



# 2013 Annual Report

Alternative Dispute Prevention  
& Resolution Advisory Council



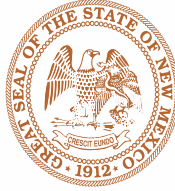
## **INTRODUCTION**

The Office of Alternative Dispute Prevention and Resolution promotes the early resolution of disputes through respectful communication and positive, constructive collaboration. The 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 *"Encouraging communication through mutual respect."*

## **CONTENTS**

<b><i>Introduction</i></b> .....	<b><i>pg. 1</i></b>
<b><i>Letter from AJ Forte, RMD Director and ADR Advisory Council Chair</i></b> .....	<b><i>pg. 2</i></b>
<b><i>Customer Service Initiatives</i></b> .....	<b><i>pg. 3</i></b>
<b><i>FY14 Program Goals</i></b> .....	<b><i>pg. 4</i></b>
<b><i>Training Initiatives</i></b> .....	<b><i>pgs. 4-6</i></b>
<b><i>Measuring Progress</i></b> .....	<b><i>pg. 7</i></b>
<b><i>Appendix A: FY13 ADR Outreach &amp; Training Summary</i></b> .....	<b><i>pgs. 8-9</i></b>
<b><i>Appendix B: FY13 Employment-Related Civil Rights Data Analysis</i></b> .....	<b><i>pg. 10</i></b>
<b><i>Appendix C: FY13 ADR Service Request Statistics</i></b> .....	<b><i>pg. 11</i></b>
<b><i>Appendix D: FY13 ADR Activities as Self-Reported by Agencies</i></b> .....	<b><i>pg. 12</i></b>
<b><i>Appendix E: EEOC Mediation Statistics</i></b> .....	<b><i>pgs. 13-14</i></b>



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December 1, 2013

Honorable Governor Martinez, Legislators, and GSD Secretary Ed Burckle:

Since enactment of the Governmental Alternative Dispute Prevention and Resolution Act in 2007, state government has made significant strides in developing programs and resources for the early and effective resolution of problems. State agencies and employees participating in these programs demonstrate their commitment to cooperative workplaces and contribute to state government's cost-avoidance objectives, a critically important concern of the Risk Management Division. This report reflects this year's Alternative Dispute Resolution (ADR) accomplishments by state agencies and the state ADR Office.

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

Sincerely,

A handwritten signature in blue ink that reads "AJ Forte".

AJ Forte  
Chair, ADR Advisory Council  
Director, Risk Management Division  
General Services Department

## CUSTOMER SERVICE INITIATIVES

In FY13, the ADR Bureau maintained a steady pace of customer service visits and outreach events to educate agencies, employees and stakeholders about ADR strategies and best practices and to raise awareness about available resources and services. The Bureau's customer service base is broad - RMD-insured entities, including state agencies, boards and commissions, colleges and universities, the courts, participating local public bodies and other interested parties and organizations. Meeting with customers *at their location* is a crucial first step in the Bureau's customer service approach – building strong relationships by learning about an agency, from the agency, where its employees work, and in the communities they serve. Comprehensive knowledge about the Bureau's customers and their concerns is central to the Bureau's ability to coordinate services responsive to their needs and invite input and feedback into the program.

The Bureau held numerous outreach events throughout the year to encourage collaborative relationships among state agencies, and between mediators, ADR Coordinators and agency staff. Creating opportunities where program participants' skills, professional expertise and facilities can be shared leverages the value of these precious resources. With this kind of information, a number of state agencies are creating their own internal ADR processes and service provider lists, supporting long-term capacity for organizational conflict management.

This year, the Bureau also dedicated significant time to internal program design improvements, primarily in its computer-based information management system. Completion of an on-line quarterly reporting process, effective July 1<sup>st</sup>, 2013, will facilitate agency compliance with program requirements, and new database report-generating features will enable the Bureau to expedite data analysis, verify its integrity and produce meaningful performance measures.

Other FY13 customer service initiatives included:

- Facilitating no-cost mediation services for participating organizations and employees.
- Actively recruiting new mediators to the state *pro bono*/volunteer mediator pool.
- Continuing emphasis on agency participation through communication with designated agency ADR Coordinators and key staff.
- Providing program orientation for new ADR Coordinators.
- Requesting use of state and community facilities for ADR events and activities.
- Conducting ADR presentations at conferences, seminars, in-service trainings, staff meetings, health fairs and other organizational events.
- Participating in related organizations, including the New Mexico Supreme Court ADR Commission, the NM State Bar ADR Committee, State Personnel Office Training Governance Committee, and the State Americans with Disabilities Act (ADA) Coordinators' Council.
- Supporting the Alternative Dispute Prevention and Resolution Advisory Council by coordinating bi-annual meetings, soliciting member input into program operations and publishing this report on their behalf.

## **FY14 GOALS**

- Secure reliable funding source to support essential functions (e.g., new mediator training, formal continuing education for existing mediators, and conflict management training for key staff), and new initiatives (e.g., multilingual proficiency).
- Completely automate all ADR data reporting and analysis functions through computer-based information management system.
- Facilitate and monitor agency compliance with reporting requirements through quarterly ADR Coordinator trainings; identify non-compliant agencies, and schedule one-on-one training for ADR Coordinators and key staff at their location.
- Direct attention to Top-20 RMD-insured organizations with highest loss experience in employment-related civil rights claims costs for the last five year period; review historical loss data, “root cause” / trend analysis, and premium impacts; assist in implementing effective ADR strategies and practices to reduce losses.
- Present a one-day learning event (e.g. Symposium) in southern New Mexico to attract new mediators and engage and support existing mediators, ADR Coordinators, key staff, and community resources.

## **TRAINING INITIATIVES**

One of the primary functions of the State Office is to identify and coordinate ADR training resources; the Bureau partners with other organizations to secure access to training at low or no-cost to participants. The State of New Mexico is blessed with a large and active ADR community and is rich in related subject-matter-experts; many of these individuals generously give of their time and knowledge in assisting the Office with *pro bono* mediation and facilitation services, training and mentoring of mediators and organizational development support. These opportunities provide continuing education and critical support for practicing mediators who provide the program’s essential services; training events also attract new mediators who bring new perspectives and expertise.

FY13 training activities ranged from general overviews and program orientations, to formal mediation skill development; in all, the Bureau coordinated 33 outreach and training events in three state locations (Albuquerque, Santa Fe and Española) with a total of 970 attendees. (See *Appendix A: FY13 ADR Outreach & Training Summary*).

The Annual Symposium, held in October of each year, is a unique opportunity to present continuing education and skills practice from the extensive network of state, community and professional trainers, as well as fellow ADR practitioners; it also provides an open environment for networking with other program participants and new colleagues. The Annual Symposium is the single largest event presented by the Bureau; the 2013 Symposium is discussed in detail on the next two pages.

## THIRD STATEWIDE ADR SYMPOSIUM HELD IN ALBUQUERQUE

On October 10<sup>th</sup> and 11<sup>th</sup>, the third 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, part of the General Services Department Risk Management Division, and made possible by the contribution of time and talent from many agencies and partnering organizations.

The ADR Bureau and UNM School of Law kicked off the two days of workshops and presentations on Thursday, October 10th with welcoming remarks by GSD Secretary Ed Burckle, who thanked participants for their contributions toward increasing the availability, efficiency and success of mediation within state government, and for helping to raise awareness of the importance of early conflict resolution. Then UNM Professor John Feldman's plenary presentation, inspired by the teachings and ideas in Nassim Nicholas Taleb's book, "The Black Swan," asked participants to consider how randomness and the unexpected apply to the management of risk and the practice of mediation.

Friday, October 11th, opened with the reading of a welcome message from Governor Martinez, and an update on the work of the New Mexico Supreme Court Statewide ADR Commission. Both days included a variety of breakout sessions, workshops and numerous opportunities for networking and discussion. Presenters included some of the state's most highly recognized and respected mediation instructors, attorneys, organizational development and management consultants and ADR practitioners, with a wide range of subjects, including best practices in personnel management, arbitration, ombudsman practice, environmental resource management, cultural competency, communication and mediation fundamentals, elder mediation, and equal access for those with disabilities. The Symposium hosted over 140 participants from throughout New Mexico, representing: all levels of state courts; 19 state agencies, commissions and boards; 5 state universities, colleges and schools; Kirtland Air Force Base; Los Alamos National Laboratory; a number of counties and local public bodies; professional organizations; and a number of community members and interested parties.

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

- *"The selection of topics being addressed was interesting and useful and I liked everything that I attended. I met helpful professionals and learned from the presenters, materials and the audiences."*
- *"The networking opportunities exceeded my expectations. I found the entire community (presenters, organizers, participants) to be friendly, helpful, and generally committed to fostering ADR in this state."*
- *"The Symposium was wonderful and well worth the time."*

Numerous requests from the southern part of the state have spurred discussion and planning for a one-day symposium in 2014.

## Presenters at the 2013 ADR Symposium



GSD-Risk Management Division's Loss Control Specialist Pedro Archuleta, left, and C. Michael Patterson, ADR Management Analyst at RMD, discuss data analysis results of employment-related civil rights claims with Symposium participants.

UNM's Rob Burford, Student Conduct Officer for the Dean of Students' Office, and Holly Meyer, Sr. Academic Advisor for the College of Arts & Sciences, discuss a pilot mediation program for undergraduate students.



Robert Rambo, Appellate Mediator with the NM Court of Appeals, leads a panel discussion to close the Symposium.

## MEASURING PROGRESS

The ADR Bureau utilizes performance measures that reflect agency participation in the program and in other ADR processes. As defined in the New Mexico Governmental Dispute Prevention and Resolution Act of 2007 (NMSA 1978, § 12-8A), ADR means a voluntary process other than litigation used to prevent or resolve disputes; in state government, ADR encompasses a broad range of problem-solving processes, most commonly mediation, facilitation and arbitration. The Act requires that state agencies **provide access to ADR**, through internal processes, through professional services, or through external avenues. Agency use of ADR strategies can greatly assist in the reduction of insurable losses (particularly employment-related civil rights claims). In FY13, the ADR Bureau partnered with the RMD Loss Control Bureau to conduct extensive analysis of this claims data; from FY08–FY12, these claims totaled almost \$22 million, with an average individual cost of almost \$44,000. This analysis presents the best business case for ADR – **cost avoidance** value of over \$3 million by resolving workplace issues that could otherwise escalate to costly claims against the state (see *Appendix B: FY13 Employment-Related Civil Rights Data Analysis*).

The ADR Bureau relies heavily on a pool of trained volunteer mediators for no-cost services; in FY13, most requests were for mediation between employees and supervisors, and between co-workers (See *Appendix C: FY13 ADR Service Request Statistics*). When mediation occurred as scheduled, the issue in dispute was resolved over 80% of the time; when mediation did not occur, the most frequent reason was that one of the parties declined to participate. Motivating self-referrals and increasing participation remain high priorities for the Bureau.

**“Moving people under conditions of uncertainty is difficult – they freeze. They’re scared of what they might lose. It’s good to tell people what they will lose if they fail to move.”**

*Robert Cialdini, “The Uses (and Abuses) of Influence,”  
Harvard Business Review, July–August 2013, pg. 80.*

The Bureau elicits feedback from both mediators and participating parties for quality assurance and performance improvement; information collected includes resolution rates and non-financial “quality of life” impacts (e.g., improved relationships and reduced stress).

Data on other ADR activities is collected directly from agencies, as self-reported in Quarterly ADR Activity Reports (See: *Appendix D: FY13 ADR Activities as Self-Reported by Agencies*). Agencies report resolution of the issues in dispute in over 70% of completed mediations.

The Bureau continues to monitor and encourage agency mediation with the US Equal Employment Opportunity Commission, pursuant to the *Regional Universal Agreement to Mediate (RUAM)* of 2008. The goal of this agreement is to increase participation by state government employers, and improve operational efficiency, cost-effectiveness and accountability in state dispute resolution practices. A summary of the types of charges filed, status, and a 5-year comparative analysis are contained in *Appendix E: EEOC Mediation Statistics*. Retaliation remains the most frequently cited type of charge in both state and national statistics (an expected result, as it is generally filed as a “companion” to other charges).



**APPENDIX A: FY13 ADR OUTREACH AND TRAINING SUMMARY**

Start Date	Event	Location	# of Attendees
7/11/12	Presentation at NM ADA Coordinators' Council	Santa Fe	10
7/14/12	Presentation at State Bench & Bar Annual Conference	Albuquerque	9
7/19/12	Presentation at Jud. Ed. Center/Municipal Courts	Albuquerque	60
8/2/12	Customer Service Meeting and ADR Coordinator Orientation (ALTSD)	Santa Fe	2
8/14/12	Presentation at 13 <sup>th</sup> Jud. Dist. Ct. / Valencia County	Albuquerque	10
8/29/12	Presentation at Dept. of Public Safety / Records Unit	Santa Fe	50
9/20/12	Assist in Civil Rights Training for DHSEM Senior Management Team	Santa Fe	10
9/26/12	Customer Service Meeting and ADR Coordinator Orientation (CYFD)	Albuquerque	1
9/27/12	Presentation at DOH / Public Health Division – All Region Managers conference	Albuquerque	80
10/11/12	Presentation at Southwest Conference on Disability	Albuquerque	42
10/18 & 19/12	State ADR Symposium	Albuquerque	176
10/23/12	Presentation at 2012 Diversity Leadership Forum	Albuquerque	38
10/24/12	Presentation at UNM Mentorship Conference	Albuquerque	23
10/30/12	RMD Health Fair for state employees (at State Capitol)	Santa Fe	100
11/29/12	ADR Coordinator Orientation (GSD)	Santa Fe	3
2/13/13	Customer Service Meeting and ADR Coordinator Orientation (EMNRD)	Santa Fe	3
2/19/13	Presentation to GSD Senior Management Team	Santa Fe	15
2/22/13	Presentation at UNM Staff Ombudsman Program mediation training	Albuquerque	12
2/26/13	Presentation at Non-Metro Area Agency on Aging Conference (for managers & supervisors)	Albuquerque	84
2/28/13	Presentation with Loss Control Bureau at DWS (Loss Control Committee meeting)	Albuquerque	9

3/5/13	Customer Service Meeting and ADR Coordinator Orientation (PED)	Santa Fe	1
3/20/13	Presentation at new employee orientation (EMNRD)	Santa Fe	36
4/22/13	Assisted in presenting Active Shooter Awareness training pilot for GSD & SPO management	Santa Fe	45
4/26/13	Customer Service Meeting and ADR Coordinator Orientation (Bernalillo Co./ City of Alb. Water Authority)	Albuquerque	2
5/2/13	Presentation at State District Attorneys' Annual Conference	Albuquerque	32
5/14/13	Customer Service Meeting and ADR Coordinator Orientation (ERB)	Santa Fe	1
5/15/13	Customer Service Meeting and ADR Coordinator Orientation (NNMC)	Espanola	2
5/15/13	Customer Service Meeting: Espanola Municipal Court	Espanola	1
5/30/13	ADR Coordinator Orientation (various agencies)	Santa Fe	6
6/4/13	Presentation to City of Alb./Office of Senior Affairs (Casa staff)	Albuquerque	20
6/13/13	Presentation at DVR state managers & supervisors training	Albuquerque	42
6/25/13	ADR Refresher Training for state mediators (Cynthia Olson)	Albuquerque	31
6/28/13	Presentation at State Bench & Bar Annual Conference	Santa Fe	14

<b>Total Number of Events</b>	<b>33</b>
<b>Total Number of Event Locations (Santa Fe, Alb., Espanola)</b>	<b>3</b>
<b>Total Number of Attendees</b>	<b>970</b>

## **APPENDIX B: Employment-Related Civil Rights Data Analysis**

### **Preliminary Loss Data Analysis**

1. Employment-Related Civil Rights Claims against State of New Mexico for Five-Year period: FY 08 – FY 12
  - 495 employment-related civil rights claims
  - Aggregate “total incurred” cost of almost \$ 22 million
  - Average “cost” of almost \$ 44 thousand per claim
  
2. Impact on Agency Budgets (total for all agencies, annually):
  - FY12 Civil Rights Insurance Premiums: \$ 10 million  
(of \$ 66 million total insurance coverage premiums)
  - FY13 Civil Rights Insurance Premiums: \$ 9.8 million  
(of \$ 61 million total insurance coverage premiums)
  - FY14 Civil Rights Insurance Premiums: \$ 9.8 million  
(of \$ 60 million total insurance coverage premiums)

### **ADR Cost-Benefit Factors**

1. Early Dispute Resolution Options:
  - In-house resources (agency policies & procedures, ADR Coordinators, etc.); *no-cost*
  - ADR services through ADR Bureau / state program; *no-cost*
  - Other “external” service providers (EAP, community or private service provider, etc.); generally, a fee-for-service arrangement
  
2. ADR Cost –Benefit Value:
  - In FY12, of 141 mediations, 81 resulted in resolution of the issues presented and did not proceed to a formal claim or lawsuit, with a **cost avoidance** value of over \$3.5 million.
  - FY13 data analysis will be completed in coming year.

## APPENDIX C: FY13 ADR Service Request Statistics

**FY2013 TOTAL SERVICE REQUESTS RECEIVED: 92**

**Type of Dispute:**

Employee / Supervisor	47
Employee / Employee	29
Other (e.g., Group Facilitation)	16

**Resolution status of the 43 mediations that occurred\*:**

Written agreement	24
Verbal (oral) agreement	13
No agreement, and/or returning to mediation	6

*\* 49 mediations did not occur because the matter was withdrawn (a party declined mediation, a party left employment, or the matter was otherwise resolved by the parties), the matter was deemed inappropriate for mediation, or the parties chose to use a different administrative process.*

**Source of Request**

**By Requestor:**

Executive Agency	77
Colleges & Universities	4
Judicial Agency	5
Other	6

**By Geographic Location:**

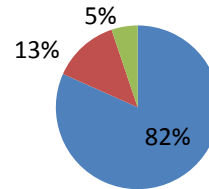
Santa Fe	49
Albuquerque / Bernalillo	16
Las Vegas	6
Portales	3
Roswell	3
Los Lunas	2
Clovis	2
Alamogordo	2
Gallup	2
Grants	2
Estancia	1
Socorro	1
Taos	1
Farmington	1
Silver City	1

## **APPENDIX D: FY13 ADR Activities as Self-Reported by Agencies**

In FY13, state agencies reported 251 total internal ADR activities; of those activities, 46 were ADR processes, with 33 classified as Employee/Supervisor mediations (13%), 13 classified as Employee/Employee mediations (5%), and the remaining 205 classified as Other processes (82%). Other processes include arbitrations, group facilitations, citizen participation events, meetings, trainings and other miscellaneous ADR-related events.

### **Agency Reported ADR Activities by Type**

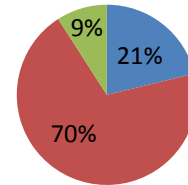
- Other (205 or 82%)
- Employee/Supervisor (33 or 13%)
- Employee/Employee (13 or 5%)



Of 33 Employee/Supervisor mediations, 23 (or 70%) resolved the issues presented, 3 (or 9%) are ongoing, and the remaining requests (7, or 21%) were either withdrawn/refused or otherwise did not resolve the issues presented.

### **Employee/Supervisor Resolution Rates**

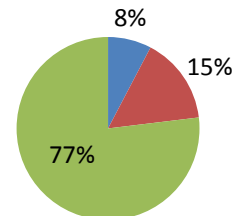
- Other (7 or 21%)
- Resolved (23 or 70%)
- Ongoing (3 or 9%)



Of the 13 Employee/Employee mediations, 10 (or 77%) resolved the issues presented, 2 (or 15%) are ongoing, and the remaining requests (1, or 8%) were either withdrawn/refused or otherwise did not resolve the issues presented.

### **Employee/Employee Resolution Rates**

- Other (1 or 8%)
- Ongoing (2 or 15%)
- Resolved (10 or 77%)



## **APPENDIX E: EEOC Mediation Statistics**

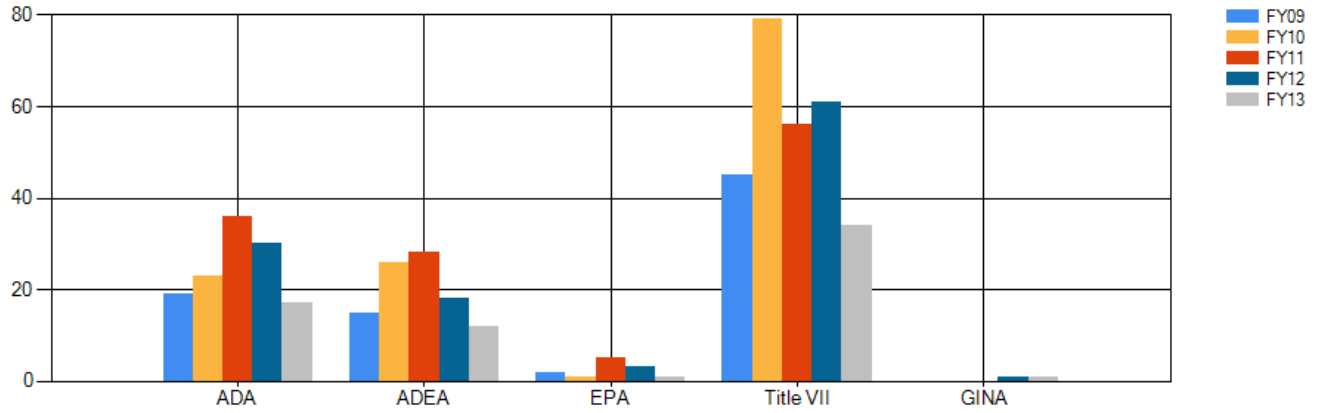
**MEDIATIONS PURSUANT TO REGIONAL UNIVERSAL AGREEMENT TO MEDIATE BETWEEN US EEOC AND STATE OF NEW MEXICO.** Office established protocols and procedures to assist agencies through EEOC mediations, and monitor and report on participation and resolution rates. For FY13:

- A. 49 charges received by RMD (47, or 95.92% from Albuquerque/Phoenix District, 1, or 2.04% from El Paso/Dallas District, and 1, or 2.04% from the NM Human Rights Bureau).
- B. Number of charges by law under which filed:
  1. Title VII of Civil Rights Act: 34, or 52.31%
  2. Americans with Disabilities Act: 17, or 26.15%
  3. Age Discrimination in Employment Act: 12, or 18.46%
  4. Equal Pay Act: 1, or 1.54%
  5. Genetic Information Nondiscrimination Act (GINA): 1, or 1.54%  
*\*\*(37 of 49 charges, or 75.51%, were filed under more than one law)*
- C. Number of charges by type of alleged discrimination:
  1. Retaliation: 20, or 23.26%
  2. Sex: 17, or 19.77%
  3. Disability: 16, or 18.60%
  4. National Origin: 7, or 8.14%
  5. Age: 12, or 13.95%
  6. Race: 10, or 11.63%
  7. Other: 1, or 1.16%
  8. Color: 2, or 2.33%
  9. Religion: 0, or 0%
  10. GINA: 1, or 1.16%  
*\*\*(22 of 49 charges, or 44.90%, were filed alleging more than one type of discrimination)*
- D. Type of issue alleged
  1. Discharge: 15, or 21.43%
  2. Harassment: 14, or 20.00%
  3. Sexual Harassment: 2, or 2.86%
  4. Terms / Conditions: 7, or 10.00%
  5. Discipline: 7, or 10.00%
  6. Wages: 2, or 2.86%
  7. Reasonable Accommodation: 12, or 17.14%
  8. Hiring: 3, or 4.29%
  9. Promotion: 8, or 11.43%  
*\*\*(19 of 49 charges, or 38.77%, were filed alleging more than one issue)*
- E. Status of charge:
  1. Mediation was “Not Applicable” in 13 of 49 charges, or 26.53% (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 36 charges eligible for mediation:
    - a. Agency Agreed to Mediate: 14, or 38.89%
    - b. Agency Declined to Mediate: 22, or 61.11%
- F. Outcomes of the 14 Mediations:
  1. Agreement resolving charge: 5, or 35.71%
  2. No resolution reached: 6, or 42.86%
  3. Outcome pending: 3, or 21.42%

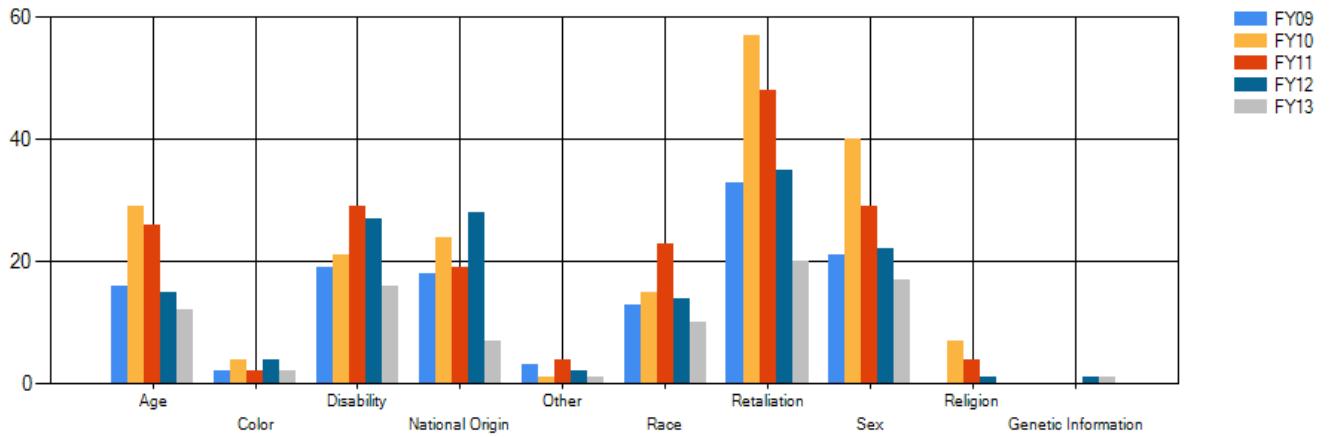
Data Source: US EEOC

## 5-year Comparative Analysis of EEOC Charges

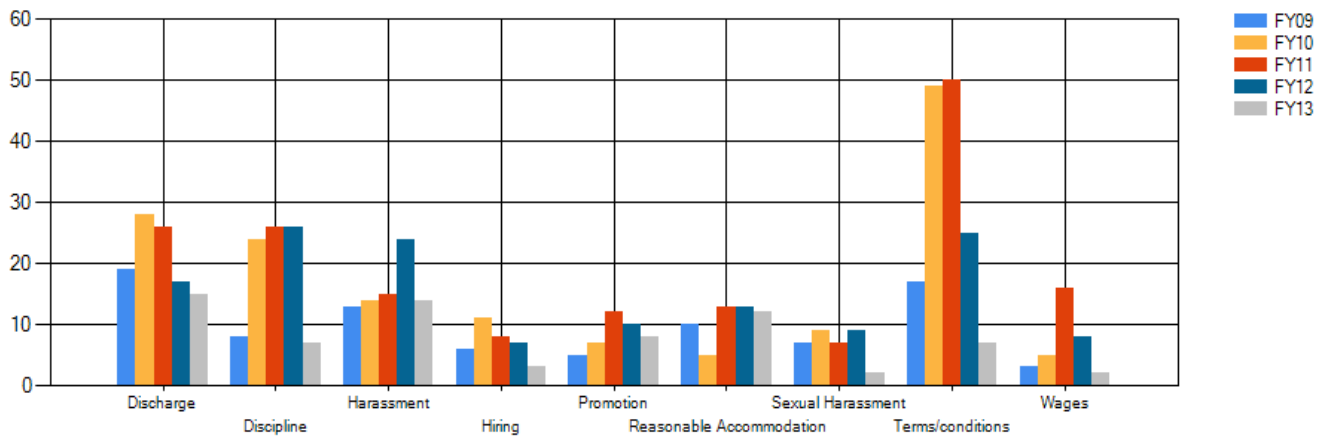
### FY09 – FY13: CHARGES FILED BY LAW



### FY09 – FY13: CHARGES BY TYPE OF ALLEGED DISCRIMINATION



### FY09 – FY13: CHARGES BY TYPE OF ISSUE ALLEGED



*Data Source: US EEOC*



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