

## ANALYSIS

### Item 73: Bureau of Labor and Industries Civil Rights Division Performance

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**Analyst:** Ben Ruef

**Request:** Acknowledge receipt of the report on the Civil Rights Division performance.

**Analysis:** The Bureau of Labor and Industries (BOLI) submitted a report on the performance of the Civil Rights Division required by a budget note in the agency’s budget bill, SB 5515 (2023).

The BOLI Civil Rights Division is responsible for enforcing Oregon's civil rights laws, prohibiting discrimination in employment, housing, public accommodations, and other areas based on protected characteristics like race, religion, sex, sexual orientation, national origin, marital status, disability, and age. Through investigations into filed complaints, the Division determines potential violations, seeking resolution via mediation, legal action, or other corrective measures if discrimination is found. The Division also engages in educational outreach efforts, providing training and resources to educate communities, businesses, and individuals about their rights and responsibilities under Oregon's civil rights laws, while advocating for equal opportunity and diversity in workplaces and communities throughout the state.

#### **Workload**

Workload for the Division has historically been measured using two data points, number of inquiries and number of cases filed. Since 2016, this workload data has remained relatively stable with notable increases in 2018 and 2019 followed by a decrease in 2020.

The “number of inquiries” is a combined count of all of the contacts BOLI receives, via phone or email. The report submitted by BOLI on the Civil Rights Division’s performance indicates an increase in workload characterized by “number of questionnaires.” It is not clear at this time how the number of questionnaires impacts the Division’s overall workload when compared to the number of inquiries and number of cases filed.



The questionnaire is commonly the first step in the civil rights complaint filing process which is filled out by the complainant. Each questionnaire is assigned to a staff member for review to determine whether the allegations may be within the statutory jurisdiction of the Division to investigate. Every single questionnaire is reviewed and responded to by an investigator. The investigator then determines the course of action which can lead to a case being filed.

Given the increasing number of questionnaires data introduced in BOLI’s report along with an increasing backlog there appears to be a bottleneck in this section of the civil rights complaint process. Currently, there are a total of four civil rights investigators committed to this intake work.

The number of filed civil rights cases has remained relatively steady since 2016. However, there has been a significant increase in the number of open cases over the past six years, pointing towards a backlog in case investigations. The number of open civil rights cases has almost doubled from 667 in 2018 to 1,247 in 2023. This backlog is primarily attributed to staffing issues related to recruitment, retention, and allocation, as well as inefficiencies in business processes. Currently, there are 31 civil rights investigators committed to this work, six of which are dedicated to housing complaints only.

### ***Staffing Growth and Challenges***

The BOLI Civil Rights Division has grown substantially in terms of staffing since 2019. The Division's position count has grown 56% since 2019, adding 17 new positions over the course of two biennia. Out of these 17 positions, only seven can be applied to civil rights cases experiencing backlog issues. This is due to eight positions dedicated through legislative action to housing cases which only makes up 6% of case investigations. Two of these positions are held vacant due to lack of federal funding.

Despite the fact that BOLI has seven additional positions to address the growing civil rights case backlog, minimal progress has been made reducing the backlog due to workload capacity issues from high turnover and failed recruiting in these positions.

The agency competes for intake and investigator candidates with other organizations in Oregon that pay substantially higher wages for similar positions. At the lower end of the pay scale, many organizations offer wages 16% to 63% higher than BOLI for similarly classified positions. This wage gap is leading to failed recruitments and lengthy vacancies. Furthermore, it's common for BOLI staff to leave these positions after a short time for higher paying positions elsewhere, further exacerbating the issue due to the cost of recruitment and training these individuals.

### ***Operational Enhancements***

The Division has initiated new procedures to determine the level of engagement desired by complainants when interacting with BOLI. These procedures aim to accommodate varying levels of engagement, recognizing that some complainants might only wish to have a letter sent to their employer or may choose not to pursue complaints at all. This approach allows for more efficient allocation of resources by the Division.

BOLI has collaborated with an external consultant specializing in optimizing the intake process for law firms. The resulting report highlights the need for additional financial investment in staff and technology as the primary solution to address the intake backlog effectively.

The agency is collaborating with the Department of Administrative Services to align the Division's work with suitable positions. This evaluation aims to achieve two main objectives: ensuring an adequate number of positions to meet growing service demands and accurately classifying roles for the recruitment of qualified candidates. Through this collaboration, the Division is strategizing how to reorganize and reclassify current positions to better match the workload. This involves identifying underutilized positions and exploring ways to transform them into roles that better serve both the Division and Oregon's populace. Additionally, the process includes considering alternative classifications for existing positions that may remain mostly unchanged but are currently categorized inadequately to reflect the required scope of work.

BOLI is also seeking investment from the Legislature to modernize the agency's outdated database to further reduce errors and find efficiencies through automation.

**Recommendation:** The Legislative Fiscal Office recommends that the Joint Interim Committee on Ways and Means acknowledge receipt of the report.

**Request:** Report on specific performance aspects of the Bureau of Labor and Industries' Civil Rights Division per the Senate Bill 5515 (2023) budget note.

**Recommendation:** Acknowledge receipt of the report.

**Discussion:** Pursuant to a Senate Bill 5515 (2023) budget note, the Bureau of Labor and Industries (BOLI) was directed to provide a report on specific performance aspects of the Civil Rights Division (CRD) including an explanation of recruitment and retention difficulties; impact of unfilled positions; investigation backlog; impact of new staff and training; and the expedited investigation procedure.

According to the report, CRD's primary recruitment and retention challenge is that the salary for a civil rights investigator is not commensurate with the level of expertise required to effectively resolve complex disputes with significant implications for Oregon workers and businesses. Similar investigatory employment opportunities are available with higher-pay accompanied by more manageable caseloads at other state agencies and throughout the public sector, making those entities a more attractive employment alternative. To mitigate the compensation challenges impacting recruitment and retention, BOLI has been working with the Department of Administrative Services to better align the civil rights investigator position descriptions and classifications with the complex investigatory work performed.

The compensation issues also contribute to near-constant turnover in CRD. This near-constant turnover in staff combined with the time required for new employees to function at their full potential creates additional challenges for CRD managers, staff, and BOLI's limited human resource capacity. These ongoing challenges have been exacerbated by a nearly 100 percent increase in civil rights questionnaires filed with BOLI between fiscal years 2020 and 2023.

There are thousands of Oregonians waiting approximately six months for their complaint to be drafted, leaving only six months for investigators to investigate, given the statutory one-year allowed for investigation. To address the staffing challenges and increasing workload, BOLI has prioritized changes to its antiquated case management system and complaint portal making the process of drafting complaints more efficient. CRD has also started new procedures that help identify what level of engagement a complainant desires from their contact with BOLI, which will allow the CRD to allocate resources accordingly. BOLI also engaged an outside consultant to identify best practices associated with intake.



**CHRISTINA E. STEPHENSON**  
Commissioner of the  
Bureau of Labor and Industries

Senator Elizabeth Steiner, Co-Chair  
Representative Tawna Sanchez, Co-Chair  
Interim Joint Committee on Ways and Means  
900 Court Street NE  
H-178 State Capitol  
Salem, OR 97301

Dear Co-Chairs:

### **Nature of the Request**

The Bureau of Labor and Industries respectfully submits the attached report (Attachment A) on performance aspects of the Bureau's Civil Rights Division, in accordance with a Budget Note associated with Enrolled Senate Bill 5515 (2023).

### **Agency Action**

In response to the Budget Note, the Bureau gathered and analyzed various data elements to demonstrate the underlying challenges associated with recruiting and retaining Civil Rights Investigators, and the corresponding impact these structural challenges have on providing timely relief to Oregon workers and Oregon businesses. Specifically, the Budget Note directed the Bureau to provide: 1) An explanation of the specific challenges associated with recruiting Civil Rights Investigators; 2) An explanation of the impact of unfilled positions on the timeliness within which the Bureau processes Civil Rights complaints; 3) An update on the progress of reducing the Civil Rights backlog; 4) A description of how new investigators are integrated into the Civil Rights Division, including the training and guidance provided to those new investigators; and 5) A description of the recently implemented procedure for expediting a subset of investigations. In addition to responding directly to the Committee's inquiries, the Bureau has attached a report from a consultant who specializes in streamlining the intake process for law firms. The consultant's report concludes that the only solution to the Civil Rights intake backlog that the Bureau is not currently undertaking, is additional financial investment in both staff and technology.

The Division's primary recruiting and retention challenge is that the salary for a Civil Rights Investigator is not commensurate with the volume of work and level of expertise required to effectively resolve complex disputes that have significant implications for Oregon workers and Oregon businesses. The Bureau has become a training ground for private and public sector investigator positions that pay more and require a smaller scope of expertise. As BOLI's report details, these higher-paying positions, that come with more manageable caseloads, exist at all levels of the public sector, including at *other state agencies*. Absent a change in the compensation provided to Civil Rights Investigators at the state's sole Civil Rights agency serving both private- and public-sector Oregonians, these recruiting and retention challenges will likely continue.

To address these compensation challenges, the Bureau has engaged with the Department of Administrative Services to better align its Civil Rights position descriptions with the complex investigatory work performed. The Bureau looks forward to working with the Legislative Assembly when that process is complete. Future



legislative support will play a critical role in the Bureau's ability to work towards our shared goal of eradicating harassment and discrimination from all Oregon workplaces, our housing market and our places of public accommodation.

In part because of the above-described compensation issues, the Civil Rights Division has near-constant turnover. This turnover leads to more work for the Bureau, as limited managerial staff must consistently train and monitor new employees, limited human resource capacity is utilized to re-fill positions and the investigators that do remain must carry additional cases to account for the lost productivity. These recruiting and retention challenges have been exacerbated by a nearly 100% increase in Civil Rights questionnaires filed with the Bureau between FY 2020 and FY 2023. To address these human resource challenges and an increasing workload, the Bureau has prioritized changes to its antiquated case management system and complaint portal, and has implemented process changes to better align the investigation with the complaint and the desires of the complainant. In addition, the Bureau engaged an outside consultant to identify best practices associated with intake. The consultant's report (Attachment B) is attached below.

With the exception of the last two biennia, the resources available to the Civil Rights Division have been consistently cut since the 1980s, at the same time Oregon experienced a remarkable population boom – a boom that is reflected in the number of Oregon workers and Oregon employers served by the agency. Effectively, the agency is now half the size it was 30 years ago. It will take significant and sustained investment for the Bureau to meet the Oregonians' record need for Civil Rights enforcement.

### **Action Requested**

The Bureau requests acknowledgment of the receipt of the attached report.

### **Legislation Affected**

None

Sincerely,



Christina Stephenson  
Commissioner, Bureau of Labor and Industries

Enc: As stated

## Attachment A: CRD Budget Note Report

By: Oregon Bureau of Labor and Industries

December 4, 2023

**1. Recruitment and Retention Difficulties: Further details on the specific challenges faced in recruiting qualified applicants for Civil Rights Investigator positions including reasons for multiple failed recruitments and the steps being taken to address this issue. Further details on specific retention issues including pay disparity and updates on the current Department of Administrative Services classification and compensation study.**

### **Overview of recruitment and retention difficulties**

The Division's recruiting and retention challenges manifest themselves in several ways, but two examples are particularly illustrative. First, the Bureau experiences significant difficulty recruiting qualified candidates for Civil Rights Investigator 1 (intake) positions, and second, the Bureau experiences retention issues with the Civil Rights Investigator 2 classification that are primarily based on pay disparity.

### **Civil Rights Investigator 1 (Intake) Positions**

The Civil Rights Investigator 1 position is among the most difficult to recruit for because the position pays much less than comparable positions.

The Civil Rights Investigator 1 (CRI1 or "intake") is the lower level of the two investigator classifications. The CRI1 is a salary range 21 on the state salary scale, with a monthly salary ranging from \$3,790 (\$45,480/year) to \$5,771 (\$69,252/year)<sup>1</sup> Salary range 21 begins only 5% higher than the salary of an Administrative Specialist 2 (salary range 20). This structure effectively limits interested candidates to those whose experience does not align with the demands of the position.

Civil Rights intake work is intense and challenging – it requires expert-level knowledge of more than 50 different state and federal protected classes that may be the basis for a complaint filed with the Division. Not only must intake staff be intimately familiar with hundreds of state and federal laws, covering more than 50 different protected classes and changing yearly, but these staff members must also be able to identify possible bases for complaints when given unclear or inconsistent information from members of the public, who likely have no familiarity with what laws may apply to their particular situation. This skill set is learned through extensive experience or advanced education. Comparatively, under the same collective bargaining agreement, paralegals are designated as salary range 26 (\$4776-\$7,327/month; \$57,312-\$87,924/year).

It is nearly impossible to fill a position that requires the skills of a paralegal when the salary offered is at least 20% less than a paralegal makes outside of the agency. Consequently, when CRI1 positions are filled, they are frequently filled at a level that is not commensurate with the work. This results in a workload increase as more mistakes



take time to correct, and the increased workload makes the positions even less desirable for recruitment and retention. Additionally, the errors that occur due to the relatively low classification and a higher level of work slow down the claim processing time. If the incorrect violations are drafted in the complaint, the investigator must redo the work that should have already occurred.

In FY23, the Division attempted to fill Civil Rights Investigator 1 vacancies twice. Both recruitments failed due to a lack of qualified candidates. As described above, the applicants for the position did not have the required skill sets to succeed in the role as they were predominantly looking for their first "professional" position.

In the first recruitment, the highest-scoring candidate at the written assessment stage was a massage therapist with no relevant experience, with a score of 65/100 total points. For reference, successful candidates generally score in the 85-95% range on the written assessment. The second recruitment similarly had underqualified candidates, despite updated questions for applicants geared toward legal, writing, and other related experience. One recent law school graduate applied but accepted another position before moving forward in the application process. The next highest-scoring candidate was a high school volleyball coach with no relevant experience. This recruitment also failed due to a lack of qualified candidates. Following the two failed recruitments, a former BOLI employee who had worked in the Division's intake unit expressed interest in returning to work part-time. Due to the difficulty filling this position, that person was hired to fill a temporary position in May 2023.

### **Civil Rights Investigator 2 (Investigator) Positions**

The Civil Rights Investigator 2 position is among the most difficult to retain because people often leave the position for higher pay after gaining experience at BOLI.

The Civil Rights Investigator 2 (CRI2 or "investigator") is the higher level of the two investigator classifications. In addition to identifying 50+ state and federal protected characteristics and laws that change yearly, investigators must apply those laws to facts that surface from various sources. Due to the low salary compared to the skill set required for this position, turnover of investigative staff has continually impacted the success of the Division. Investigators tend to move on to higher-paying but otherwise similar roles after gaining experience in the Division.

The salary-skill discrepancy has been magnified increasingly as other entities, including other State of Oregon agencies, are provided with resources to support this critical work. Further, as other entities have placed more emphasis on establishing internal investigatory capacity for their workplaces, there are more opportunities available outside the Division to perform the same functions effectively with a higher salary and with a much smaller scope of work. Most other entities with similar positions focus only on internal civil rights investigations. That means the number of potential complaints



and cases is limited to the number of employees or customers of that particular entity and to the more limited number of laws that apply in those instances. This narrower scope, coupled with notable salary differences, makes it exceptionally difficult to retain skilled investigators because they can find higher pay and decreased caseloads at other places of employment.

The lack of ability to recruit and retain investigators means that retained investigators are beleaguered, picking up the slack of revolving positions. In addition, the training for investigators takes many months, so a person in a position will not be productive at the expected rate until they are fully trained. Effectively, this Division is only partially staffed, even when all positions are filled.

### **Inadequate Staffing of Other Positions**

The agency's lack of adequate human resource capacity has also strained the Division. For example, one mid-level Human Resources professional was tasked with supporting the needs of approximately 150 employees. For the organization's size, it is estimated that the agency needs four HR professionals. This lack of capacity has meant that recruitment is a lengthy process, as only one individual was working to complete the many recruiting functions for new positions in CRD and across the agency. New positions are even more challenging to fill with limited human resources capacity as they must go through a position description process with DAS that can be lengthy. Further, previous disinvestment in human resources capacity has contributed to an environment in which not all employees felt welcome and supported, resulting in turmoil and turnover.

### **DAS Class/Comp Analysis**

In light of the above, the Bureau has engaged with the Department of Administrative Services to better align the work of the Division with the appropriate positions. This process utilizes DAS' Class and Compensation expertise to holistically evaluate the needs of the Division and the positions that can support that work. The goal of this process is twofold: having a sufficient number of positions to meet the continually increasing demand for services and appropriately classifying positions so qualified candidates can fill them. Through this engagement with DAS, the Division is currently determining how best to reorganize and reclassify existing positions to suit the scope and volume of work better. This process has involved identifying positions that may not currently be used to their highest potential and assessing how those positions could be evolved into roles that will better serve the Division and the people of Oregon. The process has also involved considering different classifications for existing positions that will predominantly remain unchanged but are currently classified in a way that does not accurately encompass the work that must be performed.

## **Salaries of Comparable Positions**

### **Intake:**

- Oregon Bureau of Labor and Industries: \$45,480/year to \$69,252/year
- OHSU Civil Rights Intake Specialist: \$74,194 to \$118,539 (as of 9/9/23)
- State of Oregon paralegal: \$57,312-\$87,928/year

### **Investigator:**

- Oregon Bureau of Labor and Industries: \$57,312-\$87,928/year
- City of Portland ADA/Civil Rights Complaints Investigator: \$70,220.80-\$116,792.00/year (as of 5/22/23)
- City of Portland Risk Specialist: \$70,211-\$116,792/year (as of 10/3/22)
- Oregon Department of Education Civil Rights Specialist: \$67,884-\$104,256/year (as of 10/4/23)
- Multnomah County Workplace Investigator: \$72,173.41-\$108,261.31/year (as of 10/3/22)
- Oregon Health Authority Civil Rights Investigator: \$66,708-\$98,376/year (as of 10/26/20)
- Washington County Employment Investigator: \$90,421.80 - \$115,354.92/year (as of 10/9/22)

### **Manager:**

- Washington County Civil Rights Officer: \$103,263.36-\$131,746.44/year (as of 10/9/23)  
TRIMET Civil Rights Manager: \$89,803.00-\$134,705.00/year (as of 12/9/22)

### **Administrator:**

- OHSU Office of Civil Rights Investigations Director: \$131,372.80 - \$223,308.80/year (as of 9/9/23)

**2. Impact of Unfilled Positions: Provide an explanation regarding the impact of the unfilled Civil Rights Investigator positions on the completion of investigations. This should include data on actual investigator labor hours to date over a six-year period and workload (cases). Include information on strategies being employed to mitigate the effects of these vacancies.**

## **Current Vacancies**

Due to marginally increased HR capacity and this year's intense focus on filling positions immediately to address the workload, there is currently only one vacant Civil Rights Investigator 2 position. With the intake backlog and need for reorganization, the

position itself may remain vacant while the budget the position represents is deployed to backlog reduction.

There is one vacant Civil Rights Investigator 1 position. As noted above, this position is currently offset by a temporary employee, so the position is effectively not vacant.

However, as mentioned above, due to the near-constant turnover and the time needed for new employees to perform at their full potential, this Division is never fully staffed, even when all positions are filled. Having no vacancies at any given time is not, on its own, indicative of the challenges with recruitment and retention. Over the last three years, before the most recent failed recruitments, the Division has hired four separate people to fill a single Civil Rights Investigator 1 vacancy in the intake unit. Two of the individuals who were hired remained employed with the Division for less than one month each before finding employment elsewhere.

Turnover has also been a chronic challenge for the Civil Rights Investigator 2 classification, as employees frequently move on to higher-paying positions once they gain experience. For instance, Multnomah County's Protected Class Complaint Investigation Unit, which was just created in 2019, comprises four investigators and a manager, all of whom are former BOLI Civil Rights Investigators. Former BOLI employees have also accepted positions with Oregon Health Authority, the City of Portland, Washington County, and Oregon Health & Science University (salaries referenced above for comparison). Sixty percent of investigators currently employed with the Division have been hired within the last four years—the Division on average, turns over four investigator positions per year.

Even beyond the investigator classifications, the Division, while able to fill positions, is constantly faced with vacancies. The Division is similarly new to BOLI, with 62% of Civil Rights Division employees being hired within the last four years. One hundred percent of managers have been hired to their positions within the previous four years. The Division has had three different administrators during this same timeframe, including seven months with no administrator and three years with two separate interim administrators. The Division has also hired five different investigations managers for two positions within the last four years, including a four-month period where both positions were vacant, a 20-month period where one employee was both an investigations manager and the interim administrator, and a 16-month period where one employee was both the chief prosecutor and interim administrator.

Similarly, while the positions may be filled, the Division is regularly unable to hire the top candidate because they decline offers of employment due to the offered salary. For example, of the 15 investigators hired within the last four years, seven were not the top candidate at the end of their recruitment and were hired only after the leading candidate declined the offer. This issue also persists in other work units in the Division – while recruiting for an administrative staff position, seven candidates declined offers, and the

eventual successful candidate, who was hired less than one year ago, has now accepted a different position.

**Labor Hours**

The amount of time needed to investigate each case varies, with some requiring two hours or less of work and many requiring 50 or more hours of work. To investigate all cases fully, investigators would need to work approximately 3,700 hours per year, which is nearly double the actual working hours available (2080 work hours – 80 to account for estimated vacation and sick leave).

**Figure 1**, below, compiles intake-related data over the past six years. The table identifies the number of questionnaires received, the number of intake staff reviewing those questionnaires, the number of questionnaires the intake staff can process, as well as the remainder of questionnaires creating the intake backlog.

**Figure 1: Intake**

<b>Fiscal Year</b>	<b>Questionnaires</b>	<b>Intake Staff</b>	<b>Potential Number of Intakes per year (4 hours/intake and 10 intakes/week)</b>	<b>Number unable to process each year/ cumulative amount unable to process</b>
2018	2381	2	2080	301 / 301
2019	2604	2	2080	524 / 825
2020	2554	2	2080	474 / 1299
2021	3009	3	3120	111 / 1400
2022	3748	3	3120	628 / 2028
2023	4968	3	3120	1848 / 3876

**Figure 2**, below, compiles investigation-related data over the past six years. The table identifies the number of cases closed, the number of investigators processing those cases, the average number of hours spent investigating those cases, as well as the number of additional hours it would require to conduct a “complete” investigation.

**Figure 2: Investigation**

<b>Fiscal Year</b>	<b>Cases Closed</b>	<b>Investigators</b>	<b>Avg. Hours per Case (2000 hours/year)</b>	<b>Hours less than a “complete”<sup>1</sup> investigation for each case</b>
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<sup>1</sup> “Complete” is defined as an average of 40 hours to interview Complainant, Respondent, witnesses, review documentary evidence, subpoena evidence, and write a dismissal or substantial evidence determination. The Division would need approximately double the investigators for all filed cases to obtain a “complete” investigation.



2018	1786	17	19	21
2019	1850	17	18	22
2020	1355	18	26.5	13.5
2021	1755	17	19	21
2022	1732	19	22	18
2023	2069	23	22	18

### **Mitigating effects of vacancies**

As indicated in **Figures 1 and 2**, the Bureau's current position authority is not meeting the demand. Historically, the Bureau has managed a shortage of Civil Rights Investigator 1 positions by running an intake backlog and the shortage of Civil Rights Investigator 2 positions by conducting "less-than-complete" investigations. Thus, while it is important to address both turnover and vacancies, it is useful to remember that they occur in a broader context of high turnover and unsustainable caseloads.

As mentioned above, there is one Civil Rights Investigator 2 vacancy. Investigators are assigned approximately 90-100 cases per year, meaning that there will be an additional 4-5 cases assigned to each investigator due to the vacancy. One strategy that will mitigate the effect of this vacancy and contribute to more efficiency is the reimplementation of the expedited investigation procedure described below; this is intended to reduce the time needed to investigate cases in which there is not likely evidence of the alleged violations.

After two failed recruitments and the general hiring difficulties described above, the effects of the vacant Civil Rights Investigator 1 have been mitigated by hiring a temporary employee to help work through the backlog of questionnaires. The Division also engaged with an outside consultant, described below, to assist with streamlining the intake process to better meet the demand.

### **3. Investigation Backlog: Update on progress of reducing the civil rights case backlog.**

The investigation process for cases filed with the Civil Rights Division effectively has two phases: intake and investigation. The backlog explained to the legislature in 2023 was primarily related to intake. There are thousands of Oregonians waiting approximately six months for their complaint to be drafted, leaving a scant six months for investigators to investigate, given the statutory one-year allowed for investigation.

To initiate the process, a member of the public submits a "questionnaire" identifying the discrimination they believe they have experienced. Each questionnaire is assigned to a staff member for review to determine whether the allegations may be within the statutory jurisdiction of the Division to investigate. Every single questionnaire is reviewed and responded to by an investigator (to address the backlog, this now includes both levels of civil rights investigators). When a questionnaire identifies issues

over which the Division may have jurisdiction, the intake investigator must contact the submitter to collect any additional information necessary and then draft a formal complaint of discrimination that will be the basis of the investigation.

The intake backlog has ballooned over the years, as demonstrated in **Figure 1**. In FY2020, the Division received approximately 2500 questionnaires. In three short years, this number has doubled, with approximately 5000 questionnaires received in FY2023. Over the past several years, the backlog has increased each year.

To address the backlog, this administration has taken several steps. First, we prioritized changes to the outdated database and complaint portal. By the beginning of next year, drafting complaints will be more efficient and should take less time. We are seeking additional investments from the legislature for improving this end-of-life database to further reduce errors and manual data entry that takes enormous amounts of staff time. The Division has also started new procedures that help identify what level of engagement a Complainant desires from their contact with BOLI; some Complainants simply want to have a letter sent to their employer and some decide they don't want to pursue complaints at all, the new procedures allow the Division to allocate resources accordingly.

In addition, the Civil Rights Division has engaged with an outside consultant who specializes in streamlining the intake process for law firms to generate the attached report. **See Attachment B**. The process resulted in a determination that the only solution to the intake backlog that the Division is not currently undertaking, is additional financial investment in staff and technology.

Finally, as noted above, BOLI is engaging in a holistic process with DAS to identify how to support the work of the Division through restructuring the positions within the Division.

Simply put, if the Legislatively Assembly intends for an intake process that is thorough, accurate, and timely, and for each complaint filed with the Bureau to be fully investigated, it can only achieve those goals by investing in the work of the Division and providing additional resources needed to meet the public's demand for services.

#### **4. Impact of New Staff and Training: Describe how new investigative staff are integrated into the Civil Rights Division, including the training and guidance provided to new investigators to expedite their transition and enhance their investigative skills.**

New investigative staff have a six-month onboarding period designed to orient them into their new roles while introducing them to all the necessary skills and knowledge. New investigators begin with intake assignments to familiarize themselves with the many laws the Division enforces, use the database, and work with the public on their civil rights claims. As investigators become more familiar with the body of work, they slowly

transition to receiving fewer intake assignments and more investigations. This usually takes a month or two, but the length of time varies based on the new employee's needs and existing experience.

As investigators transition into the role of primarily conducting investigations, they will be assigned new cases and transferred cases from other investigators in various stages of the investigation process. This allows the new investigator to experience cases with different requirements, as well as team up with a more seasoned investigator who is personally familiar with the case and can provide support and guidance on how to conduct the investigation.

At the end of six months, which coincides with the trial service period, a new investigator will have completed all stages of the investigation process, written different types of factual determinations, and had hands-on experience conducting investigations alongside more senior staff. The result is experienced, well-rounded investigators appropriately prepared to investigate most cases.

**5. Expedited Investigation Procedure: Detail on the recently implemented procedure for expedited investigation of non-meritorious cases and its expected impact on investigation timelines including data or examples showcasing the anticipated improvements resulting from this change.**

With management approval, the expedited investigation or triage procedure allows investigators to assess the evidence in a case and spend less time investigating cases that cannot be effectively investigated in light of the Division's limited resources. This procedure was in place for many years, during which time the Division consistently met or exceeded key performance measures related to length of investigation. In late 2019, this procedure was eliminated. **Figure 3**, below, shows this procedure has effect on investigation times, as they have continued to increase since early 2020. The table identifies the average length of an investigation and the percent of those investigations completed within 180 days.

**Figure 3: Average length of investigations**

Fiscal Year	Avg. Investigation Length (Days)	% of Investigations Completed in <180 days
2017	137	74%
2018	128	75%
2019	131	76%
2020	171	64%
2021	223	38%
2022	225	32%



This procedure was reintroduced in mid-2023. Data that reflects the anticipated changes in lengths of investigations is not available at this time. This is to be expected due to the cyclical nature of the workload – it takes approximately one year to start seeing the effects of procedural changes because all cases that were open at the time of the change must filter out of the system so that data reflects, effectively, a fresh cycle. However, it is clear from historical data that the expedited investigation and triage procedure positively influences the time needed to conduct investigations. It allows the Division to focus resources on the cases that need them the most and where the Division can be most effective.

Further, the legislature has changed the KPM for length of investigation to include a tiered metric, requiring 40% of cases to be completed within 180 days, 65% of cases completed within 240 days, and 100% of cases completed within 365 days. This updated KPM is meant to acknowledge the importance of this work that is being done. Investigations should not be measured by quantity but by quality. While it is of utmost importance to complete investigations in a timely manner, what is "timely" is different for every case, and it is a disservice to the people of Oregon to prioritize speed over accuracy when we are investigating their allegations of discrimination and retaliation. The tiered length of investigation KPM gives investigators flexibility to have cases open longer when they need more time to gather the information necessary to make an informed and accurate determination while still incentivizing the closure of cases for which extensive investigation is not required.

## **Conclusions**

The resources of the Division have been consistently cut since the 1980s, leaving the agency about half of its previous size. Over the past three biennia, however, the legislature has gradually increased its investment in the agency. It will take significant, sustained investment for BOLI to meet Oregonians' record needs. BOLI is the state's sole civil rights agency serving the entire population of Oregon. In addition, the legislature has given Oregonians rights that can only be enforced through BOLI. In order to ensure that the laws passed by the legislature are enforced and that bad actors do not have a competitive advantage in this state, BOLI will continue to need investment by the legislature.





# **Oregon Bureau of Labor and Industries, Civil Rights Division Intake Process Initial Assessment Report**

John E. Grant  
Agile Attorney Consulting  
August 22, 2023

## **Overview**

In June 2023, I conducted a brief initial assessment of the Oregon Bureau of Labor and Industries Civil Rights Division intake process, with an eye towards understanding the scope and nature of the intake backlogs. This assessment consisted of conversations with Leila Wall, a review of intake team data provided by the division, a team retrospective with the intake team and other stakeholders within the Civil Rights Division, and observations during a 2-day Kanban Process Improvement training with members of the Civil Rights Division.

## **Retrospective Findings**

The team retrospective consisted of semi-anonymous<sup>1</sup> answers to the three questions of an Agile retrospective: What is going well that we should keep doing? What is not going well that we should stop or change? and What should we try that is new or different? Each participant developed individual answers to each question (taken in turn) over a 2-3 minute independent work period in order to encourage individual ideation and broaden discussion. The team then spent 15-20 minutes grouping and discussing each answer to find commonalities and uncover more detail about common answers.

Below is my summary and interpretation of the answers to each question.

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<sup>1</sup> Participants in the room knew which people made comments or observations, but identifying information was intentionally not preserved in meeting artifacts

### **Question 1: What is going well that we should keep doing / preserve?**

Team members identified a supportive work environment, good communication, positive team dynamics, and a lack of micromanagement. People were generally happy with their work-life balance through flexible hours and remote work options. One team member praised the “stick-to-it-iveness” of the team, especially through the elevated case loads and turbulence of the pandemic.

The team was also generally positive about the shift towards new technologies, such as electronic filing and the use of DocuSign for signatures (although technology challenges also came up later). Other initiatives, including changes to the intake questionnaire and the Survey Monkey project, showed promising progress.

### **Question 2: What is not going well that we should stop or change?**

Despite the positives concerning communication identified above, the team felt that the communication remained a challenge. Several comments reflected a feeling that the division's work was overly siloed across different functions, leading to a perceived hierarchy among the civil rights division teams. Individual contributors expressed a desire for more involvement in management decision-making and clearer internal communication about these decisions. Team members also identified a need for clearer job duties, policies, and workflow procedures, both within individual teams and as cases flow from one team to the next.

One particular answer — “too many touches” — received a lot of discussion and agreement that process inefficiency overall is a significant problem. Similar answers included “lack of clear policies and procedures,” “too many emails,” “unclear job duties,” “too much human error,” and “insufficient new employee training.”

Several comments reflected a 'traumatized workforce' still recovering from the pandemic's impact, its influx of new questionnaires and cases, and the continuing backlog. The team generally felt that key roles were still understaffed, both in

management and for individual contributors. This led to “stress because I can never get everything done.”

The team identified specific workflow problems caused by insufficient detail being captured by the (then-current) intake questionnaire and only limited information being provided to complainants regarding the basis and process for the CRD to perform an investigation. This has frequently led to a need for multiple back-and-forth conversations between CRD staff (both intake and investigators) and the complainant, where each round of communication adds time and overhead to the overall process. The team was hopeful that planned changes to the intake questionnaire would help, but believed that many more improvements were needed to improve the amount of information they receive from complainants, automated information that could flow back to a complainant regarding the status of their matter, and the information available to the public about the complaint process in general.

The shift to electronic case file management and the Impact database elicited mixed feelings. Some staff missed paper files, while others had complaints about the Impact database. One team member also reported that internet connection issues during remote work were affecting efficiency.

### **Question 3: What should we try (or continue) that is new or different?**

Many of the suggestions for improvements reflected a need for better communication with individuals filing questionnaires or complaints. Team members suggested using automated emails to communicate filing status and substantive information to complainants, improving the roadmap to communicate the overall process, and providing additional navigation and substantive information on the BOLI website.

The team again highlighted the need for more staff, especially in the intake team. They also proposed more cross-division meetings and team-building efforts to address perceived silos within the division.

The team recommended several technological enhancements, such as continuing to improve the questionnaire on the website, improving the Impact database, and creating an online portal for complainants to check their complaint status.

One other suggestion that elicited discussion was to allow some complainants to draft their own complaints to free up staff for more advanced investigatory work.

## **Intake Team Data Analysis**

Based on data provided by the Civil Rights Division management,<sup>2</sup> it is clear that demand for Division resources since the start of 2022 has exceeded the capacity of those resources. This is especially stark for the intake team.

### **Intake Backlog Growth**

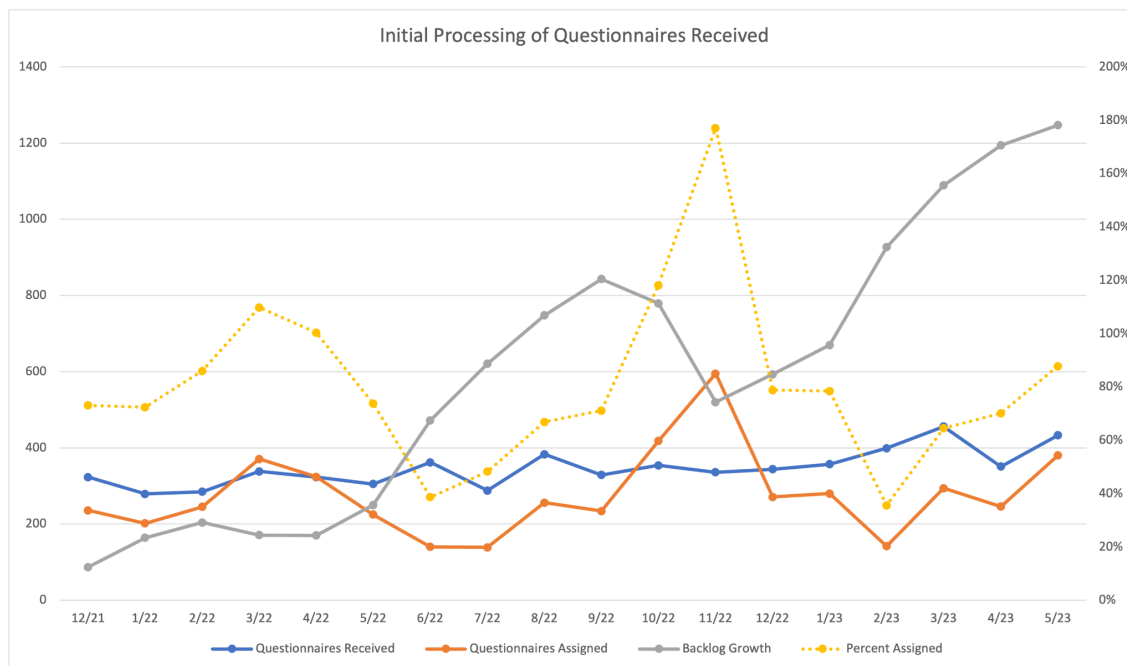
The three month rolling average of new questionnaires received grew from 296 in February 2022 to 413 in May 2023, a 40% increase. During that time, an average of 69 questionnaires were added to the backlog each month, despite a successful push to reduce the backlog by 195 cases in October and November 2022.

The backlog grew despite a 35% increase in the three month rolling average of questionnaires assigned to an intake team member over the same time period (from 228 questionnaires assigned to 307). Taken independently, the intake team's increased productivity should be considered a substantial success; the rolling average reached 428 during the late-2022 backlog production push. Unfortunately, this success is masked by the unrelenting growth in demand as represented by new questionnaires received.

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<sup>2</sup> See Appendix A

## Initial Disposition of questionnaires received



### Ramifications of the Backlog Growth

Based on interviews with intake team members and managers, the excess growth in demand (in the form of new questionnaires submitted) relative to capacity leads to several suboptimal outcomes.

#### 1. Processing questionnaires in an “out of order” manner.

In an ideal situation, the intake team would process questionnaires in a first-in, first-out (FIFO) order, i.e. questionnaires would be processed in the order in which they are received. This would provide maximum fairness to people submitting questionnaires, and would help create consistency in the period between when questionnaires are received and when they are processed.

For a variety of reasons — including statute of limitations concerns — the large backlog creates some incentive for the intake team to give preference to

questionnaires with older instances of alleged misconduct. Not only does this require additional processing time to determine how to prioritize cases (as opposed to a FIFO approach), it can create a situation where people who procrastinate filing their questionnaires get faster response times than those who make timely filings.

## 2. Ballooning Wait Times for Newly Received Questionnaires

While the data set reviewed does not contain processing time on a per-questionnaire basis, we can use Little's Law<sup>3</sup> to predict how growth in the backlog leads to growth in the total wait time. According to Little's Law, the average wait time ( $W$ ) for a unit of work in a system is equal to the average number of items in queue for that system ( $L$ ) — i.e. the backlog — divided by the average arrival rate of new items into the system ( $\lambda$ ).

$$W = L \div \lambda$$

Even without knowing the actual wait times for the CRD intake team to process questionnaires, we can calculate the average wait time for a single questionnaire to be roughly 10 times longer in May 2023 (approximately 86 days) than it was in December 2021 (approximately 8 days).<sup>4</sup>

## Recommended Next Steps

Based on the feedback from the team retrospective, conversations with team members, and a preliminary analysis of available data, I offer the following recommendations for the Civil Rights Division to improve (or in some cases continue to improve) its processing of questionnaires and subsequent complaints:

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<sup>3</sup> [https://en.wikipedia.org/wiki/Little%27s\\_Law](https://en.wikipedia.org/wiki/Little%27s_Law)

<sup>4</sup> The backlog size ( $L$ ) in December 2021 was 87 questionnaires and the arrival rate ( $\lambda$ ) was 323 questionnaires per month, which puts calculated wait time ( $W$ ) at .27 months (~8 days). The backlog size ( $L$ ) in May 2023 was 1,247 questionnaires and the arrival rate ( $\lambda$ ) was 433 questionnaires per month, which puts calculated wait time ( $W$ ) at 2.88 months (~86 days).

**(1) Continue the strategy of right-sizing the Intake team to manage the growing workload of new questionnaires.**

Although the Intake Team has made laudable strides in its productivity in the face of a growing number of questionnaires, it is unrealistic to expect that the current backlog can be managed without adding additional members to the team.

**(2) Continue efforts to improve the questionnaire submission form and process, but do so with an eye towards improving user experience and education.**

Based on initial feedback from intake team members, the recent changes to the intake questionnaire form on the BOLI website to encourage complainants to provide more information when submitting questionnaires has helped improve the quality of initial questionnaire submissions. Anecdotally, intake team members report that this improved quality means that they need to spend less time engaging in back-and-forth communications with complainants to gather sufficient information to make a determination whether to draft a formal complaint.

Based on a preliminary review of the revised intake questionnaire, however, I have some concerns that the design, functionality, and usability of the new form may create barriers to access that could discourage people with otherwise valid complaints from completing the questionnaire process. The Bureau should consider engaging the services of a Usability, User Experience, or Interaction Design professional to conduct a heuristic evaluation<sup>5</sup> of the online intake questionnaire and recommend improvements.

Ultimately, the division will need to make policy decisions<sup>6</sup> that balance public accessibility with the need to improve the quality of information contained within questionnaire submissions prior to devoting intake team resources to processing the questionnaire. Once a policy is developed and implemented, the agency can use accessible design and user experience principles to increase accessibility in a way that doesn't overburden its intake and investigation resources.

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<sup>5</sup> "Heuristic evaluation is a process where experts use rules of thumb to measure the usability of user interfaces in independent walkthroughs and report issues. Evaluators use established heuristics (e.g., Nielsen-Molich's) and reveal insights that can help design teams enhance product usability from early in development." see <https://www.interaction-design.org/literature/topics/heuristic-evaluation>

<sup>6</sup> This is consistent with the "make policies explicit" prong of the Kanban Method.

**(3) Implement a kanban-based workflow management system (or ticketing system) to manage and track the status of cases through the intake and complaint processes.**

Modern support teams have increasingly turned to kanban-based visual management systems like Kanbanize, Jira, ServiceNow, etc.<sup>7</sup> to track work progress, visualize dependencies, capture workflow data, and accelerate the delivery of customer value. These tools can also help support teams track and triage different case types, create and manage service level agreements (SLAs) for predicting time-to completion of work stages, and enhance communication among team members and across teams.

Once established and tested, a well-designed ticketing system would also serve to push status updates to complainants (people who have submitted a questionnaire or are in the investigation process), potentially reducing the need for BOLI personnel to respond to status requests (which were identified in the team retrospective as a source of low-value-added work).

Ultimately, a well thought-out ticketing system could form the backbone of a broader dispute resolution management system, similar in concept to the British Columbia Civil Resolution Tribunal<sup>8</sup> (the gold-standard for collaborative online dispute resolution implementations).

**(4) Continue to utilize the Kanban Method (and related Lean and Agile methods) to engage in process and operations improvement.**

Regardless of when or whether the intake and investigation teams are able to adopt a kanban-based workflow management system, the Division can still use the tenets and teachings of the Kanban method to continue to make systemic improvements. Specifically, the Division should continue efforts to document and improve internal workflow policies and procedures, to limit in-progress work to the actual carrying capacities of its teams, to use data to measure and encourage the flow of work through

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<sup>7</sup> Some ticketing systems like Jira and Azure DevOps are designed around technology development teams, others like ServiceNow or ZenDesk are designed for customer service and support applications. Still others (Kanbanize, KanbanZone, Asana) are more general purpose. Part of any transition to a kanban-based system would be requirements definition and system selection.

<sup>8</sup> See <https://civilresolutionbc.ca/>. The Civil Resolution Tribunal currently provides self-help information and dispute resolution services for homeowner association disputes (known as “strata disputes” in Canada), small claims, and certain motor vehicle accidents.



its processes and systems, and to engage in collaborative efforts to increase flow and accelerate the appropriate resolution of complaints.

## Appendix A: CRD Intake Data December 2021 to May 2023

intake data																				
questionnaires received 12/21-5/23	6251																			
*6/20-11/21	4888																			
questionnaires assigned 12/21-5/23	4998																			
*6/20-11/21	4440																			
cases opened 12/21-5/23	2572																			
*6/20-11/21	2432																			
complaints drafted, not returned 12/21-5/23	1026																			
*6/20-11/21	810																			
Signed complaints received 12/21-5/23	1500																			
*6/20/11/21	1800																			
monthly stats																				
	12/21	1/22	2/22	3/22	4/22	5/22	6/22	7/22	8/22	9/22	10/22	11/22	12/22	1/23	2/23	3/23	4/23	5/23	total	
qrec	323	279	285	338	323	305	362	288	383	329	354	336	344	357	399	456	351	433	6245	
QA	236	202	245	371	324	225	140	139	256	234	418	595	271	280	142	294	246	380	4998	
difference (what turns into backlog)	87	77	40	-33	-1	80	222	149	127	95	-64	-259	73	77	257	162	105	53	1247	
NJ letters sent	137	233	137	155	147	66	100	139	103	103	169	236	244	202	116	100	107	191		
complaints drafted	155	139	125	252	218	136	131	118	154	172	166	156	153	155	113	131	146	101		
complaints revised	10	21	20	28	27	18	22	13	13	24	16	15	15	17	10	13	23	12		
total activities	302	393	282	435	392	220	253	270	270	299	351	407	412	374	239	244	276	304		
signed complaints received	52	72	93	95	146	84	103	78	69	77	77	76	90	87	76	64	66	95	1500	
cases opened	87	52	88	171	115	161	157	87	62	93	62	80	109	37	142	248	100	122		
individual data (anonymous)																				
	intake 1	intake 2	intake 3	invest 1	invest 2	invest 3	invest 4	invest 5	invest 6	invest 7	invest 8	invest 9	invest 10	invest 11	invest 12	invest 13				
complaints drafted since 12/1/21	572	586	601	83	21	62	22	73	91	35	53	34	39	29	63	15				
NJ letters sent since 12/1/21	672	379	558	84	10	188	41	107	86	25	24	35	14	11	73	39				