



Practice & Procedure Under the PA Human Relations Act

**PA Human Relations Commission
Chief Counsel's Office**

▶ Context & Practical Tips

- **First – Know the law and applicable regulations**
- **Second – Know the Process**
- **Third – Know the Procedures**

➤ PHRA- Police Power and Civil Right

43 P.S. 952 Police Power

The PHRA is an exercise of the Commonwealth's police power for the protection of the welfare prosperity health and peace of the people of the Commonwealth

43 P.S. 953 Civil Right

The opportunity of individual to obtain employment for which he is qualified without discrimination...is declared to be a civil right enforceable under the PHRA

Statutes Enforced by PHRC

- **Pennsylvania Human Relations Act (PHRA) – 43 P.S. §§ 951-963**
- **Pennsylvania Fair Educational Opportunities Act (PFEOA) – 24 P.S. §§ 5001-5010**

PHRA Regulations

- **All PHRA Regulations**
 - 16 Pa. Code, Chapters 41-51.61
- **Special Rules of Administrative Practice and Procedure**
 - 16 Pa. Code, §§ 42.1-42.141
- **Handicap & Disability**
 - 16 Pa. Code, §§ 44.1-44.21
- **Housing & Commercial Property**
 - 16 Pa. Code, §§ 45.1-45.207

➤ How is the PHRA Interpreted?

- **Broad Construction-Remedial Law**
- **“The provisions of this Act shall be construed liberally... and any law inconsistent with any provisions hereof shall not apply.” 43 P.S. § 962 (a)**

PHRA Jurisdiction

WHAT IS COVERED UNDER THE ACT?

- **Employment (must employ 4 or more)**
- **Housing & Commercial Property**
- **Public Accommodations**

▶ PFEOA Jurisdiction

- **Educational institutions – postsecondary, trade, colleges**
- **Overlaps with the public accommodations section of the PHRA**

(See PHRA definition of “public accommodation” – §954(l))

▶ For Jurisdiction

- **PHRA:**
- **Employment - 4 or more on the day of the alleged act of discrimination**
- **Housing - 1 property**
- **Education - Any educational institution**
- **Public Accommodation - Any place that services the public**

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▶ Complimentary Federal Statutes

- **Title VII – EEOC**
(Employment)
- **Age Discrimination in Employment Act (ADEA) – EEOC**
- **Americans with Disabilities Act (ADA) – EEOC**
- **Equal Pay Act (EPA) – EEOC**
- **Vocational Rehabilitation Act of 1973 – §§503 & 504**
- **Title VIII – HUD**
(Housing)
- **Title IX – U.S. Dept. of Education Office of Civil Rights**
(Education)

Employees – Jurisdiction State v. Federal

- **PHRA** – 4 or more at alleged act of harm
- **Title VII** – 15 or more in 20 consecutive weeks
- **ADA** – 15 or more in 20 consecutive weeks
- **ADEA** – 20 or more in 20 consecutive weeks

PHRA Protected Classes

- **RACE (includes white)**
- **AGE (40 and above)**
 - **NOTE: Not in public accommodations or PFEOA**
- **RELIGIOUS CREED**
- **COLOR**
- **ANCESTRY**
- **NATIONAL ORIGIN**
- **GED (employment only)**

PHRA Protected Classes (cont.)

- **DISABILITY**
 - **NOTE: In employment, non job-related**
 - **Known relationship or association with a person with a disability**
 - **User, trainer or handler of guide or support animals**
- **Protection from RETALIATION**
- **FAMILIAL STATUS (housing only)**
- **SEX**

➤ Sex Discrimination

- **GUIDANCE ON DISCRIMINATION ON THE BASIS OF SEX UNDER THE PENNSYLVANIA HUMAN RELATIONS ACT**
- **GUIDANCE ON DISCRIMINATION ON THE BASIS OF SEX UNDER THE PENNSYLVANIA FAIR EDUCATIONAL OPPORTUNITIES ACT**

➤ Sex Discrimination

- **Case by case basis**
- **“Sex” under the PHRA and PFEOA:**
 - Sex assigned at birth
 - Sexual orientation
 - Transgender identity
 - Gender transition
 - Gender identity
 - Gender expression

➤ Sex Discrimination

- **Comments raising concerns about religious entities being subject to enforcement actions**
- **PA Religious Freedom Protection Act
71 P.S. § § 2401-2407**

▶ Most Common Theories

- **Disparate Treatment**
- **Disparate Impact**
- **Failure to Accommodate**
- **Harassment**
- **Retaliation**

Protected Class Comparisons

Protected Class	STATE	FEDERAL					
	PHRA	TITLE VII	ADEA	Equal Pay Act	ADA	Rehab. Act	Ex. Order 11246
Race/Color	X	X					X
Religion	X	X					
Ancestry	X	X					
Disability	X				X	X	
Support Animals	X						
Age	X		X				
Sex	X	X		X			X
National Origin	X	X					X
GED	X						

▶ Statute of Limitations – State v. Federal

PHRA:

- **180 days from the act of harm (includes Saturdays, Sundays & holidays)**
- **If 180th days ends on Sat., Sun. or holiday, the time period ends the next business day**

TITLE VII, ADA, ADEA:

- **180 days from the act of harm if there is no state or local agency**
- **300 days from the act of harm if there is a state or local agency**

TITLE VIII

- **1 year from the act of harm**

➤ Housing Accommodation

Housing Accommodation:

any building, structure, mobile home site or facility, or portion thereof, which is the home residence or sleeping place of one or more individuals or any vacant land whose purpose is to construct or locate thereon any such building, structure, mobile home site or facility

Note: housing accommodation does not include a personal residence offered for rent (building or structure containing living quarters for no more than two individuals, groups or families and used by the owner as a bona fide residence)

▶ Housing – Type of Actions Covered

- Refuse to sell
- Refuse to lease
- Refuse to finance
- Otherwise deny or withhold housing accommodation
- Discrimination in the terms or conditions of selling or leasing
- Discrimination in furnishing facilities, services or privileges in connection with the ownership, occupancy or use of any housing accommodation

➤ More Covered Actions

- **Print, publish or circulate any statement or advertisement relating to the sale, lease or acquisition of any housing accommodation which indicates any preference, limitation, specification or discrimination**
 - **List of words to be avoided (16 Pa. Code § 45.181)**

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➤ **And More Covered Actions**

- **Failure to permit reasonable modifications of existing premises**
 - when necessary to afford such person full enjoyment of the premises
- **Failure to provide reasonable accommodations**
 - in rules, policies, practices or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a housing accommodation

Reasonable Accommodations

Reasonable accommodations must be made when the request is **reasonable** and the request must be acted upon within a **reasonable** time

A request may be an undue hardship depending on:

- The extent, nature and cost of the accommodation required, including the overall size and nature of the housing accommodation
- The extent to which a person with a disability can reasonably be expected to need or benefit from the housing accommodation
 - The requirements of other laws or contracts, to the extent they are not preempted by the act.
 - The extent to which the accommodation would pose a demonstrable threat of harm to the health and safety of others

Service and Support Animals

ADA: The ADA regulations, 28 CFR Part 36, define service animal as follows:

Any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability

Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition

The work or tasks performed by a service animal must be directly related to the individual's disability

▶ Service and Support Animals – 2

PHRA and its implementing regulations: do not define service animal or support animal

FHA regulations: 24 CFR Part 100: does not define service animal or support animal

Appendix A to Part 36:

- While some agencies, like HUD, use the terms “assistance animal,” “assistive animal,” or “support animal,” these terms are used to denote a broader category of animals than is covered by the ADA
- Under the Fair Housing Act, an individual with a disability may have the right to have an animal other than a dog in his or her home if the animal qualifies as a “reasonable accommodation” that is necessary to afford the individual equal opportunity to use and enjoy a dwelling, assuming that the use of the animal does not pose a direct threat

▶ Familial Status

- **One or more individuals who have not attained the age of 18 years being domiciled with**
 - A parent or other person having legal custody of such individuals or
 - The designee of such parent or other person
- **Any person who is pregnant or in the process of securing legal custody of any individual who has not attained the age of 18 years**

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Reasonable Occupancy Standards

- **The PHRA does not limit the applicability of reasonable state or local restrictions on the maximum number of occupants permitted to occupy a dwelling**
- **The PHRA does not limit the applicability of reasonable state or local restrictions relating to health or safety standards or business necessity**
- **Owners and managers of dwellings may develop and implement reasonable occupancy and safety standards based on factors such as the number and size of sleeping areas or bedrooms and the overall size of a dwelling unit so long as the standards do not violate the FHA or state or local restrictions**

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Discrimination in Education

- **Discrimination in education is prohibited by Section 5(i)1 of the PHRA (See 43 P.S. § § 951-963); and**
- **Discrimination in higher education is prohibited by Section 4 of the PFEOA (See 24 P.S. § § 5001-5010).**

PHRA – Public Accommodations

955(i) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any public accommodation, resort or amusement to:

- (1) Refuse, withhold from, deny to any person because of his race, color, sex, religious creed, ancestry, national origin or handicap or disability, or to any person due to use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, either directly or indirectly, any of the accommodations, advantages, facilities or privileges of such **public accommodation**, resort or amusement.

Public Accommodation

The PHRA defines “public accommodation” as...”kindergartens, primary and secondary schools, high schools, academies, colleges and universities, extension courses and all educational institutions under the supervision of this Commonwealth...” 43 P.S. § 954(I).

Practice Point: The PHRA does not protect prospective or current students of “distinctly private” educational institutions such as a parochial school, nor does it protect prospective or current students from age discrimination.

PFEOA

The PFEOA permits religious or denominational institutions to use religion in their admissions, enrollment and program decisions. Educational institutions which are neither state-owned, state-related, nor state-aided may offer single-sex classes.

The PFEOA does not protect prospective or current students from age discrimination.

Employment

955 (a) For any employer because of the race, color, religious creed, ancestry, age, sex, national origin or non-job related handicap or disability or the use of a guide or support animal. . . to refuse to hire or employ or contract with, or to bar or to discharge from employment such individual or independent contractor, or to otherwise discriminate against such individual or independent contractor with respect to compensation, hire, tenure, terms, conditions or privileges of employment or contract, if the individual or independent contractor is the best able and most competent to perform the services required.

Employment

955 (b)(1) For any employer, employment agency or labor organization, prior to the employment, contracting with an independent contractor or admission to membership, to:

Elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, color, religious creed, ancestry, age, sex, national origin, past handicap or disability or the use of a guide or support animal because of the blindness, deafness or physical handicap of any applicant for employment or membership. . . .

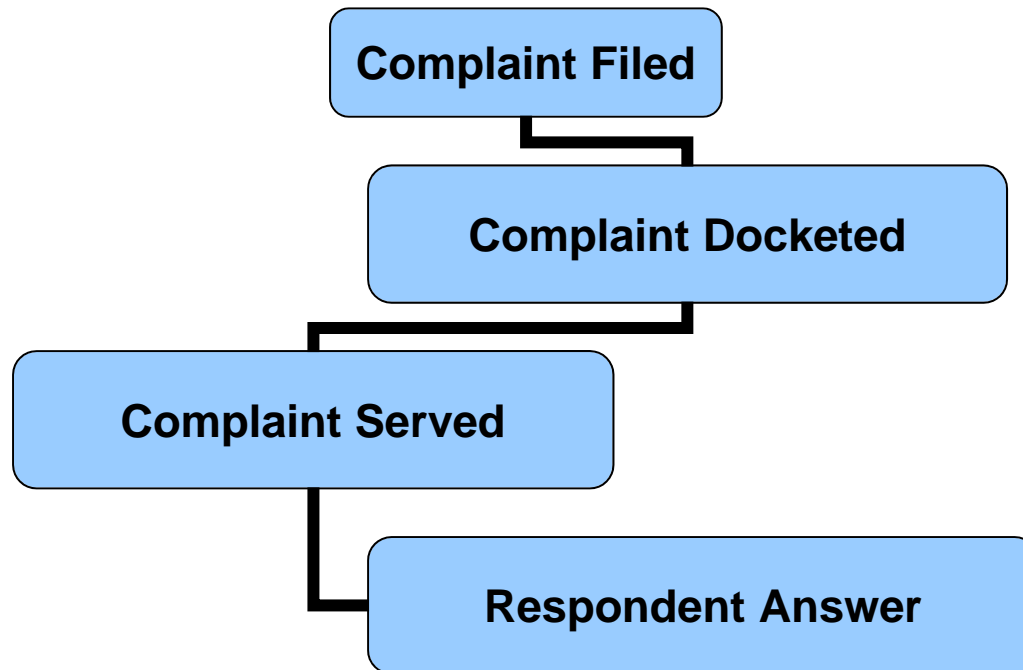
Employment

- 955 (d) For any **person**, employer, employment agency or labor organization to discriminate in any manner against any individual because such individual has opposed any practice forbidden by this act, or because such individual has made a charge, testified or assisted, in any manner, in any investigation, proceeding or hearing under this act.

Employment

- 955 (e) For any **person**, employer, employment agency, labor organization or employee, to aid, abet, incite, compel or coerce the doing of any act declared by this section to be an unlawful discriminatory practice, or to obstruct or prevent any person from complying with the provisions of this act or any order issued thereunder, or to attempt, directly or indirectly, to commit any act declared by this section to be an unlawful discriminatory practice.

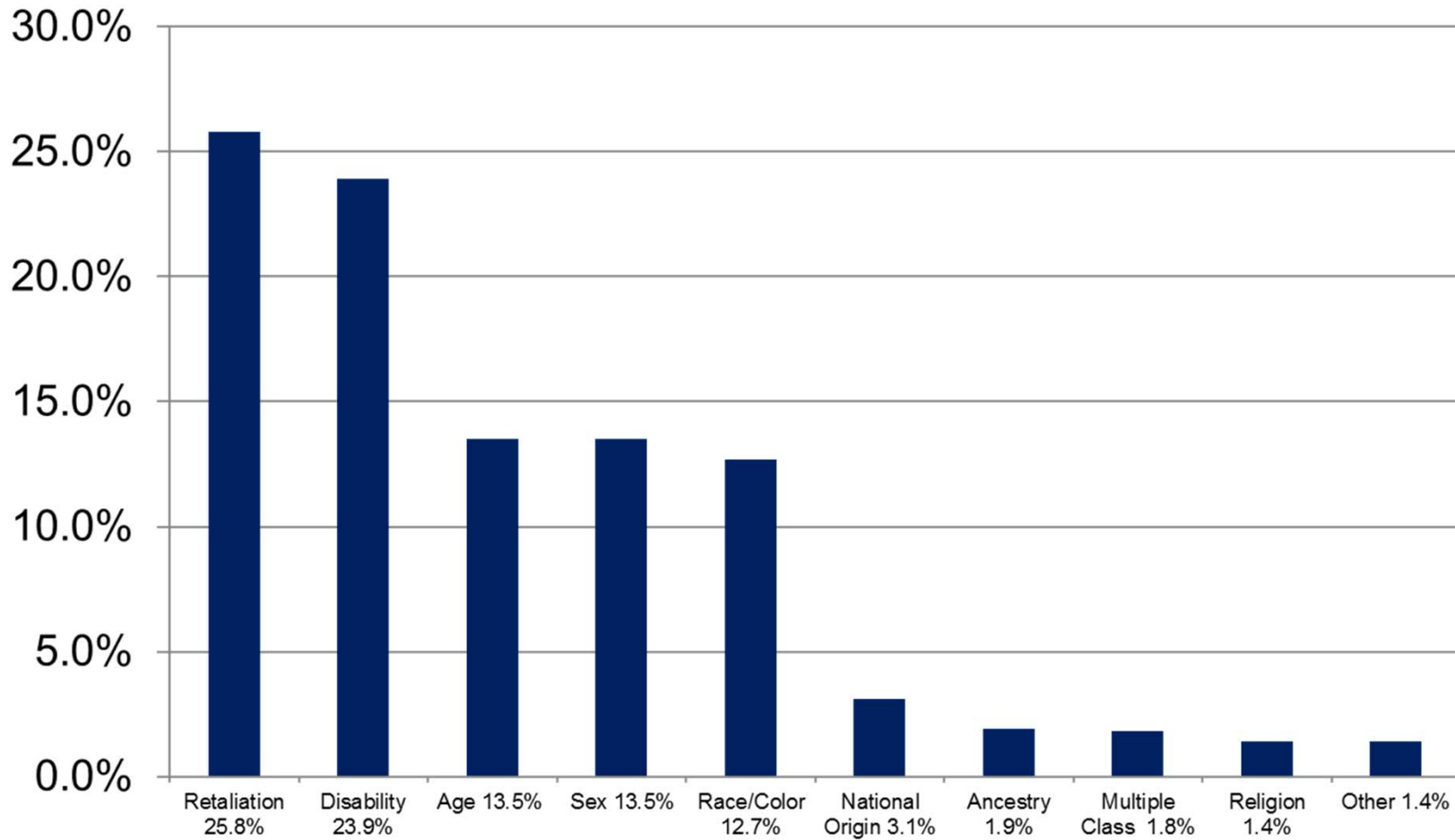
Complaint Process – FILING



Complaints Docketed by Subject Area 2017-18

Subject Area	Number of Cases	Percentage of Total Cases
Employment	943	78%
Commercial Property	0	0%
Education	34	3%
Housing	180	15%
Public Accommodations	51	4%
Total	1,208	

Basis of Complaints 2017-18



Top Three Complaint Bases 2017-'18

Housing

1. Disability
2. Retaliation
3. Race/Color



Public Accommodations

1. Disability
2. Race/Color
3. Retaliation and National Origin (tied)



Employment

1. Retaliation
2. Disability
3. Age



Education

1. Disability
2. Retaliation
3. Race/Color



Mediation Program

Employment
Public Accommodation

➤ Why Mediate?

- **Free**
- **Fast**
- **Convenient**
- **Voluntary**
- **Confidential**

Why Mediate?



➤ Who are the Mediators?

- Office of General Counsel's Mediation Program
- Volunteers
- Me (Katherine Petruczok)!

▶ Mediation Process

- **Parties are invited to mediation before docketing**
- **If one party declines: returned to regional office for docketing and investigation**
- **If both parties accept: referred to our volunteer mediators**

▶ Mediation Process

- **Mediator volunteers: case is assigned and mediator reaches out to the parties to schedule**
- **If no volunteers available: parties are asked to consent to PHRC mediator**

▶ Mediation Process

- **If parties reach a settlement agreement, case is docketed and complaint withdrawn. No answer required.**
- **If parties unable to resolve, case is docketed and assigned to an investigator. At that point the complaint is served and Respondent will need to file answer.**

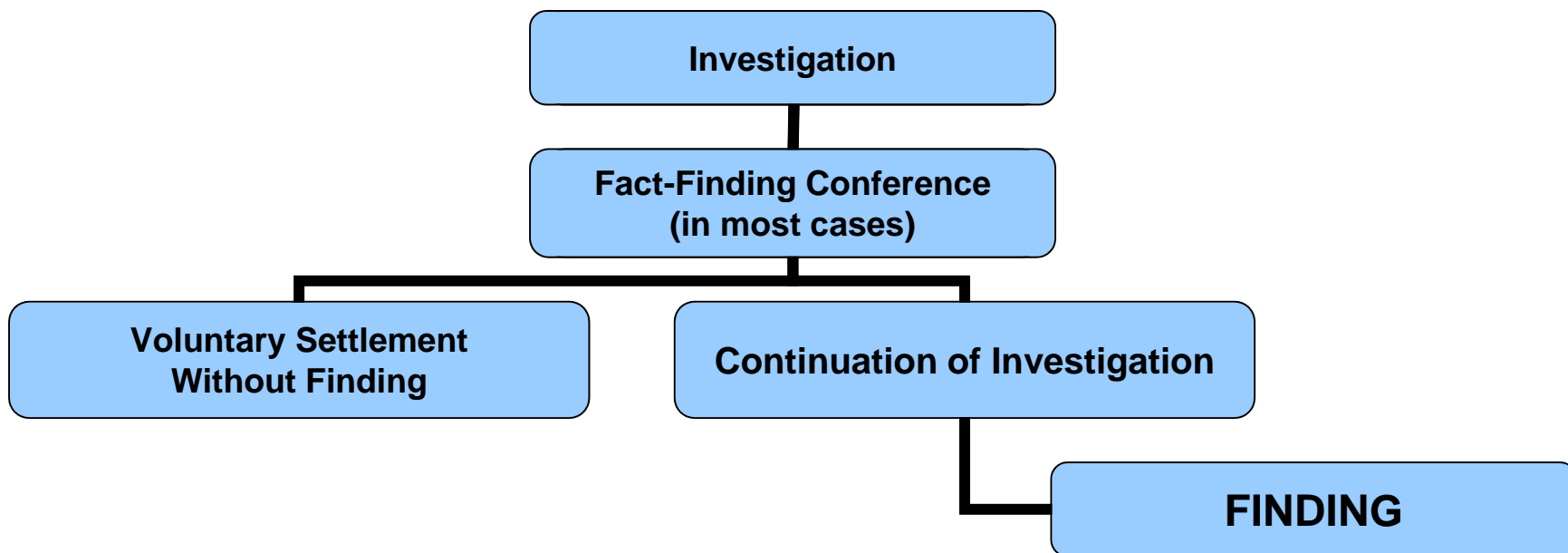
▶ What to Expect

- **Facilitative model**
- **Informal**
- **Limited release**
- **Confidential**

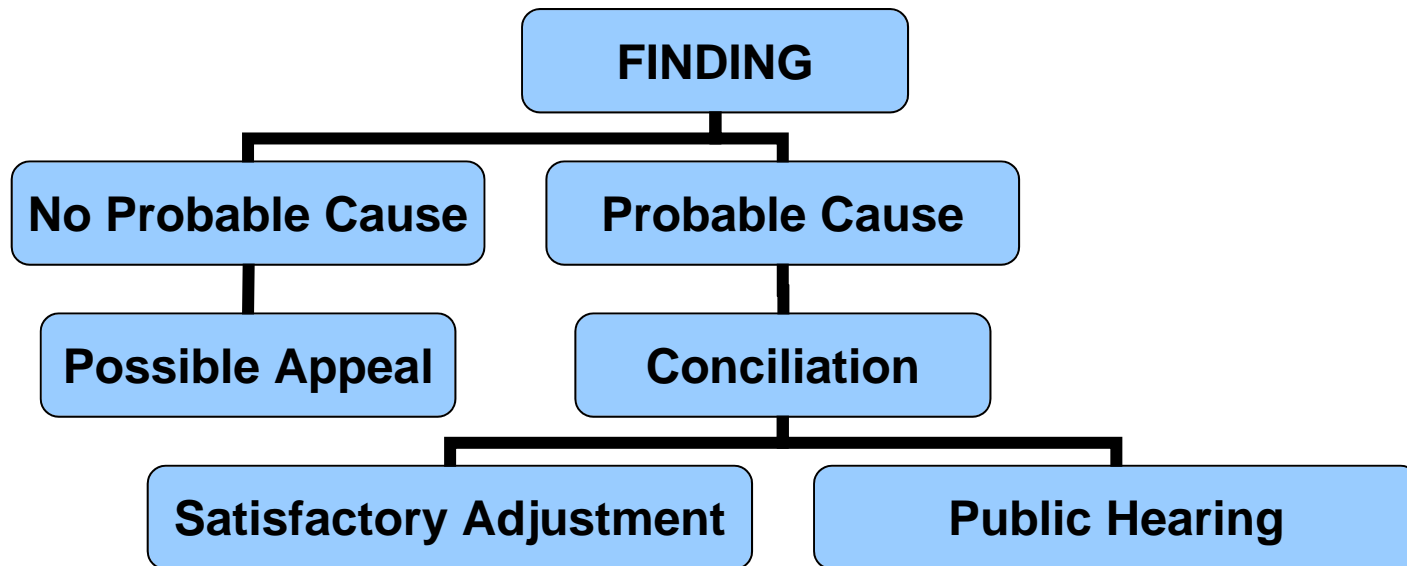
➤ For More Information

- Check out our FAQs on our website under Resources > Mediation
- Email us at RA-mediation@pa.gov

Complaint Process – INVESTIGATION



Complaint Process – DETERMINATION



▶ Results of the Investigation

The investigation may find:

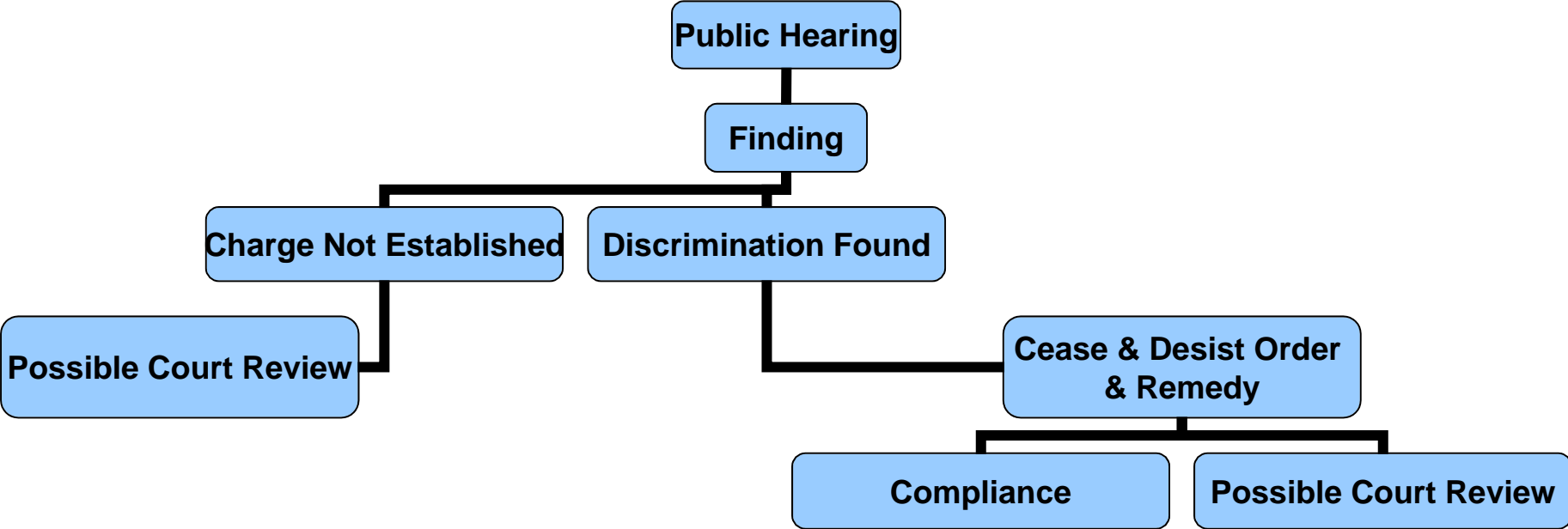
- **No Probable Cause** - Insufficient evidence of illegal discrimination
- **Probable Cause** - Based on all available evidence it is more likely than not that an illegal act of discrimination occurred
- **Lack of Jurisdiction** – PHRC does not have authority to investigate
- **Administrative**– Case may also be closed without a finding due to court filings, bankruptcy of Respondent, Complainant failing to cooperate or be located, etc.

▶ Case Closings

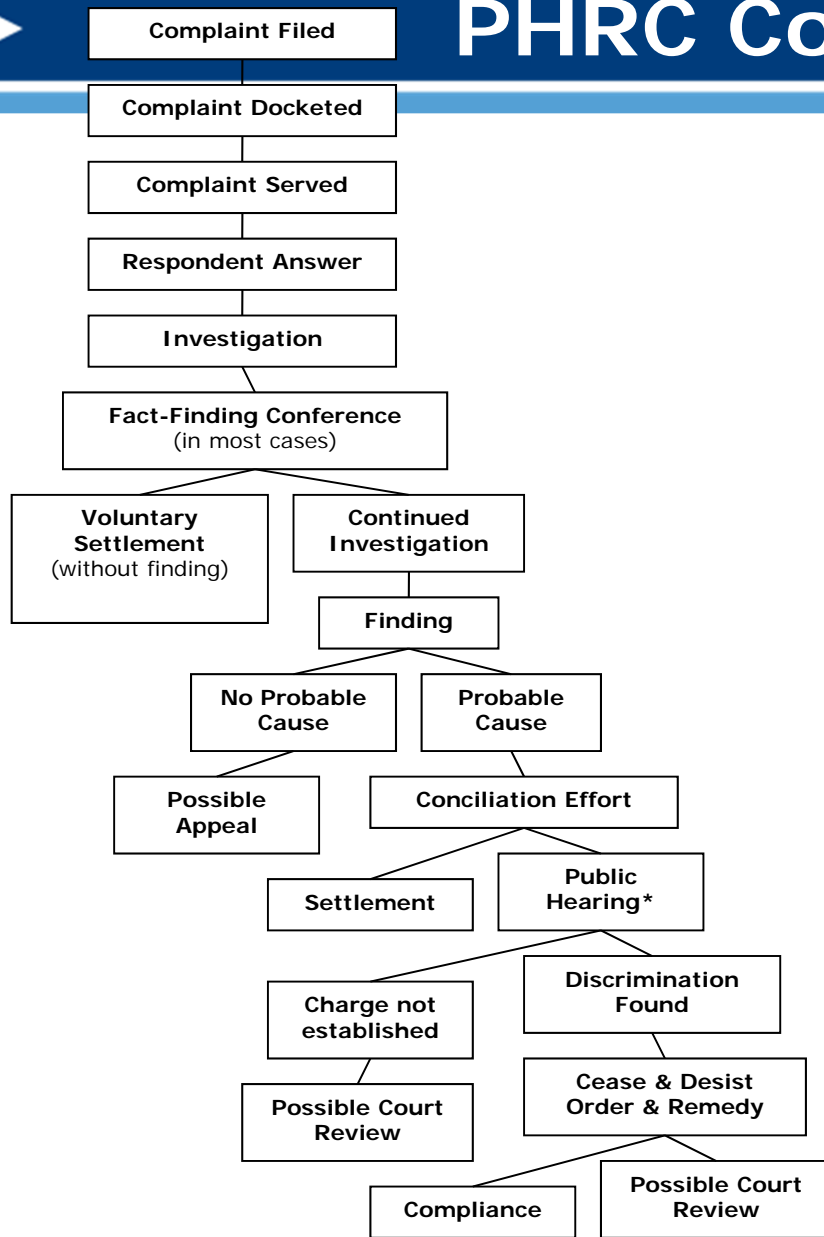
2017-18

Settled After Probable Cause Finding	29 (2%)
Settled Before Probable Cause Finding	365 (28%)
Administrative	224 (17%)
No Probable Cause	667 (52%)
Total =	1,285

Complaint Process – PUBLIC HEARING



PHRC Complaint Process



➤ Why is PHRA Knowledge Important?

- **Let me give you nine million, one hundred thousand reasons!**
 - **McKenna et al v. City of Philadelphia,**
2009 U.S. Dist., LEXIS 60695 (July 15, 2009)

▶ Thank you! To Contact Us:

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