

Commonwealth of Pennsylvania  
Senate State Government Committee  
Hearing on the Pennsylvania Human Relations Commission  
June 7, 2016

Thank you for the opportunity to testify on the Pennsylvania Human Relations Commission. I am an attorney and Independence Fellow at the Public Interest Law Center, where I represent low-income people with disabilities in employment discrimination matters. The Public Interest Law Center is a nonprofit civil rights law firm in Philadelphia that uses high-impact legal strategies to advocate for people's rights to access the vital resources that every person needs in order to enjoy equal citizenship.

The PHRC is essential to addressing discrimination in Pennsylvania. Its mission is to eradicate discrimination so that all Pennsylvanians may have the equal opportunity to access the workplace, housing, and our communities. The PHRC is the only state-wide agency that enforces anti-discrimination laws in housing, public places and government services. When a person with a service animal is denied entry to a restaurant, or a voter cannot physically access a polling place, the PHRC is the only agency that will investigate and enforce their rights to be free from discrimination.

For low-income Pennsylvanians, the PHRC is their only opportunity to access their civil rights under the law. Very few people can afford a private attorney. Only high-salary employees have sufficient wages to hire a private lawyer on a contingency fee basis or to pay an attorney out of pocket. The procedural requirements of filing in state or federal court, and the filing fees, are a nearly insurmountable barriers for people without an attorney. I serve people with disabilities facing discrimination who cannot afford a private attorney. Many have filed pro se complaints at the Commission and we cannot serve them all. These clients rely on the Pennsylvania Human Relations Commission to enforce their rights because they have no other means to seek justice.

I frequently speak at conferences and presentations on disability rights issues, and people ask what they can do if their doctor refuses to provide them with an American Sign Language (ASL) interpreter or if they are excluded from a store because they require a service animal. The answer is to file a charge of discrimination with the PHRC.

The PHRC is especially important for people with disabilities. In Pennsylvania, 65% of working age adults with disabilities are unemployed. When a person with disabilities loses a job due to illegal discrimination, it is extremely difficult to find work.

People with disabilities often have complicated discrimination cases because they require reasonable accommodations. Employers and businesses often do not understand their legal obligations to provide reasonable accommodations. Without an agency enforcing these requirements, people with disabilities do not get access to the accommodations that they need to keep their jobs. Some employees with disabilities file complaints of discrimination for failure to accommodate while they continue to work because their employer has denied their request for accommodations or refused to respond to their requests at all.

Unfortunately, of the thousands of complaints filed, only 40 resulted in a finding of probable cause in 2013-2014. The PHRC is failing the people who need it most.

First, when the Philadelphia office eliminated walk-in intake, it closed the door on people who are poor, elderly, speak languages other than English, and people with disabilities. Most of my clients do not have computer literacy skills and cannot access the online complaint form. In fact, many do not have literacy skills at all and cannot fill out a complaint form without the assistance of the PHRC. Indeed, many deaf Pennsylvanians face regular discrimination, but some cannot fill out a written complaint because they primarily communicate in ASL and require an ASL interpreter to explain to the Commission what happened to them. Incredibly, the agency that once targeted English-only policies as a source of discrimination only has discrimination complaint forms available in English.

Often, victims of discrimination know that they have been treated unfairly, but few know how to explain what happened to them within the legal framework. It can be challenging to explain what accommodations a person with disabilities needed in the workplace or to show how the failure to accommodate led to their wrongful termination. In-person intake is essential to explaining when unfair conduct constitutes and to help a person frame the facts from his or her experience into a legal claim of discrimination.

Second, the PHRC complaint process is too long and lacks transparency. It takes more than a year for a case to even be considered for a probable cause finding. This means that a blind employee who filed a complaint because she cannot get a screen reader at work has had to endure this continuing discrimination while the charge is pending. Victims of workplace harassment and failure to accommodate who are currently working or are in the subject housing need immediate intervention. Poor workers who lost their jobs suffer tremendously as the process takes years to complete--they have no other source of income while they await resolution.

Tragically, a number of cases can be resolved with reinstatement if addressed quickly, but employers have no obligation to respond to charges when they are filed and extensions are routinely granted. This means that employees who file charges may not get any responses to their complaints at all for six months to a year after they filed. Employers benefit from this delay. There is no penalty for failing to meet a deadline or for failing to respond to a request for documentation. This leaves the Commission to serve a subpoena and then file an enforcement action in court when an employer does not respond to the subpoena.

Charging parties are unaware of the status of the investigation until it is completed because the PHRC process also lacks transparency. Pennsylvanians rely on this process to address the discrimination they face. Some people endure ongoing harassment or hold out hope of returning to work because they filed a charge and believe the PHRC will remedy their complaint. They wait months or years with no updates.

Investigators do not regularly communicate with charging parties. This means that a case might be referred to mediation, or a response may have been submitted, but a charging party is not informed. When a response is filed, the charging party does not always receive copies of

attachments to the response. Sneaky defense attorneys manipulate this protocol and cache crucial details or documents in attachments, depriving the charging party of the opportunity to submit a meaningful reply. This procedure undermines the purpose of assessing whether discrimination occurred.

Both parties should know where their case stands in the process, what is left to do to complete an investigation, and who is currently managing the case. This could be easily accomplished through an online tracking and docketing system, as the courts use.

Some of these problems stem from a lack of funding. With hundreds of cases assigned to each investigator, it takes years to process complaints. Investigators do not have time to update each charging party on the status of their complaint, and do not have time to harangue delinquent employers who fail to respond to investigation requests. Offices have discontinued in-person intake due to lack of staff. Pennsylvania must dramatically increase the funding to the PHRC to enforce its anti-discrimination laws to protect the rights of Pennsylvanians who deserve an equal opportunity.

More importantly, the PHRC must be led by civil rights champions. It does nothing to redress discrimination to quickly process and dismiss charges without investigation. The PHRC must be committed to rooting out and eliminating discrimination. This starts with the leadership's commitment to protect people from discrimination. The PHRC requires civil rights leaders who appreciate what it is like for a person who uses a wheelchair to fill out dozens of rental applications and be denied every apartment, to be removed from a restaurant because of your son's autism, and to be terrified of losing your home because you cannot find a new job as a 57-year-old woman with a termination on your record. The Pennsylvania Senate must ensure that the leadership of the PHRC internalizes the impact of discrimination on our most vulnerable citizens and is committed to eradicating discrimination in Pennsylvania.

#### Recommendations:

1. Dramatically increase funding levels to support at least five times the current number of staff at each office.
2. Increase transparency
  - a. Create investigation timelines and benchmarks--communicate those benchmarks to both parties.
  - b. Create a docketing system so that parties may understand where their case is in the process and who is responsible for completing that step of the process.
  - c. Provide charging parties with a copy of the complete response including attachments.
3. Establish hard deadlines
  - a. Implement penalties for responding parties that fail to meet deadlines to respond or fail to respond to requests for information.
  - b. Enforce the good cause showing before granting extensions.
4. Expedite investigations for complainants currently on the job or in housing.

a. Triage cases to identify ongoing violations and expedite mediation and investigations to protect employees and residents from ongoing discrimination. Quickly addressing ongoing discrimination could help more people stay in their jobs and homes.

5. Empower civil rights leadership to fight discrimination in Pennsylvania.

Sincerely,

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Action. Access. Progress.

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