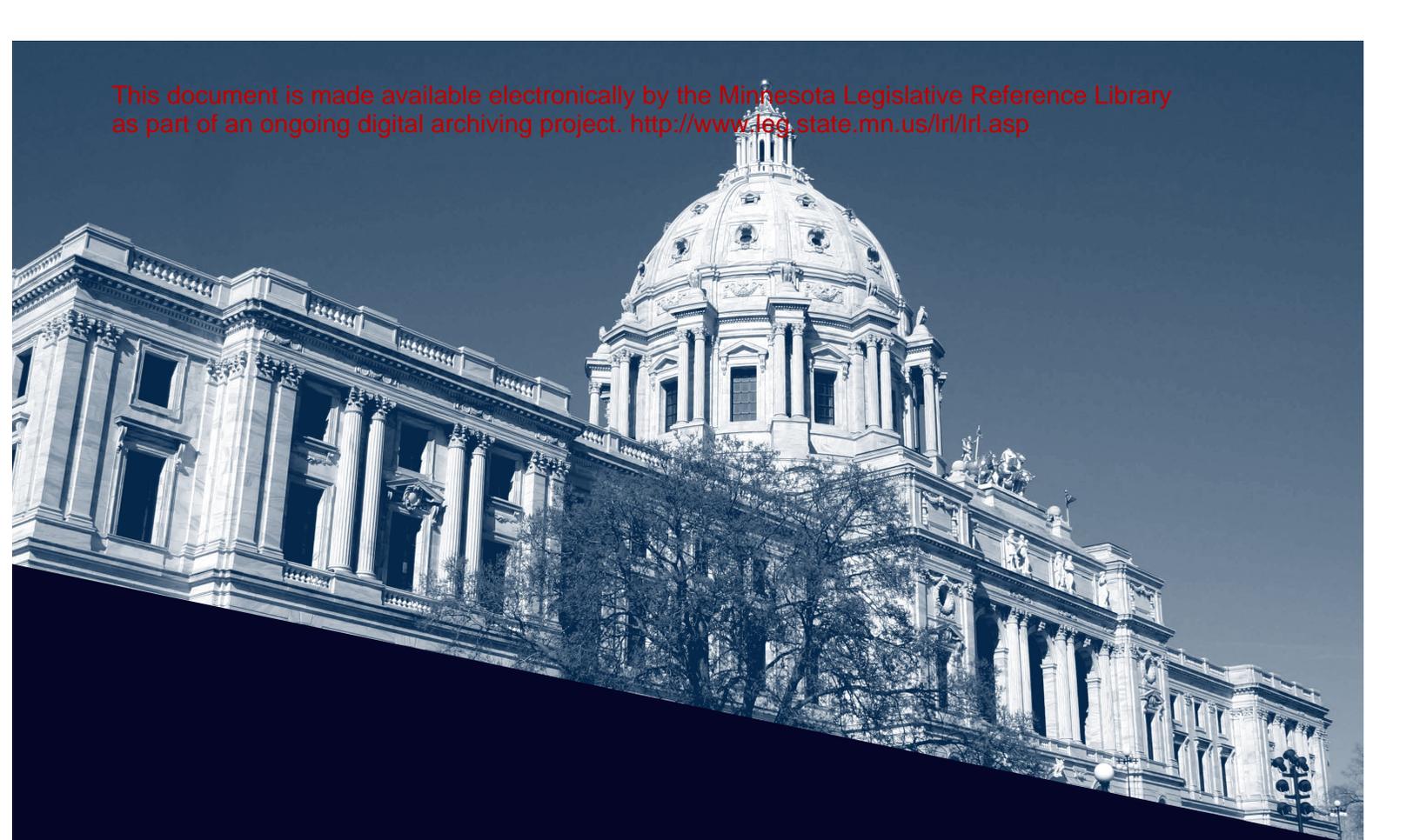


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# Minnesota Department of Human Rights: Complaint Resolution Process

2020  
EVALUATION REPORT

Program Evaluation Division  
**OFFICE OF THE LEGISLATIVE AUDITOR**  
STATE OF MINNESOTA

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## OFFICE OF THE LEGISLATIVE AUDITOR

STATE OF MINNESOTA • James Nobles, Legislative Auditor

February 2020

Members of the Legislative Audit Commission:

The Minnesota Human Rights Act protects residents of the state from illegal discrimination. The Minnesota Department of Human Rights (MDHR) is responsible for enforcing the act by investigating discrimination complaints and determining whether they have merit, among other duties.

In recent years, MDHR has not conducted timely investigations as required by law, taking more than one year to complete its investigation for the majority of cases. We present several recommendations for the department and the Legislature to improve MDHR's investigations into discrimination allegations.

Our evaluation was conducted by Caitlin Badger and Carrie Meyerhoff (project managers) and Yue (Zoey) Zou. MDHR cooperated fully with our evaluation, and we thank them for their assistance.

Sincerely,

Handwritten signature of James Nobles in black ink.

James Nobles  
Legislative Auditor

Handwritten signature of Judy Randall in black ink.

Judy Randall  
Deputy Legislative Auditor



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# Summary

## Minnesota Department of Human Rights: Complaint Resolution Process

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### Key Facts and Findings:

- The Minnesota Human Rights Act says that residents of the state should be free from illegal discrimination. (p. 3)
- The Minnesota Department of Human Rights is responsible for enforcing the act by investigating discrimination complaints and determining whether they have merit, among other duties. (pp. 5-6)
- At the end of Fiscal Year 2019, the Minnesota Department of Human Rights reported having a large backlog of alleged discrimination cases awaiting determination. (p. 9)
- In recent years, the Minnesota Department of Human Rights has not met important timeliness requirements outlined in law. (p. 59)
- The Minnesota Department of Human Rights' lack of timely investigations makes it more difficult to conduct effective investigations and negatively affects parties. (pp. 61-62)
- Prior to 2019, the Minnesota Department of Human Rights conducted minimal screening of discrimination complaints before accepting them as cases. (pp. 18-19)
- By law, the Minnesota Department of Human Rights must prioritize investigating certain cases; however, the department has done so inconsistently. (pp. 50-52)
- The Minnesota Department of Human Rights does not have an effective case triage process to help allocate its limited resources. (p. 55)
- While the Minnesota Department of Human Rights has taken steps since 2019 to increase its oversight of some aspects of its investigations, the department has adopted few policies to ensure investigators take a consistent approach to their work. (p. 21)
- Statutes outline requirements for appeals made by individuals alleging discrimination, but not for appeals made by those accused of discrimination. (p. 36)

### Key Recommendations:

- The Minnesota Department of Human Rights should develop a plan for meeting statutory timeliness requirements and submit it to the Legislature. (pp. 63-64)
- The Minnesota Department of Human Rights should prioritize cases, as required by law. (p. 56)
- The Minnesota Department of Human Rights should establish a case triage process to more effectively allocate its investigation resources. (p. 57)
- The Legislature should amend statutes to include the right to appeal the department's determination for both parties and establish parameters regarding the timeliness of all appeals. (p. 37)

**In recent years, the Minnesota Department of Human Rights has struggled to process alleged discrimination cases in a timely manner, yet the department has adopted few strategies to manage its workload.**

## Report Summary

According to state law, discrimination “threatens the rights and privileges” of Minnesotans and “menaces the institutions and foundations of democracy.”<sup>1</sup>

Discrimination can happen at any time, in any place, and to anyone. The Minnesota Human Rights Act is the state’s civil rights law intended to protect Minnesotans from discrimination.

The word “discrimination” can have multiple meanings. However, for an action to be illegal under the Minnesota Human Rights Act, it must be committed against a person because of a particular personal characteristic listed in the act, such as their race, religion, or sex (referred to as a “protected class”). In addition, the action must be committed in a specified “area” of life, such as employment or housing.

When Minnesota residents believe they have been subjected to discrimination, they may contact the Minnesota Department of Human Rights (MDHR) to file a charge of alleged discrimination. Statutes direct MDHR to investigate these cases and issue a “determination” indicating whether or not discrimination probably occurred.

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**At the end of Fiscal Year 2019, the department reported it had a large backlog of cases awaiting determination.**

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Complainants filed a total of more than 675 cases with MDHR, on average, in the past several fiscal years. However, during that time period, the department was only able to close, on average, 575 cases.

As a result, the total number of cases pending determination has generally increased in recent years. At the end of Fiscal Year 2019, the department reported there were nearly 800 cases awaiting determination, the highest number of cases awaiting determination since 2013.

During the same period, the caseloads for MDHR investigators generally increased.

MDHR reported that investigators’ average caseload at the end of Fiscal Year 2019 was 61 cases, an increase from an average of 32 cases per investigator reported at the end of Fiscal Year 2015. Investigators told us that there are far more cases assigned to them than they could hope to investigate at any one time.

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**In recent years, the Minnesota Department of Human Rights has not conducted timely investigations for the majority of cases.**

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Statutes outline a number of requirements regarding the speed with which MDHR must complete its investigative activities. For example, statutes generally require that MDHR issue a determination indicating whether or not there is probable cause to believe discrimination occurred within one year of an individual filing a charge of discrimination with the department.

We found that among discrimination complaints reported to MDHR in fiscal years 2016 through 2018, MDHR issued a timely determination for only 40 percent of cases. For some of those cases, MDHR took substantially longer to issue a determination than the time permitted in law. For example, MDHR issued a determination more than 180 days *after* the statutory deadline for 16 percent of the cases.

Both MDHR staff and attorneys representing parties named in discrimination complaints told us that delays can negatively impact the department’s ability to conduct investigations. For example, the longer it takes to investigate a case, the more likely it is that witnesses are no longer available or that parties did not retain relevant documentation. Attorneys commented that delays negatively affect their clients.

We recommend that MDHR develop a clear plan for meeting statutory timeliness requirements and submit it to the Legislature. The Legislature should review MDHR’s plan and ensure it reflects the needs and priorities of the state.

**For the majority of cases in recent years, the Minnesota Department of Human Rights did not determine in a timely manner whether or not discrimination probably occurred.**

<sup>1</sup> *Minnesota Statutes* 2019, 363A.02, subd. 1(b).

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**Prior to 2019, the Minnesota Department of Human Rights conducted minimal screening of discrimination complaints before accepting them as cases.**

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Before accepting a case for investigation, staff must evaluate whether complaints have met certain basic criteria. For example, most complainants must make a *prima facie* case of discrimination.<sup>2</sup> The criteria necessary to make a *prima facie* case vary from case to case. Generally, the complainant must indicate they are a member of a protected class, and that they were subject to an adverse action because of their class. However, investigation supervisors told us staff have inconsistently evaluated whether cases meet the *prima facie* criteria.

Typically, if a complainant files a case with MDHR, the department investigates it. As discussed above, investigator caseloads have grown in recent years, and MDHR has struggled to conduct timely investigations. One way MDHR could manage its workload is by accepting fewer cases from the outset.

In 2019, MDHR took some steps to improve its complaint screening process. For example, MDHR implemented a protocol to help ensure that staff collect information necessary to determine whether a complaint meets basic screening criteria. We commend the department for these changes and recommend that MDHR continue to take steps to ensure it accepts only cases that meet at least the basic screening criteria.

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**The department has not consistently prioritized cases as required by law and does not have an effective triage process to allocate its limited resources.**

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Given the large number of cases MDHR accepts, it is reasonable to expect it to establish priorities to manage its workload. Statutes require MDHR to prioritize certain types of cases. For example, statutes require

MDHR to prioritize frivolous cases in order to quickly dismiss them. Many MDHR staff, however, told us they do not consistently prioritize cases as indicated in law. For example, investigators told us that they do not alter their investigation practices for frivolous cases.

While statutes prioritize some cases, the majority of cases MDHR receives do not fall under one of the priorities listed in law. The department generally does not have a strategy for how investigators should triage these cases. For example, MDHR could alleviate its workload by choosing not to investigate all cases or by conducting less in-depth investigations for certain cases. However, MDHR has not chosen to do so.

A number of MDHR investigators told us the department should triage cases to more strategically use the department's limited resources. Several investigators told us that in recent years, they spent time investigating cases they considered to be frivolous, which took time and resources away from investigating more meritorious cases.

We recommend that MDHR prioritize investigating cases as required by law. In addition, given the department's difficulty meeting timeliness requirements in law, we recommend MDHR establish a triage process to more effectively allocate its investigation resources.

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**Without clear policies or standards, it was difficult to determine if the variation we encountered across investigations was appropriate.**

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While state law outlines a number of requirements pertaining to the timeliness of MDHR's investigatory work, it provides no guidance about the activities investigators must undertake during their investigation. For example, statutes do not require investigators to interview parties or review documents. While MDHR took steps in 2019 to increase its oversight of some aspects of its investigations, the department

**The Minnesota Department of Human Rights should adopt case prioritization strategies to help it more effectively manage its workload.**

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<sup>2</sup> Generally, making a *prima facie* case means the complainant's claims are sufficient for someone to presume discrimination occurred, unless the complainant's claims are disproved or rebutted.

**The Legislature should clarify aspects of the Minnesota Human Rights Act, such as the discrimination complaint appeals process.**

has adopted few written policies or standards to ensure investigators take a consistent approach to their work.

Overall, we found that investigators are somewhat inconsistent in how they conduct investigations. While MDHR generally has not established written policies for investigations, MDHR staff told us of two unwritten expectations. Staff told us investigators are always supposed to thoroughly document their investigation and interview the person who filed the charge of discrimination. However, we found that investigators did not always do so.

MDHR staff and attorneys representing parties named in discrimination complaints commented that investigations—or at least aspects of investigations—vary by investigator. For example, they said that the overall quality of the investigation varies by investigator and that some investigators are more likely than others to determine that discrimination probably occurred.

Absent standards in law or clear departmental policies, investigators have significant discretion to decide how they conduct their work. Without standards, it was difficult to determine the extent to which an investigator appropriately used this discretion. While we think it would be difficult to craft policies guiding all investigative activities, we recommend that MDHR adopt policies for certain activities or processes that are relevant to most cases.

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**Statutes outline requirements for appeals made by individuals alleging discrimination, but not for appeals by those accused of discrimination.**

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If a party is dissatisfied with MDHR's determination, they may choose to appeal. While administrative rules grant both parties the right to appeal, only individuals alleging discrimination are granted the right to appeal in statutes.

In addition, statutes stipulate timeliness requirements for appeals submitted by one party, but not the other. For example, statutes require individuals alleging discrimination to submit their appeal request to MDHR within ten days of receiving the determination. In contrast, neither statutes nor rules indicate how long entities accused of discrimination have to submit their appeal request to MDHR. Likewise, statutes and rules outline timeliness requirements regarding how quickly MDHR must make a decision on an appeal submitted by someone alleging discrimination, but not someone accused of it.

The appeals process provides parties with an opportunity to request that MDHR reexamine its initial determination—an important step in providing due process. We recommend the Legislature amend statutes to include both parties' right to appeal and outline for both parties similar requirements regarding the timeliness of appeals activities.

## Summary of Agency Response

*In a letter dated February 26, 2020, the Minnesota Department of Human Rights Commissioner Rebecca Lucero said that of the 11 recommendations OLA makes for MDHR, "all were identified [by the department] as areas of focus at the beginning of 2019." The Commissioner indicated that the department has already implemented a number of changes related to the recommendations highlighted in the OLA report, noting that OLA's recommendations "align with progress the Department has already made to improve processes and procedures to ensure the civil rights of Minnesotans are protected and advanced." She further stated that MDHR "looks forward to continuing to work with the Administration, Legislature, community partners, and staff to achieve bold, transformational goals."*

The full evaluation report, *Minnesota Department of Human Rights: Complaint Resolution Process*, is available at 651-296-4708 or:

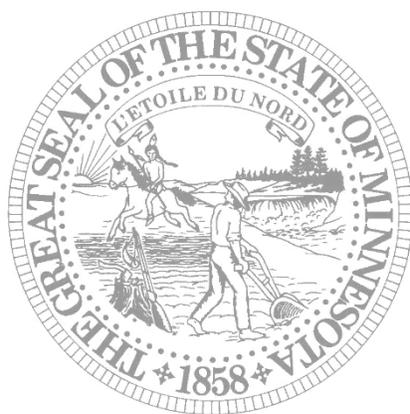
[www.auditor.leg.state.mn.us/ped/2020/humanrights.htm](http://www.auditor.leg.state.mn.us/ped/2020/humanrights.htm)

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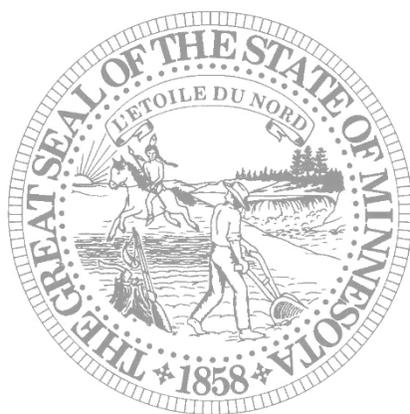
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# Introduction

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According to state law, discrimination “threatens the rights and privileges” of Minnesotans and “menaces the institutions and foundations of democracy.”<sup>1</sup> Discrimination can happen at any time, in any place, and to anyone.<sup>2</sup> The Minnesota Human Rights Act is intended to protect all Minnesotans from discrimination.

The Minnesota Department of Human Rights (MDHR) is responsible for enforcing the state’s laws against discrimination. It primarily does so through education, investigating allegations of discrimination, and ensuring certain state contractors are in compliance with affirmative action requirements. In April 2019, the Legislative Audit Commission directed the Office of the Legislative Auditor to evaluate MDHR. While MDHR has several responsibilities, our evaluation focused on MDHR’s efforts to investigate allegations of discrimination.

In our evaluation, we addressed the following questions:

- **To what extent has the Minnesota Department of Human Rights established policies and procedures for investigating and resolving cases of alleged discrimination?**
- **To what extent has the Minnesota Department of Human Rights investigated alleged discrimination cases in a timely and consistent manner?**

During our evaluation, we reviewed relevant state statutes, federal law, case law, and administrative rules. We also reviewed various documents related to MDHR’s investigation process. We analyzed MDHR financial and staffing data for fiscal years 2014-2019 and demographic trends in Minnesota over the last 40 years.

A key aspect of our evaluation was to learn more about how MDHR investigates allegations of discrimination, and how long it takes the department to do so. To answer these questions, we interviewed numerous MDHR staff, including each of MDHR’s investigators and investigation supervisors, as well as other key staff. To gain a deeper understanding of MDHR’s processes on a case-by-case basis, we reviewed the investigation files for a sample of cases.<sup>3</sup> We also analyzed data about complaints reported to MDHR in fiscal years 2016 through 2018.

In an effort to assess parties’ overall satisfaction with MDHR’s investigation process, we surveyed attorneys who provided legal counsel to parties named in recent

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<sup>1</sup> *Minnesota Statutes* 2019, 363A.02, subd. 1(b).

<sup>2</sup> For the purposes of this report, “discrimination” is the act of treating an individual differently—because of one or more personal characteristics—in violation of the Minnesota Human Rights Act, and includes the failure to provide reasonable accommodations as required by law.

<sup>3</sup> We selected a sample of 40 closed cases resulting from complaints reported by members of the public (that is, excluding cases filed by MDHR’s commissioner) in fiscal years 2016 and 2017.

discrimination complaints reported to MDHR.<sup>4</sup> In addition, we interviewed eight attorneys representing both individuals alleging discrimination and individuals accused of discrimination. These interviews provided us with an opportunity to discuss certain issues in greater depth than we could explore in our survey.

Finally, to learn more about common practices and challenges related to investigating discrimination, we solicited information from agencies that conduct similar investigations into allegations of discrimination.<sup>5</sup> We also reviewed academic literature related to investigating civil or human rights offenses.

Our evaluation focused on the timeliness of MDHR investigations and the extent to which investigators adhered to MDHR policies and standards. We did not attempt to determine whether investigators made appropriate decisions for specific cases. We also focused on cases filed by members of the public, rather than cases filed by MDHR's commissioner, as cases filed by the public comprised the vast majority of discrimination cases filed with MDHR in recent years.<sup>6</sup>

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<sup>4</sup> We surveyed attorneys who provided legal counsel to charging and/or responding parties for discrimination complaints reported to MDHR in fiscal years 2016 through 2018, according to data provided by MDHR. We surveyed 920 attorneys and received 305 responses, for a response rate of 33 percent.

<sup>5</sup> We reviewed the practices of and interviewed staff from the U.S. Equal Employment Opportunity Commission, the Illinois Department of Human Rights, and the Minneapolis Department of Civil Rights.

<sup>6</sup> *Minnesota Statutes* 2019, 363A.28, subd. 2, gives MDHR's commissioner authority to file cases of discrimination directly "whenever the commissioner has reason to believe that a person is engaging in an unfair discriminatory practice." Among complaints reported to MDHR in fiscal years 2016 through 2018, members of the public filed about 1,890 cases of discrimination (93 percent), and MDHR's commissioner filed about 145 cases (7 percent).

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# Chapter 1: Background

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In addition to the protections provided to people under the United States Constitution and federal laws, many states across the country have established laws to protect individuals from illegal discrimination. In this chapter, we provide an overview of the law and the agency established to protect Minnesotans from discrimination—the Minnesota Human Rights Act and the Minnesota Department of Human Rights (MDHR), respectively. We then highlight some key trends related to MDHR’s investigative work in recent years, and provide information about MDHR’s staff and finances.

## Key Findings in This Chapter

- The Minnesota Human Rights Act says that residents of the state should be free from illegal discrimination.
- According to the Minnesota Department of Human Rights, the number of new discrimination cases filed regularly exceeded the number of cases closed by the department in recent years.

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## The Minnesota Human Rights Act

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The Legislature first established laws to address discrimination in 1955, when it passed the Minnesota State Act for Fair Employment Practices.<sup>1</sup> After expanding the scope of the state’s discrimination law multiple times, in 1973, the Legislature renamed the law the Minnesota Human Rights Act.<sup>2</sup> Today, the Minnesota Human Rights Act is the state’s civil rights law intended to protect Minnesotans from discrimination.

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### **The Minnesota Human Rights Act says that residents of the state should be free from illegal discrimination.**

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According to the Minnesota Human Rights Act, “It is the public policy of this state to secure for persons in this state, freedom from discrimination....”<sup>3</sup> The act further says, “Such discrimination threatens the rights and privileges of the inhabitants of this state and menaces the institutions and foundations of democracy.”<sup>4</sup> While it is clear that the act intends for Minnesotans to be free from discrimination, statutes also state that it is the policy of the state to “protect all persons from wholly unfounded charges of discrimination.”<sup>5</sup>

The word “discrimination” can have multiple meanings. In this report, we use the word to mean not only negative actions—biased, prejudicial, etc.—but also actions and inactions that, if proven, would be violations of the Minnesota Human Rights Act. The

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<sup>1</sup> *Laws of Minnesota* 1955, Chapter 516.

<sup>2</sup> *Laws of Minnesota* 1973, Chapter 729, codified as *Minnesota Statutes* 2019, 363A.

<sup>3</sup> *Minnesota Statutes* 2019, 363A.02, subd. 1(a).

<sup>4</sup> *Minnesota Statutes* 2019, 363A.02, subd. 1(b).

<sup>5</sup> *Ibid.*

law calls them unfair acts of discrimination; in this report, we often simply use the word “discrimination.”

For an action to be illegal or unfair under the Minnesota Human Rights Act, the action must be committed against a person, or persons, because of their race, color, creed, religion, national origin, marital status, sex, or other “protected” category identified in the law. These protected categories are often referred to as “protected classes.” In addition, the action must be committed in a specified protected “area” of life, such as employment, public accommodation, or housing. For example, it is illegal to:

“...deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of race, color, creed, religion, disability, national origin, martial status, sexual orientation, or sex...”<sup>6</sup>

Exhibit 1.1 shows the areas and protected classes outlined in law. The Minnesota Human Rights Act protects every person in Minnesota, because every individual belongs to one or more protected classes. However, statutes do not protect all classes in all areas, as seen in Exhibit 1.1.

Since the passage of the Minnesota Human Rights Act, Minnesota’s demographics have changed with regard to some of the classes protected in law. For example, between 1980 and 2018, Minnesota’s population gradually grew both older and more racially diverse.<sup>7</sup> While the majority of Minnesota’s population was White in 2018, Asian/Pacific Islander and Black/African American have been Minnesota’s two fastest-growing racial groups. For instance, in 1980, 1 percent of Minnesota’s total population was Black or African American, compared to 7 percent in 2018. At the same time, Minnesota’s Asian and Pacific Islander population increased from less than 1 percent to 5 percent of Minnesota’s total population. Simultaneously, the number of adults in Minnesota over the age of 18 has steadily increased.<sup>8</sup> Between 1980 and 2018, the number of adults grew by 48 percent, representing 77 percent of Minnesota’s total population in 2018.

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<sup>6</sup> *Minnesota Statutes* 2019, 363A.11, subd. 1(a)(1).

<sup>7</sup> U.S. Department of Commerce, Bureau of the Census, *1980 Census of Population* (Washington, DC, 1983); *1990 Census of Population* (Washington, DC, 1992); *2000 Census of Population and Housing* (Washington, DC, 2002); *2010 Census of Population and Housing* (Washington, DC, 2012); and *Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin for the United States, States, and Counties: April 1, 2010 to July 1, 2018* (Washington, DC, 2019), <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>, accessed December 2, 2019.

<sup>8</sup> The Minnesota Human Rights Act prohibits discrimination based on age for adults over the age of the majority (18 years old). The Act prohibits discrimination based on age in only certain areas. *Minnesota Statutes* 2019, 363A.03, subd. 2; and 645.451, subd. 5.

## Exhibit 1.1: Classes protected by the Minnesota Human Rights Act vary by area.

| Class  | Area     |        |                          |            |                       |                 |               |
|--|----------|--------|--------------------------|------------|-----------------------|-----------------|---------------|
|  | Business | Credit | Educational Institutions | Employment | Public Accommodations | Public Services | Real Property |
| Age  | ●        | ●      | ●                        | ●          | ●                     | ●               | ●             |
| Color  | ●        | ●      | ●                        | ●          | ●                     | ●               | ●             |
| Creed  | ●        | ●      | ●                        | ●          | ●                     | ●               | ●             |
| Disability                                   | ●        | ●      | ●                        | ●          | ●                     | ●               | ●             |
| Familial status                              | ●        | ●      | ●                        | ●          | ●                     | ●               | ●             |
| Marital status                               | ●        | ●      | ●                        | ●          | ●                     | ●               | ●             |
| Membership or activity in a local commission | ●        | ●      | ●                        | ●          | ●                     | ●               | ●             |
| National origin                              | ●        | ●      | ●                        | ●          | ●                     | ●               | ●             |
| Public assistance status                     | ●        | ●      | ●                        | ●          | ●                     | ●               | ●             |
| Race   | ●        | ●      | ●                        | ●          | ●                     | ●               | ●             |
| Religion                                     | ●        | ●      | ●                        | ●          | ●                     | ●               | ●             |
| Sex  | ●        | ●      | ●                        | ●          | ●                     | ●               | ●             |
| Sexual orientation                           | ●        | ●      | ●                        | ●          | ●                     | ●               | ●             |

● Protected class is covered in the area     
● Protected class is not covered in the area

NOTES: While classes listed in this exhibit are generally protected from discrimination in the areas indicated above, statutes list some exceptions. For example, *Minnesota Statutes* 2019, 363A.23, subd. 1, states that “It is not an unfair discriminatory practice for a religious or denominational [educational] institution to limit admission or give preference to applicants of the same religion.” Statutes also prohibit aiding, abetting, obstructing, and retaliatory practices associated with illegal discrimination. *Minnesota Statutes* 2019, 363A.14-363A.15.

SOURCE: Office of the Legislative Auditor, analysis of *Minnesota Statutes* 2019, 363A.08-363A.26.

## The Minnesota Department of Human Rights

When MDHR was established in 1967, Minnesota became one of the first states to create a department-level civil rights agency in the executive branch.

### Statutes charge the Minnesota Department of Human Rights with enforcing the Minnesota Human Rights Act.

The Minnesota Human Rights Act grants MDHR’s commissioner numerous powers and duties. For example, statutes require the commissioner to create local and statewide advisory committees as needed to implement the act, research discriminatory practices to aid in assessing compliance with the act, and provide “technical assistance” to people

subject to the provisions of the act.<sup>9</sup> While statutes outline many responsibilities, they require MDHR's commissioner to prioritize three areas:<sup>10</sup>

**Discrimination complaints.** The Minnesota Human Rights Act directs MDHR to "...receive and investigate charges alleging unfair discriminatory practices, and determine whether or not probable cause exists for hearing."<sup>11</sup> In doing so, MDHR may subpoena witnesses, administer oaths, take testimony, and review documents as appropriate to carry out the act's purposes.<sup>12</sup>

**Affirmative action plans.** MDHR must also prioritize certifying that certain businesses that want to bid on state contracts have an approved affirmative action plan. For certain state contracts, the Minnesota Human Rights Act dictates that state agencies must not accept bids from certain businesses unless MDHR is in possession of that business's affirmative action plan "for the employment of minority persons, women, and qualified disabled individuals."<sup>13</sup> The plan must be approved by MDHR prior to executing the contract.

**Education.** The Minnesota Human Rights Act directs MDHR to attempt to eliminate discriminatory practices through education, conference, persuasion, and other means.<sup>14</sup>

Over time, the Legislature has broadened the Minnesota Human Rights Act, thereby increasing the scope of MDHR's existing responsibilities. For instance, the Legislature expanded the act to include new areas of discrimination and new protected classes. In 1980, for example, the Legislature amended the act to prohibit discrimination in housing based on familial status and in 1993 to prohibit discrimination based on sexual orientation.<sup>15</sup>

The Legislature has also given MDHR new responsibilities over time. For example, after the Legislature introduced prohibitions against inquiring into a prospective employee's criminal history early in the hiring process, it tasked MDHR with investigating violations of the law and imposing penalties as appropriate.<sup>16</sup> Similarly, in 2014, the Legislature required MDHR to begin issuing "equal pay certificates" to certain businesses that attest they do not discriminate based on sex for certain pay and promotion decisions.<sup>17</sup> While MDHR has numerous responsibilities, our evaluation focused on MDHR's efforts to investigate allegations of discrimination.

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<sup>9</sup> *Minnesota Statutes* 2019, 363A.06, subd. 1(a)(14)-1(a)(16).

<sup>10</sup> *Minnesota Statutes* 2019, 363A.06, subd. 1(a).

<sup>11</sup> *Minnesota Statutes* 2019, 363A.06, subd. 1(a)(8).

<sup>12</sup> *Minnesota Statutes* 2019, 363A.06, subd. 1(a)(9).

<sup>13</sup> *Minnesota Statutes* 2019, 363A.36, subd. 1(a).

<sup>14</sup> *Minnesota Statutes* 2019, 363A.06, subd. 1(a)(10).

<sup>15</sup> *Laws of Minnesota* 1980, chapter 531, sec. 4, subd. 2, codified as *Minnesota Statutes* 2019, 363A.09; and *Laws of Minnesota* 1993, chapter 22, sec. 19, subd. 1, codified as *Minnesota Statutes* 2019, 363A.02, subd. 1.

<sup>16</sup> *Laws of Minnesota* 2009, chapter 59, art. 5, sec. 11, codified as *Minnesota Statutes* 2019, 364.021(a); and *Laws of Minnesota* 2013, chapter 61, sec. 4, codified as *Minnesota Statutes* 2019, 364.06, subd. 2(a).

<sup>17</sup> *Laws of Minnesota* 2014, chapter 239, art. 2, sec. 6, codified as *Minnesota Statutes* 2019, 363A.44.

## Discrimination Cases

For individuals who believe they have been subject to discrimination, there are several potential ways to seek restitution. For example, depending on the characteristics of their complaint, individuals may file a case in either state or federal district court, with a local human rights commission, or with various federal agencies tasked with investigating allegations of discrimination.<sup>18</sup> They may also file a case with MDHR.

MDHR acts as a fact-finder to determine whether discrimination probably occurred. Generally, after an individual files a charge with MDHR outlining the discrimination allegation(s), MDHR investigates the allegation(s) and makes a determination about whether or not it is probable that discrimination occurred.<sup>19</sup> If MDHR determines that discrimination probably did occur, the department is then responsible for attempting to eliminate the discriminatory practices.<sup>20</sup>

Cases take different paths through MDHR’s investigation process depending on the characteristics of the case and desires of the parties involved.<sup>21</sup> For example, parties may choose to resolve the dispute through MDHR’s mediation program before MDHR issues a determination, or the department may investigate the allegations and issue a determination. We discuss MDHR’s case investigation and resolution processes in greater detail in chapters 2 and 3, respectively.

In recent years, MDHR has processed discrimination cases from across the state and related to nearly all protected classes and areas. Among complaints reported to MDHR in fiscal years 2016 through 2018, individuals most frequently alleged they were discriminated against on the basis of disability, followed by race, sex, and age, respectively. The majority of cases were employment related, followed by cases

### Discrimination Case Example

**Area:** Public Accommodations  
**Class:** Religion and National Origin

A Muslim woman originally from Somalia reported to MDHR that she was verbally harassed by restaurant staff, who made negative comments about her religion and country of origin while she waited for her food. The restaurant denied the allegations.

MDHR conducted an investigation, including collecting information from third-party witnesses, who corroborated the allegations. After issuing a “probable cause” determination, MDHR conciliated the issue and brokered a settlement agreement.

<sup>18</sup> *Minnesota Statutes* 2019, 363A.07, permits local municipalities to establish human rights commissions. Some cities—including St. Paul and Minneapolis—have offices that investigate allegations of discrimination. In addition, some federal agencies—such as the U.S. Equal Employment Opportunity Commission or the U.S. Department of Housing and Urban Development—enforce federal laws that make it illegal to discriminate in certain areas. If the alleged discriminatory act is in violation of federal law, an individual could choose to file a case with one of those federal agencies.

<sup>19</sup> For the purposes of this report, a “charge” is a written statement outlining allegations of discriminatory acts that are prohibited by the Minnesota Human Rights Act.

<sup>20</sup> *Minnesota Statutes* 2019, 363A.28, subd. 8.

<sup>21</sup> A discrimination complaint becomes a “case” after the charging party files a charge of alleged discrimination with MDHR.

regarding public accommodations. Many cases also included allegations of reprisal.<sup>22</sup> In recent years, individuals living in most Minnesota counties filed cases with MDHR, although the majority of cases originated in the seven-county Twin Cities region.<sup>23</sup> Among complaints reported to MDHR in fiscal years 2016 through 2018, about 30 percent of cases were filed by individuals outside of the seven-county Twin Cities region.

According to MDHR, the number of discrimination cases filed with the department has fluctuated between Fiscal Year 2012 and Fiscal Year 2019. As seen in Exhibit 1.2, MDHR reported a high of 785 cases filed in Fiscal Year 2013 and a low of about 575 cases filed in Fiscal Year 2015.<sup>24</sup>

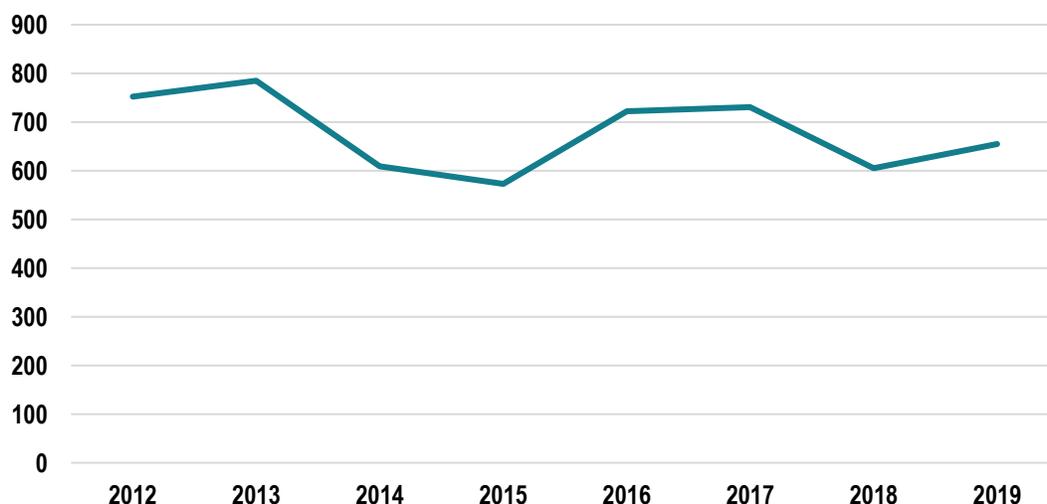
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**Exhibit 1.2: The number of discrimination cases filed with the Minnesota Department of Human Rights has fluctuated over time.**

Number of Cases



NOTES: Data reflect cases filed as of the last day of each fiscal year and include commissioner-initiated cases.

SOURCE: Office of the Legislative Auditor, analysis of Minnesota Department of Human Rights semi-annual legislative reports, July 2012 to July 2019, <https://mn.gov/mdhr/news-community/reports/legislative-report.jsp>, accessed November 18, 2019.

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<sup>22</sup> In addition to specifying unfair discriminatory actions related to protected classes, statutes prohibit other specific activities, such as reprisal. Reprisal includes, for example, intimidation, retaliation, or harassment by an individual accused of discrimination against the accuser or an individual who assisted with an investigation into a case of alleged discrimination. *Minnesota Statutes* 2019, 363A.15.

<sup>23</sup> The seven-county Twin Cities region includes Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties.

<sup>24</sup> Data reported by MDHR include commissioner-initiated cases.

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**According to the Minnesota Department of Human Rights, the number of new discrimination cases filed regularly exceeded the number of cases closed by the department in recent years.**

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Between Fiscal Year 2016 and Fiscal Year 2019, parties filed an average of 678 cases with MDHR each year. During the same period, MDHR closed an average of 575 cases annually.<sup>25</sup> Parties filed nearly 200 more cases than the department closed in fiscal years 2016 and 2017.

As a result, the total number of cases pending determination has generally increased in recent years. At the close of Fiscal Year 2019, MDHR reported that 798 cases of alleged discrimination were awaiting a determination. This is an increase from 701 cases awaiting determination at the end of Fiscal Year 2018 and 588 cases at the end of Fiscal Year 2016.

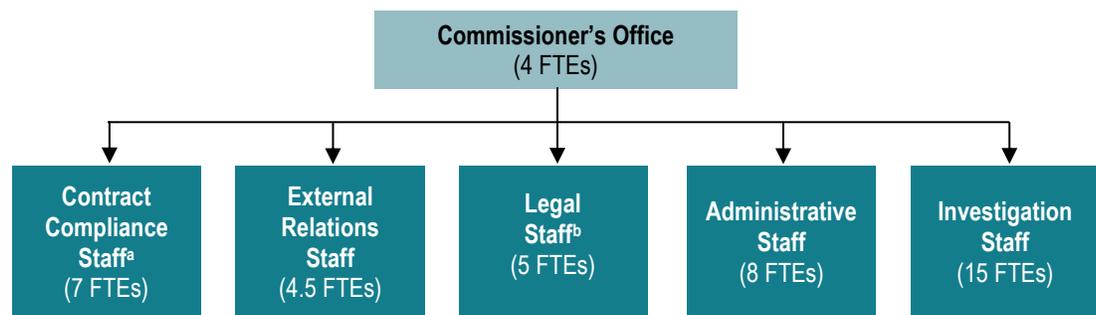
## Staff

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As seen in Exhibit 1.3, MDHR staff are primarily organized into five functional units—contract compliance, external relations, legal, administrative, and investigation staff.

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### Exhibit 1.3: Staff at the Minnesota Department of Human Rights are grouped into five functional units.



NOTES: Data reflect MDHR staff as of the end of Fiscal Year 2019. A “full-time-equivalent” (FTE) employee is an employee who works 40 hours per week. One employee who works 30 hours each week is counted as 0.75 FTE.

<sup>a</sup> “Contract Compliance Staff” ensure certain businesses bidding on certain state contracts have an approved affirmative action plan and are making a good faith effort to ensure equal pay, as required by law.

<sup>b</sup> “Legal Staff” include attorneys and employees overseeing case settlements and mediation.

SOURCE: Office of the Legislative Auditor, analysis of Minnesota Department of Human Rights payroll data.

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<sup>25</sup> “Closed cases” reflect cases that were dismissed or withdrawn, were resolved or settled prior to determination, or for which MDHR issued a determination. Data reflect cases filed as of the last day of each fiscal year.

Contract compliance staff, for example, ensure certain businesses bidding on certain state contracts have an approved affirmative action plan and are making a good faith effort to ensure equal pay, as required by law. External relations staff, such as communication, education, and outreach specialists, develop education and community engagement programs to inform Minnesotans about their rights.

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**In addition to individuals conducting investigations, several other staff at the Minnesota Department of Human Rights perform activities pertaining to allegations of discrimination.**

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MDHR's investigation staff include investigators and their supervisors. As of the end of Fiscal Year 2019, MDHR employed 13 full-time investigators. Four investigators were devoted to receiving allegations of discrimination (also referred to as case intake), eight investigators were devoted to investigating allegations of discrimination, and one investigator conducted both intake and investigation. MDHR also employed two full-time investigation supervisors who oversee investigators. At the end of Fiscal Year 2019, investigation staff accounted for 34 percent of the department's total full-time-equivalent (FTE) employees.<sup>26</sup>

In addition to investigation staff, MDHR leadership estimated that—as of the end of Fiscal Year 2019—ten legal or administrative employees spent a significant portion of their time assisting with allegations of discrimination. For example, MDHR's legal staff oversee MDHR's mediation program and case settlements, and provide legal assistance to MDHR staff, among other responsibilities related to resolving cases. Administrative staff assist with processing investigation-related paperwork and other support functions.

The number of MDHR's overall staff has increased in recent years. From fiscal years 2014 to 2019, MDHR increased its staff by about 8 FTEs, to nearly 44 FTEs (an increase of 23 percent). Some of this growth can be attributed to increases in staff who assist with allegations of discrimination. For example, from fiscal years 2014 to 2019, MDHR increased its legal team by four staff, including hiring an individual to oversee MDHR's mediation program and an individual to oversee settlements resulting from cases in which MDHR determined discrimination likely occurred. MDHR also hired a second investigation supervisor. At the same time, the number of investigators remained relatively flat; from fiscal years 2014 to 2019, MDHR increased the number of investigators by one FTE.

## Finances

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Between fiscal years 2014 and 2019, MDHR's revenue and expenditures both increased. While MDHR received revenue from several sources, in recent years, the Legislature appropriated most of the department's funding from the General Fund.

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<sup>26</sup> A "full-time-equivalent" (FTE) employee is an employee who works 40 hours per week. One employee who works 30 hours each week is counted as 0.75 FTE.

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**Between fiscal years 2014 and 2019, General Fund appropriations to the Minnesota Department of Human Rights increased by 27 percent to \$4.6 million, after adjusting for inflation.**

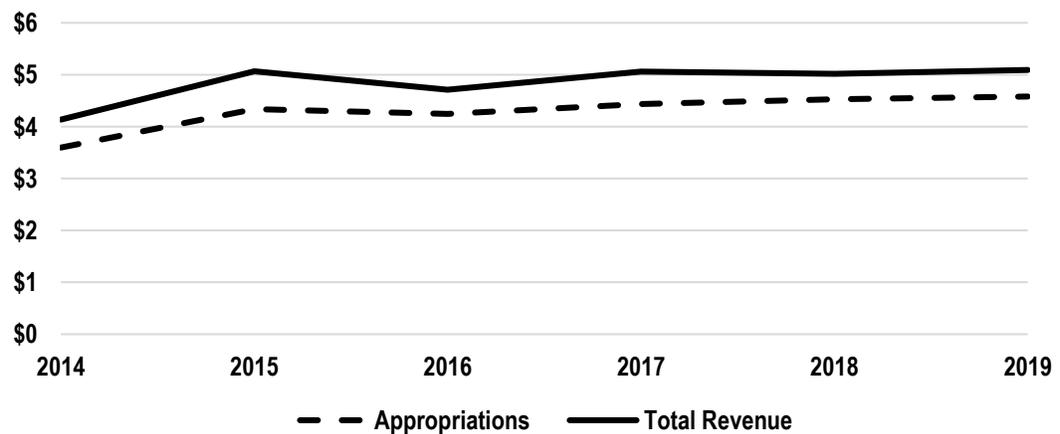
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As shown in Exhibit 1.4, MDHR’s total revenue was almost \$5.1 million in Fiscal Year 2019. In recent years, the General Fund provided between 85 to 90 percent of the department’s funding. General Fund appropriations to MDHR grew from \$3.6 million in Fiscal Year 2014 to \$4.6 million in Fiscal Year 2019, after adjusting for inflation.<sup>27</sup>

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**Exhibit 1.4: The Minnesota Department of Human Rights’ revenue increased from fiscal years 2014 to 2019.**

In millions of 2019 dollars



NOTES: Minnesota Department of Human Rights’ revenue comes from General Fund appropriations, federal funding, fees from issuing affirmative action and equal pay certificates as required by law, and other special revenue and gifts. Dollar amounts are adjusted for inflation.

SOURCES: Office of the Legislative Auditor, analysis of appropriations laws; the Minnesota Department of Human Rights’ allotments within appropriations reflected in the State of Minnesota’s accounting system; and U.S. Bureau of Economic Analysis, “Table 1.1.4. Price Indexes for Gross Domestic Product,” [https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=3&isuri=1&nipa\\_table\\_list=4](https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=3&isuri=1&nipa_table_list=4), accessed October 3, 2019.

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In some cases, the Legislature authorized fees or appropriated funds that reflected new responsibilities or specific tasks assigned to MDHR. For example, as mentioned earlier, the 2014 Legislature passed legislation that required MDHR to issue equal pay certificates to qualifying businesses.<sup>28</sup> The Legislature authorized a \$150 application fee

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<sup>27</sup> Dollar amounts are presented in Fiscal Year 2019 dollars based on U.S. Bureau of Economic Analysis, “Table 1.1.4. Price Indexes for Gross Domestic Product,” [https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=3&isuri=1&nipa\\_table\\_list=4](https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=3&isuri=1&nipa_table_list=4), accessed October 3, 2019.

<sup>28</sup> *Laws of Minnesota* 2014, chapter 239, art. 2, sec. 6, codified as *Minnesota Statutes* 2019, 363A.44. Qualifying businesses submit a signed statement attesting that they meet the criteria outlined in law. Criteria include, for example, that the “average compensation for [an employer’s] female employees is not consistently below the average compensation for its male employees,” and that the employer makes retention and promotion decisions without regard to sex.

per certificate and appropriated \$674,000 to the department for Fiscal Year 2015 for MDHR to implement the act.<sup>29</sup>

In addition to General Fund appropriations, MDHR received a small amount of funding from other sources. In the last five fiscal years, MDHR's second-largest source of revenue was the federal government.<sup>30</sup> Other sources of revenue have included fees from issuing affirmative action or equal pay certificates, receipts from seminars or events, grants, and gifts. Funding from sources other than the General Fund fluctuated between fiscal years 2014 and 2019.

MDHR expenditures have also increased from \$3.4 million in Fiscal Year 2014 to \$5.4 million in Fiscal Year 2019.<sup>31</sup> As seen in Exhibit 1.5, the majority of MDHR's expenses are for payroll. For the last six fiscal years, payroll accounted for about three-quarters of MDHR's total expenditures. Purchased services—including IT services, professional and technical contracts, and rent and utilities—represented MDHR's next highest area of expenditures.

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### Exhibit 1.5: Payroll accounted for the majority of the Minnesota Department of Human Rights' expenditures in the last six fiscal years.

|                                 | 2014         | 2015         | 2016         | 2017         | 2018         | 2019         |
|---------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Payroll                         | \$2.8        | \$3.1        | \$3.1        | \$3.5        | \$3.9        | \$4.1        |
| Purchased services <sup>a</sup> | 0.6          | 0.8          | 0.7          | 1.1          | 0.9          | 1.2          |
| Other <sup>b</sup>              | <0.1         | 0.3          | 0.2          | 0.3          | 0.1          | 0.1          |
| <b>Total</b>                    | <b>\$3.4</b> | <b>\$4.2</b> | <b>\$4.1</b> | <b>\$4.9</b> | <b>\$4.9</b> | <b>\$5.4</b> |

NOTES: Expenditures are reported in millions of dollars. Amounts are adjusted for inflation and presented in Fiscal Year 2019 dollars. Expenditures by year may not sum to the total due to rounding.

<sup>a</sup> Between fiscal years 2014 and 2019, three categories of expenditures accounted for approximately 90 percent of the Minnesota Department of Human Rights' purchased services: (1) centralized IT services and "computer and system services," (2) state agency or outside professional-technical services, and (3) space rental and utilities.

<sup>b</sup> Examples of "other" categories of spending include indirect costs, equipment leases, supplies, and other operating costs.

SOURCES: Office of the Legislative Auditor, analysis of Minnesota Department of Human Rights expenditure data; and U.S. Bureau of Economic Analysis, "Table 1.1.4. Price Indexes for Gross Domestic Product," [https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=3&isuri=1&nipa\\_table\\_list=4](https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=3&isuri=1&nipa_table_list=4), accessed October 3, 2019.

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<sup>29</sup> *Laws of Minnesota* 2014, chapter 239, art. 2, sec. 6, subd. 2(a); and art. 3, sec. 12. In addition to a one-time appropriation of \$674,000 for Fiscal Year 2015, the 2014 Legislature increased MDHR's base budget by \$426,000 beginning in Fiscal Year 2016 for the purpose of implementing this new responsibility.

<sup>30</sup> MDHR has a worksharing agreement with the U.S. Equal Employment Opportunity Commission (EEOC). EEOC enforces federal laws that make it illegal to discriminate against certain individuals in the area of employment. Per the worksharing agreement, MDHR investigates some cases under EEOC's purview and receives payment from EEOC for that work.

<sup>31</sup> Dollar amounts are adjusted for inflation and presented in Fiscal Year 2019 dollars.

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# Chapter 2: Intake and Investigation Process

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As discussed in Chapter 1, a primary responsibility of the Minnesota Department of Human Rights (MDHR) is to investigate allegations of discrimination.<sup>1</sup> In this chapter, we discuss the process by which MDHR accepts and investigates alleged discrimination cases.<sup>2</sup> We did not evaluate the adequacy of the department’s investigations into specific cases; rather, we systematically reviewed issues affecting investigators’ work, including MDHR’s complaint screening process, its policies guiding investigations, and its communication with parties. We provide more information about the ways a case could be resolved in Chapter 3.

## Key Findings in This Chapter

- Prior to 2019, the Minnesota Department of Human Rights conducted minimal screening of complaints before accepting them as cases.
- The Minnesota Department of Human Rights’ communication with parties about their case is inconsistent and infrequent.

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## Process Overview

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As shown in Exhibit 2.1, the intake and investigation process begins when an individual—a “complainant”—contacts staff in MDHR’s intake unit because they believe they were subject to discrimination.<sup>3</sup> The complainant describes their complaint to an MDHR intake staff person, who gathers information relevant to a potential discrimination case.

As we discuss in the following section, intake staff must assess whether the complaint meets certain basic criteria. For example, staff evaluate whether the alleged actions are illegal under the Minnesota Human Rights Act. At this stage, staff do not evaluate the veracity of the claims or assess whether discrimination likely occurred. If the complaint does not meet the basic criteria, MDHR should not accept it as a case. If MDHR does not accept the complaint, staff told us they attempt to refer the complainant to other resources for assistance. For example, staff might refer a complainant to an organization providing legal assistance or tenant advocacy, or to various other state agencies relevant to their complaint.

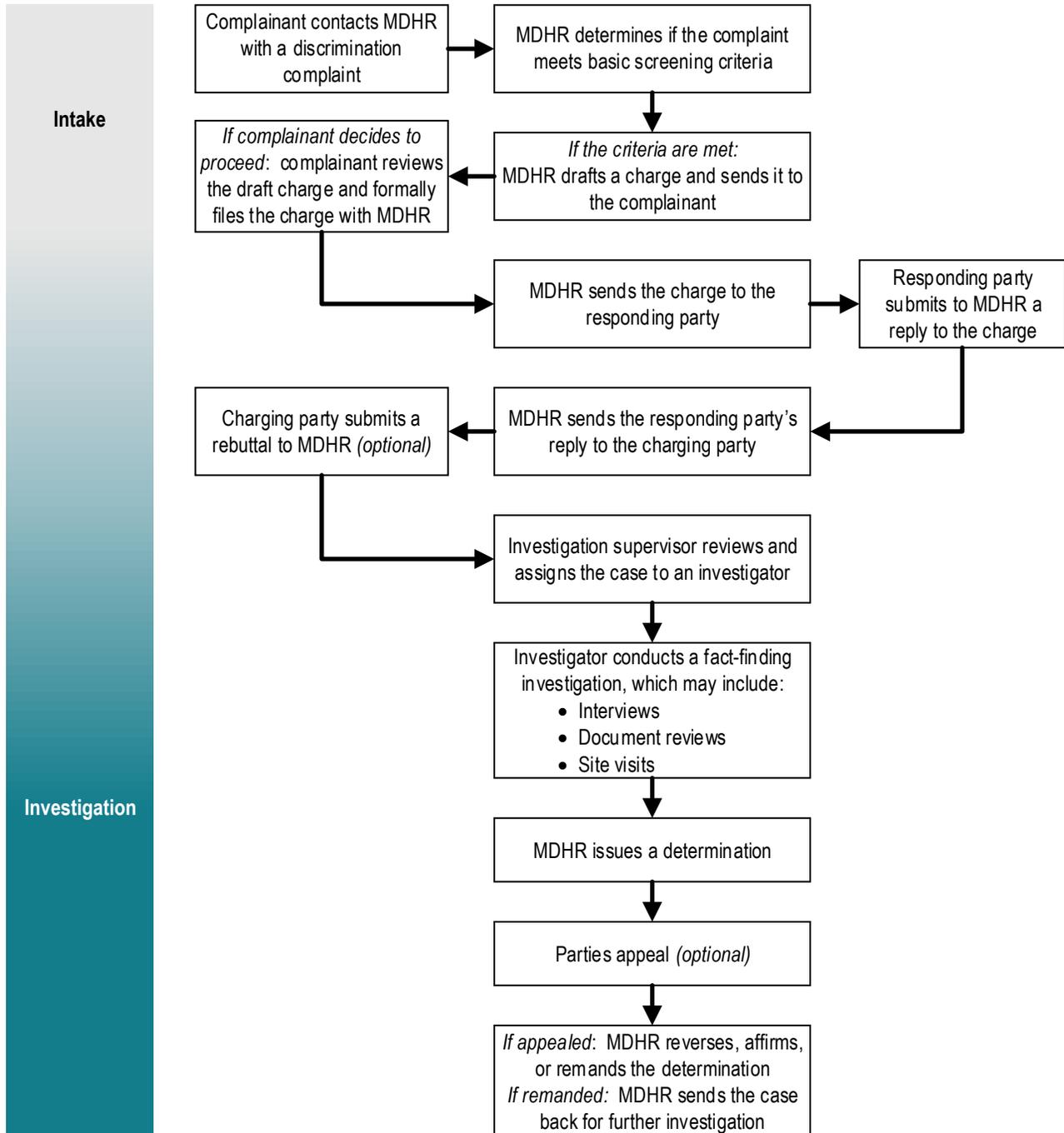
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<sup>1</sup> *Minnesota Statutes* 2019, 363A.06, subd. 1(a)(8). For the purposes of this report, “discrimination” is the act of treating an individual differently—because of one or more personal characteristics—in violation of the Minnesota Human Rights Act, and includes the failure to provide reasonable accommodations as required by law.

<sup>2</sup> For the purposes of this report, a discrimination complaint becomes a “case” after the charging party files a charge of alleged discrimination with MDHR.

<sup>3</sup> MDHR’s intake procedures have varied over time. In recent years, all investigators were responsible for handling intake and investigating cases. In 2019, the department separated its intake and investigation functions. Currently, complainants may contact intake staff by phone, mail, e-mail, an online form, or through a walk-in visit.

**Exhibit 2.1: The Minnesota Department of Human Rights’ case intake and investigation process has many steps.**



NOTES: “MDHR” is the Minnesota Department of Human Rights. The “charging party” is the individual alleging discrimination and the “responding party” is the entity accused of discrimination. Many complaints never proceed through the entire intake and investigation process. For example, parties resolve some cases through mediation before the department issues a determination.

SOURCE: Office of the Legislative Auditor.

If the complaint meets the basic criteria, the intake staff person collects additional information as necessary and drafts a charge of discrimination.<sup>4</sup> The charge is a written statement—typically no more than one or two pages in length—that outlines the discrimination allegation(s). MDHR staff then send the draft charge to the complainant for their review and approval. The complainant officially files the charge with MDHR by submitting a signed and notarized copy of the charge to the department. After filing the charge, the complainant becomes the “charging party.”

After the charge is filed, the department sends a copy of the charge to the entity accused of discrimination—otherwise known as the “responding party”—thereby notifying them of the allegations against them. Statutes then require the responding party to submit to MDHR a reply to the charge.<sup>5</sup> MDHR then provides a copy of the responding party’s reply to the charging party, which may choose to send MDHR a rebuttal.

At this stage in the process, MDHR supervisors review the case and assign it to an investigator. Next, an MDHR investigator investigates the case to determine whether there is “probable cause” or “no probable cause” to believe that discrimination occurred. During the investigation, the investigator might request and review additional documents, or interview parties and witnesses, among other investigatory activities.

After the investigation is complete, the department issues a “determination” that is mailed to both parties. This determination indicates whether the investigator found probable cause to believe discrimination occurred and includes a memorandum written by the investigator outlining the department’s reasons for the decision. If either party is dissatisfied with MDHR’s determination, they may submit an appeal to MDHR, as we discuss in Chapter 3.

#### Discrimination Case Example

**Area:** Employment  
**Class:** Disability

A man with a disability suffered a serious medical episode that caused him to take medical leave from work. The man alleged that his employer terminated his employment the day he was due back at work because of his disability, although his employer said he was terminated due to a lack of available work.

During its investigation, MDHR found that—despite asserting that there was insufficient work to employ the man—the employer hired several new employees while the man was on approved medical leave and another new employee within 30 days of the man’s termination. In addition, the employer admitted that he was reluctant to allow the man to return to work because he did not think he was fit to do so, despite a doctor’s assessment stating the contrary.

After concluding its investigation, MDHR issued a “probable cause” determination indicating that there was reason to believe discrimination occurred. The man then withdrew his case with MDHR in order to file a private suit in court.

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### Many discrimination complaints never proceed through the entire intake and investigation process.

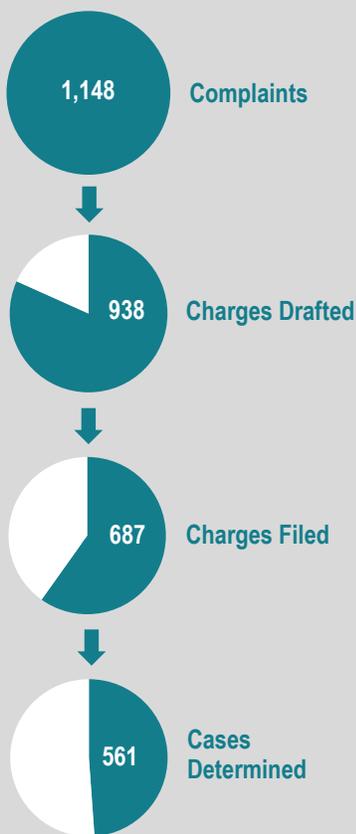
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Discrimination complaints exit MDHR’s intake and investigation process at different points, depending on the specifics of each case and the desires of the individuals

<sup>4</sup> Attorneys may also draft charges on behalf of their clients.

<sup>5</sup> *Minnesota Statutes* 2019, 363A.28, subd. 1.

Many complaints reported to MDHR in Fiscal Year 2016 did not proceed through the full investigation process.



involved. For example, some complaints exit MDHR's process before being filed as a charge, either because MDHR determined the complaint did not meet the minimum basic criteria necessary to file a charge, or because the complainant decided not to file their complaint as a formal charge. In other instances—as we discuss in greater detail in Chapter 3—the charging party files the charge, but the case exits the investigation process before MDHR completes its investigation. For example, MDHR might dismiss the case, the charging party might withdraw the case, or the case might be resolved through other means.

The box at the left shows how complaints reported to MDHR in Fiscal Year 2016 proceeded through MDHR's intake and investigation process.<sup>6</sup> For example, members of the public contacted MDHR with 1,148 complaints during Fiscal Year 2016, 938 of which MDHR staff drafted into a charge.<sup>7</sup> Of the 938 draft charges, charging parties formally filed 687 charges. MDHR ultimately issued a determination for 561 of the 687 charges filed. For the complaints we reviewed, MDHR's lack of jurisdiction over the complaint—which we talk about in the next section—was the most frequent reason a complaint did not become a charge.

Unlike filing in court, there is no fee to file a charge with MDHR. In addition, MDHR does not require either party to hire an attorney, although some choose to do so. Among complaints reported to MDHR in Fiscal Year 2016, we found attorneys represented charging parties for 30 percent of cases and represented responding parties for 77 percent of cases.

## Intake

As discussed previously, MDHR staff conduct two primary activities during the intake process: screening complaints and drafting charges. We discuss both below.

### Complaint Screening

Intake staff play a key role in ensuring the department accepts only eligible cases. When an individual first contacts MDHR with a discrimination complaint, the complainant speaks with MDHR intake staff, who ask the complainant questions to better understand their situation. For example, MDHR staff might ask why the complainant thinks they have been treated in a discriminatory manner and when the

<sup>6</sup> Throughout this report, we highlight a cohort of complaints reported to MDHR in Fiscal Year 2016. As we discuss in greater detail in Chapter 4, it regularly takes MDHR more than one year to issue a determination for a case. Fiscal Year 2016 was the most recent year for which MDHR had closed nearly all cases, thereby providing us with the most current and complete data on discrimination cases.

<sup>7</sup> Staff told us investigators do not consistently collect data on complaints when it is immediately evident that the complaint does not meet certain basic minimum criteria, such as if the complaint did not allege a violation of the Minnesota Human Rights Act. As a result, the 1,148 complaints reported above likely underestimate the total number of discrimination complaints reported to MDHR in Fiscal Year 2016.

treatment happened. The goal of this process is to determine whether MDHR has authority to investigate the complainant's allegations.

MDHR has jurisdiction over violations of the Minnesota Human Rights Act, and intake staff must ensure complaints do not fall outside of MDHR's jurisdiction. For example, a discrimination complaint may not be in MDHR's jurisdiction because the complainant entered into an arbitration agreement with the entity alleged to have discriminated. In other circumstances, federal law may preempt the Minnesota Human Rights Act.<sup>8</sup> Generally, however, intake staff assess whether a complaint meets the following three primary jurisdictional criteria:

1. The complaint must allege a violation of the Minnesota Human Rights Act.
2. The alleged discriminatory act must have occurred in Minnesota.<sup>9</sup>
3. The alleged discriminatory act must have occurred within one year of the date the charge was filed with MDHR.<sup>10</sup>

As part of our evaluation, we conducted a survey of attorneys who provided legal counsel to parties named in discrimination complaints reported to the department in recent years.<sup>11</sup> When we asked respondents about MDHR's initial complaint screening process, 80 percent said MDHR always or often investigated cases that were within its jurisdiction.

In addition to screening out complaints that are outside of MDHR's jurisdiction, intake staff must evaluate whether complainants have made a *prima facie* case of discrimination before the complaint proceeds to a case.<sup>12</sup> Generally, making a *prima*

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<sup>8</sup> For example, the federal Employee Retirement Income Security Act preempts the Minnesota Human Rights Act with regard to some allegations pertaining to employee benefit plans. Employment Retirement Income Security Act (ERISA) of 1974, 29 *U.S. Code*, sec. 1144(a) (2018).

<sup>9</sup> In certain instances, complaints involving discriminatory acts occurring outside of Minnesota may be within MDHR's jurisdiction.

<sup>10</sup> If parties voluntarily engage in a dispute resolution process regarding the complaint—including arbitration, conciliation, mediation, or another specified grievance procedure—the one-year period is suspended for the length of time parties are engaged in the process. *Minnesota Statutes* 2019, 363A.28, subd. 3(a)-(b).

<sup>11</sup> We surveyed attorneys who provided legal counsel to charging and/or responding parties for discrimination complaints reported to MDHR in fiscal years 2016 through 2018, according to data provided by MDHR. We surveyed 920 attorneys and received 305 responses, for a response rate of 33 percent. Sixty-seven survey respondents (22 percent) indicated they represented the charging party, 202 respondents (66 percent) indicated they represented the responding party, and 19 respondents (6 percent) indicated they represented both charging and responding parties. Seventeen respondents did not indicate who they represented. Throughout this report, unless otherwise indicated, "attorneys" means attorneys that represent charging and/or responding parties.

<sup>12</sup> *Prima facie* literally means "at first sight." Per MDHR, when there is direct evidence—or a "smoking gun"—indicating that discrimination occurred, complainants need not make a *prima facie* case. When there is no direct evidence of discrimination, a Federal discrimination case—*McDonnell-Douglas v. Green*—prescribes the approach to assessing whether discrimination occurred. As the first step dictated by the McDonnell-Douglas framework, the charging party must establish a *prima facie* case. *McDonnell-Douglas Corporation v. Green*, 411 U.S. 792 (1973); and Legal Information Institute, *Prima facie* (Ithaca, NY: Cornell Law School), [https://www.law.cornell.edu/wex/prima\\_facie](https://www.law.cornell.edu/wex/prima_facie), accessed November 13, 2019.

*facie* case means the complainant’s claims are “sufficient to establish a fact or raise a presumption [of discrimination] unless disproved or rebutted.”<sup>13</sup> The elements necessary to make a *prima facie* case vary based on the characteristics of the discrimination alleged. Generally, however, the complainant must indicate they are a member of a protected class, and that they were subject to an adverse action because of their protected class.<sup>14</sup>

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**Prior to 2019, the Minnesota Department of Human Rights conducted minimal screening of complaints before accepting them as cases.**

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While MDHR staff are supposed to screen out complaints that do not establish a *prima facie* case, MDHR’s investigation supervisors told us that staff have not consistently done so. Other MDHR staff likewise indicated the department has taken a lax approach to screening complaints based on the *prima facie* elements. For example, one investigator told us he did not think it was a “hard and fast rule” that complainants establish a *prima facie* case, while another investigator told us the department has instructed investigators to be “very liberal” when deciding whether the complainant has established a *prima facie* case.

In addition, when deciding whether to accept a complaint, intake staff do not assess the veracity of a complainant’s allegations. Staff rely on the complainant’s assertions alone; the complainant need not provide any documentation to support their claims. Some staff told us that complainants occasionally misremember key facts about their case that lead MDHR to accept a case it otherwise would not. For example, the complainant might misremember the date they were terminated from their job, leading MDHR to accept a case that would otherwise fall outside of the one-year deadline for filing a charge. A few staff told us that some complainants even lie or try to abuse the process. Some investigators said it would be beneficial to evaluate the factual accuracy of complaints at the intake stage, although they noted that MDHR’s ability to do so may be limited. For example, charging parties may not have access to certain documents, such as personnel records, that would be necessary to support their case.

While we did not explicitly ask about the adequacy of MDHR’s complaint screening process, in response to our survey, more than two dozen responding party attorneys commented that MDHR’s complaint screening process is insufficient. For example, one responding party attorney said, “Frequently charges appear not to



There does not appear to be any significant screening going on at the initial stage. I’ve had people bring charges that should have been immediately dismissed on their face. Instead, MDHR has required my clients...to expend serious time and money responding.

— Charging and Responding Party Attorney

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<sup>13</sup> Legal Information Institute, *Prima facie* (Ithaca, NY: Cornell Law School), [https://www.law.cornell.edu/wex/prima\\_facie](https://www.law.cornell.edu/wex/prima_facie), accessed November 13, 2019.

<sup>14</sup> For example, for a complainant to make a *prima facie* case that they were discriminated against when they were terminated from their job, the complainant must indicate that (1) they are a member of a protected class, (2) they met the employer’s legitimate performance expectations, (3) they suffered an adverse employment action, and (4) the circumstances around the adverse action “give rise to an inference of discrimination.” Minnesota Department of Human Rights, *Deskbook* (St. Paul, 2015), 39.

even meet minimum criteria,” while another commented, “I am surprised that MDHR is using an initial screening process, as my client received many frivolous charges that I would not expect to pass even a minimal screening process.”

Responding party attorneys also commented that MDHR accepted complaints that did not meet the *prima facie* threshold, were factually inaccurate, or lacked merit. For example, one attorney commented, “In my experience, many complaints should have been thrown out on their face, often because the facts alleged (even if true) are not even tied to any form of discrimination.” Only 40 percent of survey respondents said MDHR always or often investigated cases that warranted investigation, although opinions varied based on whether the attorney represented the charging or responding party. Slightly less than two-thirds of charging party attorneys said MDHR always or often investigated cases that warranted investigation, compared to 32 percent of responding party attorneys.

Several MDHR investigators told us the department should more thoroughly screen complaints before the complainant files a charge. MDHR staff commented that, when the department accepts complaints that do not meet basic criteria, it takes investigation resources away from more meritorious cases. As we discuss later in this section, MDHR has recently taken several steps to improve the consistency and quality of work during the intake process. We discuss MDHR’s efforts to screen cases *after* the charge is filed in Chapter 4.

## Charge Drafting

In addition to assessing whether complaints meet basic screening criteria, intake staff are responsible for drafting charges of discrimination. As we previously mentioned, a charge is a written statement that outlines the discrimination allegation(s). Intake staff draft charges based on the information they collect from the complainant during the intake process. MDHR staff told us intake staff—as opposed to complainants—draft discrimination charges to ensure that charges include only information relevant to the case.

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### Some responding party attorneys said that charges lack sufficient information or clarity, making it difficult to respond.

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While we did not explicitly ask in our survey about the quality of discrimination charges, nearly 20 responding party attorneys commented that charges are vague, difficult to understand, or lack sufficient information. Some survey respondents said charges were so unclear, responding parties had to guess at the events and individuals involved, and that for some charges, even the alleged discriminatory act was unclear. For example, one responding party attorney commented, “Many times the charge is only a



Sometimes the allegations are extremely threadbare and it is impossible to know what employee an accusation is about or what exactly is being alleged as misconduct. MDHR does not do a good job requiring those making a charge to be specific about how they have been discriminated against.

— Responding Party Attorney

few sentences long and/or includes allegations of discrimination with no facts or evidence.”

Survey respondents commented that the lack of information or clarity in charges makes it difficult for them to meaningfully respond. For example, one responding party attorney wrote, “MDHR often send[s] complaints with so few facts it was difficult to even formulate a response because the basis of the discrimination was not clear.” Another commented,

“...there are certainly charges that do not provide [the] respondent enough information to respond in a substantive way. For example, a complainant [may]...not provide factual information to allow [the] respondent to do its own investigation and provide a substantive response.”

## Intake Recommendation

MDHR’s intake staff serve a critical function—they control which complaints are investigated and which are not. Accepting cases that do not meet the screening criteria increases the department’s overall workload and is a poor use of state resources.

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### RECOMMENDATION

**The Minnesota Department of Human Rights should ensure that complaints meet at least the basic screening criteria and are sufficiently clear.**

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Accepting complaints that do not meet the minimum screening criteria negatively affects individuals involved in MDHR’s investigation process. Accepting—and thereby investigating—cases that do not meet the minimum criteria takes department resources away from investigating more meritorious cases. As a result, investigators may take longer to issue determinations, or investigators may have less time to investigate cases thoroughly.

In addition, charges that are unclear or do not meet screening criteria negatively affect responding parties. Attorneys we interviewed commented that responding parties often invest significant time and resources replying to discrimination charges.<sup>15</sup> It is reasonable to assume that responding to unclear charges would necessitate further time and resources. While MDHR has a responsibility to identify and endeavor to eliminate discriminatory practices, the department also has a responsibility to ensure responding parties expend resources responding only to charges that are clear and complete and that meet the basic screening criteria.

In the last few months, MDHR has taken several steps to improve the consistency and quality of work during the intake phase. For example, an MDHR supervisor now reviews all draft charges before the department sends them to charging parties.<sup>16</sup> In

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<sup>15</sup> For example, two responding party attorneys we interviewed told us responding parties may pay thousands of dollars in attorney fees merely to reply to a discrimination charge.

<sup>16</sup> Until recently, MDHR supervisors reviewed draft charges inconsistently—if at all—before they were sent to charging parties.

addition, MDHR has implemented a new intake protocol to help ensure that staff collect the necessary information to determine whether a complaint meets all basic screening criteria. While it is too soon for our office to evaluate the effectiveness of these changes, we believe they are important steps to addressing the issues identified above. As these new processes mature, we encourage MDHR to assess their effectiveness and evaluate whether additional steps are needed to improve the intake process.

## Investigations

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After the charging party files the charge with MDHR, the case moves into the investigation phase. In this section, we discuss the extent to which there are standards to guide investigation activities and whether investigators consistently adhere to those standards. We then discuss determinations issued by the department in recent years.

### Investigation Standards

Minnesota statutes and rules provide little guidance about how investigators should conduct their work. State law outlines a number of requirements pertaining to the timeliness of MDHR's investigatory work—as we discuss in Chapter 4—but it provides no guidance about the activities investigators must undertake during the course of their investigation. For example, statutes do not indicate whether investigators should interview parties, review documents, conduct site visits, or perform other activities.

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#### **The Minnesota Department of Human Rights has adopted few policies or standards to ensure investigators take a consistent approach to their work.**

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Statutes state that MDHR's commissioner "shall formulate policies to effectuate the purposes of" the Minnesota Human Rights Act, yet we found MDHR has not adopted policies or standards for most aspects of investigators' work.<sup>17</sup> For example, MDHR has not established policies regarding whether investigators should interview responding parties or witnesses, or how long investigators should give parties to respond to department requests for additional information.

While MDHR largely has not established written policies or standards for investigations, MDHR staff told us of two unwritten expectations for their investigative work. First, many investigators told us they are supposed to document all aspects of their investigation. Second, both investigation supervisors told us that investigators should always interview charging parties, and most investigators told us that they always did so.<sup>18</sup>

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<sup>17</sup> *Minnesota Statutes* 2019, 363A.06, subd. 1(a).

<sup>18</sup> Three investigators told us there may be very rare circumstances when they would not interview the charging party, such as if MDHR determines the case is not jurisdictional, or if the responding party admitted to discriminating against the charging party.

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**Minnesota Department of Human Rights investigators have been somewhat inconsistent in how they conduct investigations and make determinations.**

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We found that investigators inconsistently adhered to the two unwritten expectations noted above. For example, when we reviewed a sample of cases filed with MDHR, we found some inconsistencies in the extent to which investigators documented their work.<sup>19</sup> For instance, in 13 percent (five) of the case files we reviewed, the investigator indicated they conducted at least one interview for which we were unable to find interview notes. As another example, in reviewing case files, it was sometimes difficult to determine what information investigators had requested from parties for a given case. For 15 percent (six) of the case files we reviewed, there were documents in the files that appeared to be requests for additional information, but it was not clear whether investigators ever sent those requests to the party.

In addition, we found that investigators did not always interview the charging party, despite the unwritten expectation to always do so. In our file review, we were unable to find evidence that investigators interviewed charging parties for 18 percent (seven) of the cases we reviewed.<sup>20</sup> It is possible that investigators *did* interview charging parties for these cases but did not document the interview; if so, this would point to further inconsistencies in MDHR's documentation practices.

In reviewing case files, we found other ways in which investigative activities varied from case to case. For example, investigators did not always interview witnesses or a representative of the responding party. In our file review, we were unable to find evidence of MDHR interviewing witnesses for 58 percent of the cases we reviewed or anyone affiliated with the responding party for 45 percent of the cases we reviewed. MDHR staff told us there may be legitimate reasons not to interview a responding party or witness(es) for a given case; however, without standards, we were unable to assess whether investigators made that decision appropriately.

Several MDHR staff told us that investigations—or at least aspects of investigations—vary from one investigator to the next. For example, one staff member told us that investigators vary with regard to the number of interviews they conduct per case. Other staff told us that determinations have varied from one investigator to the next, both with regard to the information included in the determination memorandum, and the determination decision itself. For example, two staff commented that some investigators are more likely to issue “probable cause” determinations than others. Two staff told us the overall quality of the investigation varies by investigator.

Some survey respondents likewise commented that investigations vary by investigator. For example, one charging party attorney said, “The quality of the investigation varies depending on who handles the case.” Some attorneys also said that some investigators

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<sup>19</sup> We selected a sample of 40 closed cases filed by members of the public (that is, excluding cases initiated by MDHR's commissioner) from MDHR data on complaints reported to the department in fiscal years 2016 and 2017.

<sup>20</sup> MDHR initially issued a “no probable cause” determination for all seven charges for which we could not find evidence that the investigator interviewed the charging party.

are more likely to issue a “probable cause” determination than others. For example, a responding party attorney commented, “The neutrality of the investigators is inconsistent. The department should not have investigators ‘known’ for probable cause findings, regardless of the validity of the claims asserted.” On the other hand, some survey respondents commented that MDHR investigators are fair and unbiased. For



It seems that everything is dependent upon the investigator assigned, which can lead to inconsistency and arbitrariness.

— Charging and Responding Party Attorney

example, one charging party attorney said, “I appreciate the neutrality of [the] investigators,” while a responding party attorney said, “I have generally found the investigators to be fair and objective in their investigations.”

## Determinations

After an investigator concludes their investigation, the department issues a determination indicating whether there was probable cause to believe discrimination occurred. In determining probable cause, the department seeks to determine whether it is *more likely than not* that discrimination occurred.<sup>21</sup>

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### In recent years, “no probable cause” decisions comprised the vast majority of the Minnesota Department of Human Rights’ determinations.

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Among complaints reported to MDHR in Fiscal Year 2016, “no probable cause” determinations accounted for 95 percent of MDHR’s total determinations. In contrast, “probable cause” determinations accounted for 4 percent of total determinations.<sup>22</sup> Similarly, among complaints reported to MDHR in Fiscal Year 2017, “no probable cause” determinations accounted for 92 percent of determinations, while “probable cause” determinations accounted for only 6 percent of determinations.<sup>23</sup>

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### Some attorneys questioned whether the department conducted a thorough investigation or accurately interpreted the law before issuing its determination.

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Several attorneys expressed frustration with the thoroughness of MDHR’s investigations. For example, one responding party attorney commented, “I’m not sure they are very

<sup>21</sup> Neither Minnesota statutes nor rules define the amount of proof needed to establish “probable cause” for cases alleging discrimination. In absence of a definition in law of “probable cause,” MDHR uses the “preponderance of evidence” standard of proof. A preponderance of evidence indicates that it is more likely than not that the allegations are true.

<sup>22</sup> MDHR may issue a “split” determination for cases involving multiple allegations in which MDHR finds “probable cause” for at least one allegation and “no probable cause” for at least one allegation. In Fiscal Year 2016, MDHR issued a split determination for 1 percent of cases. Totals do not reflect cases that were resolved prior to MDHR issuing a determination.

<sup>23</sup> In Fiscal Year 2017, MDHR issued a split determination for 2 percent of cases. When we received data from MDHR on complaints reported to the department in Fiscal Year 2017, MDHR had not yet closed 10 percent of the cases filed. Final determinations for those open cases may change if cases are appealed. In addition, some investigators told us that investigations resulting in a “probable cause” determination often take longer to investigate than those resulting in a “no probable cause” determination. If so, these figures may underreport the final share of “probable cause” determinations for complaints reported in Fiscal Year 2017.

thorough, or that the staff member gets deep enough to really understand the issues.” A charging party attorney commented, “From the outside, the investigations appear at times to be superficial and incomplete.” Attorneys particularly expressed frustration that MDHR did not more regularly interview their clients or witnesses associated with the case.

Overall, 56 percent of attorneys responding to our survey said they were satisfied or somewhat satisfied with the quality of MDHR investigations. Charging party attorneys were generally less satisfied with the quality of MDHR’s investigations than responding party attorneys, with 40 percent of charging party attorneys saying they were satisfied or somewhat satisfied compared to 61 percent of responding party attorneys.

While some attorneys indicated dissatisfaction with the thoroughness of MDHR’s investigations, attorneys and their clients are not privy to all of MDHR’s activities on a given case.<sup>24</sup> As a result, the memorandum accompanying MDHR’s determination letter often provides the most comprehensive view parties have into the investigation.<sup>25</sup> However, only 55 percent of survey respondents said MDHR’s determinations always or often clearly identified the evidence MDHR used to make its determination. If determination memoranda do not clearly identify the evidence upon which MDHR makes its determination, it may be difficult for parties to accurately gauge the thoroughness of MDHR’s work. It also makes it difficult for parties to determine whether to appeal the department’s determination.<sup>26</sup>

In response to our survey, some attorneys also expressed concern about investigators’ understanding of relevant law. In our conversations with MDHR investigators, many told us that the law is the standard by which they arrive at their determination. Yet, only 57 percent of survey respondents said the legal basis upon which MDHR made its determination always or often reflected an accurate interpretation of law. For example, one charging party attorney said, “Sometimes decisions are made with little or no analysis and incorrect understanding of governing law.” A responding party attorney commented, “MDHR’s ability to make determinations based on facts is strong. I have far less confidence when the issue is a matter of law.”

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<sup>24</sup> The Minnesota Human Rights Act limits the information MDHR staff can share with parties. When a case is under investigation, investigative data are classified as not public, although MDHR can share with both parties the name and contact information for both parties, the factual basis of the allegations, and the statutes relevant to the case. *Minnesota Statutes* 2019, 363A.35, subd. 2(a).

<sup>25</sup> When MDHR issues a “probable cause” determination, statutes require MDHR to include specific information in the letter notifying the responding party of the department’s decision. The law requires MDHR to send the responding party “a short plain written statement of the alleged facts which support the finding of probable cause and an enumeration of the provisions of law allegedly violated.” Statutes do not describe what information MDHR must provide when the department issues a “no probable cause” determination. *Minnesota Statutes* 2019, 363A.28, subd. 6(d).

<sup>26</sup> As we discuss in Chapter 3, a party may only appeal MDHR’s determination if the party can demonstrate at least one of the following: (1) there is new evidence that was not available during the investigation, (2) MDHR did not properly weigh evidence available during the investigation, or (3) MDHR erroneously issued a determination given statutes or case law. Responding parties may also appeal a “probable cause” determination if they identify information indicating that evidence upon which MDHR relied was falsified or inaccurate. *Minnesota Rules*, 5000.0700, subp. 8; and 5000.0750, subp. 1, published electronically October 2, 2013.

## Investigation Recommendation

Absent standards in law or clear departmental policies, investigators have significant discretion to decide on a case-by-case basis how they conduct their work. However, without standards, it is difficult to determine the extent to which an investigator appropriately uses this discretion on a given case.

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### RECOMMENDATION

**The Minnesota Department of Human Rights should adopt clear standards for activities common across the investigation process.**

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We would expect to see some variation in the quality and approach to employee work across all professions. In addition, a degree of variation in investigators' work is neither unexpected—due to the unique nature of each case—nor inherently good or bad. Despite this, we were concerned that some of the variation we observed across investigators' work indicated the quality of services parties receive may depend on the investigator assigned to their case.

When we contacted other agencies conducting similar types of investigations into alleged discrimination, staff indicated they ensure consistency across investigations in different ways.<sup>27</sup> For example, a staff person from one office said their investigation manual—which outlines department standards and expectations for investigator activities—is essential to ensuring the consistency of investigations. On the other hand, staff from another office said detailed standards are not helpful, preferring instead to ensure consistency through strong collaborative practices.

We agree that it would be difficult to craft policies guiding all investigative activities. However, we think it is reasonable that MDHR adopt formal policies for certain activities or processes that are relevant to most cases. For example, MDHR should formalize its expectations that investigators thoroughly document their work and always interview the charging party. In addition, MDHR should develop policies describing when it is appropriate for investigators not to interview the responding party. When policies are not practical, we recommend that MDHR actively supervise its investigators and regularly review investigators' work to ensure consistency across all investigators.

MDHR has recently taken steps to increase investigator oversight and consistency across the department. In 2019, MDHR hired a second supervisor and began requiring weekly check-ins between investigators and their supervisors. Also in 2019, MDHR developed templates for determination memoranda in an attempt to improve consistency with regard to the information provided to parties about their case. In addition, supervisors are now reviewing all investigator determinations prior to MDHR sending them to parties. These are positive initial steps. We recommend that MDHR implement additional policies and processes to further ensure consistency across staff.

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<sup>27</sup> We reviewed the practices of and interviewed staff from the U.S. Equal Employment Opportunity Commission, the Illinois Department of Human Rights, and the Minneapolis Department of Civil Rights.

## Communication Challenges

MDHR staff communicate both formally and informally with parties. MDHR sends formal correspondence—such as the department’s determination—by mail, while an investigator may exchange informal e-mails with a party regarding the status of their case. In this section, we talk about three areas in which we identified concerns regarding communication: MDHR’s ongoing communication with parties, responding parties’ replies to discrimination charges, and MDHR’s requests for information.

### Ongoing Communication

As we discuss in Chapter 4, for many cases, MDHR’s investigation process is quite lengthy, often taking more than one year for MDHR to issue a determination. With a long process involving multiple steps, it is important to communicate clearly and consistently with those involved.

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#### The Minnesota Department of Human Rights’ communication with parties about their case is inconsistent and infrequent.

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MDHR could and should do a better job of communicating clearly with all parties involve[d]. They should be upfront about how long the process should take. They should provide periodic updates about the status of a case, even if the case is not being actively investigated. Right now, the charge process is not transparent.

— Charging Party Attorney

MDHR has developed some formal mechanisms for communicating with parties. Specifically, MDHR has developed various form letters to send to parties at certain milestones in the investigation process, most notably: (1) when the charge is initially filed, (2) when the department assigns an investigator to the case, and (3) when the department issues a determination.<sup>28</sup> Because MDHR often takes considerable time to issue a determination, these milestone communications may occur many months apart.

Aside from its form letters, MDHR does not have standards or policies pertaining to how or how often investigators should contact parties. Investigators reported taking somewhat different approaches to informally communicating with parties about their case. For example, one investigator told us she tries to keep parties apprised of the status of their case, even if there is no news to report. The majority of investigators, however, told us that they do not proactively update parties about their case, but they will provide updates if the party calls them directly.

Many attorneys reported to us that communication from MDHR about discrimination cases is insufficient. Only 20 percent of survey respondents said MDHR always or often provided sufficient updates on the status of their case. One charging party attorney commented, “MDHR investigators have gone more than a year without contacting me or my client about a case,” while a responding party attorney said, “...charges tend to sit for a year (or years) with no information about what is happening with them or when next steps should be expected.” Several attorneys described MDHR as a “black hole.”

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<sup>28</sup> MDHR also notifies the charging party when the responding party submits their reply to the charge. There are additional circumstances under which MDHR *may* contact parties, such as if a party appeals the department’s determination, MDHR decides to dismiss a case, or MDHR identifies a case as having mediation potential.



Other than initial communication, I have never received a timely response from MDHR. They do not call, write, or e-mail. They do not respond to requests for updates. Cases have been dismissed without my knowledge. In one case, the case had been closed for three years before I found out—and that was with quarterly requests for updates. As a respondent, at least, I do not think I have ever received a response from any inquiry I have ever made.

— Responding Party Attorney

When they do proactively reach out to MDHR about a case, attorneys indicated the department does not consistently respond. Less than one-half of survey respondents said that MDHR staff always or often responded promptly when contacted. Many attorneys commented that MDHR staff do not respond to phone calls or e-mails, and it is not always clear who to contact. For example, one responding party survey respondent said, “It is very difficult to reach a live person when contacting MDHR. It is rare that anyone answers a call or is available to answer questions.” Another responding party attorney said, “E-mail requests are not answered, voicemail messages are not responded to....”

A few attorneys commented that MDHR’s lack of communication causes stress for their clients or makes it difficult to provide legal advice. For example, one responding party attorney stated, “Greater communication about status and greater transparency about the system and process would be helpful so that we can advise clients on where things stand and keep things moving smoothly.” A charging party attorney commented, “Communication on [the case’s] status was spotty and often difficult to obtain from MDHR. As a result this was very stressful for our client and her family and did nothing to inspire any resolution with the other party.”



It is difficult to know whether MDHR is earnestly working on investigating your charge or close to a determination...[or] whether you should just remove your client’s charge to proceed in court. MDHR needs to be more transparent about where they are in the investigation process and how close they are to a determination so counsel can make the best recommendations to their clients.

— Charging Party Attorney

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## RECOMMENDATION

**The Minnesota Department of Human Rights should more promptly respond to inquiries and keep parties better apprised of the status of their case.**

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Increasing communication with parties will require additional staff effort; however, we think this recommendation merits the allocation of additional department resources, particularly given how long it often takes MDHR to issue determinations. As we discussed in Chapter 1, there are multiple ways in which a charging party can seek restitution for discrimination, and once a case is filed with MDHR, there are several ways in which it can be resolved. However, it is difficult for parties to evaluate their best course of action without information about where their case is in MDHR’s process. We encourage the department to explore ways to increase communication with parties without adding to investigators’ existing workload. For example, MDHR could assign communication responsibilities to non-investigatory staff or automate more frequent correspondence.

## Replies to Discrimination Charges

Statutes establish some timeliness requirements regarding how quickly MDHR and both parties must communicate with each other. For example, MDHR must send the discrimination charge to the responding party within ten days of it being filed.<sup>29</sup> Similarly, statutes require responding parties to file with MDHR a reply to the discrimination charge with a “summary of the details of [their] position relative to the charge within 20 days of receipt of the charge.”<sup>30</sup>

In the form letter MDHR sends to responding parties when they receive the charge, MDHR explains that the responding party must submit a reply to the charge within 20 days of its receipt, as required by law. However, responding parties regularly have not adhered to this requirement.

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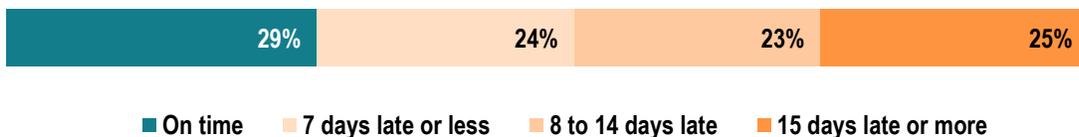
### In recent years, responding parties submitted timely replies for less than one-third of charges filed.

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Exhibit 2.2 illustrates how quickly responding parties provided replies to charges arising from complaints reported to MDHR in fiscal years 2016 through 2018. While responding parties provided replies for over one-half of the charges within a week of the required deadline, responding party replies were more than two weeks overdue for about 25 percent of charges.<sup>31</sup>

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### Exhibit 2.2: In recent years, responding parties provided timely replies to less than one-third of discrimination charges.



NOTES: We reviewed data pertaining to complaints reported to the Minnesota Department of Human Rights in fiscal years 2016 through 2018. Per *Minnesota Statutes* 2019, 363A. 28, subd. 1, the responding party shall provide a written reply to a charge of discrimination within 20 days of receiving the charge. To determine whether responding parties replied in a timely manner, we counted the 20 days stipulated in law and allowed 5 additional days to account for mailing time. Totals do not sum to 100 percent due to rounding.

SOURCE: Office of the Legislative Auditor, analysis of Minnesota Department of Human Rights complaint data.

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<sup>29</sup> *Minnesota Statutes* 2019, 363A.28, subd. 1.

<sup>30</sup> *Ibid.* Per statutes, if the responding party does not reply “within 30 days after service of the charge...the commissioner, on behalf of the complaining party, may bring an action for default in district court....”

<sup>31</sup> To determine whether responding parties replied in a timely manner, we counted the 20 days stipulated in law and allowed 5 additional days to account for mailing time.

Attorneys responding to our survey provided somewhat mixed perspectives on whether the time given in law to submit a reply to a charge is sufficient. On the one hand, 59 percent of responding party attorneys replying to our survey said MDHR always or often allowed sufficient time to provide an initial reply to the charge of discrimination.



Twenty days is insufficient for a respondent representative to learn about the allegations, speak to decision-makers, gather requested information and write a position statement. All while balancing existing work, deadlines, and availability of respondent management based on vacation or sick time.

— Responding Party Attorney

On the other hand, many responding party attorneys commented in their survey that the time given to responding parties to reply to a charge of discrimination is inadequate and that various factors can contribute to a delayed response. For example, in some cases, MDHR may deliver the charge to the incorrect address—such as a branch office instead of headquarters—and it must be forwarded to the correct individual. In other instances, for example, the responding party may be delayed in obtaining counsel. One responding party attorney wrote:

The current time period for providing responses is not reasonable for a large organization like ours. We want our responses to be based upon a thorough review and understanding of the matter. It takes time to gather the relevant data and facts.... Like MDHR, we also have a large docket of matters that we are handling.

MDHR staff told us that responding parties periodically contact the department to request an extension to the 20-day deadline. In recent years, an investigation supervisor said, the department typically granted these requests and gave the responding party an additional ten days to submit their reply. MDHR staff commented that it is important that the responding party provide a complete reply to a charge. For example, one investigator told us that it creates more work for the investigator when the responding party does not address all of the allegations in a charge.

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## RECOMMENDATION

**The Legislature should amend statutes to give responding parties more time to provide an initial reply to a charge of discrimination.**

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Data from recent years show that responding parties submitted replies to about three-quarters of discrimination charges within 39 days of the charge being filed. We recommend the Legislature amend *Minnesota Statutes* 2019, 363A.28, subd. 1, to increase the time responding parties have to reply to a discrimination charge from the current 20 days to 30 or 40 days.

Department leadership told us they are open to providing responding parties more than 20 days to reply to a charge. Extending the timeline for responding parties may result in the department ultimately receiving more complete information without further delaying investigations.

## Information Requests

As part of its investigation, MDHR may require responding parties to provide various information in addition to its initial reply to the charge.<sup>32</sup> For example, MDHR may request copies of policies, personnel files, medical records, or a list of current employees. Statutes do not clarify how long the responding party has to respond to an information request.

MDHR's approach to requesting additional information from the responding party has changed over the years. Previously, staff sometimes sent out information requests with the initial discrimination charge, giving responding parties 20 days to reply to the charge *and* respond to the information request. Currently, MDHR does not send information requests with the charge; investigators submit requests for information after they are assigned to the case.

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**Many responding party attorneys said the Minnesota Department of Human Rights makes unreasonable and unclear requests for information and provides too little time to respond.**

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The information request is the worst and most burdensome part of the complaint process.

The scope of the request is broad and the timeline for response is incredibly short, even in the most straight-forward cases. I typically need to coordinate information gathering between at least two to three employees just to review and identify what responsive information we have....

— Responding Party Attorney

In response to our survey, only 39 percent of responding party attorneys said that MDHR's information requests were always or often reasonable, given the allegations. Nearly one in five said MDHR's requests for information were rarely or never reasonable.

When survey respondents did not find MDHR's information request reasonable, they most commonly said MDHR requested information beyond the scope of the allegations and that the resources needed to

respond to MDHR's request(s) were excessive given the allegation(s). For example, one responding party attorney said, "The requests frequently seek information well beyond the time period at issue in the case, related to protected class statuses not at issue in the charge, and unrelated to the decision makers at issue." Another said, "[MDHR] requests are often overbroad and require lots of time and money to respond to."

In addition, some responding party attorneys indicated that MDHR's information requests are not always clear. In response to our survey, only 54 percent of responding party attorneys said that MDHR's information requests were always or often clear. One attorney commented, for example, "Requests for information were often overly broad and difficult to understand."

As part of our file review, we examined information requests MDHR sent to responding parties and found MDHR staff inconsistently completed the requests. In recent years, investigators often drafted these information requests based on a template document. The template included certain fields for the investigator to fill in (such as specific dates

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<sup>32</sup> MDHR may also require charging parties to provide additional information. However, we primarily heard concerns from responding party attorneys regarding MDHR's information requests.

or employee names), and investigators could tailor the template as needed based on the specific case. In our file review, we found that investigators did not fill in at least one of the template fields for 15 percent (six) of the cases we reviewed.<sup>33</sup> For example, one request asked for "...a list of all former employees...who have left since January 1, 20XX," while another asked for "Cop(ies) of personnel file(s) of \_\_\_\_\_."

Finally, many responding party attorneys felt MDHR gives insufficient time to reply to information requests. In response to our survey, only 51 percent of responding party attorneys said MDHR always or often gave them sufficient time to respond to MDHR information requests. Seventy percent of responding party attorneys said they requested additional time to respond to an MDHR information request at least once between January 2016 and fall of 2019.

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## RECOMMENDATION

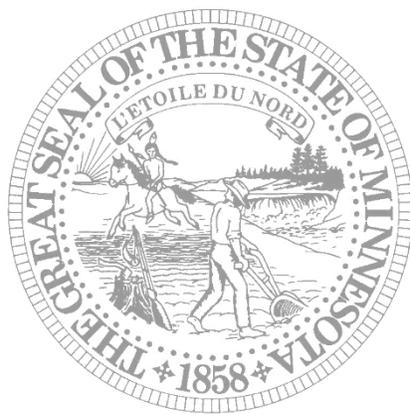
**The Minnesota Department of Human Rights should ensure that information requests are clear and specific to the needs of each case and provide responding parties adequate time to respond.**

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It is critical that investigators receive the information necessary to investigate a case in a timely manner. At the same time, we recognize the burden an unfocused information request could place on the responding party. As discussed previously, MDHR should implement policies or standards for common investigation activities, including issuing information requests. For example, MDHR should establish standards for how much time investigators give parties to respond to information requests. In addition, we recommend that supervisors periodically review a sample of information requests drafted by each investigator to ensure requests are clear, complete, and relevant to the case.

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<sup>33</sup> As we discussed earlier, it was not always clear when investigators sent information requests to parties. We found evidence that investigators used the information request template and sent the request to the responding party in 31 of the 40 cases we reviewed. As a percentage of those 31 cases, investigators did not complete all template fields for 19 percent of cases.



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# Chapter 3: Case Resolution

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Discrimination cases filed with the Minnesota Department of Human Rights (MDHR) are resolved in different ways depending on the characteristics of the case and the wishes of the charging and responding parties.<sup>1</sup> In this chapter, we provide an overview of the ways cases may be resolved before discussing the extent to which parties appealed the department’s determinations. We then discuss MDHR’s mediation and conciliation activities in greater detail.

## Key Findings in This Chapter

- Statutes outline requirements for appeals submitted by charging parties, but not for appeals submitted by responding parties.
- Among attorneys who responded to our survey and had recent experience with the Minnesota Department of Human Rights’ mediation program, less than 40 percent said that mediations were often conducted effectively.

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## Case Resolution Overview

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### Discrimination Case Example

**Area:** Public Services  
**Class:** Race

A man, who is African American, alleged that officers at the correctional facility where he was living repeatedly directed racial epithets at him.

As part of its investigation, MDHR reviewed documents pertaining to the correctional facility’s own investigation into the allegations, which did not substantiate the man’s claims. MDHR also reviewed statements from the man alleging discrimination and interviewed witnesses, who were unable to corroborate the allegations. After concluding its investigation, MDHR issued a “no probable cause” determination indicating that there was insufficient evidence to believe discrimination probably occurred.

Cases can be resolved in several different ways. For example, some cases are resolved before MDHR completes its investigation because the parties reach a settlement agreement outside of MDHR’s processes or because the charging party withdraws the case. For other cases, MDHR completes its investigation and issues a determination indicating whether or not discrimination probably occurred. We describe the various ways a case might be resolved below.

**Conciliation.** If, after the conclusion of an investigation and any appeals, MDHR issues a “probable cause” determination, the case may be resolved through conciliation. For these cases, MDHR staff try to broker a settlement agreement between the parties. Unlike mediation, MDHR is typically a party to any settlement agreements resulting from conciliation. During settlement negotiations, the charging party may seek monetary relief, while statutes task MDHR with eliminating the unfair discriminatory practice.<sup>2</sup>

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<sup>1</sup> For the purposes of this report, the “charging party” is the individual alleging discrimination and the “responding party” is the entity accused of discrimination. A discrimination complaint becomes a “case” after the charging party files a charge of alleged discrimination with MDHR. “Discrimination” is the act of treating an individual differently—because of one or more personal characteristics—in violation of the Minnesota Human Rights Act, and includes the failure to provide reasonable accommodations as required by law.

<sup>2</sup> *Minnesota Statutes* 2019, 363A.28, subd. 8.

| Case Outcome Overview             |   |
|-----------------------------------|---|
| Case Outcome                      | Description   |
| Conciliation                      | MDHR attempts to broker an agreement between the two parties and MDHR <i>after</i> issuing a “probable cause” determination.                    |
| Dismissal                         | MDHR dismisses a case either before or after MDHR issues a determination.   |
| Litigation                        | If conciliation for a case with a “probable cause” determination is unsuccessful, MDHR may request that the Attorney General litigate the case. |
| Mediation                         | MDHR’s volunteer mediators attempt to broker an agreement between the two parties <i>before</i> the department issues a determination.          |
| “No probable cause” determination | MDHR closes the case after issuing a “no probable cause” determination.   |
| Withdrawal                        | The charging party withdraws the case, either before or after MDHR issues a determination.  |

**Dismissal.** MDHR sometimes chooses to dismiss a case, either before or after issuing a determination. For example, MDHR may dismiss a case if the charging party does not provide MDHR with sufficient information to contact them or if the charging party has died since filing the case.<sup>3</sup> Staff may also dismiss a case if they discover that the case is outside of MDHR’s jurisdiction or outside of the statute of limitations.

**Litigation.** After completing its investigation, if MDHR issues a “probable cause” determination and conciliation efforts are unsuccessful, MDHR may request that the Office of the Attorney General litigate the case before either (1) district court or (2) the Office of Administrative Hearings.<sup>4</sup>

**Mediation.** Prior to MDHR issuing a determination, some cases are resolved

through mediation.<sup>5</sup> For these cases, a volunteer mediator helps parties resolve their differences, possibly brokering an agreement between the two parties. Unlike conciliation, MDHR is not typically a party to settlement agreements resulting from mediation.

**“No probable cause” determination.** After completing its investigation, if MDHR issues a “no probable cause” determination, the charging party has an opportunity to appeal the department’s decision. If the charging party chooses not to appeal, or the appeals process is exhausted and the “no probable cause” determination stands, MDHR closes the case.

**Withdrawal.** The charging party may choose to withdraw the case for various reasons. For example, parties may satisfactorily resolve their dispute through mediation outside of MDHR’s processes. As another example, per Minnesota rules, if the charging party chooses to file a private lawsuit in court, MDHR must request that the charging party withdraw the case.<sup>6</sup> A charging party may choose to withdraw a case before or after MDHR issues a determination.

<sup>3</sup> *Minnesota Rules*, 5000.0400, subp. 6, published electronically June 11, 2008.

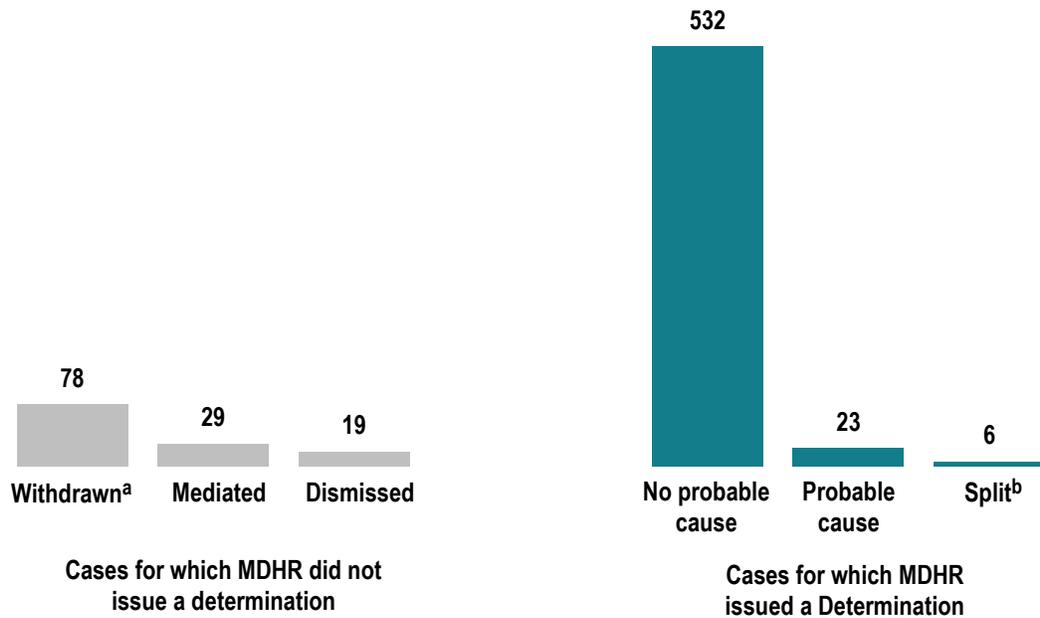
<sup>4</sup> The Office of Administrative Hearings is a judicial entity within Minnesota’s executive branch that provides hearings for entities contesting actions taken by state and local governments.

<sup>5</sup> MDHR also offers another form of alternative dispute resolution called “facilitated negotiation.” Like mediation, facilitated negotiation is a process by which parties attempt to reach a mutually agreeable resolution to a conflict prior to MDHR issuing a determination and without filing a suit in court. Unlike mediation, facilitated negotiation is conducted by MDHR staff.

<sup>6</sup> *Minnesota Rules*, 5000.0550, published electronically June 11, 2008. Per *Minnesota Statutes* 2019, 363A.33, subd. 1(3), the charging party may bring a civil action 45 days after filing a charge with MDHR if the case has not been heard by the Office of Administrative Hearings or the charging party has not signed a conciliation agreement.

Exhibit 3.1 shows the ways in which cases resulting from complaints reported to MDHR in Fiscal Year 2016 were resolved.<sup>7</sup> MDHR investigated and issued a determination for 561 (82 percent) of the 687 charges filed with the department.<sup>8</sup> The remaining 18 percent of cases were resolved before MDHR issued a determination, the majority of which were withdrawn by the charging party.

**Exhibit 3.1: The Minnesota Department of Human Rights issued a determination for the majority of cases resulting from complaints reported in Fiscal Year 2016.**



NOTES: Parties appealed 88 of the 687 total cases arising from complaints reported in Fiscal Year 2016. The numbers above reflect final determinations issued after any appeals.

<sup>a</sup> A charging party may choose to withdraw a case for various reasons, including in order to file a private lawsuit in court.

<sup>b</sup> The department may issue a “split” determination for cases involving multiple allegations in which the department finds “probable cause” for at least one allegation and “no probable cause” for at least one allegation.

SOURCE: Office of the Legislative Auditor, analysis of Minnesota Department of Human Rights complaint data.

<sup>7</sup> For the purposes of this report, “complaints” are allegations of unfair discrimination that have not been filed as a charge.

<sup>8</sup> For the purposes of this report, a “charge” is a written statement outlining allegations of discriminatory acts that are prohibited by the Minnesota Human Rights Act.

## Appeals

After MDHR issues a determination, a party may choose to appeal the department's decision. By law, parties must articulate a reason why the department should reconsider its determination based on certain criteria.<sup>9</sup> Specifically, parties must demonstrate at least one of the following: (1) there is new evidence that was not available during the investigation, (2) MDHR did not properly weigh evidence available during the investigation, or (3) MDHR erroneously issued a determination given statutes or case law.<sup>10</sup>

Among complaints reported to MDHR in Fiscal Year 2016, parties appealed MDHR's initial determinations for 88 cases, or 16 percent of total determinations. MDHR revised its determination for only eight of those appealed cases.

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### Statutes outline requirements for appeals submitted by charging parties, but not for appeals submitted by responding parties.

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First, while administrative rules grant both parties the right to appeal, only charging parties are granted the right to appeal in statutes. Per statutes, when MDHR issues a "no probable cause" determination, "the charging party may request in writing... that the commissioner reconsider the determination."<sup>11</sup> In contrast, responding parties are only granted the right to appeal the department's determination in rules.<sup>12</sup>

In addition, statutes place specific parameters around the process for appeals made by charging parties, but neither statutes nor rules outline comparable parameters for appeals initiated by responding parties. For example, statutes require charging parties to submit their appeal request to MDHR within ten days of receiving the determination.<sup>13</sup> In contrast, neither statutes nor rules indicate how long responding parties have to submit their appeal request to MDHR. In addition, when a charging party appeals

#### Discrimination Case Example

**Area:** Employment  
**Class:** Disability

A man reported to MDHR that his employer failed to provide him with reasonable accommodations for his disability and then terminated him from his job as a bus driver. Specifically, the man reported that he needed to miss work numerous times due to his disability, but his employer was unwilling to accommodate his absences.

After interviewing the charging party and reviewing documents, MDHR issued a "no probable cause" determination. MDHR found the man was unable to meet the essential job functions of his position due to his absences. In addition, he had incurred significant absences in violation of company policy and the collective bargaining agreement to which he was subject.

The charging party appealed MDHR's determination. MDHR upheld its initial determination indicating that the man did not provide new information that would justify reversing the initial determination.

<sup>9</sup> *Minnesota Rules*, 5000.0700, subp. 8; and 5000.0750, subp. 1, published electronically October 2, 2013.

<sup>10</sup> *Ibid.* Responding parties may also appeal a "probable cause" determination if they identify information indicating that evidence upon which MDHR relied was falsified or inaccurate.

<sup>11</sup> *Minnesota Statutes* 2019, 363A.28, subd. 6(c).

<sup>12</sup> *Minnesota Rules*, 5000.0750, published electronically October 2, 2013.

<sup>13</sup> *Minnesota Statutes* 2019, 363A.28, subd. 6(c).

MDHR's determination, statutes require MDHR to reverse, remand, or affirm the department's original determination within 20 days.<sup>14</sup> Neither statutes nor rules provide a timeframe within which MDHR must make a decision on a responding party's appeal.

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**The Minnesota Department of Human Rights did not consistently notify responding parties of their right to appeal the department's determination.**

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As we described in Chapter 2, when MDHR issues a determination, the department sends a form letter to both parties notifying them of the department's decision. In late fall 2019, MDHR updated the form letter sent with determinations. Prior to this update, when MDHR issued a "probable cause" determination, the form letters sent to responding parties did not include information about the responding party's right to appeal. In our file review, we found that MDHR did not notify responding parties of their right to appeal MDHR's determination for any "probable cause" determinations we reviewed.<sup>15</sup> In contrast, when MDHR issued a "no probable cause" determination, the form letter sent to charging parties included information about the charging party's right to appeal.

When MDHR updated its form letter in late fall 2019, it added information about the responding party's right to appeal. We commend the department for addressing this disparity, and we encourage MDHR to ensure both parties are informed of their right to appeal moving forward.

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**RECOMMENDATION**

**The Legislature should amend statutes to include the responding party's right to appeal the department's determination.**

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We believe an appeals process is important for two reasons. First, it provides charging and responding parties with an opportunity to request that MDHR reexamine its initial determination, a critical step in providing due process to both parties. Second, it provides the department with an important oversight tool. Issues brought to light through the appeal process can provide MDHR with important information about investigator performance that may require further attention.

It is important for both parties to have equal access to due process, and, as such, we think the ability to appeal MDHR's determinations should be outlined in statutes for both parties. We recommend the Legislature amend *Minnesota Statutes* 2019, 363A.28, subd. 6, to include the responding party's right to appeal.

We also think it is important that statutes outline for both parties similar parameters governing the timeliness of appeals activities. The Legislature should amend statutes to stipulate deadlines by which (1) the responding party must submit their appeal to MDHR, and (2) MDHR must decide whether to reverse, remand, or affirm its original decision for responding party appeals.

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<sup>14</sup> *Minnesota Statutes* 2019, 363A.28, subd. 6(c).

<sup>15</sup> MDHR initially issued a "probable cause" determination for 5 of the 40 cases we included in our file review.

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## Mediation

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Mediation is a process by which parties convene with the goal of reaching a mutually agreeable resolution to a conflict without filing a suit in court. Mediation processes are typically facilitated by a neutral mediator who may ask questions, help the parties to clarify their interests and needs, and help each party to understand the other's perspective. Through this process, the mediator seeks to help parties resolve their dispute. Some mediations result in a formal agreement between the parties.

### Mediation Opportunities

Parties may participate in MDHR's mediation program at any time prior to the department issuing its determination for a case. Participation in MDHR's mediation program is voluntary. If parties do not engage in mediation—or if mediation is unsuccessful—MDHR will initiate or continue its investigation into the case. MDHR primarily uses volunteer mediators and provides mediation services at no cost to the parties.<sup>16</sup>

In recent years, very few cases have been resolved through MDHR's mediation program.<sup>17</sup> Among complaints reported to MDHR in Fiscal Year 2016, MDHR resolved 4 percent of cases through mediation. In reports to the Legislature, MDHR reported resolving through mediation an average of 20 cases per year for the last five fiscal years.<sup>18</sup>

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**Prior to 2019, the Minnesota Department of Human Rights did not offer the opportunity to mediate to all parties for all cases.**

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In reviewing data on complaints reported to MDHR in fiscal years 2016 through 2018, we found MDHR extended a formal mediation invitation for about one-third of cases. Investigators told us they refer cases to MDHR's mediation program if a party indicates interest or if the investigator feels the case is appropriate for mediation. MDHR does not have formal policies about when the department should offer mediation, although it has recently developed some guidance for investigators about how to identify cases for which mediation is a promising option.

While staff told us they refer some cases to MDHR's mediation program when a party indicates interest, some parties may not have known mediation was an option. When MDHR sends the discrimination charge to parties, the charge is accompanied by a form letter providing information about the investigation process. Until recently, the department included information about its mediation program in only the letter sent to charging parties; MDHR did not routinely notify responding parties of the option to mediate. In the latter half of 2019, MDHR updated the form letter sent with the initial charge to instruct both parties to contact the department if they are interested in mediation.

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<sup>16</sup> In addition to volunteers, MDHR's mediation director mediates a small number of cases.

<sup>17</sup> Parties may also mediate a dispute outside of MDHR. MDHR data do not reflect cases that were resolved through mediation outside of MDHR.

<sup>18</sup> Totals do not reflect the number of cases for which MDHR offered or provided mediation services, which typically exceed the number of cases resolved through mediation. For example, in Fiscal Year 2019, MDHR reported scheduling 71 mediations but resolving only 21 cases through mediation.

## Satisfaction with Mediation

To learn more about parties' experiences with MDHR—including its mediation program—we conducted a survey of attorneys who provided legal counsel to parties named in discrimination complaints reported to the department in recent years.<sup>19</sup>

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**Among attorneys who responded to our survey and had recent experience with the Minnesota Department of Human Rights' mediation program, less than 40 percent said that mediations were often conducted effectively.**

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Among survey respondents who had recent experience with MDHR's mediation program, only 38 percent said MDHR's mediation process was always or often conducted effectively.<sup>20</sup> For example, some survey respondents commented that MDHR does not schedule sufficient time for mediation sessions.

Satisfaction with MDHR's mediation program varied to some degree based on whether the attorney represented the charging or responding party. For example, 78 percent of charging party attorneys responding to our survey said they always or often received sufficient information from MDHR to prepare for mediation, compared to 56 percent of responding party attorneys. Similarly, 91 percent of charging party attorneys said that the mediator assigned to their case was always or often neutral compared to only 47 percent of responding party attorneys.



I do not recommend the mediation option to my clients because it is often an ineffective waste of time.... If I feel a case should settle, I would attempt to negotiate directly with the other side or propose private mediation.

— Responding Party Attorney

Many survey respondents expressed concern about the level of experience of the volunteer mediators upon which MDHR relies. Only 41 percent of respondents said the mediator assigned to the case was always or often adequately skilled to perform their role. One charging party attorney commented, "Some of the mediators I have had during MDHR mediation processes were great. Others were very ineffective, or engaged in counter-productive methods.... The quality of the mediators used is very inconsistent." A responding party attorney said, "Mediations are often done with volunteer mediators who are new to mediations. I have found them very unproductive.... If the agency would retain experienced mediators, the mediations might have more success."

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<sup>19</sup> We surveyed attorneys who provided legal counsel to charging and/or responding parties for discrimination complaints reported to MDHR in fiscal years 2016 through 2018, according to data provided by MDHR. We surveyed 920 attorneys and received 305 responses, for a response rate of 33 percent. Sixty-seven survey respondents (22 percent) indicated they represented the charging party, 202 respondents (66 percent) indicated they represented the responding party, and 19 respondents (6 percent) indicated they represented both charging and responding parties. Seventeen respondents did not indicate who they represented. Throughout this report, unless otherwise indicated, "attorneys" means attorneys that represent charging and/or responding parties.

<sup>20</sup> We asked questions regarding MDHR's mediation program of the 114 attorneys who indicated they had attended an MDHR mediation session since January 1, 2016. Of those 114 attorneys, 28 percent represented the charging party, 61 percent represented the responding party, and 11 percent represented both charging and responding parties.

MDHR’s mediation program has undergone significant changes in the last year. In early 2019, MDHR hired its first mediation director to coordinate the department’s mediation program and oversee the department’s volunteers.<sup>21</sup> Since then, the department has formalized minimum basic requirements to be a volunteer mediator.

For example, mediators now must have completed a 30-hour Minnesota Supreme Court-certified training and attended MDHR’s mediator orientation program. MDHR’s mediation director said it was not clear what—if any—minimum qualifications were expected of mediators before she was hired. She said the department is in the process of phasing in the new requirements. MDHR’s mediation director said the level of expertise among the volunteer mediators varies, although any volunteer currently leading mediation for a case filed with MDHR has at least one year of mediation experience.

While many attorneys responding to our survey had concerns about MDHR’s mediation program, MDHR has received more positive feedback. As part of its mediation process, MDHR asks mediation participants to complete a mediation evaluation. We reviewed all mediation evaluation forms submitted to MDHR between July 2017 and September 2019, and found comments to be largely positive.<sup>22</sup> However, given the small number of forms MDHR received, it is difficult to draw broad conclusions about participant satisfaction from these responses.

## Mediation Recommendation

Many individuals told us of potential benefits to mediation. For example, mediation can provide a meaningful resolution for cases in which MDHR would otherwise issue a “no probable cause” determination. Mediation can provide a neutral environment in which both parties can discuss and better understand each others’ perspectives. In doing so, parties may choose to make adjustments in the future to avoid similar conflicts. In addition, resolving complaints via mediation can be a cost-effective option when it is conducted early in the process and responding parties do not have to incur the expense of replying to a formal charge or information request.

Mediation can also be an important mechanism for MDHR to manage its overall investigation workload. As we noted in Chapter 1, in recent years, charging parties regularly filed more cases in a given year than MDHR was able to close. As part of our evaluation, we interviewed representatives from three agencies conducting similar investigations into discrimination allegations.<sup>23</sup> Representatives from two of those agencies indicated mediation is an important tool that helps them manage the volume of cases filed with the agency. A couple of MDHR staff likewise suggested mediation as one way to help the agency streamline its processes and manage its workload.



I sincerely appreciate that MDHR offers this service. However, my mediations have been unproductive largely due to the inexperience of the mediators.

— Charging Party Attorney

<sup>21</sup> In years prior, staff said, MDHR’s mediation program was primarily managed by administrative staff who coordinated the various administrative logistics.

<sup>22</sup> MDHR received a total of 25 evaluations representing 23 cases. Sixty percent (15) of the evaluation forms were submitted by the charging party or the charging party’s attorney; 40 percent (10) of the forms were submitted by the responding party or the responding party’s attorney.

<sup>23</sup> We reviewed the practices of and interviewed staff from the U.S. Equal Employment Opportunity Commission, the Illinois Department of Human Rights, and the Minneapolis Department of Civil Rights.

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## RECOMMENDATION

### The Minnesota Department of Human Rights should ensure the effectiveness of its mediation program.

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We commend the department for updating its form letter to ensure it offers both parties the opportunity to mediate. However, for mediation to be a meaningful option, MDHR must ensure that mediations are conducted effectively. MDHR must ensure that sufficient time is scheduled for mediation and that mediators are sufficiently skilled. As we discussed above, since hiring a mediation director in early 2019, MDHR has made a number of changes to its mediation program. We encourage the department to systematically solicit feedback from individuals involved in MDHR’s mediation process to evaluate the effectiveness of these changes and assess where there are still areas that need improvement.

While offering mediation should be the department’s default approach, there may be some key exceptions. MDHR staff indicated there are a few instances in which offering mediation would be inappropriate, such as cases involving violence against an individual, or involving an individual who has been ruled incompetent to advocate for their own interests. We recommend that MDHR develop policies indicating when offering mediation is inappropriate and document all instances in which MDHR decides not to offer mediation.

## Conciliation

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When MDHR issues a “probable cause” determination, MDHR offers both parties an opportunity to resolve their dispute through conciliation. Like mediation, conciliation provides a way for parties to resolve their dispute without filing a suit in court. Unlike mediation, however, MDHR is also a party to conciliation efforts and may have its own demands. Conciliation is not required, although if parties cannot reach a resolution, responding parties risk either MDHR or the charging party moving forward with litigation.

MDHR’s legal staff typically facilitate conciliation. In advance of conciliation, MDHR legal staff often collect information from both parties, including an offer from the responding party and a demand from the charging party. On the day of conciliation, MDHR legal staff communicate between parties, typically by phone, with the goal of reaching a mutually agreeable resolution. When conciliation is successful—as we discuss in the next section—MDHR legal staff draft a settlement agreement for parties to sign. After each party signs the agreement, MDHR closes the case.

### Discrimination Case Example

**Area:** Reprisal  
**Class:** Sex

A woman reported to MDHR that, while playing pool at a bar, the bartender sexually harassed her by touching her buttocks and reaching for her breast. She reported the incident to local police. Shortly thereafter, the bar’s owner banned her from the bar.

MDHR conducted an investigation, reviewing related documents, information from witnesses, and surveillance video. MDHR issued a “probable cause” determination, indicating that there was reason to believe the business engaged in reprisal against the woman because she filed a sexual harassment complaint with the local police. MDHR conciliated the issue and brokered a settlement agreement.

If conciliation is unsuccessful, staff from MDHR’s legal team conduct a litigation review to determine whether to refer the case to the Office of the Attorney General for litigation.<sup>24</sup> If MDHR requests that the Attorney General litigate a case, the Attorney General may file a lawsuit before either the Office of Administrative Hearings or in state district court.

Among complaints reported to MDHR in Fiscal Year 2016, a settlement agreement was the most frequent resolution when MDHR issued a “probable cause” determination, as shown in Exhibit 3.2. MDHR reached a settlement agreement for 17 of the 29 cases (59 percent); it was still in the process of negotiating settlement agreements for an additional three cases, as of July 2019. The charging parties withdrew 5 of the 29 cases (17 percent)—either because the parties satisfactorily resolved the dispute or because the charging party planned to take the case to court. For the remaining cases, MDHR is considering or actively pursuing litigation or has determined the case did not warrant additional resources.

**Exhibit 3.2: Among complaints reported to the Minnesota Department of Human Rights in Fiscal Year 2016, parties reached a settlement agreement for the majority of cases in which the department issued a “probable cause” determination.**

|                                   | Description  | Number of Cases |
|-----------------------------------|--|-----------------|
| <b>Settlement agreement</b>       | MDHR reached a settlement agreement through conciliation for 17 cases.   | 17              |
| <b>Withdrawal</b>                 | For four cases, the charging party withdrew the case because parties satisfactorily resolved the dispute. Parties, for example, may choose to negotiate the case without involvement from MDHR. For one case, the charging party withdrew the case in order to file a suit in court. | 5               |
| <b>Conciliation</b>               | MDHR was still in the process of negotiating a settlement agreement through conciliation for three cases.  | 3               |
| <b>Litigation</b>                 | MDHR was unable to reach a settlement agreement through conciliation. The department is determining whether to litigate one case, and the department forwarded the second case to the Office of the Attorney General for prosecution.  | 2               |
| <b>Does not warrant resources</b> | MDHR decided the cases did not warrant further resources and closed them without reaching a settlement agreement or pursuing litigation.   | 2               |

NOTE: Totals reflect all cases with a final determination of “probable cause,” including “probable cause” determinations that were part of a split determination and those made after an appeal, as of July 2019.

SOURCE: Office of the Legislative Auditor, analysis of Minnesota Department of Human Rights complaint data.

<sup>24</sup> At this point, staff from the Office of the Attorney General may also review the case and provide additional information to MDHR about the merits of pursuing litigation.

We provide additional information about settlement agreements below, before discussing how MDHR addressed cases in recent years when conciliation was unsuccessful.

## Settlement Agreements

Unlike mediation, in conciliation, MDHR is typically a party to settlement agreements. While charging parties may receive monetary damages, MDHR negotiates nonmonetary terms designed to eliminate the discriminatory practices the department has probable cause to believe occurred. For example, nonmonetary settlement terms could include requirements for the responding party to conduct training for its staff, develop or revise policies, or submit reports to MDHR.

Each settlement agreement arising from complaints reported to MDHR in Fiscal Year 2016 included both monetary and nonmonetary terms. Monetary settlement terms included, for example, payment of attorneys' fees and back pay. Monetary terms ranged from \$4,000 to \$150,000, with a median of \$14,125. Examples of nonmonetary terms included having the responding party provide training on reasonable accommodations and review and revise employment policies.

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### **The Minnesota Department of Human Rights has not consistently monitored settlement agreements in recent years, as required by law.**

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According to Minnesota rules, MDHR “shall monitor all settlement and conciliation agreements requiring specific performance.”<sup>25</sup> Further, if MDHR believes a respondent has not complied with a settlement agreement, MDHR must notify the respondent and conduct an investigation of the possible noncompliance. Rules state, “If noncompliance is determined, the commissioner shall commence proceedings to enforce the agreement....”<sup>26</sup>

MDHR staff told us that the department has not consistently monitored parties' compliance with settlement agreements in recent years. One staff person described the department's approach to monitoring settlement agreements as “hit or miss” and said the responsibilities for monitoring settlements in recent years were spread across a number of administrative staff.

MDHR hired a Director of Settlement Compliance in late 2018. This individual was responsible for monitoring parties' compliance with most aspects of settlement agreements. MDHR's settlement director explained to us that she spent time at the beginning of her tenure trying to figure out what agreements were in place because information on settlement agreements had been stored inconsistently.

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<sup>25</sup> *Minnesota Rules*, 5000.0800, subp. 3a, published electronically June 11, 2008.

<sup>26</sup> *Ibid.* Per rules, the commissioner may also determine that enforcing a settlement agreement does not warrant use of department resources.

## RECOMMENDATION

### **The Minnesota Department of Human Rights should monitor settlement agreements, as required by law.**

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As mentioned above, during conciliation, MDHR staff seek to both obtain recompense for the charging party and eliminate the identified discriminatory practices. MDHR can expend significant time and resources investigating and conciliating cases for which the department issues a “probable cause” determination. Given the effort that can be involved in reaching a settlement agreement and the department’s statutory responsibility to attempt to eliminate discrimination, it is reasonable to expect MDHR to ensure parties uphold their part of the settlement agreement.

While MDHR took recent steps to institutionalize its settlement monitoring responsibilities by hiring a Director of Settlement Compliance, this individual left the department in late 2019. MDHR leadership told us the department remains committed to monitoring settlements and plans to rely primarily on its paralegal to do so instead of a director. Regardless of who is responsible for these activities, MDHR should ensure it monitors settlement agreements consistently, as required by law.

## Unsuccessful Conciliation

As we mentioned previously, sometimes MDHR’s conciliation efforts are unsuccessful. Among complaints reported to MDHR in Fiscal Year 2016, MDHR was unable to broker a settlement agreement for 4 of the 29 cases with a “probable cause” determination.<sup>27</sup> MDHR is considering or in the process of pursuing litigation for two of those cases. However, for the other two cases, MDHR decided the cases did not warrant further department resources and closed these cases without reaching a settlement agreement or pursuing litigation.

Among complaints reported to MDHR in fiscal years 2016 through 2018, we found a total of five cases for which MDHR issued a “probable cause” determination but chose not to pursue litigation when conciliation was unsuccessful. In other words, for 6 percent of the cases in which MDHR decided discrimination probably occurred, the department determined that the cases did not warrant further resources after conciliation had failed.<sup>28</sup> When we reviewed the case files for each of the five cases, it was not clear for four of the five cases why MDHR decided the case did not warrant additional resources, although we found that some of the cases had been open for some time.<sup>29</sup> MDHR issued its determination roughly 1 to 2.5 years prior to closing most of these cases.

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<sup>27</sup> MDHR was still in the process of negotiating settlement agreements for three cases when we received data on discrimination complaints from the department. We did not include cases withdrawn by the charging party in our calculation of cases for which the department could not broker a settlement agreement. Totals reflect all cases with a determination of “probable cause,” including “probable cause” determinations that were part of a split determination.

<sup>28</sup> When we received data from MDHR on complaints reported to the department in Fiscal Year 2017, MDHR had not yet closed 10 percent of the cases filed. Forty-six percent of cases resulting from complaints reported to the department in Fiscal Year 2018 were also open. Final determinations for those open cases may change if cases are appealed. Totals reflect all cases with a determination of “probable cause,” including “probable cause” determinations that were part of a split determination.

<sup>29</sup> MDHR dismissed the fifth case because it was unable to contact the charging party.

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**The law is unclear regarding what actions the Minnesota Department of Human Rights should take when conciliation is unsuccessful.**

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Taken in isolation, certain statutes appear to require MDHR to pursue litigation for cases that are not resolved via conciliation. Statutes state that, if MDHR issues a “probable cause” determination and the commissioner determines that conciliation has been or would be unsuccessful, the commissioner shall require the respondent to “answer the allegations...at a hearing before an administrative law judge.”<sup>30</sup>

MDHR, however, has interpreted statutes and rules more broadly. When we asked MDHR leadership why the department has not brought cases for which conciliation was unsuccessful before an administrative law judge, MDHR leadership referred to provisions giving the commissioner discretion to decide how the department deploys its resources. For example, the department referenced rules that grant the commissioner the authority to dismiss a case if it “does not warrant further use of department resources.”<sup>31</sup> MDHR also referenced statutes that grant the commissioner authority to:

“...adopt policies to determine which charges are processed and the order in which charges are processed based on their particular social or legal significance, administrative convenience, difficulty of resolution, or other standard consistent with the provisions of this chapter.”<sup>32</sup>

MDHR has not adopted any policies or standards outlining under what circumstances the department would choose not to pursue litigation when conciliation is unsuccessful. However, MDHR staff told us there are multiple reasons the department may not litigate certain cases. For example, MDHR staff told us, for some cases, the department may risk infringing upon the charging party’s due process rights by filing a case before the Office of Administrative Hearings. MDHR leadership said the charging party may instead prefer to pursue the case in district court.

In addition, MDHR leadership noted that litigation is expensive and time intensive, so the department must consider whether a case warrants the investment. In deciding whether a case warrants department resources, MDHR staff told us they consider several factors, such as whether the charging party is responsive, the egregiousness of the case, the availability of witnesses, and the potential risk of losing in court and establishing precedent contrary to the department’s mission.

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<sup>30</sup> *Minnesota Statutes* 2019, 363A.28, subd. 6(d).

<sup>31</sup> *Minnesota Rules*, 5000.0520, published electronically June 11, 2008.

<sup>32</sup> *Minnesota Statutes* 2019, 363A.28, subd. 6(h).

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**RECOMMENDATION**

**The Legislature should consider eliminating the requirement in law that the Minnesota Department of Human Rights always pursue litigation for cases when conciliation is unsuccessful.**

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Current language in law and rules has resulted in ambiguity regarding whether MDHR must pursue litigation for certain cases. The plain meaning of *Minnesota Statutes* 2019, 363A.28, subd. 6(d), taken in isolation, appears to require MDHR to put forward certain cases for a hearing before an administrative law judge. MDHR has taken a different and broader interpretation of law.

We think there are legitimate reasons MDHR may choose not to litigate a case in court. Further, with finite staff and resources, it is important that MDHR consider departmental priorities and the impact that litigating one case may have on MDHR's work on all cases filed with the department. As such, we recommend the Legislature consider eliminating the language in statutes requiring MDHR to bring certain cases before an administrative law judge.

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**RECOMMENDATION**

**The Minnesota Department of Human Rights should establish policies outlining its process for resolving cases when conciliation is unsuccessful.**

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At the same time, MDHR must establish policies outlining the circumstances in which the department might choose not to pursue litigation for a case. Such policies will increase the transparency around the department's decision-making processes and help parties better understand what to expect of MDHR's responsibilities after issuing a "probable cause" determination.

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# Chapter 4: Workload Management and Timeliness

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Investigating cases of alleged discrimination and achieving resolutions for those cases—whether through mediation, conciliation, or other means—is a primary goal of the Minnesota Department of Human Rights (MDHR).<sup>1</sup> However, the department is limited in how many investigations it can conduct, and how quickly it can conduct them. In this chapter, we discuss the department’s investigation workload, how the department prioritizes its work, and the department’s struggles with completing its work within the timelines established by law.

## Key Findings in This Chapter

- Minnesota Department of Human Rights investigators have large caseloads that have increased over the past several years.
- In recent years, the Minnesota Department of Human Rights has not met important timeliness requirements outlined in law.
- The Minnesota Department of Human Rights’ lack of timely investigations negatively affects parties and makes it more difficult for the department to conduct effective investigations.

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## Investigation Workload

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As we discussed in Chapter 1, the number of new discrimination cases filed with the department regularly exceeded the number of cases closed by the department in recent years. As a result, the total number of cases awaiting a determination has generally increased since Fiscal Year 2016. At the close of Fiscal Year 2019, MDHR reported that 798 cases of alleged discrimination were awaiting a determination, the highest number of cases awaiting determination since 2013.

Below, we examine how the number of cases has affected investigators’ caseloads. We also discuss the department’s trouble with staff turnover, and how this turnover has also affected investigators’ caseloads.

### Caseloads

“Caseload” refers to the number of cases assigned to an individual investigator, which is different than the number of cases on which an investigator is *actively* working at any given time.

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<sup>1</sup> For the purposes of this report, “discrimination” is the act of treating an individual differently—because of one or more personal characteristics—in violation of the Minnesota Human Rights Act, and includes the failure to provide reasonable accommodations as required by law. A discrimination complaint becomes a “case” after the charging party files a charge of alleged discrimination with MDHR.

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**Minnesota Department of Human Rights investigators have large caseloads that have increased over the past several years.**

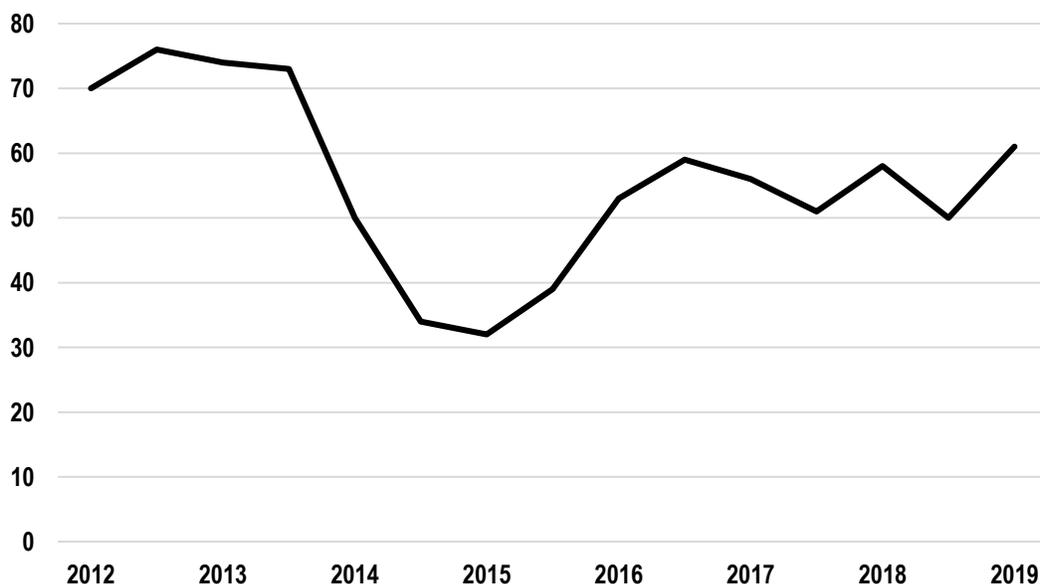
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MDHR reported that investigators' average caseload at the end of Fiscal Year 2019 was 61 cases.<sup>2</sup> The department also reported that caseloads have increased and remained high over the last several years. As Exhibit 4.1 illustrates, average investigator caseloads were in the mid-70s in Fiscal Year 2013. Caseloads dropped significantly in the following years, bottoming out at an average of 32 cases per investigator at the end of Fiscal Year 2015. Since then, however, caseloads have generally increased, surpassing 60 cases per investigator in the most recent data reported by the department.

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**Exhibit 4.1: The Minnesota Department of Human Rights reported that investigator caseloads have remained high over the last several fiscal years.**

Investigator Caseload



NOTES: The Minnesota Department of Human Rights calculates caseload by dividing its total inventory of cases by investigator full-time equivalents. The department's caseload figures likely include some cases that have not yet been assigned to investigators.

SOURCE: Office of the Legislative Auditor, analysis of Minnesota Department of Human Rights semi-annual legislative reports, July 2012 to July 2019, <https://mn.gov/mdhr/news-community/reports/legislative-report.jsp>, accessed November 18, 2019.

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<sup>2</sup> MDHR calculates caseload by dividing its total inventory of cases by investigator full-time equivalents. MDHR's caseload figures likely include some cases that have not yet been assigned to investigators. Minnesota Department of Human Rights, *Semi-Annual Report to the Legislature* (St. Paul, July 31, 2019).

As part of our evaluation, we interviewed each investigator who was employed with MDHR at the end of Fiscal Year 2019. Investigators told us their caseloads ranged from about a dozen cases for a relatively new investigator to about 70 cases for some investigators who had been with the department for more than one year. On average, investigators reported caseloads of just over 50 cases.

Some experienced investigators reported having caseloads of about **70 cases** at any one time.

Although most investigators said they are assigned 50 or more cases, they are not investigating all of those cases at the same time. While there was slight variation by investigator, on average, investigators told us they were able to “actively” investigate 11 cases at any one time and complete investigations for between 4 and 7 cases in any given month. Investigators told us that there are far more cases assigned to them than they could hope to investigate at any one time.

Having such high caseloads—especially given the number of cases investigators can actually work on at any one time—can lead to several problems. For example, investigators told us that high caseloads can lead to delays, as cases sit in an investigator’s queue waiting to be investigated. Investigators also told us that they have little time to communicate with parties about their cases; many investigators told us they do not routinely update parties about the status of their case, as we discussed in Chapter 2. Finally, some investigators told us that the overall workload contributes to stress and staff burnout.

## Staff Turnover

As discussed in Chapter 1, at the end of Fiscal Year 2019, MDHR had 13 investigators and 2 investigation supervisors on staff. These investigators include intake staff, who are responsible for determining whether incoming allegations of discrimination meet basic criteria, and investigators, who investigate cases filed with the department.

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### **Minnesota Department of Human Rights staff reported that high levels of investigator turnover have exacerbated high caseloads.**

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From Fiscal Year 2014 to Fiscal Year 2019, MDHR investigators turned over at an average annual rate of 17 percent. In recent years, the department has typically lost at least two investigators annually. In fall 2019 alone, the department lost two experienced investigators. In our interviews with MDHR staff, investigators told us that turnover is largely due to low pay, their large workload, and the high expectations for their work.

When an investigator leaves MDHR, not only must the department hire and train someone to replace the investigator, it must also reassign all of the cases for which the departing investigator was responsible. This in turn can lead to additional delays for those cases, as the reassigned cases are added to another investigator’s queue. These additional cases also result in higher caseloads for the remaining investigators. One investigator told us she anticipated her caseload would soon surpass 100 cases, once additional cases are reassigned to her due to recent staff resignations.

In addition, nearly one-half of investigators working at MDHR at the end of Fiscal Year 2019 had been with the department for 2.5 years or less. According to several investigators, it can take six months to a year or longer for a new investigator to fully understand the requirements of the job. Having a relatively inexperienced workforce can contribute to an overall reduction in productivity.



There is high turnover such that I'm always speaking to a different person who is learning the case.

— Charging Party Attorney

The rate of turnover at MDHR has been noticeable to those outside of the department. As part of our evaluation, we conducted a survey of attorneys who provided legal counsel to parties named in discrimination complaints reported to the department in recent years.<sup>3</sup> Several survey respondents commented that MDHR has had high levels of staff turnover, which negatively impacts the department's effectiveness. For example, one responding party attorney wrote, "It is obvious that MDHR has had a high turnover in the last several years, and this undermines its mission and effectiveness."

## Case Prioritization

Given the large number of cases the department has received, it is reasonable to expect the department to establish priorities to manage its workload and allocate its limited resources. In fact, Minnesota statutes establish some priorities and grant MDHR's commissioner the authority to "adopt policies to determine which charges are processed and the order in which charges are processed based on their particular social or legal significance, administrative convenience, difficulty of resolution, or other standard..."<sup>4</sup> In this section, we discuss the extent to which the department has complied with the priorities outlined in law. We also discuss the extent to which the department has established and implemented its own prioritization policies.

### Priorities in Law

Minnesota statutes establish criteria for which types of cases MDHR should prioritize. By law, MDHR must "make an immediate inquiry when a charge alleges actual or threatened physical violence" or "when it appears that a charge is frivolous or without merit."<sup>5</sup> When a case is frivolous or without merit, statutes instruct the commissioner to

<sup>3</sup> We surveyed attorneys who provided legal counsel to charging and/or responding parties for discrimination complaints reported to MDHR in fiscal years 2016 through 2018, according to data provided by MDHR. We surveyed 920 attorneys and received 305 responses, for a response rate of 33 percent. Sixty-seven survey respondents (22 percent) indicated they represented the charging party, 202 respondents (66 percent) indicated they represented the responding party, and 19 respondents (6 percent) indicated they represented both charging and responding parties. Seventeen respondents did not indicate who they represented. Throughout this report, unless otherwise indicated, "attorneys" means attorneys that represented charging and/or responding parties.

For the purposes of this report, the "charging party" is the individual alleging discrimination, the "responding party" is the entity accused of discrimination, and "complaints" are allegations of illegal discrimination that have not been filed as a charge. A "charge" is a written statement outlining allegations of discriminatory acts that are prohibited by the Minnesota Human Rights Act.

<sup>4</sup> *Minnesota Statutes* 2019, 363A.28, subd. 6(h).

<sup>5</sup> *Minnesota Statutes* 2019, 363A.28, subd. 6(a).

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## Exhibit 4.2: Statutes require the Minnesota Department of Human Rights to prioritize certain cases.

The commissioner shall make *immediate inquiry* when:

- A case alleges actual or threatened physical violence.
- It appears that a case is frivolous or without merit.<sup>a</sup>

The commissioner shall *give priority* to investigating cases that have the following characteristics, in the following order:

1. There is evidence of irreparable harm if immediate action is not taken.
2. There is evidence that the responding party has intentionally engaged in reprisal.
3. A significant number of recent cases have been filed against the responding party.
4. The responding party is a government entity.
5. There is potential for broadly promoting the Minnesota Human Rights Act.
6. The case is supported by substantial and credible documentation, witnesses, or other evidence.

<sup>a</sup> The Minnesota Department of Human Rights is required to make an immediate inquiry into and dismiss these cases.

SOURCE: *Minnesota Statutes* 2019, 363A.28, subd. 6(a)-(b).

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make an immediate inquiry and then dismiss the case.<sup>6</sup> Statutes also require MDHR to “give priority to investigating and processing” certain other types of cases, as outlined in Exhibit 4.2.<sup>7</sup>

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## By law, the Minnesota Department of Human Rights must prioritize certain cases; however, the department has done so inconsistently.

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MDHR has internal guidance to help investigators prioritize their caseload. The internal guidance generally follows the priorities outlined in law, with one notable exception—it does not prioritize cases that appear to be frivolous or without merit. MDHR’s guidance also identifies three additional factors for investigators to consider when prioritizing cases:

1. The case can be easily resolved.
2. The case is “noncomplex.”<sup>8</sup>
3. The case is “cross-filed” with the U.S. Equal Employment Opportunity Commission (EEOC).<sup>9</sup>

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<sup>6</sup> *Minnesota Statutes* 2019, 363A.28, subd. 6(a).

<sup>7</sup> *Minnesota Statutes* 2019, 363A.28, subd. 6(b).

<sup>8</sup> As explained in the next section, the department may classify a case as “complex” if it meets certain criteria. The department classifies cases not meeting the criteria as “noncomplex.” *Minnesota Statutes* 2019, 363A.29, subd. 2.

<sup>9</sup> When MDHR and EEOC both have jurisdiction over an employment-related case, MDHR automatically files the case with EEOC so that only one agency investigates the case.

However, many MDHR staff told us they do not consistently prioritize cases as indicated in law. For example, not 1 of the 13 investigators told us they have prioritized reviewing frivolous or meritless cases or made “an immediate inquiry” into them, despite the requirement in law to do so.<sup>10</sup> Similarly, investigators did not tell us they prioritize cases that allege reprisal or cases that involve a responding party that has had a significant number of recent cases filed against them, both of which are identified as priorities in law.<sup>11</sup>

When we asked MDHR investigation staff what types of cases investigators do prioritize, more than half indicated that they prioritize “noncomplex” cases. Investigators also told us that the department’s priorities have sometimes changed over the course of a given year. For example, several staff told us that at certain times of the year, MDHR prioritizes investigating cases that are cross-filed with the EEOC. MDHR has a contract with EEOC to conduct investigations of employment-related allegations of discrimination, and EEOC pays MDHR to conduct these investigations. Investigators told us that MDHR has prioritized investigating the cases that qualify for EEOC payment, to ensure MDHR meets the expectations of—and receives full payment associated with—its contract with EEOC. Finally, MDHR staff told us that they often prioritize older cases, and that sometimes they prioritize older cases over the types of cases identified as a priority in law.

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**Statutory requirements to prioritize frivolous and meritless cases are unclear and may cause the department to allocate resources contrary to the broader intent of the law.**

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As noted above, MDHR does not prioritize frivolous or meritless cases as required by law; however, the requirement that it do so is problematic for two reasons. First, Minnesota statutes do not define what constitutes a “frivolous” case. As a result, it is unclear which cases the department should prioritize under this requirement.

Second, the requirement may cause the department to prioritize its resources contrary to the broader intent of the law. The Minnesota Human Rights Act states that, “It is the public policy of this state to secure for persons in this state, freedom from discrimination.”<sup>12</sup> By requiring MDHR to prioritize frivolous cases, statutes require MDHR to prioritize investigating allegations that are less likely to be the result of discrimination. As a result, it necessarily means that investigators are taking longer to begin their investigations of more important and meritorious cases. The law essentially requires the department to prioritize less important cases—seemingly the opposite of what the Legislature would expect the department to do given the broader goals of the act.

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<sup>10</sup> *Minnesota Statutes* 2019, 363A.28, subd. 6(a).

<sup>11</sup> *Minnesota Statutes* 2019, 363A.28, subd. 6(b).

<sup>12</sup> *Minnesota Statutes* 2019, 363A.02, subd. 1.

## Complex Cases

As mentioned in the previous section, the department makes a distinction between “complex” and “noncomplex” cases. Statutes outline criteria that classify a case as “complex,” including if the case involves multiple parties or issues, complex issues of law or fact, or substantially new issues of law in the discrimination area.<sup>13</sup>



### “Complex” Cases

A case may be certified as complex if it meets one of the following criteria:

1. Involves multiple parties or issues.
2. Presents complex issues of law or fact.
3. Presents substantially new issues of law in the discrimination area.

— *Minnesota Statutes 2019, 363A.29, subd. 2*

For noncomplex cases, Minnesota statutes grant charging parties the ability to file a request for a contested case hearing before an administrative law judge if MDHR has not issued a determination within 180 days of the charging party filing the charge with the department.<sup>14</sup> Statutes do not grant charging parties the same ability when MDHR classifies their case as complex.<sup>15</sup> By law, if a charging party requests a contested case hearing for a noncomplex case, the department is responsible for the associated costs.<sup>16</sup> Several MDHR staff told us the hearings could cost the department a significant amount of money.

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### MDHR staff feel pressure to classify cases as “complex.”

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In recent years, MDHR has classified the vast majority of cases as “complex.” For example, MDHR classified as complex 84 percent of cases resulting from complaints reported to MDHR in Fiscal Year 2016 and in Fiscal Year 2017. Among complaints reported to MDHR in Fiscal Year 2018, the department classified 89 percent of cases as complex.

Many staff told us they feel compelled to classify cases as complex so that the department will not have to risk paying for a contested case hearing if it does not issue a determination in 180 days. Two staff people told us there is “pressure” or an “incentive” to classify cases as complex. Another investigator told us that all efforts are made to designate a case as complex.

Some of the attorneys who responded to our survey questioned the department’s practice of classifying so many cases as complex. For example, one charging party attorney said, “I feel charges are designated as complex too regularly,” while a responding party attorney wrote, “I don’t believe I have ever worked on a charge that MDHR did not classify as ‘complex,’ presumably to give itself an extended period of

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<sup>13</sup> *Minnesota Statutes 2019, 363A.29, subd. 2.*

<sup>14</sup> *Ibid.* Time during which the case is involved in “significant settlement negotiations, is being investigated by another enforcement agency..., or has been referred to mediation or to a local human rights commission...is not counted in computing the 180 days.”

<sup>15</sup> *Ibid.*

<sup>16</sup> For discrimination cases for which an administrative law judge determines that the responding party engaged in discriminatory practices, the judge generally must order the responding party to reimburse MDHR for litigation costs. *Minnesota Statutes 2019, 363A.29, subd. 11; and 14.53.*

time to conclude the investigation.” Thirty-six percent of the attorneys responding to our survey said MDHR’s assessment of a case’s complexity matched their own assessment of a case’s complexity only some of the time—or less.

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### MDHR staff routinely prioritize investigating “noncomplex” cases.

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Language in statute granting charging parties the right to request a contested case hearing for noncomplex cases has also resulted in investigators prioritizing noncomplex cases above other cases considered a priority in law. Several MDHR staff told us they prioritize investigating noncomplex cases, in an effort to issue determinations within 180 days to avoid the potential costs associated with a contested case hearing. For example, one investigator told us that noncomplex cases are always “priority one” and take precedence over the priorities identified in law. Another investigator told us that noncomplex cases need to be done quickly and are priority cases.

We found evidence of MDHR prioritizing noncomplex cases in the department’s data. Although the median length of time it took the department to investigate noncomplex cases was more than 180 days, it was shorter than the median length of time it took the department to investigate cases that are considered a priority in law. Among complaints reported to MDHR in Fiscal Year 2016, it took the department a median of 217 days to issue a determination for noncomplex cases and a median of 447 days for cases classified as a “priority.”<sup>17</sup> The median 217 days it took MDHR to investigate noncomplex cases is also shorter than the median 353 days it took the department to investigate the highest priority cases—those where “there is evidence of irreparable harm if immediate action is not taken.”<sup>18</sup>

**The median number of days to issue a determination for noncomplex cases was less than that of priority cases.**

**Noncomplex Case:      Priority Case:**

|             |             |
|-------------|-------------|
| <b>217</b>  | <b>447</b>  |
| <b>days</b> | <b>days</b> |

For cases originating from complaints reported to MDHR in Fiscal Year 2016

## Case Triage

As we have discussed, statutes identify certain types of cases that MDHR should prioritize, yet MDHR investigators often prioritize other types of cases—namely, noncomplex cases. The majority of cases, however, are neither “priority” cases as outlined in law nor “noncomplex.” Given its large workload, MDHR must establish a process whereby investigators can triage these cases and allocate their time strategically.

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<sup>17</sup> As discussed in the previous section, *Minnesota Statutes* 2019, 363A.28, subd. 6(a)-(b), directs MDHR to prioritize investigations of certain types of cases. MDHR classified about 110 of the cases resulting from Fiscal Year 2016 complaints as priority. The days reported above exclude time when the cases were engaged in alternative dispute resolution processes.

<sup>18</sup> Minnesota Department of Human Rights, *Enforcement Officer Manual*, “Case Management” (St. Paul).

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**The Minnesota Department of Human Rights does not have an effective triage process to help allocate its limited resources.**

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The department's case management priorities provide some limited guidance about the order in which staff should investigate nonpriority, noncomplex cases. For example, MDHR guidance states that, after addressing higher priority cases, investigators should work on the oldest cases first. However, the department does not have guidelines or a strategy to help MDHR strategically allocate its limited resources or mitigate its overall workload. For example, MDHR could alleviate its workload by choosing not to investigate all cases. However, MDHR does not triage cases in this manner. Currently, investigators investigate all cases assigned to them.

Given that MDHR chooses to investigate all eligible cases, the department could mitigate its workload by conducting less in-depth investigations for certain cases. Again, in recent years, MDHR has not done so. Investigators told us they conduct a full investigation for every case. As one investigator told us, if the department accepts a case, then it "goes through the process." Another investigator told us that investigators put the same amount of time and effort into each case, regardless of how meritorious or important the case may be.

An effective triage process may necessitate that MDHR dismiss certain cases before issuing a determination. However, in recent years, MDHR has been reticent to dismiss cases.<sup>19</sup> MDHR dismissed only 3 percent of cases arising from complaints reported to the department in Fiscal Year 2016. While the department's approach to dismissing cases has varied over time, some MDHR staff told us they had been instructed not to dismiss cases. For example, one investigator said, under the previous administration, they were expected to conduct an investigation even if the charging party was not responsive to the department's inquiries.

Several investigators suggested to us that the department should triage cases to more strategically use the department's limited resources. Rather than prioritizing more meritorious cases, investigators told us, in recent years, MDHR has spent time and resources investigating frivolous cases. One investigator told us the department has "absolutely" investigated frivolous allegations; another referenced a recent, "ridiculous" case that the investigator characterized as a waste of tax payers' dollars. Another investigator noted that the department investigates so many cases that should not have been taken, that it takes time away from investigating the more meritorious cases.

On the other hand, a few staff were not in favor of having the department triage cases for investigation. One investigator told us that it is hard to identify the more meritorious cases in the early stages of an investigation, and another staff person told us that a significant portion of their cases deserve a close look.

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<sup>19</sup> As we discuss in greater detail below, in 2019, MDHR implemented new procedures to help investigators more effectively dismiss cases.

## Prioritization Recommendations

Given the department's workload, MDHR should establish a process to ensure it is prioritizing its work based on the law and the needs of the state. Below, we make several recommendations to help the department prioritize its work.

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### RECOMMENDATION

**The Minnesota Department of Human Rights should prioritize cases, as required by law.**

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As we have discussed, Minnesota statutes identify the priority order in which MDHR should investigate and process cases. The department also outlines investigation priorities for investigators, but (1) the department's priorities do not completely align with the law, and (2) investigators do not always follow the priorities outlined in law. As discussed earlier, investigators often prioritize noncomplex cases over other types of priority cases identified by the department and in law.

The department's guidance regarding investigation priorities should align with the law, and investigators should be expected to follow the identified priorities. If department officials believe the priorities established in law should be revised, they should engage with the Legislature to amend the statutes.

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### RECOMMENDATIONS

**The Legislature should consider eliminating the:**

- **Distinction between complex and noncomplex cases in law.**
  - **Option for charging parties to request a contested case hearing if the Minnesota Department of Human Rights does not issue a determination within 180 days of a noncomplex case being filed.**
  - **Requirement that the Minnesota Department of Human Rights make an "immediate inquiry" into frivolous cases.**
- 

It appears, at least in part, that the Legislature established the 180-day provision for noncomplex cases in response to a Governor's taskforce that was concerned with MDHR's lack of timely determinations.<sup>20</sup> While we appreciate the desire to incentivize the department to issue determinations in a timely manner, the incentive is lost when MDHR classifies nearly all of its cases as complex. Further, as a result of the requirement, MDHR staff have prioritized investigations of noncomplex cases as opposed to other types of cases prioritized in law.

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<sup>20</sup> The task force notes in its report that it did not have time to consider the ramifications of this suggestion. Beth Waterhouse, *Report of the Governor's Blue Ribbon Task Force on Human Rights* (St. Paul, February 1984), 14-15.

By removing the “complex” case designation, MDHR would be free to prioritize its investigations based on the merits of a case and the guidelines established in law. Although the department struggles with completing investigations in a timely manner—as we discuss in more depth later in this chapter—giving the department more flexibility to manage its workload may prove beneficial.

Finally, we recommend that the Legislature consider whether the requirement that MDHR prioritize investigating frivolous or meritless cases aligns with the priorities and overall policy goals of the state. If it does not, we recommend the Legislature eliminate the requirement. If the Legislature chooses to keep this requirement, we recommend that it define what constitutes a frivolous case so that the department may prioritize cases as required by law.

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## RECOMMENDATION

### **The Minnesota Department of Human Rights should establish a triage process to more effectively allocate its investigation resources.**

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One way MDHR could manage its workload is by accepting fewer cases from the outset. Once the department has accepted a case, however, there are other ways the department could manage its workload and strategically allocate its investigation resources. More specifically, MDHR could implement a triage process to (1) prioritize investigating certain types of cases; or (2) conduct preliminary, less in-depth investigations for certain cases.

Having a triage process to prioritize cases based on specific factors—such as the merits of a case or the extent to which a case aligns with the department’s priorities—would allow the department to more strategically allocate its investigation resources. EEOC, for example, has implemented a three-tier triage system. EEOC prioritizes investigating cases that align with agency enforcement priorities or that are likely to result in a “probable cause” determination. For cases that appear to have some merit but require additional evidence to determine whether they are likely to result in a “probable cause” determination, EEOC investigates “as resources permit.”<sup>21</sup> Finally, EEOC dismisses cases for which it has evidence indicating it is not likely the agency will issue a “probable cause” determination.

Similarly, a “preliminary” investigation could help the department verify key aspects of a charging party’s allegations—such as the date of employment termination—before the department allocates full-scale investigation resources to the case. As we discussed in Chapter 2, MDHR does not assess the veracity of the charging party’s allegations before they file the charge. A preliminary investigation could help to ensure a full investigation is a good use of the department’s resources.

MDHR leadership told us they have recently implemented procedures to help staff more effectively dismiss cases if basic criteria—such as whether the case falls within the statute of limitations—are not met. The department’s new policy also implements

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<sup>21</sup> “A. Introduction to Commission Policies,” *Regional Attorneys’ Manual* (U.S. Equal Employment Opportunity Commission, May 18, 2005), [https://www.eeoc.gov/eeoc/litigation/manual/1-3-a\\_intro.html](https://www.eeoc.gov/eeoc/litigation/manual/1-3-a_intro.html), accessed July 17, 2019.

Minnesota rules that allow MDHR to dismiss a case if the charging party is not responsive to the department's inquiries.<sup>22</sup> According to MDHR leadership, these changes have enabled investigators to dismiss certain cases before conducting a full investigation. Under this new policy, MDHR leadership reported the department dismissed 11 percent of cases in 2019. While this new policy does not fully help investigators triage cases based on the merits of the allegations or other department priorities, it is a step toward more strategically allocating the department's resources. We encourage the department to develop an investigation triage strategy in addition to the new dismissal procedures it has recently implemented.

## Timeliness

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Many factors can affect how quickly MDHR investigates and closes a given case. Below, we discuss several of these factors, including requirements outlined in law and internal processes that contribute to delays. We also discuss the extent to which the department tracks whether it meets statutorily imposed deadlines.

### Statutory Requirements

Minnesota statutes establish a number of requirements regarding the promptness with which MDHR should conduct its work. However, there are several conflicting or unclear parts of the law, particularly with regard to priority and complex cases.

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#### Some timeliness requirements in law are unclear.

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As we discussed previously, Minnesota statutes indicate that MDHR should prioritize certain investigations. For example, statutes state that “[t]he commissioner shall make an *immediate inquiry* when a charge alleges actual or threatened physical violence” [emphasis added].<sup>23</sup> In that same section of law, statutes direct the commissioner to “give priority” to certain other types of cases.<sup>24</sup> However, the law does not define “immediate inquiry,” nor does it clarify what it means for the department to “give priority” to a case.

Statutes do not establish a clear timeline for investigating priority cases; however, the law appears to imply that MDHR should issue determinations for priority cases more quickly than nonpriority cases.<sup>25</sup> After stating that the department must make “immediate inquiry” into and “give priority” to certain cases, statutes go on to state that “[o]n *other* charges the commissioner shall make a determination within 12 months after the charge was filed...” [emphasis added].<sup>26</sup> Given that investigations of all “other” cases must be completed within one year, it is reasonable to assume that priority cases should be completed in less than one year and more quickly than other cases.

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<sup>22</sup> *Minnesota Rules*, 5000.0540, subp. 1, published electronically October 2, 2013.

<sup>23</sup> *Minnesota Statutes* 2019, 363A.28, subd. 6(a).

<sup>24</sup> *Minnesota Statutes* 2019, 363A.28, subd. 6(b).

<sup>25</sup> *Ibid.*

<sup>26</sup> *Minnesota Statutes* 2019, 363A.28, subd. 6(a)-(b).

But, statutes do not explicitly state that MDHR should issue a determination for priority cases within a specific time period or even more quickly than for nonpriority cases.

Statutes are also unclear regarding the required timelines for MDHR to issue determinations for complex and noncomplex cases. Statutes state that MDHR should issue a determination “within one year of the filing of a case in which the time has not been counted or a case certified as complex.”<sup>27</sup> It is not clear whether the one-year requirement applies to both complex and noncomplex cases. The plain language meaning of this law is simply not clear.

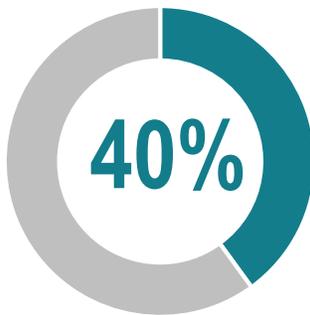
MDHR staff have asserted that they must issue a determination within 12 months for any case filed with the department. We believe the timeliness requirements for issuing a determination are confusing and could be further clarified. Nevertheless, we used this 12-month timeline to assess MDHR’s performance meeting deadlines, as detailed below.

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**In recent years, the Minnesota Department of Human Rights has not met important timeliness requirements outlined in law.**

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**MDHR issued a timely determination for only 40 percent of charges resulting from complaints reported to MDHR between fiscal years 2016 and 2018.**



Among discrimination complaints reported to the department between fiscal years 2016 and 2018, MDHR issued a timely determination for only 40 percent of cases. As shown in Exhibit 4.3, MDHR issued a determination more than 180 days *after* the statutory deadline for 16 percent of those cases.

MDHR also failed to meet required timelines for a substantial share of appeals filed by charging parties. Statutes require the department to “reaffirm, reverse, or vacate and remand for further consideration the determination of no probable cause within 20 days” of receiving the charging party’s appeal request.<sup>28</sup> For complaints reported to the department in Fiscal Year 2016, MDHR issued a decision within the statutorily required appeals timeline for only 19 percent of cases (13 cases) for which the charging party appealed the department’s initial “no probable cause” determination.<sup>29</sup>

<sup>27</sup> *Minnesota Statutes* 2019, 363A.29, subd. 2.

<sup>28</sup> *Minnesota Statutes* 2019, 363A.28, subd. 6(c).

<sup>29</sup> As mentioned in Chapter 3, there are no timeliness requirements in law regarding appeals filed by the responding party challenging a “probable cause” determination. We considered MDHR’s review of appeals to be timely if it occurred within 50 days of the date when the department issued its initial determination. State law says the department shall serve both the charging and responding party “written notice of the determination” within ten days of making its determination on a given case. After receiving the determination, the charging party has ten days to submit an appeal request to the department. MDHR then has 20 days after receiving the appeal request to make its appeal decision. To determine whether MDHR made a timely decision on an appeal request, we summed the maximum number of days in each phase noted above and added five days each time either MDHR or the charging party may have corresponded by mail. In sum: 10 days (to provide notice of determination) + 5 days (for transmission time) + 10 days (to submit an appeal) + 5 days (for transmission time) + 20 days (to decide on the appeal) = 50 days. *Ibid.*

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**Exhibit 4.3: The Minnesota Department of Human Rights did not issue a timely determination for the majority of discrimination cases filed with the department in recent years.**



■ On time ■ 90 days late or less ■ 91 to 180 days late ■ 181 to 365 days late ■ More than 365 days late ■ No determination

NOTES: “No determination” includes cases for which the department should have issued a determination based on statutory requirements but had not. We considered a determination to be “on time” if the department issued it within 365 days of the charge being filed with the department. We excluded from our calculation time when the cases were engaged in alternative dispute resolution processes. Per *Minnesota Statutes* 2019, 363A.29, subd. 2, the commissioner shall make a determination as to probable cause within one year of the filing of a charge, excluding time spent in alternative dispute resolution processes. We reviewed data pertaining to complaints reported to the department in fiscal years 2016 through 2018. Totals do not sum to 100 percent due to rounding.

SOURCE: Office of the Legislative Auditor, analysis of Minnesota Department of Human Rights complaint data.

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## Investigation Delays

Given that most of MDHR’s investigations do not meet required timelines, we examined possible causes for delays. Investigators told us of several causes for delay, including responding parties that do not answer information requests in a timely manner and charging parties that are not responsive. According to investigators, two key causes of investigation delays are internal: (1) delays in supervisors assigning cases to investigators and (2) delays in investigators beginning their investigation due to large caseloads. We discuss these two factors in more depth below.

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### The Minnesota Department of Human Rights often takes many months to begin investigating cases of alleged discrimination.

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According to MDHR staff, investigation supervisors review each case before assigning it to an investigator. The supervisors review the case file to ensure that the case meets basic jurisdictional criteria, among other things. The supervisor then assigns the case to an investigator, based on their availability, caseload, and experience in the relevant areas of law. We examined data on complaints reported to the department in Fiscal Year 2016 and found that it took MDHR a median of three months after a charge was filed with the department to assign it to an investigator. The fastest a case was assigned to an investigator was about one month (28 days); on the other hand, it took MDHR more than 18 months to assign several other cases.

Once a case is assigned to an investigator, the investigation often does not begin immediately. Many MDHR investigators told us they typically are unable to start investigating cases when they are assigned because they are busy investigating older cases. For example, one investigator told us that if a case is not assigned to her until it is already four or five months old, she will not even be “touching” the case until it is over a year old, since she is investigating the older cases already assigned to her.

Among cases in our file review, investigators conducted their first interview a median of

**9 months**

after the charge was filed with the department.

The department does not collect data that identify when investigators begin investigating a case. However, many investigators told us that—after reviewing the case file—the first major step in their investigations is to interview the charging party. As part of our evaluation, we conducted a file review of 40 investigations.<sup>30</sup> In our file review, we identified when investigators conducted their first interview with the charging party and used this as a proxy for when an investigation started in full. We found that investigators conducted their first interview with the charging party a median of about 280 days (more than nine months) after the charge was filed with the department, and a median of 155 days (more than five months) after the case was assigned to the investigator.

Delays in starting investigations have been noticeable to both charging and responding party attorneys. In our survey of attorneys, we asked how often they thought MDHR started its investigation in a timely manner. Only 31 percent of survey respondents said MDHR always or often started its investigation in a timely manner. More than 40 percent responded that the department “never” or “rarely” started its investigation in a timely manner. One responding party attorney commented, “...most MDHR investigations do not get started until many months after the response is submitted.” A charging party attorney wrote, “MDHR rarely if ever starts their investigations, or concludes them in a timely manner.... Often, we won’t get contacted for a year for an initial client interview.”

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### **The Minnesota Department of Human Rights’ lack of timely investigations negatively affects parties and makes it more difficult for the department to conduct effective investigations.**

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Many attorneys responding to our survey commented that MDHR’s lack of timely investigations is a significant concern. They mentioned several potential negative impacts to their clients and risks to the integrity of the investigation itself. For example, a charging party attorney commented, “As anyone practicing law knows, memories fade with time. The longer it takes to gain adequate information to make an informed decision, the greater the possibility of injustice.” One responding party attorney wrote:



Clients have had to wait two years for decisions. During that time, they are uncertain as to what will happen. They also forget facts, lose documents, and generally become worse witnesses. They also lose faith that the process is fair and will work as it should.

— Charging Party Attorney

The amount of time it takes the MDHR to investigate a charge negatively impacts every party involved. The process does not provide timely relief for people who have been harmed by violations of the [Minnesota Human Rights Act]. For respondents, there is often a gap of several months or over a year before the MDHR will do any interviews

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<sup>30</sup> We selected a sample of closed cases filed by members of the public (that is, excluding cases initiated by MDHR’s commissioner) from MDHR data on complaints reported to the department in fiscal years 2016 and 2017.

after an initial response is submitted, which causes memories to fade. The process takes much too long.

Another responding party attorney said:

The delay in processing charges is problematic. Witnesses leave employment/leave state/become unavailable. Memories fade. An employer's obligation to preserve evidence can be costly over time. From the perspective of a charging party, if that party has been the victim of illegal discrimination, the party deserves a process that moves more quickly.

Similarly, some investigators told us that delays can negatively impact their ability to conduct investigations. For example, one investigator told us that the longer it takes to investigate a case, the less likely the investigator is to get accurate information about the case because peoples' memories may have faded or other information may not have been retained. Another investigator said that investigating older cases can be challenging, because sometimes witnesses are not available or they no longer remember details of the case.

## Reporting and Tracking

As we have discussed, Minnesota laws establish a number of deadlines for different aspects of MDHR's investigative work. For example, the law requires MDHR to send a copy of the charge to the responding party within ten days of the charge being filed with the department.<sup>31</sup> Similarly, Minnesota rules require MDHR to notify both parties that a case has been dismissed within ten days of the dismissal.<sup>32</sup> For the department to ensure that it is meeting these and other statutory requirements, it must record and track relevant data.

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### **The Minnesota Department of Human Rights does not systematically track its compliance with a number of timeliness requirements outlined in law.**

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For several timeliness requirements, MDHR does not collect information that would enable the department to easily track its compliance. For example, MDHR staff told us that they do not regularly track whether the department complies with the requirement to notify parties within ten days of dismissing a case or within ten days of making a decision on an appeal request for a "no probable cause" determination.<sup>33</sup>

Our analysis of the department's data confirmed that there is not a systematic way to evaluate the extent to which MDHR has met many of the required deadlines outlined in law. Additionally, we found a number of issues with the quality of the case-related data the department does collect, making it difficult to accurately assess MDHR's compliance with the timeliness requirements in law. For example, we found that the

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<sup>31</sup> *Minnesota Statutes* 2019, 363A.28, subd. 1.

<sup>32</sup> *Minnesota Rules*, 5000.0560, published electronically June 11, 2008.

<sup>33</sup> *Minnesota Rules*, 5000.0560, published electronically June 11, 2008; and 5000.0700, subp. 10, published electronically October 2, 2013.

date in MDHR's database indicating when the charging party filed the charge was incorrect for more than 70 cases, and several cases had the wrong appeal code entered into the database.

## Timeliness Recommendations

MDHR has struggled for decades to fulfill the timeliness requirements outlined in law. OLA evaluations released in 1981 and 1996 identify problems with timeliness similar to those we identify in this report.<sup>34</sup> Below, we discuss a number of recommendations to help MDHR better meet required timelines.

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### RECOMMENDATION

**The Legislature should clarify the timelines by which the Minnesota Department of Human Rights must issue a determination for complex and priority cases.**

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As discussed above, Minnesota statutes delineate between cases classified as “complex” and “noncomplex.” Statutes also identify priority cases and those that require “immediate inquiry.” However, the law does not establish clear timelines by which MDHR is expected to complete its investigations of these types of cases.

We recommended earlier in this chapter that the Legislature consider eliminating in statutes the distinction between complex and noncomplex cases. If the Legislature chooses not to do so, we recommend it clarify how long MDHR has to issue a determination for complex and noncomplex cases.

In addition, the Legislature should clarify timelines for issuing a determination for priority cases. As we have noted, the department is already struggling to issue determinations within one year of a case being filed; yet, statutes appear to imply that MDHR should complete investigations for priority cases in *less* than one year. While clarifying timeliness requirements may pose new challenges for MDHR, we nonetheless think it is important for the Legislature to establish clear expectations for the department. Once these deadlines are clarified, the department can work to meet those expectations.

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### RECOMMENDATION

**The Minnesota Department of Human Rights should develop a clear plan for meeting statutory timeliness requirements and submit it to the Legislature.**

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As we have discussed, MDHR does not meet key timeliness requirements for a majority of cases it investigates. As we have also discussed, these delays can have serious consequences, both for the parties involved in the case and on the integrity of the investigation. Given its difficulty meeting required deadlines, MDHR should develop a plan for meeting statutory timeliness requirements. The department should clearly

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<sup>34</sup> Office of the Legislative Auditor, Program Evaluation Division, *Evaluation of the Minnesota Department of Human Rights* (St. Paul, 1981), and *Department of Human Rights* (St. Paul, 1996).

describe what changes would be necessary to meet requirements and any impacts those changes would have on MDHR services. The department should submit this plan to the Legislature and engage in discussions with the Legislature and key stakeholders to clarify which of the department's many responsibilities it should prioritize.

The department has several different levers it can pull to improve its ability to meet required timelines. As we discussed in Chapter 1, at the end of Fiscal Year 2019, MDHR employed only 13 investigators. One change the department could make to improve its timeliness is to internally reallocate its resources and hire more investigation staff.

In Chapter 2, we discussed how—until recently—MDHR only minimally screened cases during intake; earlier in this chapter, we discussed how MDHR does not have an effective investigation triage process. To improve its timeliness, the department could consider limiting the number of cases it investigates, whether through a more stringent intake process or by implementing an investigation triage process that prioritizes certain cases. Yet another option is for the department to increase the share of cases resolved through mediation. As we discussed in Chapter 3, MDHR staff told us that mediation can be an effective way to resolve cases, with the added benefit of reducing the department's investigation workload. Whatever the approach, we strongly suggest MDHR explore ways to reduce the total number of cases it fully investigates.

During 2019, the department implemented several streamlining initiatives to help improve investigation timeliness. As discussed in Chapter 2, the department has developed templates for investigators to use when drafting their determination memoranda. These templates have enabled investigators to more quickly reference up-to-date laws relevant to a given case. The department also increased investigator supervision by appointing a second supervisor and requiring weekly check-in meetings for all investigators. These meetings provide an opportunity for investigators to receive guidance on specific cases, which may help them work more efficiently. Finally, as discussed earlier in this chapter, the department has implemented a process whereby investigators can dismiss cases when warranted. This will help to focus the department's limited resources on cases that are within its jurisdiction.

It is too soon to know the effect of these recent changes on the timeliness of MDHR's investigations. While these new initiatives may help the department more efficiently investigate discrimination cases, the department has a long way to go before it is meeting the timelines established in law. In addition, given the large backlog of cases the department currently has, it may take substantial time before the effects of the department's new initiatives are evident. We encourage the department to continue its recent efforts and to continue to look for opportunities to streamline its work.

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## RECOMMENDATIONS

### The Legislature should:

- **Examine the plan submitted by the Minnesota Department of Human Rights and current statutory timeliness requirements.**
  - **Determine whether the department's plan and statutory requirements reflect the needs and priorities of the state.**
  - **Require the Minnesota Department of Human Rights to report on its performance meeting timeliness requirements established in state law.**
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The Legislature should use the information provided by MDHR to determine whether MDHR's actions are in line with the Legislature's priorities and overall policy goals of the state. If they are not, the Legislature should clarify the state's goals in law or work with the department to focus its efforts where they are needed most.

Currently, MDHR produces twice-yearly reports to the Legislature on case activity. The reports provide some broad metrics on the age of cases, but they do not indicate for what share of cases MDHR meets timeliness requirements in law. For example, the department's July 2019 report states that 70 percent of cases are less than a year old but does not state the percentage of cases that were closed within one year. (As we discussed earlier in this chapter, the department closed only 40 percent of recent cases within one year.) The Legislature should require that MDHR report on the extent to which the department meets these and other key statutory timeliness requirements.

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## RECOMMENDATION

### **The Minnesota Department of Human Rights should track its compliance with all timeliness requirements outlined in law.**

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It is important for MDHR to know the extent to which it is meeting statutory requirements. Under current practice, the department is not collecting key information that will allow it to track how well it is complying with the law. Department leadership should identify the key metrics and compliance standards outlined in law and collect data to ensure the department can track and report on its progress. To effectively monitor its compliance, MDHR should also improve the quality of its data. While data discrepancies may not impede management of MDHR's internal processes, they could make reporting meaningless if not remedied.



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# List of Recommendations

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- The Minnesota Department of Human Rights should ensure that complaints meet at least the basic screening criteria and are sufficiently clear. (p. 20)
- The Minnesota Department of Human Rights should adopt clear standards for activities common across the investigation process. (p. 25)
- The Minnesota Department of Human Rights should more promptly respond to inquiries and keep parties better apprised of the status of their case. (p. 27)
- The Legislature should amend statutes to give responding parties more time to provide an initial reply to a charge of discrimination. (p. 29)
- The Minnesota Department of Human Rights should ensure that information requests are clear and specific to the needs of each case and provide responding parties adequate time to respond. (p. 31)
- The Legislature should amend statutes to include the responding party's right to appeal the department's determination. (p. 37)
- The Minnesota Department of Human Rights should ensure the effectiveness of its mediation program. (p. 41)
- The Minnesota Department of Human Rights should monitor settlement agreements, as required by law. (p. 44)
- The Legislature should consider eliminating the requirement in law that the department always pursue litigation for cases when conciliation is unsuccessful. (p. 46)
- The Minnesota Department of Human Rights should establish policies outlining its process for resolving cases when conciliation is unsuccessful. (p. 46)
- The Minnesota Department of Human Rights should prioritize cases, as required by law. (p. 56)
- The Legislature should consider eliminating the:
  - Distinction between complex and noncomplex cases in law.
  - Option for charging parties to request a contested case hearing if the Minnesota Department of Human Rights does not issue a determination within 180 days of a noncomplex case being filed.
  - Requirement that the Minnesota Department of Human Rights make an "immediate inquiry" into frivolous cases. (p. 56)
- The Minnesota Department of Human Rights should establish a triage process to more effectively allocate its investigation resources. (p. 57)
- The Legislature should clarify the timelines by which the Minnesota Department of Human Rights must issue a determination for complex and priority cases. (p. 63)

- The Minnesota Department of Human Rights should develop a clear plan for meeting statutory timeliness requirements and submit it to the Legislature. (p. 63)
- The Legislature should:
  - Examine the plan submitted by the Minnesota Department of Human Rights and current statutory timeliness requirements.
  - Determine whether the department’s plan and statutory requirements reflect the needs and priorities of the state.
  - Require the Minnesota Department of Human Rights to report on its performance meeting timeliness requirements established in state law. (p. 65)
- The Minnesota Department of Human Rights should track its compliance with all timeliness requirements outlined in law. (p. 65)



February 26, 2020

James Nobles, Legislative Auditor  
Office of the Legislative Auditor  
Centennial Office Building  
658 Cedar Street  
St. Paul, Minnesota 55155

Dear Legislative Auditor Nobles:

Thank you for the opportunity to review and comment on the Office of the Legislative Auditor's (OLA) report titled "Department of Human Rights: Complaint Resolution Process." The Department appreciates the work of the OLA staff to deeply understand the investigation side of the work of the Minnesota Department of Human Rights (MDHR).

The report identifies 11 recommendations for the Department, all were identified as areas of focus at the beginning of 2019. And, as is discussed further down, the Department addressed the vast majority of these in 2019. The report appropriately commends many of the changes implemented.

The team at the Department strives to be as effective and efficient as possible with the resources available to protect and advance the civil rights of Minnesotans. The small but mighty team<sup>1</sup> is comprised of deeply dedicated employees who work tirelessly to create a community where Minnesotans can lead lives full of dignity and joy, free from discrimination.

### **Background on the Minnesota Department of Human Rights**

The Minnesota Department of Human Rights is proud to be Minnesota's civil rights enforcement agency, enforcing one of the strongest civil rights laws in the country. The Department is intentional about using a strategic enforcement and impact litigation strategy to bring about systems and cultural change to end discrimination and create a more equitable and inclusive Minnesota.

The Minnesota Human Rights Act is the foundation of the Department's work. The Act, passed into law in 1967, protects the civil rights of all Minnesotans, in every county in the state. The Act tasks the Department with important enforcement duties in employment, housing, education, credit, and public accommodations/services based on their protected class, such as: race, religion, disability, national origin, sex, marital status, familial status, age, sexual orientation, and gender identity. The Act also tasks the Department with regulating state contractors to ensure men and women are compensated equally for

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<sup>1</sup> According to the 1996 OLA report, at that time, the Minnesota Department of Human Rights had 56 full-time employees. Now we have 45 full-time employees. The Department believes it had over 90 full-time staff in the 1970's after the Department was first created. As I discuss further in this letter, in order to fulfill the agency's significant statutory obligations, the Department needs to increase the capacity of the agency to return it closer to its staffing in prior years.

equal work, and to ensure that contractors are making good faith efforts to maintain inclusive and equitable workforces so that the companies' employees reflect Minnesota's vibrant communities.<sup>2</sup>

This report appropriately highlights why this is an especially important time to be deeply dedicated to ending discrimination and creating a more equitable and inclusive state. As noted in the report on page four, "Since the passage of the Minnesota Human Rights Act, Minnesota's demographics have changed with regard to some of the classes protected in law. For example, between 1980 and 2018, Minnesota's population gradually grew both older and more racially diverse."

Every day, Minnesota's population is becoming more racially diverse and growing older and the prevalence of both race and age discrimination are increasing. Across the board, Minnesota has some of the highest rates of racial discrimination in the country – this is true in housing, employment, education, and in the criminal justice system. For instance, according to Minnesota Compass, the poverty rate for Minnesotans' of color is more than three times higher than white Minnesotans, and it is even higher for Black and Native Minnesotans. Furthermore, according to the 2019 NAACP report on the Twin Cities Economic Inclusion Plan for Minneapolis and St Paul, the disparities in child poverty is even greater: within the Twin Cities, the poverty rate for Black children is more than eight times higher than the rate for white children.

### **Specific Responses to Recommendations in Report**

This report highlights how important it is for Minnesota to have a strong civil rights enforcement agency. To that end, it is essential that the Department has the resources, tools, and capacity needed to meet its statutory obligations. This report identifies many changes that were made at the Department, provides opportunities for growth, demonstrates the need for additional capacity, and proposes some important partnerships with the Legislature to strengthen the Minnesota Human Rights Act. The Department looks forward to continuing to work with the Administration, Legislature, community partners, and staff to achieve bold, transformational goals.

Below are the Department's responses to the specific recommendations in your report.

***1. The Minnesota Department of Human Rights should ensure that complaints meet at least the basic screening criteria and are sufficiently clear.***

The OLA report reviews a time period of 2016-2018, before this current management team was in place. In early 2019, the Department quickly identified the intake process as an area that needed attention. In the past year, the Department fundamentally changed the screening process to ensure only cases that meet the basic screening criteria are filed as a charge of discrimination. These intentional and effective changes have resulted in a more orderly and focused intake process.

The OLA identified and commended the Department for making these changes: "MDHR has recently taken several steps to improve the consistency and quality of work during the intake process." Further down on page 20, the OLA report states: "In the last few months, MDHR has taken several steps to improve the consistency and quality of work during the intake phase. For example, an MDHR supervisor now reviews all draft charges before the department sends them to charging parties. In addition, MDHR has implemented a new intake protocol to help ensure that staff collect the

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<sup>2</sup> This report focuses on the investigative side of the work at Minnesota Department of Human Rights. It does not evaluate the amazing work of the Equity and Inclusion Team to partner with and regulate State contractors so that the companies' employees reflect Minnesota's vibrant communities.

necessary information to determine whether a complaint meets all basic screening criteria. While it is too soon for our office to evaluate the effectiveness of these changes, we believe they are important steps to addressing the issues identified above.”

**2. The Minnesota Department of Human Rights should adopt clear standards for activities common across the investigation process.**

The OLA report reviews a time period of 2016-2018, before this current management team was in place. In early 2019, the Department quickly identified the need to adopt clear standards for the investigative process. Since then, the Department developed clear standards for activities common across the investigative process.

The OLA identified and commended MDHR for making these changes. On page 25, the report states: “MDHR has recently taken steps to increase investigator oversight and consistency across the department. In 2019, MDHR hired a second supervisor and began requiring weekly check-ins between investigators and their supervisors. Also in 2019, MDHR developed templates for determination memoranda in an attempt to improve consistency with regard to the information provided to parties about their case. In addition, supervisors are now reviewing all investigator determinations prior to MDHR sending them to parties.”

**3. The Minnesota Department of Human Rights should more promptly respond to inquiries and keep parties better apprised of the status of their case.**

This report highlights how the Department has several formal mechanisms for communicating with parties. On page 26, the report notes: “Specifically, MDHR has developed various form letters to send to parties at certain milestones in the investigation process, most notably: (1) when the charge is initially filed, (2) when the department assigns an investigator to the case, and (3) when the department issues a determination.”

However, the OLA report correctly identifies that it can take considerable time to complete an investigation, meaning these milestone communications may not occur for many months.

This is a valid point. As a result of this recommendation, the Department is developing a formal mechanism to communicate case status updates on a more regular basis.

Ultimately, meaningful change would happen if the Department had more investigators on staff. Additional investigators would result in more cases moving faster, and therefore communicate more regularly and quickly with parties. Each investigator needs to be able to carry a more reasonable caseload. The Department’s investigators regularly manage and juggle over 60 cases at a time. This large caseload is unsustainable and makes it very difficult to keep parties regularly apprised of the status of their case.

In fact, current compensation rates coupled with the untenable workload is likely contributing to a high turnover rate for the Department’s investigators. Investigators left the Department at an average annual rate of 17 percent, almost twice the average staff turnover rate in the Executive Branch. Having more capacity would help decrease the burnout rate for investigators. Increasing the Department’s investigation capacity would also help ensure that investigations occur faster and result in more prompt responses to inquiries from parties.

The OLA report noted high turnover as a problem. The report notes on page 49, “In our interviews with MDHR staff, investigators told us that turnover is largely due to low pay, their large workload,

and the high expectations for their work. When an investigator leaves MDHR, not only must the department hire and train someone to replace the investigator, it must also reassign all of the cases for which the departing investigator was responsible. This in turn can lead to additional delays for those cases, as the reassigned cases are added to another investigator's queue. These additional cases also result in higher caseloads for the remaining investigators. One investigator told us she anticipated her caseload would soon surpass 100 cases, once additional cases are reassigned to her due to recent staff resignations."

Without the capacity for appropriate staffing, the problem of slower investigations and slow communications continues to compound. To truly address this, the Department needs additional investigators on staff.

**4. The Legislature should amend statutes to give responding parties more time to provide an initial reply to a charge of discrimination.**

The Department looks forward to discussing this proposal with legislators along with several other technical bills that would help clarify the statute and ensure a more equitable process.

**5. The Minnesota Department of Human Rights should ensure that information requests are clear and specific to the needs of each case and provide responding parties adequate time to respond.**

The OLA report accurately identifies that the Department needs to ensure the information requests to respondents are clear and specific to the needs of each case. As a result, the Department has already developed a plan to streamline and simplify the process by creating specific templates based on tailored legal issues. This would eliminate sending unnecessarily broad requests to parties. The Deputy, Investigation Supervisors, and Investigation Process Improvement Team will be moving forward to finalize these changes in the next couple of months.

**6. The Legislature should amend statutes to include the responding party's right to appeal the department's determination.**

The Department looks forward to discussing this proposal with legislators along with several other technical bills that would help clarify the statute and ensure a more equitable process.

**7. The Minnesota Department of Human Rights should ensure the effectiveness of its mediation program.**

The Department's first full-time Mediation Director started in the beginning of 2019. This continued investment in developing the mediation program is vital because there is ample evidence that demonstrates that mediation is a powerful tool to help solve issues of discrimination in a more holistic and healing manner. The OLA report cites several changes the Department made in the last year to the mediation program.

On page 40, the report states: "MDHR's mediation program has undergone significant changes in the last year. In early 2019, MDHR hired its first mediation director to coordinate the department's mediation program and oversee the department's volunteers. Since then, the department has formalized minimum basic requirements to be a volunteer mediator. For example, mediators now must have completed a 30-hour Minnesota Supreme Court-certified training and attended MDHR's mediator orientation program. MDHR's mediation director said it was not clear what—if any—minimum qualifications were expected of mediators before she was hired."

The OLA also notes on page 40 that participants find mediation to be a positive experience: “As part of its mediation process, MDHR asks mediation participants to complete a mediation evaluation. We reviewed all mediation evaluation forms submitted to MDHR between July 2017 and September 2019, and found comments to be largely positive.”

**8. The Minnesota Department of Human Rights should monitor settlement agreements, as required by law.**

The Department monitors all settlement agreements, as required by law. The majority of cases are monitored by a paralegal who works in close consultation with the General Counsel and the other members of our legal team. The Deputy Commissioner and legal staff work together to monitor the settlements that the Department entered into with 42 school districts and charter schools across Minnesota to address discipline disparities.

The OLA report examined a time period from 2016-2018, before current management was in place. Since early 2019, all settlement agreements are monitored.

**9. The Legislature should consider eliminating the requirement in law that the Minnesota Department of Human Rights always pursue litigation for cases when conciliation is unsuccessful.**

The Department looks forward to discussing this proposal with legislators along with several other technical bills that would help clarify the statute and ensure a more equitable process.

**10. The Minnesota Department of Human Rights should establish policies outlining its process for resolving cases when conciliation is unsuccessful.**

The Department has a current process in place for when probable cause is found and conciliation fails. In these instances, the legal team writes an evaluation of the case file, providing legal analysis on whether to pursue litigation. The Commissioner then makes the final decision in consultation with the General Counsel (internal legal counsel) or external legal counsel at the Minnesota Attorney General’s Office, who provides legal advice to help evaluate the risks and benefits of moving forward with litigation.

The OLA notes that this policy needs to be better outlined and the Department is moving to ensure this process is well documented and fully implemented.

**11. The Minnesota Department of Human Rights should prioritize cases as required by law.**

As part of its recommendation, the OLA notes that investigators feel pressure to complete noncomplex cases first because the statute currently requires these cases to be investigated within 180 days. This statutory obligation creates confusion because noncomplex cases are not listed as one of six types of cases that must be prioritized under the Act. The OLA appropriately recognizes the unintended consequence of this tight timeline for noncomplex cases. Furthermore, the OLA correctly notes that the 180 day requirement has resulted in these cases receiving unofficial prioritization.

For this reason, the OLA recommends that the Legislature consider eliminating the distinction between complex and noncomplex cases in law. The Department looks forward to discussing that important proposal with the Legislature. In the meantime, the Deputy Commissioner and Investigation Supervisors will ensure the Department is stressing the importance of priority cases, regardless of the pressure that the noncomplex deadline adds.

- 12. The Legislature should consider eliminating the:**
- a. Distinction between complex and noncomplex cases in law.
  - b. Option for charging parties to request a contested case hearing if the Minnesota Department of Human Rights does not issue a determination within 180 days of a noncomplex case being filed.
  - c. Requirement that the Minnesota Department of Human Rights make an “immediate inquiry” into frivolous cases.

The Department looks forward to discussing these proposals with legislators along with several other technical bills that would help clarify the statute and ensure a more equitable process.

- 13. The Minnesota Department of Human Rights should establish a triage process to more effectively allocate its investigation resources.**

The OLA report reviews a time period of 2016-2018, before current management was in place. In early 2019, the Department quickly identified the need for a triage process. In 2019, the Department implemented a triage process for the investigation team. Since this process was implemented, the investigation team now has a process in place to ensure investigation resources are more effectively allocated.

The OLA report notes these changes on page 57, stating, “MDHR leadership told us they have recently implemented procedures to help staff more effectively dismiss cases if basic criteria—such as whether the case falls within the statute of limitations—are not met. The department’s new policy also implements Minnesota rules that allow MDHR to dismiss a case if the charging party is not responsive to the department’s inquiries. According to MDHR leadership, these changes have enabled investigators to dismiss certain cases before conducting a full investigation.”

The OLA report pushes the Department to continue to identify additional ways to triage more cases around the merits of the allegations or other department priorities. The Department deeply agrees in continues improvement and is looking at additional ways to add to the triage process already in place.

- 14. The Legislature should clarify the timelines by which the Minnesota Department of Human Rights must issue a determination for complex and priority cases.**

The Department looks forward to discussing this proposal with legislators along with several other technical bills that would help clarify the statute and ensure a more equitable process.

- 15. The Minnesota Department of Human Rights should develop a clear plan for meeting statutory timeliness requirements and submit it to the Legislature.**

The Department established a two-part strategy for satisfying statutory timeliness requirements at the beginning of 2019. Since then, the Department has worked to implement this strategy. The Department is looking forward to discussing this strategy further with the Legislature. The plan is as follows:

1. Create processes and systems to streamline investigations to make them as effective and efficient as possible. Examples of this part of the strategy include the development of determination templates and intake protocol that ensures that charges are only drafted if prima facie is satisfied.
2. Increase the total number of our staff by increasing the number of investigators.

Ultimately, the Department can streamline, create strong processes, and control everything possible. At the end of the day, however, the Department simply lacks the staff capacity to be able to meet statutory obligations. As a result, *both* strategies must be implemented to ensure the Department is meeting statutory timeliness requirements.

**16. The Legislature should:**

- a. **Examine the plan submitted by the Minnesota Department of Human Rights and current statutory timeliness requirements.**
- b. **Determine whether the department’s plan and statutory requirements reflect the needs and priorities of the state.**
- c. **Require the Minnesota Department of Human Rights to report on its performance meeting timeliness requirements established in state law.**

The Department looks forward to discussing these proposals with legislators along with several other technical bills that would help clarify the statute and ensure a more equitable process.

**17. The Minnesota Department of Human Rights should track its compliance with all timeliness requirements outlined in law.**

The Department disagrees with this recommendation. The Department has detailed systems in place to track its compliance with timeliness requirements outlined in law. There seems to be some confusion based on what is reported in the legislative report. On page 65, the OLA provides an example, stating “the department’s July 2019 report states that 70 percent of cases are less than a year old but does not state the percentage of cases that were closed within one year.”

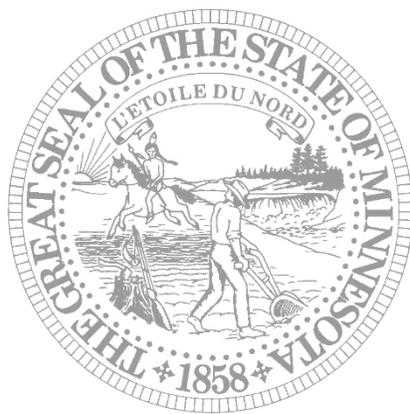
The Department can and does regularly track this number as well as many other numbers internally to determine the age of cases. The Department provides the Legislature everything that is required by law in its semi-annual report and the Department is always happy to provide additional information where it would be helpful.

The Minnesota Department of Human Rights appreciates OLA’s work to provide insights, recommendations, and analysis of the complex and challenging work that is carried out at the Department. While the report reviews a time period from 2016-2018, before current management was in place, the recommendations align with progress the Department has already made to improve processes and procedures to ensure the civil rights of Minnesotans are protected and advanced.

Sincerely,



Rebecca Lucero, Commissioner  
Minnesota Department of Human Rights



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