

# Montana Human Rights Bureau

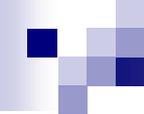
Department of Labor and  
Industry

Employment Relations  
Division

# What We Do

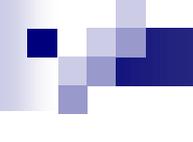


- Provide neutral investigations into discrimination complaints.
- Offer early mediation to resolve complaints prior to investigation.
- Provide information to employers and employees to prevent discrimination cases.
- Prevent 500-600 cases from going directly to district court.
- Conduct investigations for EEOC's review.



# HRB's Responsibility

- During Intake, the Charging Party must establish a Prima Facie case.
- Once a Prima Facie case is established, the State Legislature requires HRB to conduct a **thorough** and neutral investigation into the complaint.



# Breakdown of Numbers

- Front desk fields 5,000 to 6,000 calls per year.
- Of those, 900 to 1,000 intakes are scheduled.
- Of those, 400 to 500 complaints are drafted.

# Breakdown of Numbers (cont)

- Of the 443 cases closed in FY07:
  - 125 were “Cause” findings
  - 83 were settled or withdrawn with benefits prior to a determination
  - Total of 208 in favor of Charging Party (47%)
  - 202 were “No Cause” findings
  - 33 were closed by Withdraws, no jurisdiction, administrative closures, etc.
  - Total of 235 in favor of Respondent

# Discrimination in What?

- Employment
- Housing
- Education
- Insurance
- Financial Transactions
- Public Accommodations
- Government Services



# What we don't do

- Deal with every workplace issue
- Set law
- Fire people
- Provide legal advice
- Advocate for either party

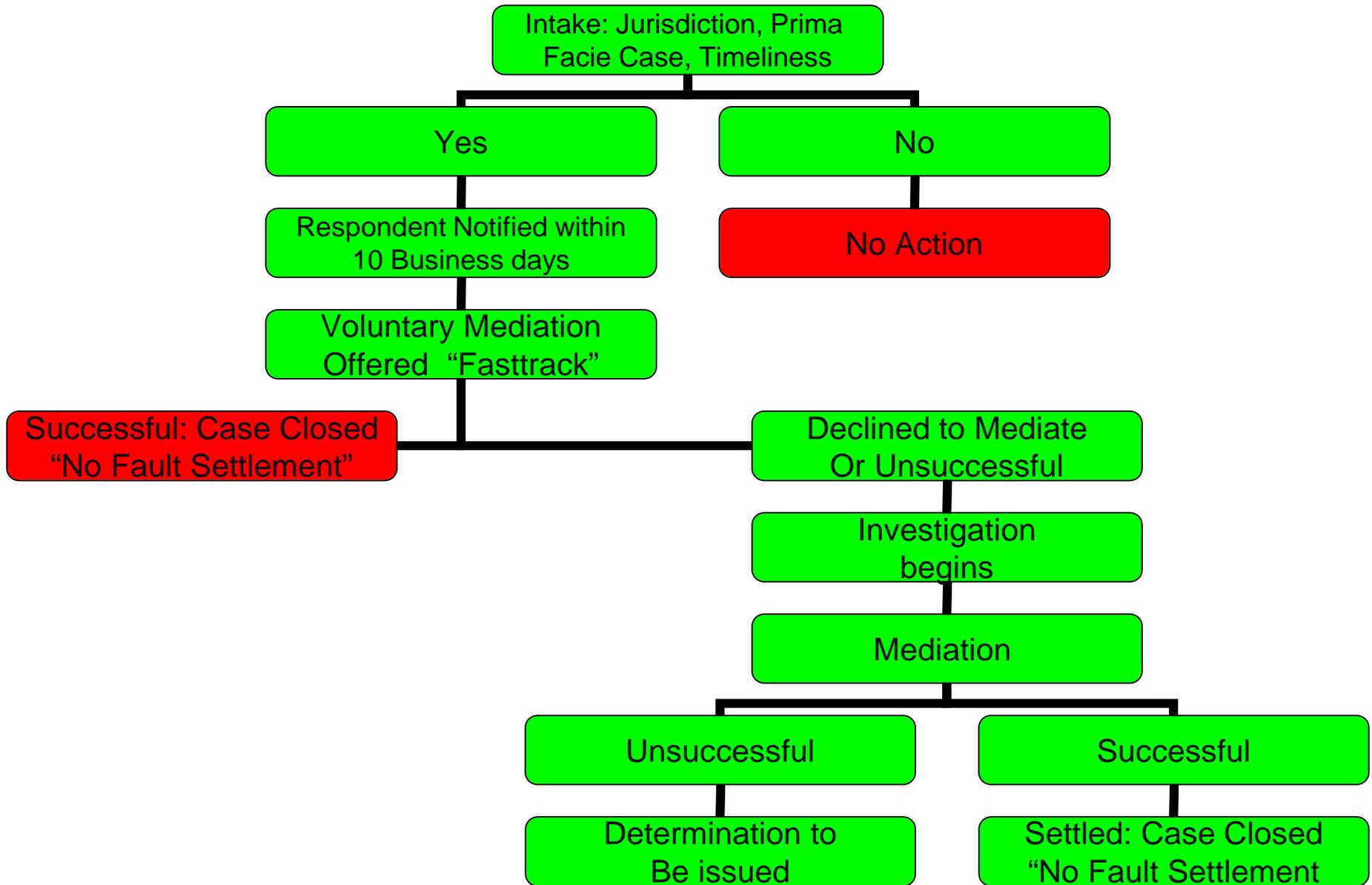


# Why should an employer care about workplace discrimination

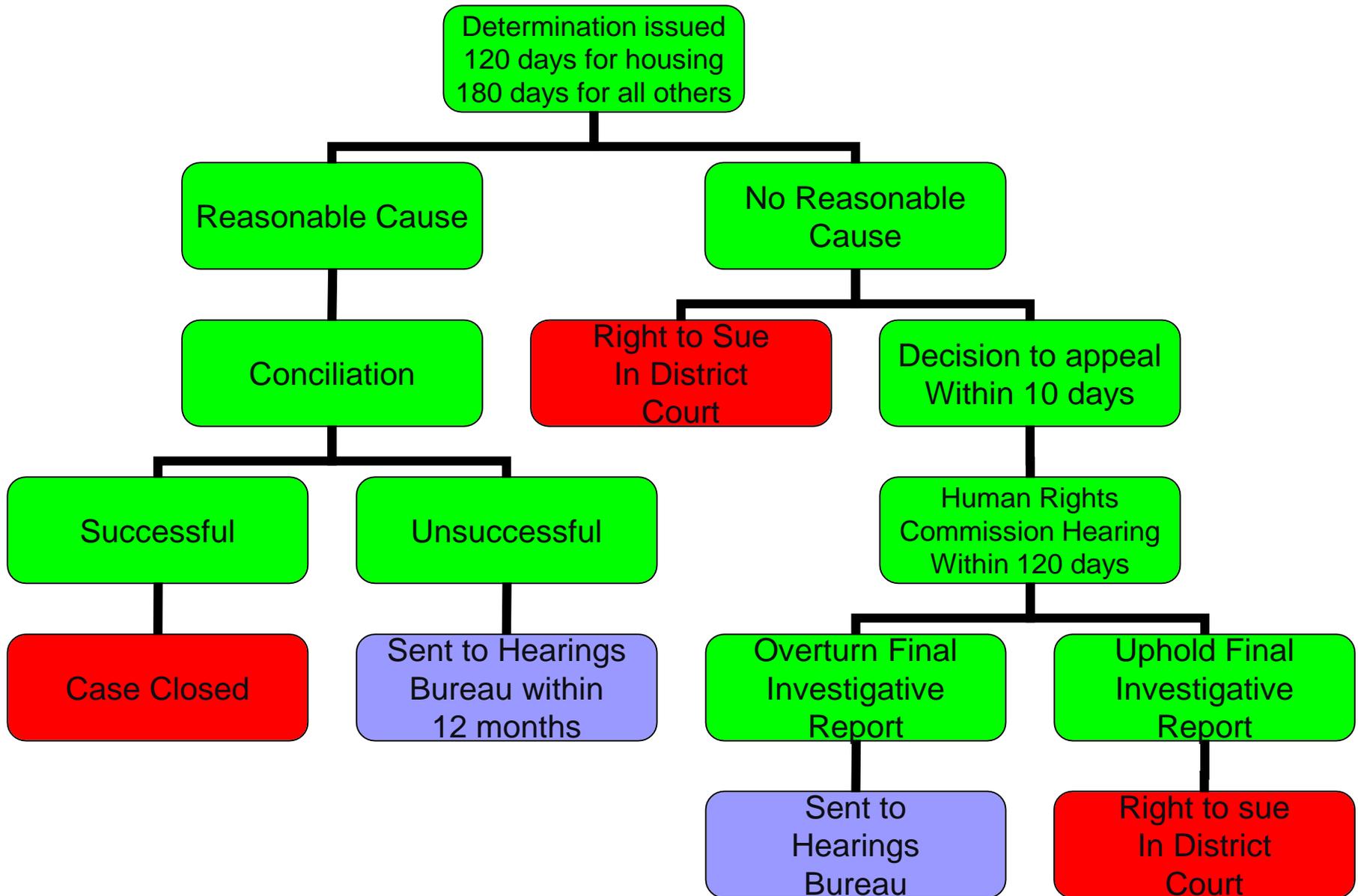


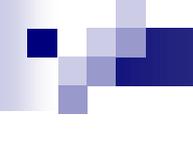
- Costs of workplace discrimination
  - Low moral
  - Declining productivity
  - Absenteeism
  - High turnover
  - Lost customers
  - Lawsuits

# Human Rights Bureau Process



# HRB Process Continued





# How many employees must I have before they can file a discrimination claim?

- Montana Law covers anyone with one or more employees
- Federal laws cover 15 or more employees
  - Age Discrimination in Employment Act requires 20 or more employees
- A person can file under federal and state laws on the same claim

# What is a protected class

- Race or national origin
- Religion
- Creed
- Sex
- Physical or mental disability



- Age
- Retaliation
- Political belief (government employees)
- Color
- Marital status

# Pregnancy Discrimination

- Non-discrimination in hiring
- Continued employment
- Reasonable maternity leave
- No mandatory unreasonable leave
- Use of accrued benefits and leave time
- Equal treatment in employment benefit plans
- Do not confuse it with FMLA



# Age Discrimination



- Montana Law protects all ages
- Federal Law protects employees 40 years of age and older.

# Qualified

- Disabled person must be able to perform the essential functions of the job with or without a reasonable accommodation.





# Individual Assessment

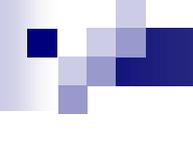
- Employers have a duty to assess an employee's disability as it relates to a job qualification on an individual basis.
  - Employees cannot be disqualified for a job due to an impairment without an individual assessment of that employee.
  - The assessment must look at the totality of the circumstances and the whole person.

# Cost of accommodating a disability

- According to the Job Accommodation Network's survey of companies who did an accommodation for a disability:
  - 50% of the accommodations cost nothing
  - 42% of the accommodations cost an average of \$600
- Compare that to the cost of defending a discrimination complaint

# What information will HRB likely need from you?

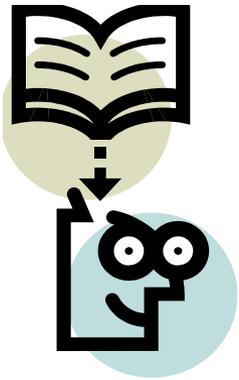
- For employment
  - Complete copy of Charging Party's employee records.
  - List of employees for at least two years with contact information.
  - Gender, age, race, disabilities of employees if known.
  - Copy of policy handbook.
- For hiring
  - Charging Party's application
  - All other applicant's applications
  - Interview information including questions, scores, and names of interviewees
  - Protected class of other applicants



# Why does HRB need this information?

- Verification of Charging Party's statements (e.g. did they perform their job in a satisfactory manner?)
- Comparative information (e.g. other employees in the same protected class)
- Witness information
- Verification of the policies

# What should be included in personnel files?

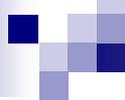


- **Documentation of all reprimands and counseling sessions.**
- Application
- Listing of positions held and salaries
- Commendations
- Performance evaluations



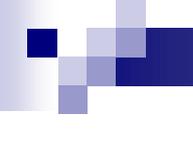
# Interaction with HRB

- Remember HRB is neutral and attempting to do a thorough investigation. Provide all information you believe is relevant.
- DO NOT lie or “bend” the truth (e.g. hiring someone you know over someone else)



# How to prevent complaints

- Be non-discriminatory in hiring, firing, reprimands, raises, promotions, commendations, etc.
- Take a minute to talk about accommodations without getting defensive
- Make sure supervisors treat employees with respect.
- List all qualifications for a job, including peripheral qualifications (e.g. office etiquette, work hours, etc.)



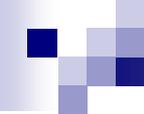
# How to prevent complaints

- Grievance or complaint policy is necessary to invoke the Affirmative Defense in co-worker harassment claims.
- Grievance or complaint policy with ways to report other than to the harasser.
- Communicate with employees that harassment will not be tolerated.
- Take immediate, effective action when a complaint is received.
- Follow up to be sure the harassment stopped.
- No retaliation!

# Preventing Discrimination Complaints



- **Communicate** with the employee regarding:
  - their anticipated medical leave and return dates for pregnancy
  - Their needs for disability or religious accommodations

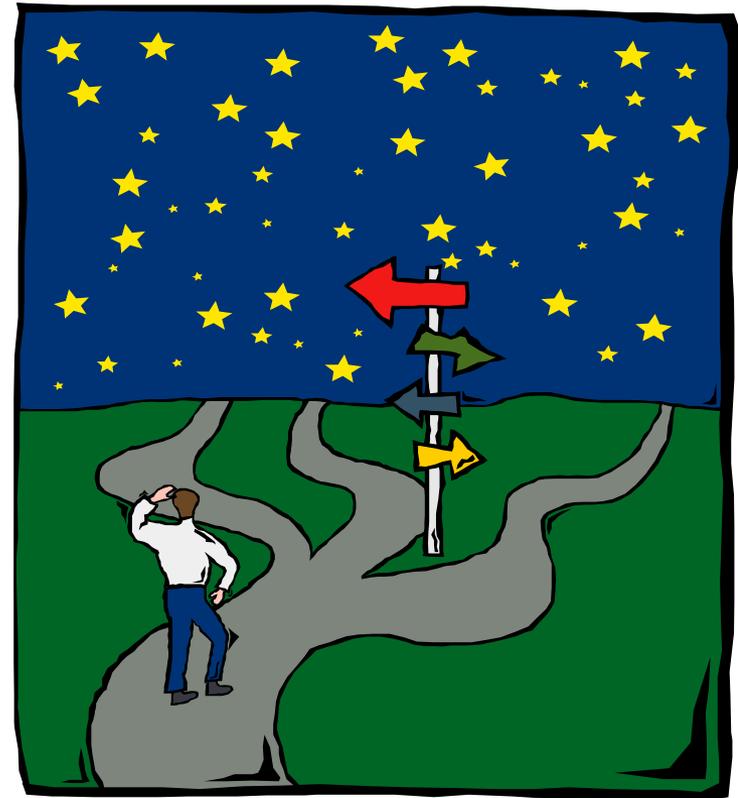


# Open and honest communication

- If there is a problem with an employee, be open and honest about that problem.
- Do NOT “sugar coat” the problem (e.g. “you just can’t seem to do the job” or “we need someone who will be around for a number of years.”)

# Prevention is the best tool

- Communication
- Training
- Post your policy
- Establish a complaint procedure
- Promptly investigate complaints
- Insure no retaliation





# Resources

- Human Rights Bureau

[www.montanadiscrimination.com](http://www.montanadiscrimination.com)

(800) 542-0807

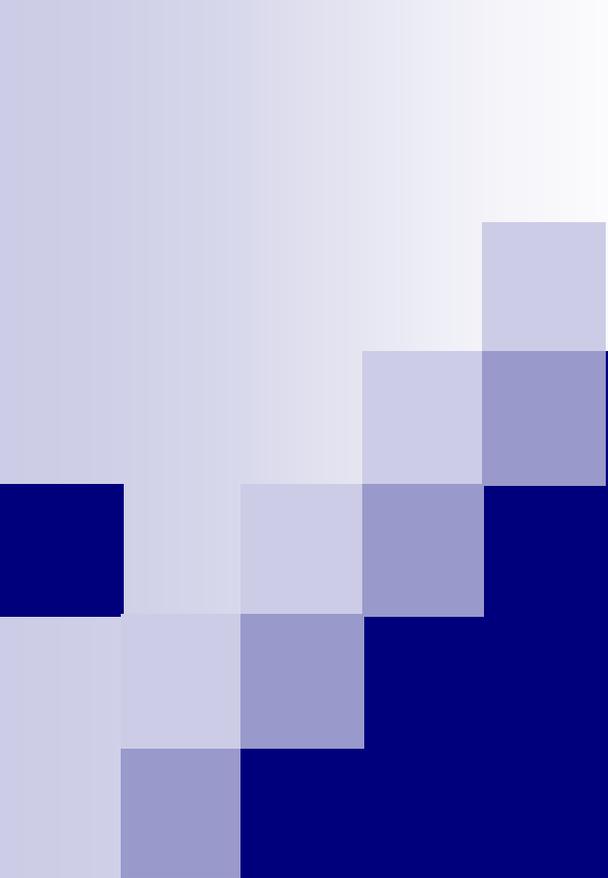
- Job Accommodation Network (JAN)

[www.jan.wvu.edu](http://www.jan.wvu.edu) (800) 526-7254

- Equal Employment Opportunity  
Commission (EEOC) [www.eeoc.gov](http://www.eeoc.gov)

# Website resources

- [www.montanadiscrimination.com](http://www.montanadiscrimination.com)
  - Guide to the Montana Human Rights Laws
  - Harassment Powerpoint
  - Montana Code Annotated (MCA) and Administrative Rules of Montana (ARM's)
  - Final Agency Decisions (FAD)
  - Statistics in Brief
  - Model Policies for Employers



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**(800) 542-0807**