



FY12 ANNUAL REPORT
State of New Mexico
Alternative Dispute Prevention
& Resolution Advisory Council



INTRODUCTION

The Office of Alternative Dispute Prevention and Resolution promotes the early resolution of disputes through respectful communication and positive, constructive collaboration. The Alternative Dispute Resolution (ADR) Bureau assists RMD-insured entities in conflict resolution processes and policy development to maintain and advance cost reduction efforts throughout the State of New Mexico. The core mission of the ADR Bureau is established in the Governmental Dispute Prevention and Resolution Act of 2007: to promote ADR; to organize and manage ADR programs for state agencies; to coordinate the use of neutral parties; to implement the development and use of ADR strategies; to provide staff support for the Council; to maintain information and educate government officials about training and the use of ADR and referrals; and, to report annually on the use, cost and success of ADR.

Through all of this work, the ADR Bureau remains committed to its motto:

"Encouraging communication through mutual respect."

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NEW MEXICO GOVERNOR



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Honorable Governor Martinez, Legislators, and GSD Secretary Burckle:

The Alternative Dispute Resolution Bureau, established in 2007, supports state agencies in meeting the mandate set forth in the Governmental Dispute Prevention and Resolution Act:

“An agency shall provide interested parties with access to alternative dispute resolution procedures to prevent or resolve any dispute, issue or controversy involving any of the agency's operations, policies, programs or functions, including formal and informal adjudications, rulemakings, enforcement actions, permitting, certifications, licensing, policy development and contract administration.” (NMSA § 12-8A-3)

Over the last five years, the ADR Bureau has worked collaboratively with entities statewide to develop and coordinate resources to respond to organizational needs at the earliest opportunity, in furtherance of the Risk Management Division's mission to reduce insurable losses and conserve state resources. The Bureau is committed to bringing these critical resources to those in need of services. Participating organizations will benefit from more efficient, less expensive, and more satisfying dispute resolution.

On behalf of the Alternative Dispute Prevention and Resolution Advisory Council and ADR Bureau, we submit this annual report for your review and consideration.

Respectfully,

A handwritten signature in cursive script that reads "Robert M. Unthank".

Robert M. Unthank,
Chair, ADR Advisory Council
Interim Director, Risk Management Division
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FY12 ACCOMPLISHMENTS

FY12 was a busy year for the Bureau; with a staff of two for most of the year, the Bureau employed creative means to maintain its momentum and focus on providing exemplary customer service. The Bureau received significantly more requests for training and on-site presentations from state agencies and RMD-insured entities, which enhanced knowledge regarding dispute resolution, effective communication, and the many functions of the Bureau to reach many who had no prior knowledge of these resources. The benefit of networking among the many participants in the presentations and trainings conducted by the Bureau is, in many ways, its crowning achievement; people from different parts of the state, walks of life, and differing points of view were able to learn from (and teach) one another how to apply the skills of dispute resolution. Events that encourage this personal interaction are integral to promoting ADR as an easily accessible service and valuable tool, and to increasing its use and success.

This year, most of the Bureau's service requests again came from state employees and managers requesting mediation for workplace issues. The Bureau dedicated significant time and resources to working "on the front lines" with agencies, employees, stakeholders and other community members, so that participants could learn more about ADR concepts and strategies, and how participation can benefit individuals and organizations. The ADR Bureau also focused outreach through on-site customer service visits and group training opportunities. Participating RMD-insured entities, representing all branches of government in New Mexico, included: state agencies, boards and commissions; colleges and universities; district and magistrate courts; participating local public bodies; and, other interested parties and organizations.

By design, the Office presents ADR program information and training in a variety of formats and settings. The Bureau partners with other ADR organizations to leverage resources, to provide high-quality training experiences at low or no-cost to participants, from recognized subject matter experts. Typically, these events focus on improving organizational conflict management or on individual skill development. These events also serve as a forum to meet, discover and recruit new talented mediators who, through their voluntary/"pro bono" participation, provide essential services to the mediation program. FY12 outreach and training activities ranged from general awareness and procedural overviews to formal mediation skill development; in all, the Bureau coordinated 45 events, totaling 163.75 hours, in 9 statewide locations (Santa Fe, Albuquerque, Las Cruces, Los Alamos, Santa Teresa, Belen, Rio Rancho, Shiprock, and Ruidoso) [See Appendix A: FY12 ADR Outreach and Training Summary]. In all, 1611 individuals attended these events, representing 71 RMD-insured entities, and receiving over 6400 cumulative training hours.

Outreach and networking has also resulted in the creation of valuable training resources for state employees by increasing the availability of low-cost formal mediation training through the state's institutions of higher learning (Santa Fe Community College, the University of New Mexico and NMSU/Dona Ana Community College). These courses qualify state employees to join the roster of volunteer state employee mediators. Growing and supporting this resource is critical; it ensures the Bureau's ability to respond to direct service requests for no-cost mediation and facilitation. The growing roster, part of a larger network of qualified ADR professionals statewide, is the heart of the state ADR program.

FY12 customer service initiatives included:

- Working with customers on-site to build relationships with key staff, share program development resources and information, and invite input and feedback to the program.
- Coordinating no-cost mediation services from the state mediator pool, and securing state and community resources for ADR events.
- Conducting ADR events, including presentations at conferences, in-service trainings, management/staff meetings, and other organizational events; program orientations/overviews; and displays at health fairs and seminars.
- Convening bi-annual meetings of the Alternative Dispute Prevention and Resolution Advisory Council, soliciting Council input into program operations, and publishing this report on its behalf.
- Actively serving in related organizations (e.g., the New Mexico Supreme Court Alternative Dispute Resolution Commission, the NM State Bar ADR Committee, the State Americans with Disabilities Act (ADA) Coordinators Council, the State Personnel Office Training Governance Council, the Department of Health / Region 1&3 Equity Group, the Diversity Leadership Forum Executive Board, the Partners in Policymaking Leadership Program Advisory Committee, and the Santa Fe County Family Self-Sufficiency Program Advisory Board).



Josh and Mary Jo presenting at the 2012 Diversity Leadership Council Forum in Albuquerque.





Josh and David Martinez, Commissioner for the Federal Mediation & Conciliation Service, at training in Shiprock, NM.

FY12 outreach and training activities included:

- Partnering with federal government and community organizations (i.e., the Federal Executive Board Shared Neutral's Program) to provide formal training and professional development opportunities for state employees.
- Co-training with the Federal Mediation & Conciliation Service to teach interest-based-problem-solving techniques to supervisors, managers and staff within union-covered organizations.
- Presenting in-depth training presentations on ADR program and procedures to state agency managers and staff (i.e., Department of Health regional managers, Aging & Long-Term Services Department).
- Presenting at the State Bar of New Mexico's Annual Meeting - Bench and Bar Conference.
- Providing dispute resolution and respectful communication training to District and Magistrate Court staff, under the auspices of the Judicial Education Center.
- Presenting "Program Orientation/Refresher" training for ADR Coordinators to review program policies and procedures, assess training needs, and promote working relationships between coordinators and with the Bureau.

SECOND STATEWIDE
ADR SYMPOSIUM
HELD IN ALBUQUERQUE



*Original Symposium program artwork
by Eduardo Duran, New Mexico artist.*

On October 18th and 19th, the second annual statewide Alternative Dispute Resolution Symposium was held at the University of New Mexico School of Law and Domenici Center for Health Sciences Education in Albuquerque. The no-cost training event was organized by the ADR Bureau, and made possible by the contribution of time and talent from many agencies and partnering organizations, and the critical on-site support of the Bureau’s “ADR Ambassadors” (a tireless crew of employees and volunteers).

The ADR Bureau and UNM School of Law kicked off the two days of workshops and presentations with welcoming remarks on Thursday, October 18th, celebrated as International Conflict Resolution Day, and during the American Bar Association’s “Mediation Week”. Participants enjoyed lunch with the law school community, featuring pizza, *naprapathic* “connective-tissue” treatments, and the opportunity to meet with ADR-related program and service exhibitors.

On Friday, October 19th, General Services Secretary Ed Burckle addressed participants and recognized their contribution to the progress of mediation and early conflict resolution within state government and in communities across the state. Commissioner Susan Barnes Anderson, Mediation Division Manager at the Bernalillo County Metropolitan Court, shared information on this year’s work by the New Mexico Supreme Court ADR Commission, followed by “*Industrial Peacemaking*,” an inspiring appeal for collaborative problem-solving approaches by David Martinez, Federal Mediation & Conciliation Service Commissioner for New Mexico.

The Symposium was attended by more than 170 participants from throughout New Mexico, representing all levels of state courts; 27 state agencies, commissions and boards; seven state universities, colleges and schools; numerous federal agencies, including Los Alamos National Laboratory and the Department of Energy’s National Nuclear Safety Administration; Kirtland Air Force Base; counties and local public bodies; several New Mexico pueblos; district attorney staff; legal aid and professional organizations; state benefit and employee assistance programs; and a large number of interested parties from communities.

Participant feedback on this year’s event was very positive:

- *“It was a great symposium, and it was clear that you folks had put a lot of work and thought into it – and you seemed to be working just as hard throughout the two days. Thanks very much for your efforts. I appreciated the opportunity to interact with members of New Mexico’s ADR community, and to take part in the diverse and interesting trainings and presentations the symposium offered. I am already looking forward to next year!”*
- *“I want to start this email by thanking you for the great / excellent / amazing training opportunities you provided at the ADR Symposium.”*
- *“Congratulations to you ... and all your staff for putting on such a great ADR Symposium last week. I know it was a lot of hard work and it really showed. I heard people say how great it was and how terrific the speakers were. You really advanced ADR in New Mexico!”*
- *“I appreciate the professionalism of your staff, ambassadors and the attendees and I know this reflects the level of your organization.”*

Planning for next year’s Symposium is already under way.

PERFORMANCE EVALUATION

Over the last five years, the ADR Bureau has implemented performance measures that seek to evaluate positive cultural change in state government; the validity of the measures is evidenced in their use to support better workplace practices and the reduction of insurable losses, particularly in the area of employment-related civil rights. The Bureau has developed tools to analyze different sets of data:

- the number and type of mediations processed through the ADR Office [See *Appendix B: FY12 ADR Bureau Mediation Statistics*].
- the number and type of ADR activities within agencies as self-reported via the agency Quarterly ADR Activity Report [See *Appendix C: FY12 Mediation Statistics as Self-Reported by Agencies*].
- the number of RMD-insured entities participating in the EEOC mediation process, and the results of those mediations [See *Appendix D: FY12 EEOC Mediation Statistics*].

To maintain confidentiality, the data is summarized for reporting purposes (without names or uniquely identifying information). Effective and durable resolution of the issue(s) in dispute is always a mediation goal, and is best quantified as “cost-avoidance” (the value of preventing a matter from proceeding to a costly claim against the state). In addition, post-mediation survey data reveals other non-financial benefits that are more difficult to quantify (e.g., “quality of life” benefits like improved workplace processes and relationships).

To meet service requests, the Bureau relies heavily on a volunteer / pro bono pool of mediators, whose “in-kind” ADR services have a typical market rate in excess of \$100/hour. These mediators are professionally trained, have valuable expertise in a myriad of fields, and bring a broad range of practical experience and cultural competencies with them. Because the majority of mediators are from within state government, the opportunity to practice mediation skills contributes to their continuing professional development, and an increased capacity for critical problem-solving skills in the state as a whole.

FY13 GOALS:

- Provide one training per quarter to those RMD-insured entities with the greatest Civil Rights loss experience in the past fiscal year (based on frequency and severity data from Loss Control and Property & Casualty Bureaus), with an objective to achieve 5% cost avoidance in the next year.
- Increase outreach to non-participating entities to encourage use of Bureau resources and development of in-house processes and practices.
- Continue to expand mediator roster through recruitment of new service providers.
- Continue to identify and collaborate with other ADR resources and service-providers statewide.

The Constitution only gives people
the right to pursue happiness.
You have to catch it yourself.

A stylized, handwritten signature of Benjamin Franklin in black ink, featuring a large, flowing 'B' and 'F'.

- Benjamin Franklin

APPENDIX A
FY12 ADR OUTREACH AND TRAINING SUMMARY

Date	Type Of Event	Hours	Location	# of Attendees	Hours Received (Cumulative)
FY12 1st Quarter					
7/16/11	State Bench & Bar Annual Conference	1.5	Albuquerque	20	30
7/19/11	Developmental Disabilities Planning Council – Team Training	1	Santa Fe	15	15
7/20/11	DOH – Regional Management Team Training	1.25	Albuquerque	42	52.5
7/27/11	ADR Brownbag—Zane Reeves	1	Santa Fe	51	51
8/9/11	ADR Program Orientation: NM Business Leadership Network	1	Santa Fe	2	2
8/15/11	ADR Program Orientation: Regulation and Licensing Department	1	Santa Fe	2	2
8/18/11	ADR Program Orientation: Department of Indian Affairs	1	Santa Fe	2	2
8/23 - 8/24/11	Federal Mediation and Conciliation Service—Training Assist	16	Los Alamos	30	480
8/25/11	ADR Brown Bag—Carolina Yahne	1	Albuquerque	45	45
8/30/11	Staff Open Mediation requests: DOT	1	Santa Fe	3	3
9/14/11	ADR Program Orientation: State Investment Council	1	Santa Fe	1	1
9/26/11	ADR Program Orientation: NM Border Authority	1	Santa Teresa	1	1
9/26 - 9/27/11	Training for Aging and Long-Term Services Ombudsman	1.5	Las Cruces	100	150
9/27/11	ADR Program Orientation: NM Department of Agriculture	1	Las Cruces	5	5
9/28/11	ADR Program Orientation: Third Judicial District Ct. & Office of DA	1	Las Cruces	10	10
9/28/11	ADR Brownbag—Josh Pando	1	Las Cruces	23	23
FY12 2nd Quarter					
10/14/11	DLC Diversity presentation at Hispano Chamber of Commerce	2	Albuquerque	65	130
10/21/11	RMD Health Fair @ Montoya Building	3	Santa Fe	200	N/A
10/25 - 10/26/11	1 st Annual ADR Symposium @ SFCC	16	Santa Fe	150	2,400
11/1/11	RMD Health Fair @ State Capitol	3	Santa Fe	200	N/A
11/9/11	ADR Coordinator Training: NMSD	1	Santa Fe	2	2
11/10/11	ADR Coordinator Training: Public Defender	1	Albuquerque	1	1
11/22/11	ADR Program Orientation: SPO	1	Santa Fe	2	2
11/29/11	ADR Brownbag—Susan Weiss	1	Albuquerque	22	22
12/7/11	ADR Program Orientation: City of Belen	1	Belen	2	2
12/15/11	ADR Program Orientation: LANL Ombuds	1	Los Alamos	3	3
12/21/11	ADR Brownbag—Mediator Appreciation Event @ Hispano Chamber of Commerce	1	Albuquerque	15	15

FY12 3 rd Quarter					
1/12/12	Federal Mediation and Conciliation Service—Training Assist (DVR)	16	Rio Rancho	15	240
1/23 - 1/24/12	Assist with Beginning Mediation Class	16	Albuquerque	25	400
1/25/12	Staff Training: NM School for the Deaf	2	Santa Fe	18	36
2/8/12	ADR Program Orientation: Martin Luther King Jr. Commission	1	Albuquerque	2	2
2/10/12	Assist with Beginning Mediation Class	8	Albuquerque	15	120
2/15/12	ADR Program Orientation: Association of Counties	1	Santa Fe	1	1
2/22/12	All Staff Training: Aging and Long-Term Services Department	4	Santa Fe	45	180
2/28/12	All Staff Training: Aging and Long-Term Services Department	4	Santa Fe	45	180
2/29/12	Federal Mediation and Conciliation Service—Training Assist (schools)	8	Shiprock	35	280
3/1/12	Federal Mediation and Conciliation Service—Training Assist (schools)	8	Shiprock	35	280
3/21/12	Administrative Office of the District Attorney Conference	1.5	Ruidoso	40	60
3/28/12-3/29/12	All Staff Training: Aging and Long-Term Services Department	4	Albuquerque	60	240
FY12 4 th Quarter					
4/2/12	ADR Coordinator Training: ENMU (videoconference)	2	Santa Fe	1	2
4/11 – 4/12/12	Staff Training: Judicial Education Center / District Courts	3	Santa Fe	60	180
4/18 – 4/19/12	Staff Training: Judicial Education Center / District Courts	3	Las Cruces	60	180
4/27/12	Staff Training: Judicial Education Center / District Courts	3	Albuquerque	100	300
5/31/12	Assist with Beginning Mediation Class	8	Albuquerque	20	160
6/12 – 6/13/12	Assist with Beginning Mediation Class	8	Albuquerque	20	160

Total Number of Events Presented	45
Total Number of Training Locations <i>(Santa Fe, Albuquerque, Las Cruces, Los Alamos, Santa Teresa, Belen, Rio Rancho, Shiprock, Ruidoso)</i>	9
Total Classroom Hours Presented	163.75
Total Number of Attendees	1611
Total Number of Participating Entities	71
Total Numbers of Hours Received (Cumulative)	6,450.50

**APPENDIX B
FY12 ADR BUREAU MEDIATION STATISTICS**

TOTAL MEDIATION REQUESTS RECEIVED: 71

Type of Dispute:

Employee / Employee	14
Employee / Supervisor	50
Other (i.e., Group Facilitation)	5
Unknown	2

Resolution status of 42 mediations that occurred*:

Written agreement	24
Verbal agreement	8
No agreement, and/or returning to mediation	10

**29 mediations did not occur because the request was withdrawn, the matter was otherwise resolved by the parties, a party left employment, or the matter was inappropriate for mediation.*

Source of Request

By Requestor:

Executive Agency	65
Judicial Agency	5
Other	1

Requests by Geographic Location:

Santa Fe	45
Las Cruces	9
Albuquerque	7
Roswell	3
Española	2
Taos	2
Clovis	1
Grants	1
Lordsburg	1

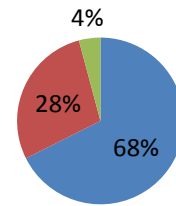
APPENDIX C FY12 MEDIATION STATISTICS AS SELF-REPORTED BY AGENCIES

In FY12, 43 state agencies reported 216 ADR total processes. Of that 216, 70 were classified as mediations; 61 were classified as Employee/Supervisor mediations (28%), and 9 were classified as Employee/Employee mediations (4%).

The remaining 146 processes were classified as Other Processes (68%), which include arbitrations, group facilitations, citizen participation events, and miscellaneous events.

Mediations By Type

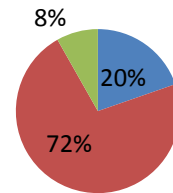
- Other (146 or 68%)
- Employee/Supervisor (61 or 28%)
- Employee/Employee (9 or 4%)



Of 61 Employee/Supervisor mediations, 44 (or 72%) resolved the issues presented, 5 (or 13%) are ongoing, and the remaining 12 requests (or 30%) were either withdrawn/refused or otherwise did not result in a resolution of the issues presented.

Employee/Supervisor Resolutions

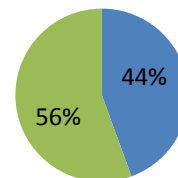
- Other (12 or 30%)
- Resolved (44 or 72%)
- Ongoing (5 or 13%)



Of the 9 Employee/Employee mediations, 5 (or 56%) resolved the issues presented, and 4 requests (or 44%) were withdrawn/refused or otherwise did not result in a resolution of the issues presented.

Employee/Employee Resolutions

- Other (4 or 44%)
- Resolved (5 or 56%)



APPENDIX D FY12 EEOC MEDIATION STATISTICS

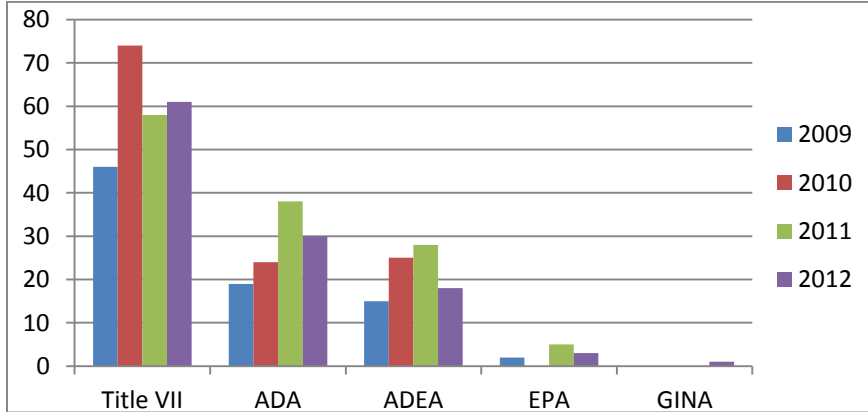
FY12 CHARGES PROCESSED PURSUANT TO REGIONAL UNIVERSAL AGREEMENT TO MEDIATE BETWEEN US EEOC AND STATE OF NEW MEXICO:

- A. Of the 81 charges received by RMD: 78 (96%) were from the Alb./Phoenix District, 2 (2%) were from the El Paso/Dallas District, and 1 (1%) was from the NM Human Rights Bureau.
- B. Number of charges by law under which filed (*a number were filed under more than one law*):
 - 1. Title VII of Civil Rights Act: 61 (75%)
 - 2. Americans with Disabilities Act: 30 (37%)
 - 3. Age Discrimination in Employment Act: 18 (22%)
 - 4. Equal Pay Act: 3 (4%)
 - 5. Genetic Information Nondiscrimination Act (GINA): 1 (1%)
- C. Number of charges by type of alleged discrimination (*a number were filed alleging more than one type of discrimination*):
 - 1. Retaliation: 35 (43%)
 - 2. Disability: 28 (35%)
 - 3. National Origin: 28 (35%)
 - 4. Sex: 22 (27%)
 - 5. Age: 15 (19%)
 - 6. Race: 14 (17%)
 - 7. Color: 4 (5%)
 - 8. Other: 2 (2%)
 - 9. Religion: 1 (1%)
 - 10. GINA: 1 (1%)
- D. Type of issue alleged (*a number were filed alleging more than one issue*):
 - 1. Discipline: 26 (32%)
 - 2. Terms / Conditions: 25 (31%)
 - 3. Harassment: 24 (30%)
 - 4. Discharge: 17 (21%)
 - 5. Reasonable Accommodation: 12 (15%)
 - 6. Promotion: 10 (12%)
 - 7. Sexual Harassment: 9 (11%)
 - 8. Wages: 8 (10%)
 - 9. Hiring: 8 (10%)
- E. Status of charge:
 - 1. Mediation was “Not Applicable” in 11 of 81 charges (14%), i.e., charge was sent for “Notice Only” purposes because charge was incomplete as filed, already settled or dismissed, or otherwise not eligible for mediation.
 - 2. Of the 70 charges eligible for mediation:
 - a. Agency Agreed to Mediate: 25 (36%)
 - b. Agency Declined to Mediate: 15 (21%)
 - c. Agency “Failed to Respond” to EEOC: 30 (43%)

4-YEAR EEOC COMPARATIVE ANALYSIS

STATE MEDIATION PARTICIPATION RATE: FY09: 44%; FY10: 42%; FY11: 47%; FY12: 36%.

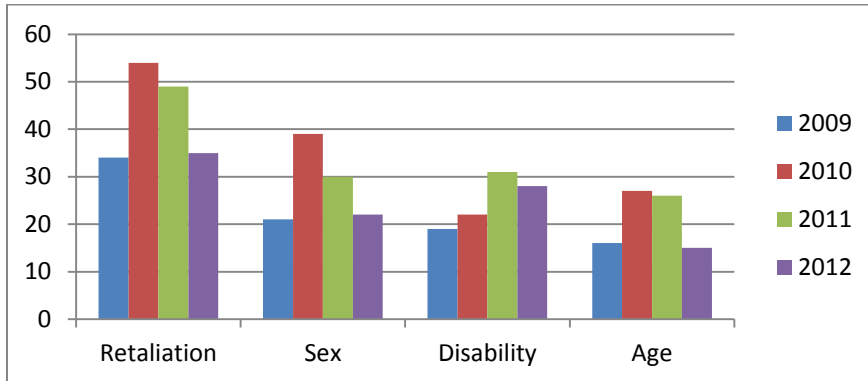
NUMBER OF CHARGES FILED BY LAW



Note:

Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which prohibits genetic information discrimination in employment, took effect on November 21, 2009.

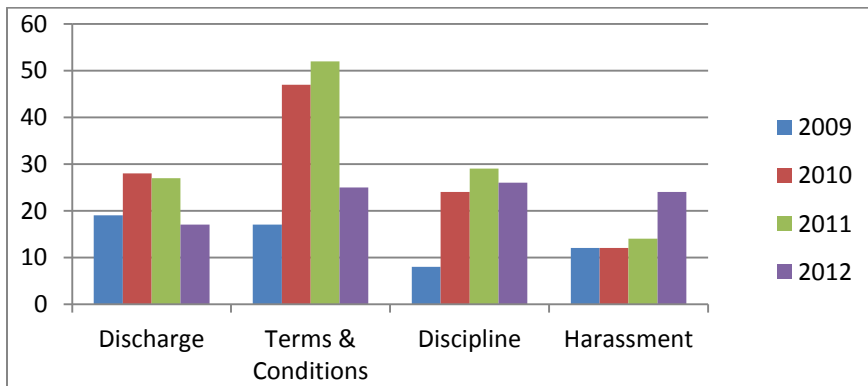
NUMBER OF CHARGES BY TYPE OF ALLEGED DISCRIMINATION



Notes:

1. Additionally, in 2012, "National Origin" discrimination was alleged in 28 (35%) of charges.
2. For the fourth consecutive year, "Retaliation" remains the most frequently cited type of discrimination allegation.

NUMBER OF CHARGES BY TYPE OF ISSUE ALLEGED



Note:

Additionally, in 2012, "Reasonable Accommodation" issues were alleged in 12 (15%) of charges, consistent with the significant number of charges alleging ADA violations and discrimination based on "Disability."

Data Source: US EEOC



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