at the end of the fiscal year. Of the complaints that were closed during the fiscal year, 257 took longer than the 490 day allotment to close. This is a total of 551, or 13% of all complaints processed during the last fiscal year.

2. The reasons for failure to comply with the time frame.

Pursuant to CONN. GEN. STAT. § 46a-83(g), investigators may make two requests for a three month extension for investigation of a complaint. Investigators making such a request must state, in writing, the reasons for their extension request. This request is then reviewed by the investigator's supervisor and by the Commission's Deputy Director.

As a general matter, the majority of requests for extension filed in the past year involved processing delays attributable to the COVID-19 pandemic. This includes things like scheduling issues related to Covid, extension requests from the parties related to Covid, and internal processing delays attributable to Covid. While the more specific reasons for the extension requests are discussed below, almost all case processing was delayed to some extent by the pandemic.

Another general matter is that many of the requests were made by newer staff. The Commission has hired a large number of new staff throughout the agency. Less experienced staff typically take longer to process complaints, resulting in additional processing time. While the extension requests do not reference the longer processing times for newer investigators, the fact that many of the requests come from newer staff is reflective of the generally longer processing times of newer investigators.

The most common reason given by investigators for an extension is that the investigator was assigned to the case late into the 190-day time limit. There are several reasons for why assignments may be delayed. Following retention at the Case Assessment Review, complaints must have a mediation unless a Pre-Answer Conciliation conference was requested. This mediation usually requires parties and/or their authorized representatives to appear in person on a date certain. If mediation is not successful, the case is sent for an investigation. Either party or the Commission can, however, request

Early Legal Intervention (ELI) at any time following mediation. Once a request for ELI is made, processing of the complaint may be halted while the Legal Division has 90 days by statute to decide how to process the complaint. These statutorily mandated processes can add considerable time to the processing of a complaint before it is assigned for investigation. There may also be conflicts of interest between a mediator or investigator which can require an additional reassignment.

The second most common reason indicated for why an extension request is made is that the parties have requested multiple times to reschedule Commission proceedings. The Commission tries to accommodate parties as much as possible but these delays can add considerable time to the processing of a complaint.

The third most common reason is that a settlement between the parties has been reached and the Commission is waiting on finalization of the settlement. Typically, processing of a complaint will pause when the parties notify the Commission that a settlement agreement has been reached. If this happens near the end of the 190-day period, the Commission mediator will request an extension of time so that the parties can resolve the dispute prior to issuance of any final findings.

The last common reason for extensions is due to delays caused by parties in scheduling or cooperating with the investigation. This most typically takes the form of non-responsiveness to the Commission's efforts to interview witnesses or collect documents. In order to ensure a complete and thorough investigation, investigators will ask for an extension to try to complete the investigation.

Finally, there were a number of extensions requested due to the originally assigned investigator having gone out on leave for medical reasons or that the assigned processor has left state service. This happened to multiple regions over the course of the past fiscal year, resulting in these regions becoming severely understaffed for significant portions of the year. This situation is unusual and is not likely to occur in subsequent fiscal years.

3. The number of actions brought pursuant to subsection (d) of CONN. GEN. STAT. 46a-82e.

CONN. GEN. STAT. § 46a-82e(d) states that,

(1) If a complaint has been pending for more than two years after the date of filing pursuant to section 46a-82, and if the investigator fails to issue a finding of reasonable cause or no reasonable cause by the date ordered by the executive director pursuant to subsection (c) of this section, the complainant or respondent may petition the superior court for the judicial district of Hartford for an order requiring the commission to issue a finding by a specified date. The petitioner shall submit the petition on forms prescribed by the Office of the Chief Court Administrator.

The Commission has no record of any such action having been filed in FY 2021.

4. The commission's recommendations for legislative action, if any, necessary for the commission to meet the statutory time frame.

The Commission has two recommendations for legislative action to improve the Commission's ability to process complaints. The most pressing recommendation is to provide additional resources. This should take two forms. The first and most significant is additional personnel. The Commission remains chronically understaffed and has not been able to fill all of the positions allotted to the Commission for many years. The other significant need for resources is in an upgrade to the Commission's computer systems. The Commission's Case Tracking System is significantly outdated and a new system will enable the Commission to process complaints significantly faster.

Secondly, the Commission recommends that the notarization requirement for all complaints be removed. Currently, complaints filed with the Commission must be notarized. Notarization is not required for complaints of discrimination filed with federal agencies. As a result of this requirement, complaints must be printed out, notarized, and then scanned into the Commission's paperless case file system. Removing this requirement will allow complaints to be filed completely electronically. During the pandemic, the notarization requirement was waived or replaced with electronic notarization where possible. As a result, initial processing of complaints was completed faster than in previous years. Making these changes permanent will speed processing going forward.