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**HRA-GC LEGAL UPDATE**  
**APRIL 2014**

***N.H. Commission for Human Rights  
FY2013 Activities & 2014 Priorities***

*The New Hampshire Commission for Human Rights (the "Commission") is the state agency charged with responding to complaints of discrimination in employment, public accommodations, and the sale or rental of housing or commercial property. We thought you might be interested in the agency's activities in 2013 and their priorities for 2014.*

***FY2013 Employment-Related Activity***

Each year, the Commission publishes data concerning its activity over the prior federal fiscal year (October 1 through September 30), including the volume of complaints (known as "charges") filed and the number and types of resolutions reached. The Commission's data for federal fiscal year 2013 (FY2013) and prior years is available on the Commission's website (<https://www.nh.gov/hrc/commission-data/index.htm>).

FY2013 highlights include:

- **234 charges were filed; all but 12 were employment-related.** This is slightly less (about 14%) than the average number of charges filed annually from FY2006-FY2012 (about 273 per year).
- **Disability discrimination was the most common basis for an employment-related charge in 2013** (89 charges filed), with sex discrimination in second (64 charges filed), and age discrimination in third (31 charges filed).
- **A finding of probable cause was made on only 3 employment-related charges** (one brought on the basis of pregnancy discrimination and two on the basis of disability discrimination) in FY2013. Similarly, the Commission made 4 employment-related probable cause findings in FY 2012 (one

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brought on the basis of sexual harassment, two on the basis of disability, and one on the basis of national origin). Probable cause is a threshold determination by one commissioner that allows the case to proceed to a hearing before the full Commission. The past two years represent a *sharp departure from FY2006-FY2011*, when the commissioners made findings of probable cause in an average of about 16 employment-related charges each year.

- The Commissioners found no probable cause in **37 cases** in FY2013 (a statistic which does not distinguish between employment- and non-employment-related cases). On average, from FY2006-FY2012, about 57 charges per year were dismissed after failing to meet the probable cause standard.
- **199 charges were “closed”** by the Commission in FY2013, about 22% less than the average number of cases (about 255) closed annually from FY2006-FY2012.

### **2014 Priorities**

The Commission’s overarching priority in 2014, explained Executive Director Joni N. Esperian, is to continue providing access to justice for the state’s “most vulnerable citizens” – which Ms. Esperian described as including “members of our disabled community” and other “marginalized communities.”

Ms. Esperian recommended that in 2014 employers prioritize training on the amendments to the Americans with Disabilities Act (ADA). In particular, employers would be well-advised to conduct a comprehensive review of all their job descriptions to ensure they include:

- (1) the qualifications necessary for the job and only those qualifications;
- (2) the job’s essential functions;
- (3) “other” (non-essential) job functions (which, Ms. Esperian noted, can assist employers in a range of decisions, from hiring, to conducting performance evaluations, to considering requests for reasonable accommodation); and
- (4) “*what*” the job is intended to accomplish, rather than setting out the “*how*.”

### **Bottom Line**

In FY2013, employers appeared before the Commission on disability discrimination charges more than on any other type of discrimination charge: 89 of the 222 employment-related charges filed in FY2013 were based on disability discrimination and 2/3 of the probable cause findings entered in FY2013 were on disability discrimination charges. Accordingly, in 2014, New Hampshire employers should confirm they have a solid understanding of the ADA, as amended, and that their job descriptions facilitate compliance with the ADA.

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