

THE SOUTH CAROLINA HUMAN AFFAIRS COMMISSION



Exhausting the Administrative Remedy



SCHAC'S MISSION



To eliminate and prevent unlawful discrimination in:

- *Employment* – on the basis of race, color, national origin, religion, sex, age and disability;
- *Housing*– on the basis of race, color, national origin, religion, sex, familial status and disability;
- *Public Accommodations*– on the basis of race, color, national origin and religion.
- *Other Allegations* of individual or institutional discrimination not considered unlawful (**90(e)**)
- *And...to foster* a mutual understanding and respect among the people of SC.



LAWS ADMINISTERED BY THE HUMAN AFFAIRS COMMISSION



- ✘ South Carolina Human Affairs Law
- ✘ South Carolina Fair Housing Law
- ✘ South Carolina Equal Enjoyment and Privileges to Public Accommodations
- ✘ Federal Laws Prohibiting Discrimination



EEOC LAWS ENFORCED



Title VII of the 1964 Civil Rights Act

Bans discrimination in employment because of race, color, religion, sex, or national origin.



Age Discrimination in Employment Act (ADEA)

Makes unlawful employment discrimination because of age against anyone 40 years of age and older.



EEOC LAWS ENFORCED

Pregnancy Discrimination Act

Amends Title VII and states that employment discrimination is prohibited when based on pregnancy, childbirth, and related medical conditions.

Photo credit / source: www.govdocs.com



It's your **RIGHT** to ask for . . .

Bathroom breaks

Rest breaks

*Help with manual
labor or lifting items*

*Changes to your work
environment*

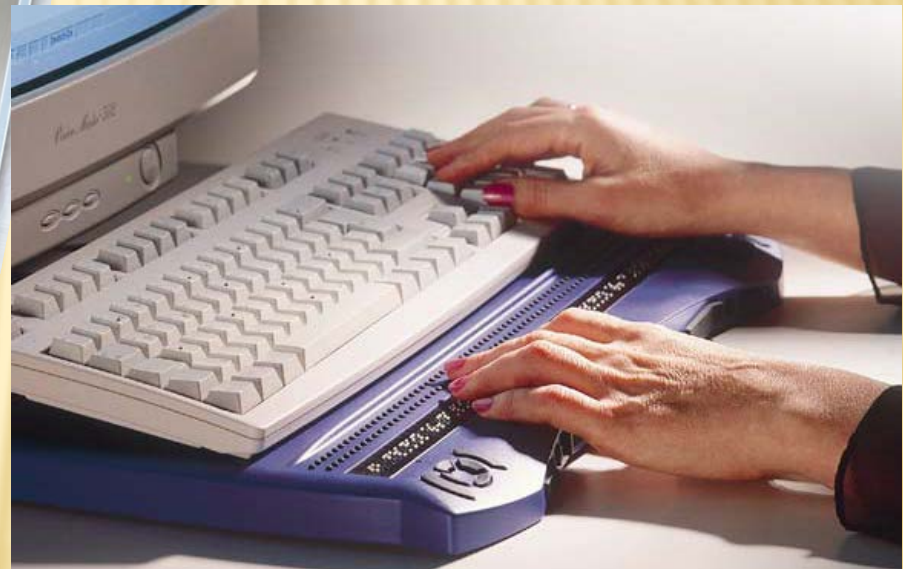
or

Unpaid medical leave

EEOC LAWS ENFORCED

The Americans with Disabilities Act (ADA)

Prohibits employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments.



EEOC LAWS ENFORCED

The term “disability” is still defined as a physical or mental impairment that **substantially limits** one or more major life activities; a record (or past history) of such an impairment; or being regarded as having a disability.

But, the term “substantially limits” requires a **lower** degree of functional limitation than before . An impairment does not need to prevent or severely or significantly restrict a major life activity to be considered “substantially limiting.”

The term “substantially limits” is to be **construed broadly** in favor of expansive coverage



THE INTAKE/MEDIATION/ INVESTIGATION PROCESS

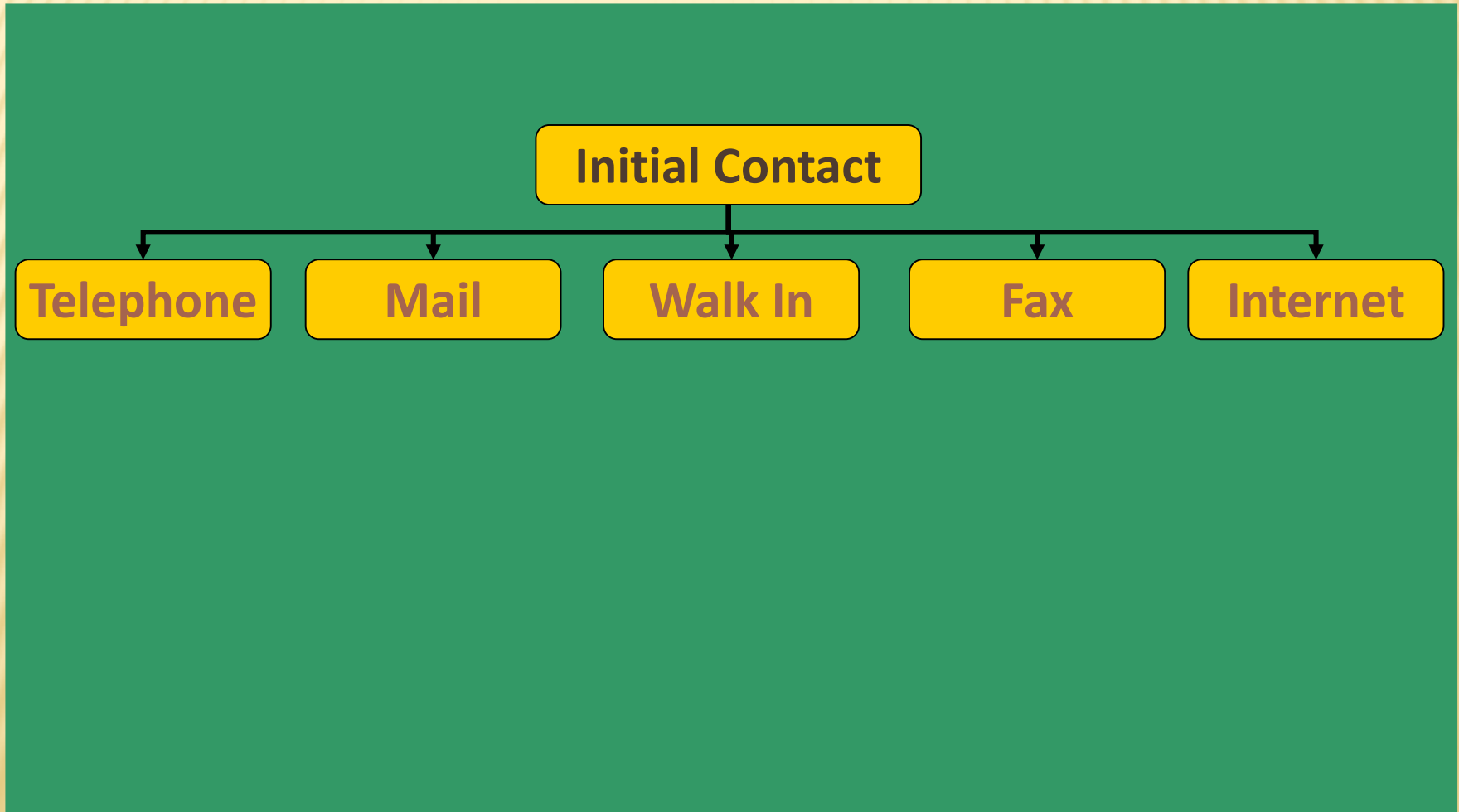


South Carolina Human Affairs Commission



Discrimination Complaint Receiving Process

Intake = Acceptance of a Complaint



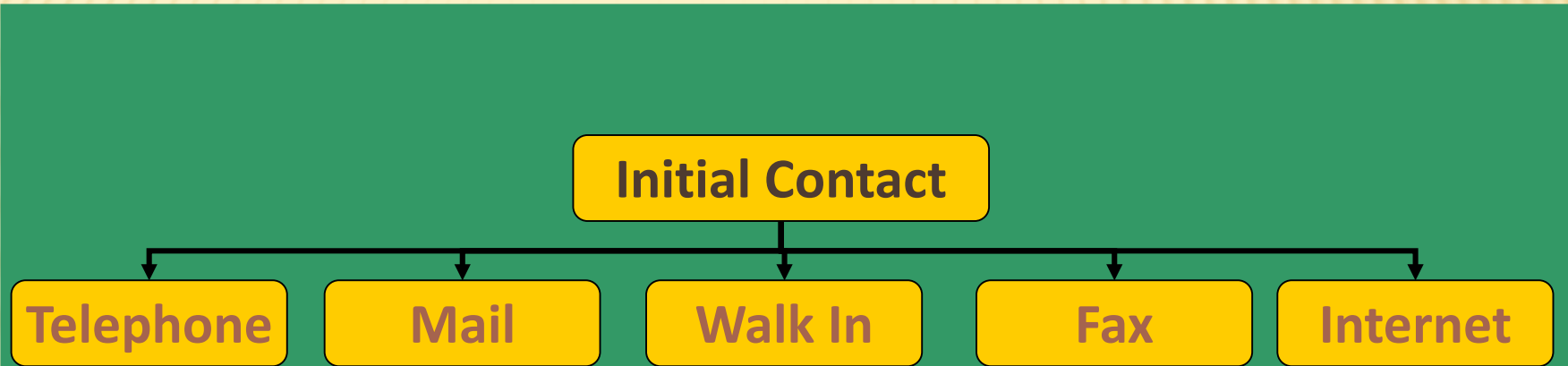


South Carolina Human Affairs Commission



Discrimination Complaint Receiving Process

Intake = Acceptance of a Complaint

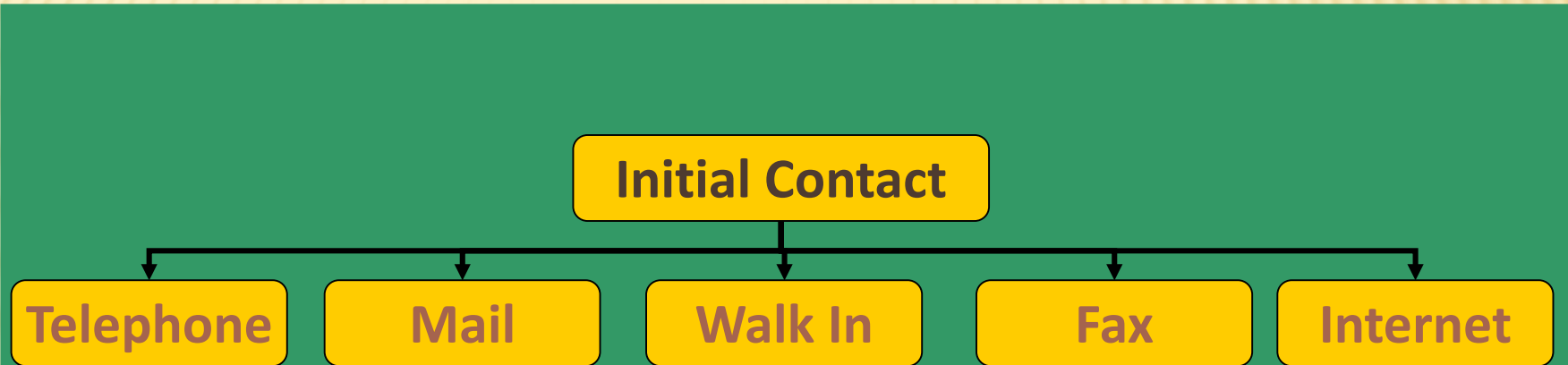


- Since January 2015, SCHAC has accepted around 30 complaints against school districts in South Carolina in Employment



Discrimination Complaint Receiving Process

Intake = Acceptance of a Complaint



- Since January 2015, SCHAC has accepted around 30 complaints against school districts in South Carolina
- On average, SCHAC receives 1,100 complaints against employers in general each year

CHARGE OF DISCRIMINATION		AGENCY	CHARGE NUMBER
This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.		<input checked="" type="checkbox"/> FEPA <input type="checkbox"/> EEOC	
<u>S. C. Human Affairs Commission</u> State or local Agency, if any		and EEOC	
NAME (Indicate Mr., Ms., Mrs.) Ms. Jane Doe		HOME TELEPHONE (Include Area Code) (803) 737-7800	
STREET ADDRESS 2611 Forest Drive, Columbia, SC 29204		CITY, STATE AND ZIP CODE DATE OF BIRTH 10/10/1931	
NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)			
NAME L & J Cafeteria		TELEPHONE (Include Area Code) (803) 333-3333	
STREET ADDRESS 2611 Forest Drive, Columbia, SC 29204		CITY, STATE AND ZIP CODE COUNTY 079	
NAME		TELEPHONE NUMBER (Include Area Code)	
STREET ADDRESS		CITY, STATE AND ZIP CODE COUNTY	
CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es)) <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input checked="" type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input checked="" type="checkbox"/> OTHER (Specify) Pepa		DATE DISCRIMINATION TOOK PLACE EARLIEST LATEST 08/31/2004 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):			
I. PERSONAL HARM: Through August 31, 2004 and continuing, I have been denied equal wages.			
II. RESPONDENT'S REASON(S) FOR ADVERSE ACTION(S): The Respondent has given no reason for the denial of equal wages.			
III. COMPLAINANT'S CONTENTION(S): I am employed with the Respondent as a Cook. I contend that I am being paid less than similarly-situated male employees even though we perform the same duties.			
IV. DISCRIMINATION STATEMENT: I, therefore, believe that I have been discriminated against because of my sex (female) in violation of the South Carolina Human Affairs Law, as amended, and Title VII of the United States Civil Rights Act of 1964, as amended.			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - (When necessary for State and Local Requirements)	
I declare under penalty of perjury that the foregoing is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.	
Date _____ Charging Party (Signature) _____		SIGNATURE OF COMPLAINANT _____	
		SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Month, day and year)	

Jurisdictional information

Complainant contact information

Respondent Information

Basis of Complaint and date occurred

Issue prompting Complaint

Respondent's apparent reason for adverse action

Complainant's allegations

Complainant's declaration of discrimination and laws violated

Complainant Certifications; sworn statement, notarization and signature

Matters subject to investigation to determine if laws were violated

If a charge is
accepted, the next
option is Mediation;
however mediation is
not required



BENEFITS TO MEDIATION

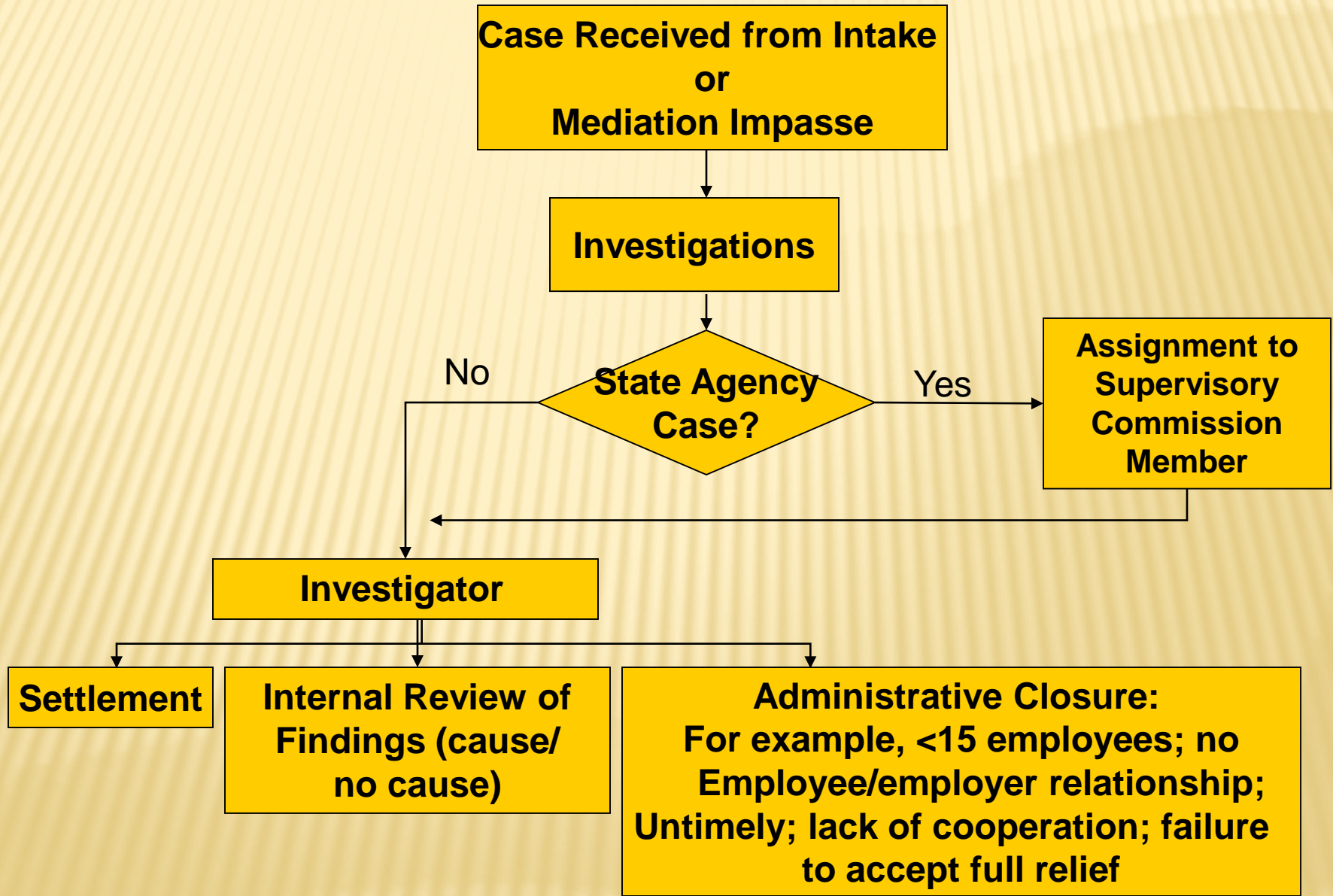


- ✘ The case does **not** go to court
- ✘ Saves time
- ✘ Saves money
- ✘ Resolves a complaint so that all parties are content
- ✘ Discussion can result in solving other problems and issues



The Investigative Process

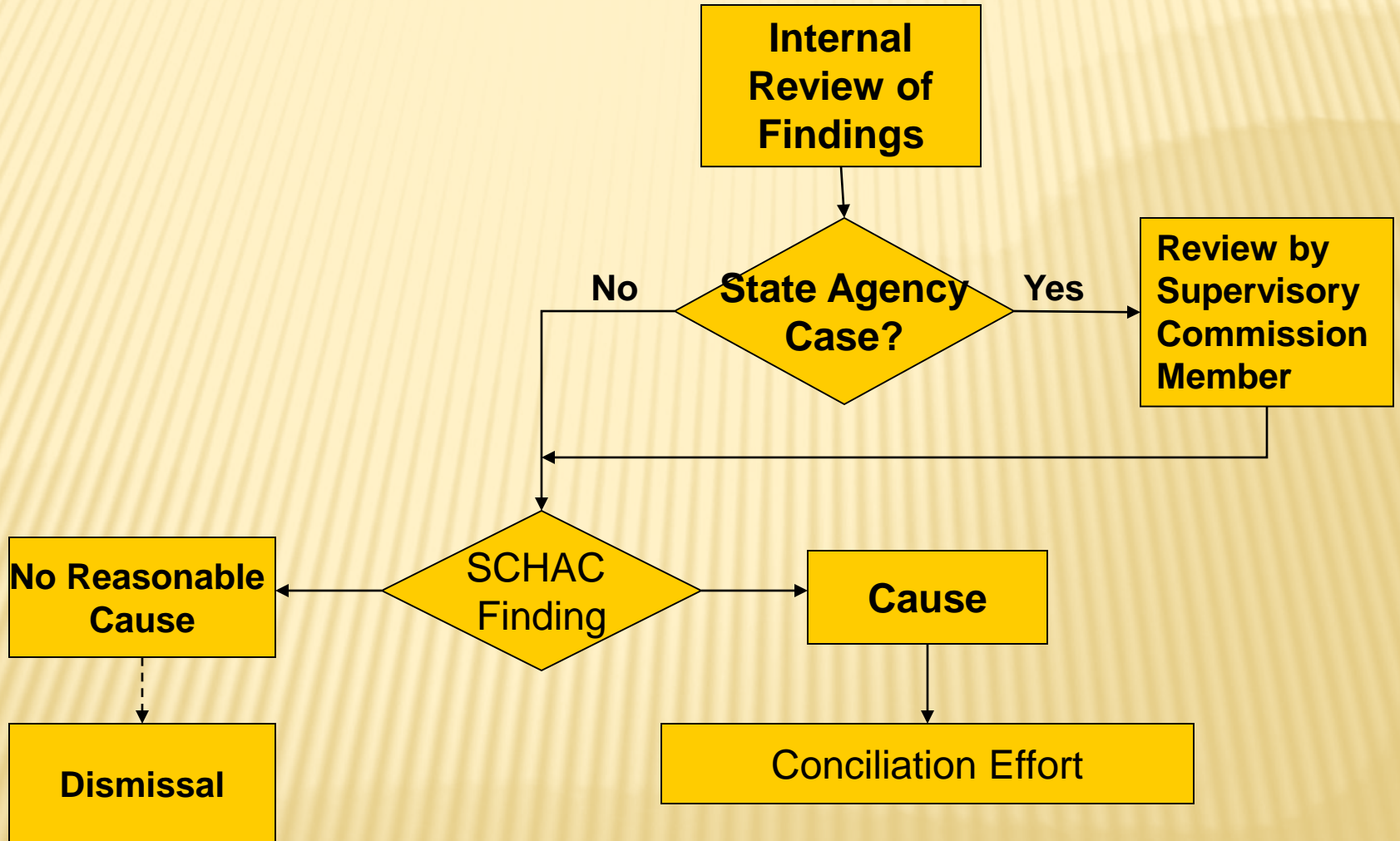
Tracking a case from filing to final agency action





The Investigative Process (Con't)

Investigation is Concluded





The Investigative Process (Con't)

Investigation is Concluded



- Since January 2015, SCHAC has completed approximately 25 investigations against school districts in South Carolina
- Some cases have been mediated, some have been administratively closed; most however have been 'no reasonable cause' cases
- Since January 2015, SCHAC has completed over 1,200 investigations against employers in general



STATE HUMAN AFFAIRS LAW PROHIBITS EMPLOYMENT DISCRIMINATION BASED ON:



RACE

SEX

COLOR

AGE

RELIGION

DISABILITY

NATIONAL ORIGIN

RETALIATION

CURRENT TRENDS IN COMPLAINTS MADE

- ✘ Disability – allegations that an employer failed to reasonably accommodate an employee's disability-related request
 - + For example, a teacher being assigned to bus/car lane duty after classes end, but his disability hinders mobility
 - ✘ Is the assignment an essential function of the job or a marginal function? Is it an undue hardship for the employer to accommodate the employee

<https://www.eeoc.gov/policy/docs/accommodation.html>

CURRENT TRENDS IN COMPLAINTS MADE

✘ Harassment by students

- + If a school employee alleges that students are harassing him or her *due to a protected class*, an investigation should begin and appropriate corrective action made
 - ✘ It is important to keep materials from the investigation for providing to our investigators if a charge is filed, or a lawsuit brought

CURRENT TRENDS IN COMPLAINTS MADE

× Retaliation

- + Once a complaint of discrimination is voiced by an employee, document it, but don't take the bait
- + The validity of the underlying complaint does not necessarily weigh in an assessment of the retaliation complaint or allegation itself

RESPONDING TO A CHARGE

- ✘ What makes for a good, complete position statement?
 - + Tone down the legal-ese
 - + Provide copies of policies, investigations, employee files, etc., as exhibits when referenced
 - + Address each issue in separate sections if possible
 - + Bring up jurisdictional issues early and clearly (timeliness, no employee-employer relationship)
 - + Provide an answer to it quickly

AUTHORITY OF INVESTIGATORS

- ✘ The Human Affairs Law, and its accompanying regulations, allow SCHAC investigators to:
 - + Request for the production of relevant documents
 - + Seek sworn statements of, interrogatories from, interviews, or depositions with relevant witnesses
 - + Request that the Commission issue a subpoena for items/witnesses not produced
 - + Make on-site visits to the employer
 - + Conciliate or mediate the case with all parties' agreement

CASELOAD OF INVESTIGATORS

- ✘ SCHAC has 15 investigators and 2 senior investigators who act as their supervisors
- ✘ Each investigator typically has 30-40 cases in his or her inventory currently
- ✘ Generally, an investigator completes 5-8 cases per month in order to keep up with SCHAC's contractual obligation with EEOC

CAUSE CASES

- ✘ If an investigator recommends a cause determination, and the recommendation is accepted by the reviewers, SCHAC will either attempt a post-determination conciliation, or may waive the case to the EEOC for further processing
- ✘ The HAL provides our legal department with the authority to bring lawsuits against employers in a 'cause' case; however, we do not have the funding for pursuing all cause cases for now....

PREVENTATIVE MEASURES

- ✘ Though infrequent, SCHAC has been engaged to perform audits and assessment of employer-practices, based on the laws we administer
- ✘ If your school district has had a series of complaints that are related, or if the school district wants to attempt to prevent charges from being filed, SCHAC will form an investigative audit team to provide feedback (for a fee)

WHAT CAN I GET FROM SCHAC'S FILE?

- ✘ If you're a Charging Party/Claimant, not very much – only what you have given to our agency (Regulation 65-3(B)(11)(d)(i))
- ✘ Once a lawsuit is filed against an employer, then the employer may get
 - + What the employer provided to SCHAC
 - + What the Charging Party/Claimant provided to SCHAC(Regulation 65-3(B)(11)(d)(ii))

WHAT ELSE DOES SCHAC DO?

- ✘ Fair Housing
- ✘ Public Accommodations
- ✘ Training
- ✘ Affirmative Action Plan
- ✘ Community Relations Councils

FAIR HOUSING LITIGATION

- ✘ We have four cases pending in court currently
 - + Settled another three since January
 - + Likely to file another one within the next month