Department of Defense

Department of Defense Fiscal Year 2020 Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR Act) Report

The estimated cost of this report for the Department of Defense is approximately $46,500 in Fiscal Years 2019-2020. This includes $500 in expenses and $46,000 in DoD labor.

Generated on 03 February 2021 Ref ID: A-4DC7CCB

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LIST OF ACRONYMS

AAFES	Army Air Force Exchange Service
ADR	alternative dispute resolution
CFR	Code of Federal Regulations
COVID-19	coronavirus disease 2019
DeCA	Defense Commissary Agency
DHA	Defense Health Agency
DHRA	Defense Human Resources Activity
DLA	Defense Logistics Agency
DMA	Defense Media Activity
DoD	Department of Defense
DoDD	Department of Defense Directive
DoDEA	Department of Defense Education Activity
DoDI	Department of Defense Instruction
DTRA	Defense Threat Reduction Agency
EEO	equal employment opportunity
EEOC	Equal Employment Opportunity Commission
FAD	final agency decision
FY	fiscal year
GINA	Genetic Information Nondiscrimination Act of 2008
ODEI	Office for Diversity, Equity, and Inclusion
No FEAR Act	Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002
ROI	report of investigation
U.S.C.	United States Code
USUHS	Uniformed Services University of the Health Sciences
WHS	Washington Headquarters Services

INTRODUCTION

Each fiscal year (FY), Federal agencies must provide an annual report to Congress on the number and severity of discrimination and whistleblower cases brought against them, pursuant to Public Law 107-174, Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), and its implementing regulation, 5 CFR § 724.302.

The No FEAR Act report for FY 2020 is the third annual No FEAR report providing a composite Department of Defense (DoD) assessment and analysis of equal employment opportunity (EEO) complaint data. However, it is the first report developed from data collected and analyzed via an electronic system. In FY 2020, DoD employed a new data collection and analysis system, allowing the Office for Diversity, Equity, and Inclusion (ODEI) to aggregate and analyze EEO formal complaint data with greater efficiency and accuracy.

Finally, the coronavirus disease 2019 (COVID-19) pandemic impacted DoD civilian employees' FY 2020 work environment by increasing telework and requiring DoD civilian employees to adhere to DoD health protection requirements, such as practicing social distancing. While the full impact of these new requirements remains unknown due to the ongoing pandemic, the Department recognizes that COVID-19 altered the DoD work environment and, thus, determination of whether FY 2020 data indicate any trends impacting analysis of future years' data.

STATUTORY REQUIREMENT

The No FEAR Act, enacted on May 15, 2002, directed Federal agencies to post quarterly EEO complaint data on their public websites, reimburse the Judgment Fund, and submit an annual report to Congress. The reporting obligations of the No FEAR Act, and its implementing regulation,[1] for each FY are:

- Number and status of cases in Federal court, pending or resolved, arising under each of the respective provisions of the Federal antidiscrimination laws and whistleblower protection laws.
- Amount of money reimbursed to the Judgment Fund by the agency for payments to employees, former employees, and applicants.
- Amount of reimbursement to the Judgment Fund for attorneys' fees where such fees have been separately designated.
- Number of employees disciplined, nature of the disciplinary actions taken, and the provision(s) of law involved.
- Final year-end data about discrimination complaints posted pursuant to Equal Employment Opportunity Commission (EEOC) regulations.
- Agency policy for taking disciplinary action against employees who violate discrimination laws or commit other prohibited personnel practices.

[1] 5 CFR § 724.302.

- Analysis of the EEO Program to include an examination of trends, causal analysis, experiential knowledge gained, and actions (taken or planned) to improve complaint or civil rights programs.
- Adjustments to the agency's budget as a result of Judgment Fund reimbursement requirements.
- The agency's written plan to train its employees.

RESULTS AND DATA

Section 301 of the No FEAR Act requires each Federal agency to post summary statistical data pertaining to complaints of employment discrimination filed against it by employees, former employees, and applicants for employment. Accordingly, DoD Components complete the EEOC Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints (Form 462). In addition, the Components provide ODEI with additional data required under the No FEAR Act. For FY 2020, ODEI prepared this composite report by compiling and analyzing all of the submissions from the following DoD Components:[2]

- Department of the Army (Army)
- Department of the Navy (Navy)
- Department of the Air Force (Air Force)
- National Guard Bureau
- Joint Chiefs of Staff
- Army Air Force Exchange Service (AAFES)
- Defense Commissary Agency (DeCA)
- Defense Contract Audit Agency
- Defense Contract Management Agency
- Defense Counterintelligence and Security Agency
- Department of Defense Education Activity (DoDEA)
- Defense Finance and Accounting Service
- Defense Health Agency (DHA)
- Defense Human Resources Activity (DHRA)
- Defense Intelligence Agency
- Defense Information Systems Agency
- Defense Logistics Agency (DLA)
- Defense Media Activity (DMA)
- Defense Technical Information Center
- Defense Threat Reduction Agency (DTRA)
- Missile Defense Agency
- National Geospatial-Intelligence Agency
- National Reconnaissance Office
- National Security Agency
- Office of the Inspector General
- Washington Headquarters Services (WHS)

THE NUMBER OF FEDERAL CASES AND THE DISPOSITION OF SUCH CASES[3]

The No FEAR Act requires agencies to provide the number and status of cases in Federal court pending or resolved in each FY that allege a violation of Federal antidiscrimination or whistleblower protection laws. Table 1 provides the total number of cases for FY 2020.

[2] Uniformed Services University of the Health Sciences (USUHS) submitted a Form 462 for FY 2020, but did not submit the additional No FEAR Act data in time for inclusion in this report.
[3] 5 CFR § 724.302(a)(1) and 5 CFR § 724.302(a)(2)(i).

TABLE 1: FEDERAL COURT CASES[4]

Statute	Cases Opened in FY 2020[5]	Cases Resolved in FY 2020[6]		Cases Pending at End of FY 2020[7]
		Settled	Other	
Title VII, Civil Rights Act of 1964 42 U.S.C. § 2000e-16	275	57	180	401
Age Discrimination in Employment Act 29 U.S.C. §§ 631, 633a	80	17	63	130
Fair Labor Standards Act of 1938 29 U.S.C. § 206(d)	5	0	3	12
Section 501 of Rehabilitation Act 29 U.S.C. § 791	125	28	69	176
Equal Pay Act 29 U.S.C. § 206(d)	1	0	0	5
Whistleblower Protection Act 5 U.S.C. § 2302(b)(1)	8	1	6	5
Genetic Information Nondiscrimination Act of 2008 (GINA) 42 U.S.C. § 2000ff	1	0	0	1
TOTAL	**495**	**103**	**321**	**730**

JUDGMENT FUND REIMBURSEMENT[8]

The Department of the Treasury, Financial Management Service, manages the Judgment Fund, which is available to the Federal Government for court judgments and Department of Justice compromise settlements of lawsuits against the Federal Government. The No FEAR Act requires that Federal agencies reimburse the Judgment Fund for personnel discrimination payments made in accordance with 28 U.S.C. §§ 2414, 2517, 2672, or 2677.[9] For FY 2020, the DoD Components that reimbursed the Judgment Fund are shown in Table 2.

[4] Does not include data from USUHS.

[5] This column includes the total number of cases that were opened in FY 2020. It is not a sum of cases resolved or pending.

[6] These columns include any case that was resolved in FY 2020. These cases may have been opened in FY 2020 or any previous FY. The cases may have been settled (first column), or otherwise resolved, such as withdrawing the complaint (second column).

[7] This column includes the number of cases that were still pending resolution at the close of FY 2020. These cases may have been opened in FY 2020 or during a previous FY.

[8] 5 C.F.R. § 724.302(a)(2)(ii) and 5 C.F.R. § 724.302(a)(2)(iii).

[9] A payment is a disbursement from the Judgment Fund, on or after October 1, 2003, to an employee, former employee, or applicant for Federal employment, in accordance with 28 U.S.C. §§ 2414, 2517, 2672, 2677 or with 31 U.S.C. § 1304, that involves alleged discriminatory or retaliatory conduct described in 5 U.S.C. § 2302(b)(1) and (b)(8) or (b)(9) as applied to conduct described in 5 U.S.C. § 2302(b)(1) and/or (b)(8) or conduct described in 29 U.S.C. §§ 206(d), 631, 633a, 791, and 42 U.S.C. § 2000e-16.

TABLE 2: JUDGMENT FUND REIMBURSEMENT

Component	$ Reimbursed to Judgment Fund	$ Attributed to Attorneys' Fees	Adjustment to Agency Budget
Army	$297,000	Unknown	$0
Navy	$601,000	$0	$601,000
Air Force	$65,000	$0	$0
DLA	$95,000	$0	$0
TOTAL	**$1,058,000**	**$0**	**$601,000**

The remaining DoD Components did not indicate that they made any Judgment Fund reimbursements.

DISCIPLINARY ACTIONS[10]

There were 988[11] disciplinary actions during FY 2020 in connection with Federal court cases or in accordance with agency policies under antidiscrimination or whistleblower protection laws. The breakdown of DoD employees who were disciplined during FY 2020 is demonstrated in Table 3.

TABLE 3: DISCIPLINARY ACTIONS

Statute[12]	# of Employees Disciplined & Discipline Type		
	DoD Total	DoD Component Breakdown	Nature of Discipline
Title VII, Civil Rights Act of 1964 42 U.S.C. § 2000e-16	45	Navy (1)	Suspension (1)
		Air Force (6)	Reprimand (4), Removal (1), Suspension (1)
		DeCA (5)	Demotion (1), Letter of Warning (1), Removal (2), Termination During Probation (1)
		DHA (23)	Letter of Caution (5), Pay (1), Removal (1),

[10] 5 CFR § 724.302(a)(3) and 5 CFR § 724.302(a)(5).

[11] This number is significantly larger than previous FYs because FY 2020 was the first year AAFES provided discipline data.

[12] The data listed in Table 3 may not reflect actual DoD employee discipline connected to one of the listed statutes because not all DoD Components track discipline in connection with the statute. For example, employees who are charged with inappropriate conduct, inappropriate remarks, and/or conduct unbecoming may also be disciplined for underlying misconduct related to discrimination and/or whistleblower protection. These employees may not be represented in Table 3 based upon the label of the misconduct charge brought against the employee (i.e., conducting unbecoming vice discrimination).

			Suspension (5), Removal (11)
		DoDEA (1)	Reprimand (1)
		DTRA (1)	Removal (1)
		WHS (8)	Reprimand (1), Suspension (1), Removal (6)
Age Discrimination in Employment Act of 1967 29 U.S.C. §§ 631, 633a	2	DoDEA (1)	Reprimand (1)
		WHS (1)	Reprimand (1)
Fair Labor Standards Act of 1938 29 U.S.C. § 201, et seq.	0	N/A	N/A
Section 501 of the Rehabilitation Act of 1973 29 U.S.C. § 791	12	DHA (8)	Letter of Caution (2), Pay (1), Suspension (2), Removal (3)
		WHS (4)	Reprimand (1), Removal (3)
Equal Pay Act of 1963 29 U.S.C. § 206(d)	0	N/A	N/A
Whistleblower Protection Act of 2012 5 U.S.C. § 2302(b)(1)	0	N/A	N/A
GINA 42 U.S.C. § 2000ff	0	N/A	N/A
Matters that did <u>NOT</u> result in a Federal court case	929	AAFES (894)	Disciplinary Downgrade (10), Reprimand (449), Separation (194), Suspension (241)
		DeCA (5)	Demotion (1), Letter of Warning (1), Removal (2), Termination During Probation (1)
		DLA (9)	Letter of Caution (4), Removal (2), Suspension (3)
		DMA (20)	Reprimand (17), Suspension (1), Removal (2)
		DTRA (1)	Termination (1)

EEO COMPLAINT DATA[13]

DoD civilian employees and applicants for civilian employment who believe they have experienced work-related discrimination have multiple venues to pursue relief, including filing an EEO complaint under the authority of 29 CFR Part 1614, and as outlined by EEOC Management Directive 110. When an employee or applicant first reports a concern to the relevant Component's EEO office, the individual enters the *pre-complaint* phase and is referred to as the *aggrieved*. The pre-complaint process is an informal process that allows EEO professionals to provide vital information regarding the EEO process and other processes that may be available to the aggrieved. This information includes an offer to the aggrieved to choose alternative dispute resolution (ADR), if suitable.

If the issue is not resolved during the informal pre-complaint phase, the aggrieved has the option to pursue a formal complaint process. If the aggrieved elects to file a formal EEO complaint, he or she becomes the *complainant* and receives an acknowledgement letter of accepted allegations. The investigation process begins with the development of an impartial and appropriate factual record that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred. The DHRA Investigations and Resolutions Directorate conducts most EEO investigations for DoD.[14]

An EEO complainant must identify the basis[15] and issue[16] when bringing forward a complaint of discrimination. A complainant may allege multiple bases and issues in one complaint. Once a report of investigation (ROI) is completed, the complainant may request a hearing before an EEOC administrative judge or request a final agency decision (FAD) issued by the agency after reviewing the ROI and pertinent documentation relating to the allegations. A final order occurs after an administrative judge issues a decision and the agency decides to implement the decision.

According to the DoD Components' respective Forms 462 for FY 2020, DoD counseled 5,112 individuals in connection with 5,403 pre-complaints in FY 2020. Of these pre-complaints, 2,544 were settled or withdrawn, and 2,728 moved into the formal complaint phase. The remaining 1,034 pre-complaints were still pending at the pre-complaint phase at the end of FY 2020.

[13] 5 CFR § 724.302(a)(4).

[14] A small number of DoD Components use internal investigators, contractor investigators, or a combination of these resources.

[15] The basis of a complaint is the reason the complainant believes he or she was discriminated against based on a protected class (e.g., race, sex, disability) relating to a term, condition, or benefit of employment.

[16] The issue of a complaint is the adverse employment action alleged by the complainant. For example, a complainant may allege she was denied a promotion because of her gender. The denial of the promotion is the issue and her gender is the basis.

TABLE 4: PRE-COMPLAINT PHASE

Pre-Complaint Phase	
Total Pre-Complaints	6,437
Pre-existing at the start of FY	1,146
Initiated during FY	5,291
Total Completed during FY	5,403
Settled	526
Withdrawn	2,018
Filed formal	2,728
Decision to file formal pending	131
Pending at end of FY	1,034

In FY 2020, DoD had 9,389 formal complaints, including unresolved complaints from previous years and newly initiated complaints. At the end of FY 2020, 2,984 had been closed and 6,405 remained pending.

TABLE 5: FORMAL COMPLAINTS TOP-LINE RESULTS

Formal Complaints	
Top-Line Totals	9,389
Pre-existing at the start of FY	6,447
Filed during FY	2,907
Remanded (not pre-existing or filed during FY)	35
Closed during FY	2,984
Withdrawn	233
Settled	743
Final Agency Action (FAD or final order)	2,008
Pending at end of FY	6,405

The 2,907 formal complaints filed in FY 2020 contained 11,204 allegations. A complainant may allege multiple bases for each allegation in a single complaint. The top identified basis of FY 2020 allegations was reprisal (2,327 allegations or 20.8 percent of all allegations). Table 6 lists all the allegations and complaints by basis.

TABLE 6: FY 2020 FORMAL COMPLAINT ALLEGATIONS BY BASIS

Formal Complaints	
Basis	# of Allegations
Race	1,996
Color	868
Religion	194
Reprisal	2,327
Sex	1,867
National Origin	486
Age	1,353
Disability	2,085
GINA[17]	28

A complainant may also allege multiple issues in a single complaint. The most frequent issue identified in the FY 2020 allegations was non-sexual harassment (3,387 allegations, or 30.2 percent of all allegations). Non-sexual harassment was alleged more than 3.5 times more frequently than the next most common issue, which was promotion/non-selection (890 allegations, or 7.9 percent of all allegations). Table 7 lists all the allegations by issue.

TABLE 7: FY 2020 FORMAL COMPLAINT ALLEGATIONS BY ISSUE

Formal Complaints			
Issue	# of Allegations	Issue	# of Allegations
Appointment/Hire	515	Other	0
Assignment of Duties	691	Pay (Including Overtime)	184
Awards	120	Promotion/Non-Selection	890
Conversion to Full-Time	5	Reasonable Accommodation	373
Discipline – Demotion	38	Reassignment – Denied	147
Discipline – Other	431	Reassignment – Directed	203
Discipline – Removal	295	Reinstatement	6
Discipline – Reprimand	310	Religious Accommodation	2
Discipline – Suspension	405	Retirement	26
Duty Hours	217	Sex-Stereotyping	13
Evaluation/Appraisal	733	Telework	109
Examination/Test	16	Termination	672
Harassment – Non-Sexual	3,387	Terms/Conditions of Employment	486
Harassment – Sexual	135	Time and Attendance	485
Medical Examination	27	Training	283

[17] Title II GINA prohibits genetic information discrimination in employment.

While Table 5 shows there were 743 complaints settled during FY 2020,[18] there were 4,478 allegations resolved in those 743 settlements. Tables 8 and 9 identify the bases and issues of the resolved allegations, respectively.

TABLE 8: FY 2020 FORMAL COMPLAINT ALLEGATIONS SETTLED BY BASIS

Formal Complaints	
Basis	# of Allegations Settled
Race	754
Color	277
Religion	75
Reprisal	983
Sex	777
National Origin	248
Age	483
Disability	875
GINA	6

TABLE 9: FY 2020 FORMAL COMPLAINT ALLEGATIONS SETTLED BY ISSUE

Formal Complaints			
Issue	# of Allegations	Issue	# of Allegations
Appointment/Hire	176	Other	0
Assignment of Duties	295	Pay (Including Overtime)	72
Awards	61	Promotion/Non-Selection	352
Conversion to Full-Time	0	Reasonable Accommodation	168
Discipline – Demotion	18	Reassignment – Denied	44
Discipline – Other	178	Reassignment – Directed	90
Discipline – Removal	69	Reinstatement	9
Discipline – Reprimand	136	Religious Accommodation	2
Discipline – Suspension	128	Retirement	6
Duty Hours	46	Sex-Stereotyping	6
Evaluation/Appraisal	332	Telework	45
Examination/Test	6	Termination	171
Harassment – Non-Sexual	1,484	Terms/Conditions of Employment	212
Harassment – Sexual	68	Time and Attendance	192
Medical Examination	9	Training	103

[18] While Form 462 provides the allegations that were settled, it does not distinguish which allegations were settled during the pre-complaint phase or the formal complaint phase by issue or basis.

There were 25 findings of discrimination in the Department in FY 2020. As previously stated, a complaint may have multiple bases or issues. It is important to understand that findings are counted per complaint, not per allegation. There were 55 allegations in those 25 findings. Tables 10 and 11 identify the bases and issues of those allegations that received findings.

TABLE 10: FY 2020 FORMAL COMPLAINT ALLEGATIONS RECEIVING A FINDING BY BASIS

Formal Complaints	
Basis	# of Allegations Receiving a Finding
Race	5
Color	0
Religion	0
Reprisal	20
Sex	4
National Origin	1
Age	3
Disability	22
GINA	0

TABLE 11: FY 2020 FORMAL COMPLAINT ALLEGATIONS RECEIVING A FINDING BY ISSUE

Formal Complaints			
Issue	# of Allegations	Issue	# of Allegations
Appointment/Hire	2	Other	0
Assignment of Duties	6	Pay (Including Overtime)	0
Awards	0	Promotion/Non-Selection	3
Conversion to Full-Time	0	Reasonable Accommodation	10
Discipline – Demotion	0	Reassignment – Denied	0
Discipline – Other	1	Reassignment – Directed	0
Discipline – Removal	0	Reinstatement	0
Discipline – Reprimand	3	Religious Accommodation	0
Discipline – Suspension	0	Retirement	0
Duty Hours	0	Sex-Stereotyping	0
Evaluation/Appraisal	7	Telework	0
Examination/Test	0	Termination	3
Harassment – Non-Sexual	11	Terms/Conditions of Employment	7
Harassment – Sexual	0	Time and Attendance	2
Medical Examination	0	Training	0

AGENCY POLICY[19]

The Department has multiple policies and offices providing oversight to protect against unlawful employment discrimination.

- Department of Defense Directive (DoDD) 1020.02e, "Diversity Management and Equal Opportunity in the DoD," June 8, 2015, incorporating Change 2, effective June 1, 2018:
    - Identifies the civilian EEO program and grants the right of all DoD employees to apply, work, and advance on the basis of merit, ability, and potential, free from unlawful discrimination based on race, color, national origin, religion, sex (including pregnancy, gender identity, and sexual orientation), disability, age, genetic information, and reprisal for previous EEO activity.
    - Requires the civilian EEO program to identify and eliminate barriers and practices that impede equal opportunity for all employees and applicants for employment including harassment in the workforce.

- DoDD 1440.1, "DoD Civilian Equal Employment Opportunity (EEO) Program," May 21, 1987, certified current November 21, 2003:
    - Establishes the DoD civilian EEO program.
    - Prohibits discrimination based on race, color, religion, sex, national origin, mental or physical disability, or age for DoD civilian employees and applicants for civilian employment.
    - Eliminates barriers and practices that impede equal employment opportunity for all employees, including sexual harassment in the workforce and at work sites and architectural, transportation, and other barriers affecting people with disabilities.
    - Instructs the Department to establish a continuing EEO educational program (including training in the prevention of sexual harassment) for civilian and military personnel who supervise civilian employees.

- Department of Defense Instruction (DoDI) 1020.04, "Harassment Prevention and Response for DoD Civilian Employees," June 30, 2020:
    - Broadens prohibited harassment to include behaviors outside of traditional EEO discriminatory harassment.
    - Requires DoD Components identify venues where employees can report and seek assistance to address these behaviors.
    - Requires leaders provide timely and ongoing information to an employee alleging harassment regarding the status of the response to the allegation.
    - Requires initial and refresher training that addresses what harassment is, how to report it, and what resources are available to correct it.

[19] 5 CFR § 724.302(a)(6).

- DoDI 1400.25, Volume 1614, "DoD Civilian Personnel Management System: Investigation of Equal Employment Opportunity (EEO) Complaints," November 5, 2015:
    - Establishes the policies governing investigation of formal EEO complaints of discrimination.
    - Prescribes procedures and assigns responsibilities for investigating EEO complaints or resolving them instead of investigating.

AGENCY TRAINING PLAN[20]

In addition to DoDD 1440.1 and DoDI 1020.04, both noted above, the Department has additional policies that address training.

- DoDI 1350.02, "DoD Military Equal Opportunity Program," September 4, 2020:
    - Designates the Defense Equal Opportunity Management Institute as the primary training provider for DoD civilian employees in EEO positions.
    - Provides training for EEO practitioners on policies and programs on the prevention and response to prohibited discrimination and harassment.
- DoDI 1400.25, Volume 410, "DoD Civilian Personnel Management System: Training, Education, and Professional Development," September 25, 2013:
    - Directs the DoD Components to "train all of their employees (including supervisors and managers) about the rights and remedies available under antidiscrimination laws and whistleblower protection laws."
    - Instructs employees are to be trained at a new employee orientation program, or within 90 days of the employee's start date.
    - States the training will be consistent with section 202 of Public Law 107-174.
    - Requires DoD Components to "provide training programs to teach employees at all levels how to identify and prevent sexual harassment."

ANALYSIS

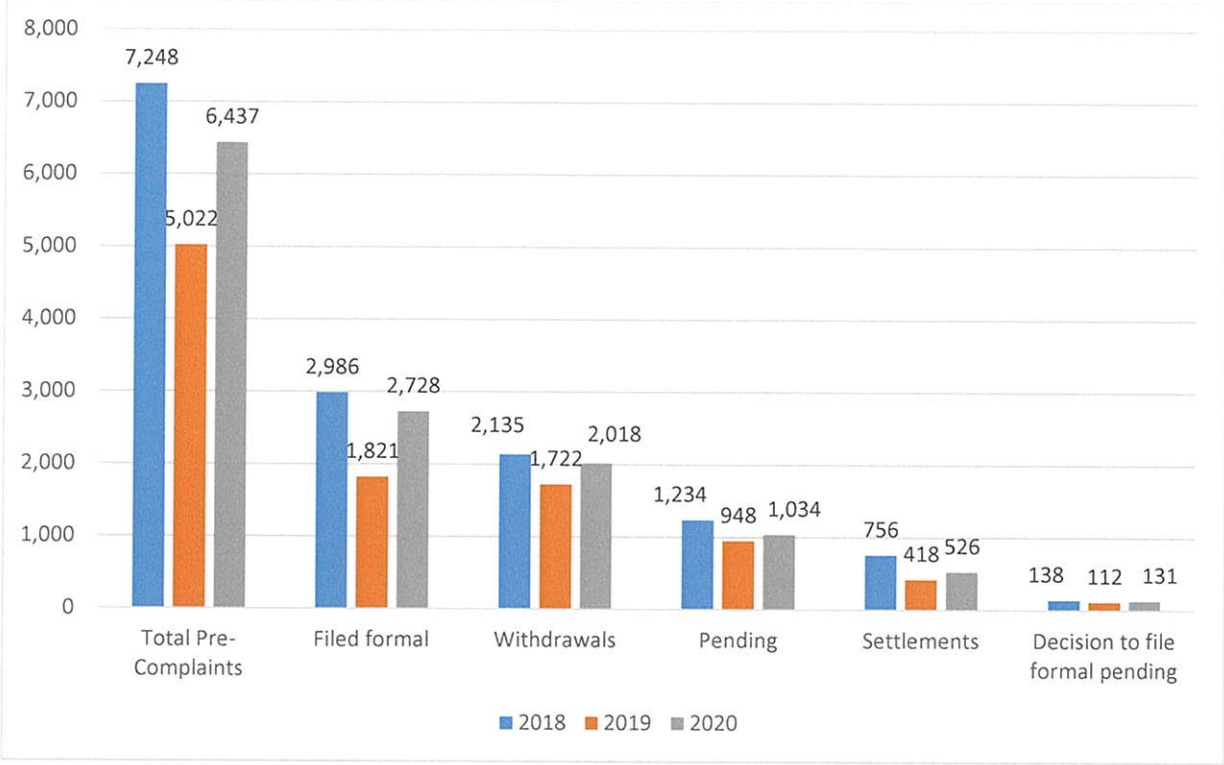
Examination of Trends

1) Pre-Complaints

As previously identified, the Department had 6,437 pre-complaints, 2,544 of which either settled or were withdrawn. The total number of FY 2020 pre-complaints increased from the 5,022 pre-complaints in FY 2019, but represented a decrease from the 7,248 pre-complaints in FY 2018. Figure 1 demonstrates this three-year trend.

[20] 5 CFR § 724.302(a)(9).

FIGURE 1: FY 2018-2020 DISPOSITION OF PRE-COMPLAINTS TREND



The Department encourages resolution at the lowest level. The first opportunity for the Department to resolve EEO complaints is through an ADR process during the pre-complaint phase. For FY 2020, 3,288 aggrieved parties were offered ADR and 2,053 accepted. The acceptance rate of aggrieved parties choosing to use the ADR process for FY 2020 (62.4 percent) is an increase from FY 2019's acceptance rate (39.6 percent) and much closer to FY 2018's acceptance rate (62.8 percent).

A non-monetary benefit generally consists of the organization taking steps to reverse or mitigate an adverse employment action. It does not necessarily mean there was not also a monetary payment. Using ADR allowed the Department to provide 405 aggrieved parties with non-monetary benefits to resolve pre-complaints. Conversely, 67 aggrieved parties received non-monetary benefits to resolve pre-complaints without ADR. This trend is similar to both FYs 2018 and 2019, each of which also demonstrated ADR was more likely to resolve matters with non-monetary benefits in the pre-complaint process than without ADR. Figure 2 shows the differences in the non-monetary benefits between FY 2020 settlements that occurred with ADR versus those that did not. Figure 3 shows a three-year comparison of the totals of non-monetary benefits in pre-complaint settlements.

FIGURE 2: FY 2020 NON-MONETARY BENEFITS IN ADR SETTLEMENTS AND NON-ADR SETTLEMENTS - PRE-COMPLAINTS

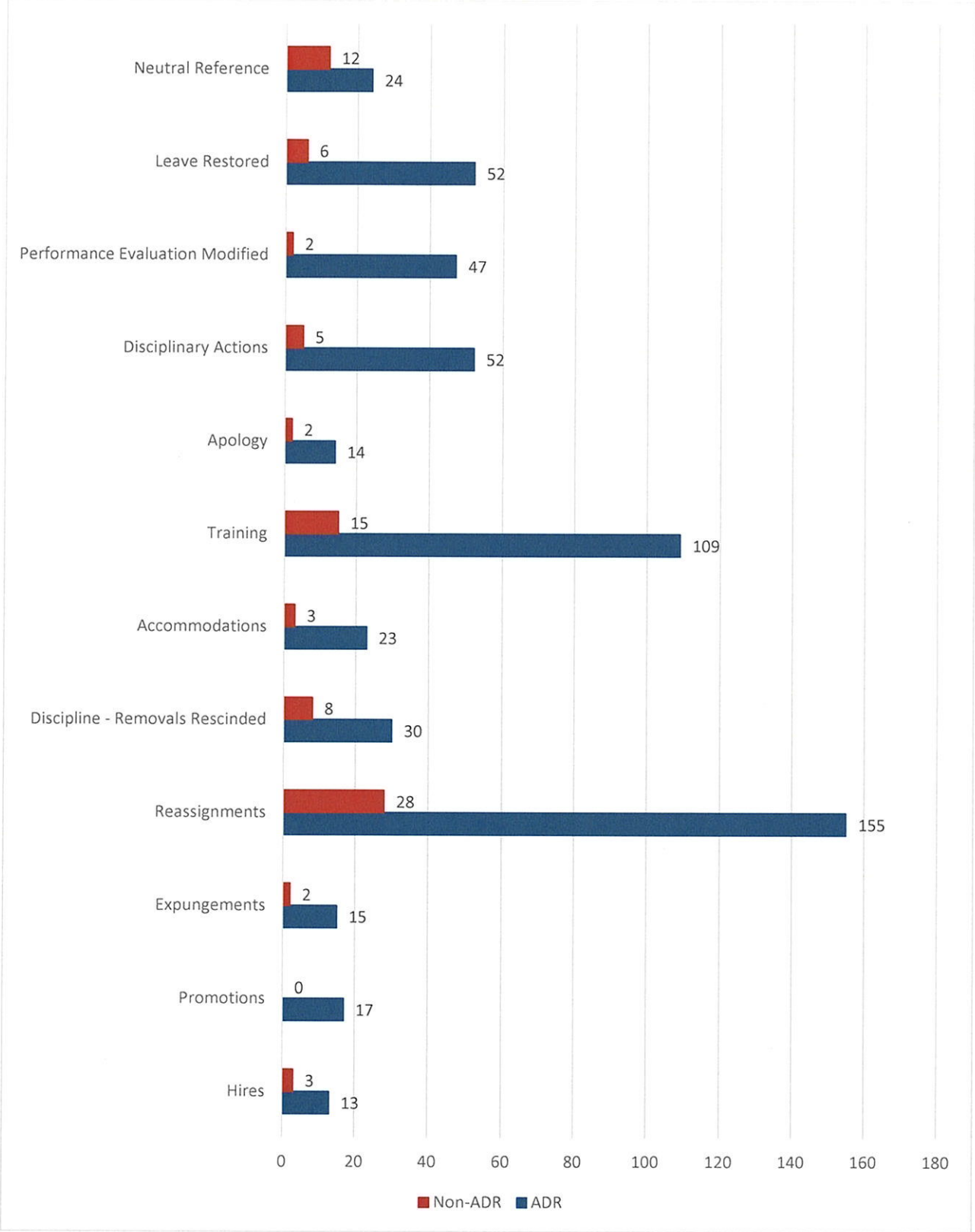
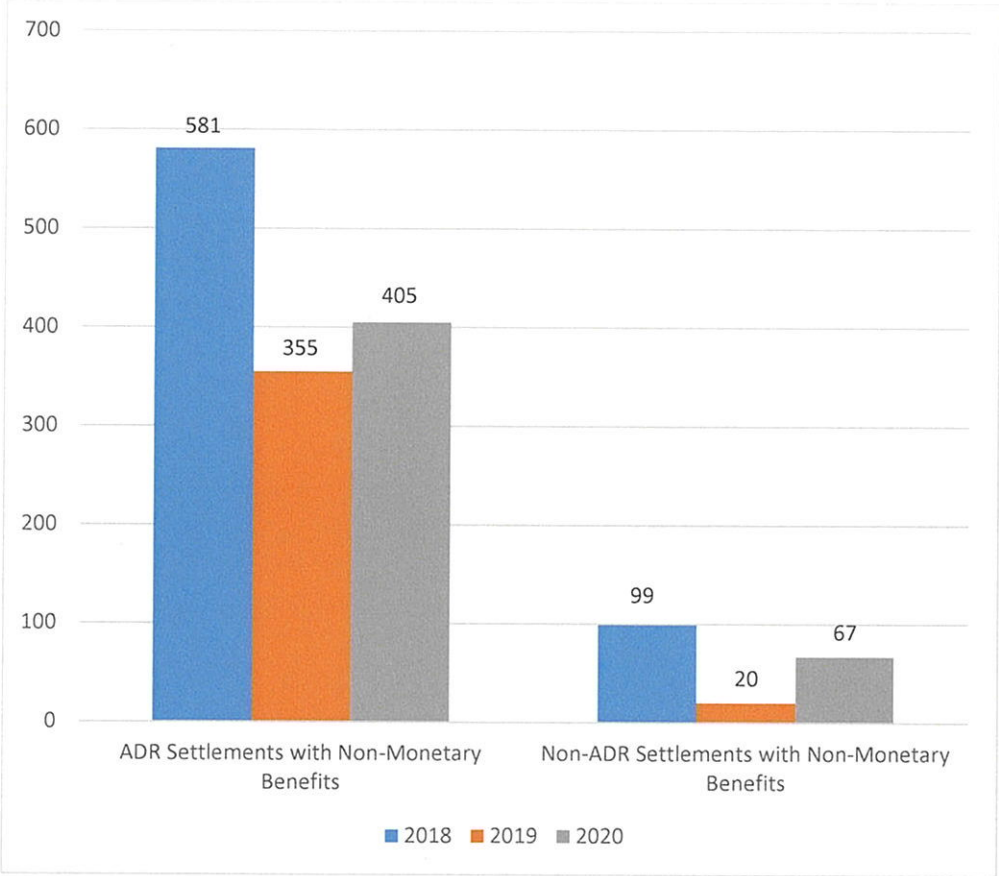


FIGURE 3: FY 2018-2020 COMPARISON OF SETTLEMENTS WITH NON-MONETARY BENEFITS - PRE-COMPLAINTS



Some pre-complaint settlements are resolved with a monetary payment. In FY 2020, 101 pre-complaint settlements resulted in the payout of $1,287,715.26 in compensatory damages, backpay/frontpay, lump sum payments, and attorney fees for the aggrieved. The FY 2020 payout is an increase from the FY 2019 payout of $332,139.42 (63 pre-complaint settlements) and also an increase from the $1,039,485.58 paid in monetary settlements during FY 2018 (164 pre-complaint settlements).

The ADR process resolved more pre-complaints by settling with monetary benefits than the non-ADR processes, but it also paid out more monetarily (ADR: $1,158,263.09; Non-ADR: $129,452.17). This is consistent with both FYs 2018 and 2019. Figure 4 and Figure 5 show the breakdown of monetary benefits in ADR settlements, first by the number of occurrence, then by dollar amount. Figure 6 shows a 3-year comparison of the totals of monetary benefits in pre-complaint settlements.

FIGURE 4: FY 2020 MONETARY BENEFITS IN ADR SETTLEMENTS AND NON-ADR SETTLEMENTS - PRE-COMPLAINTS (NUMBER)

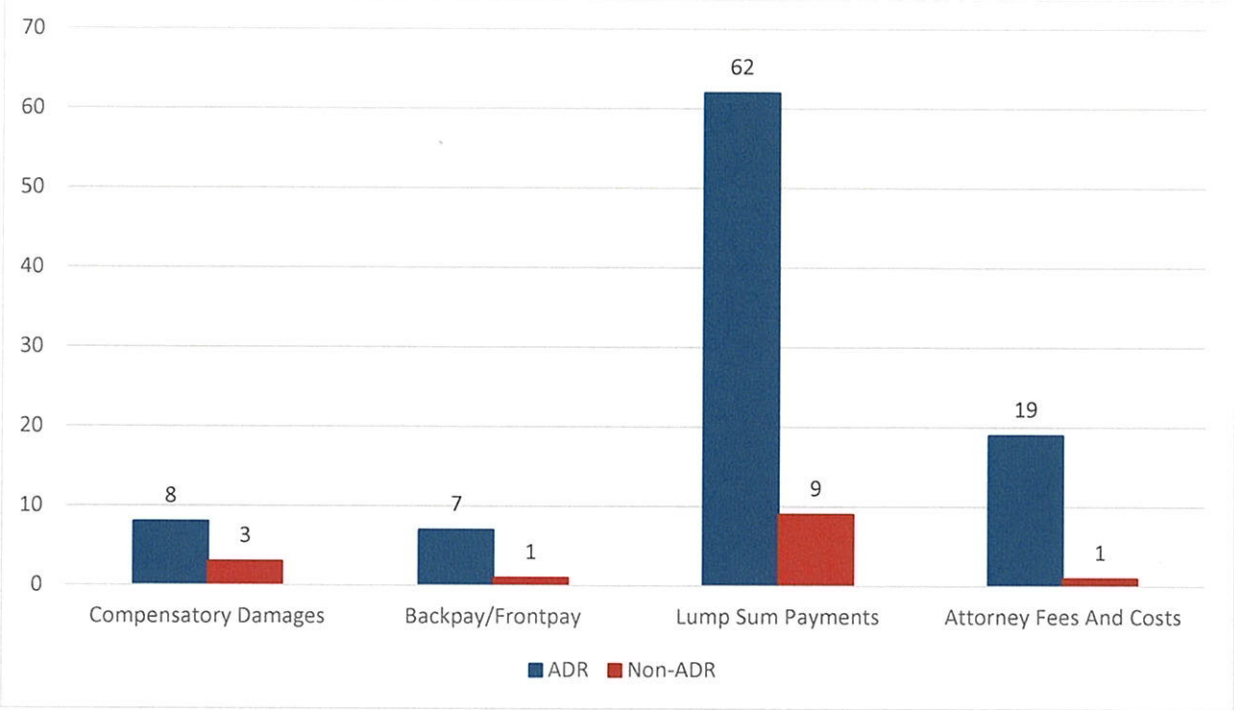


FIGURE 5: FY 2020 MONETARY BENEFITS IN ADR SETTLEMENTS AND NON-ADR SETTLEMENTS - PRE-COMPLAINTS (DOLLARS)

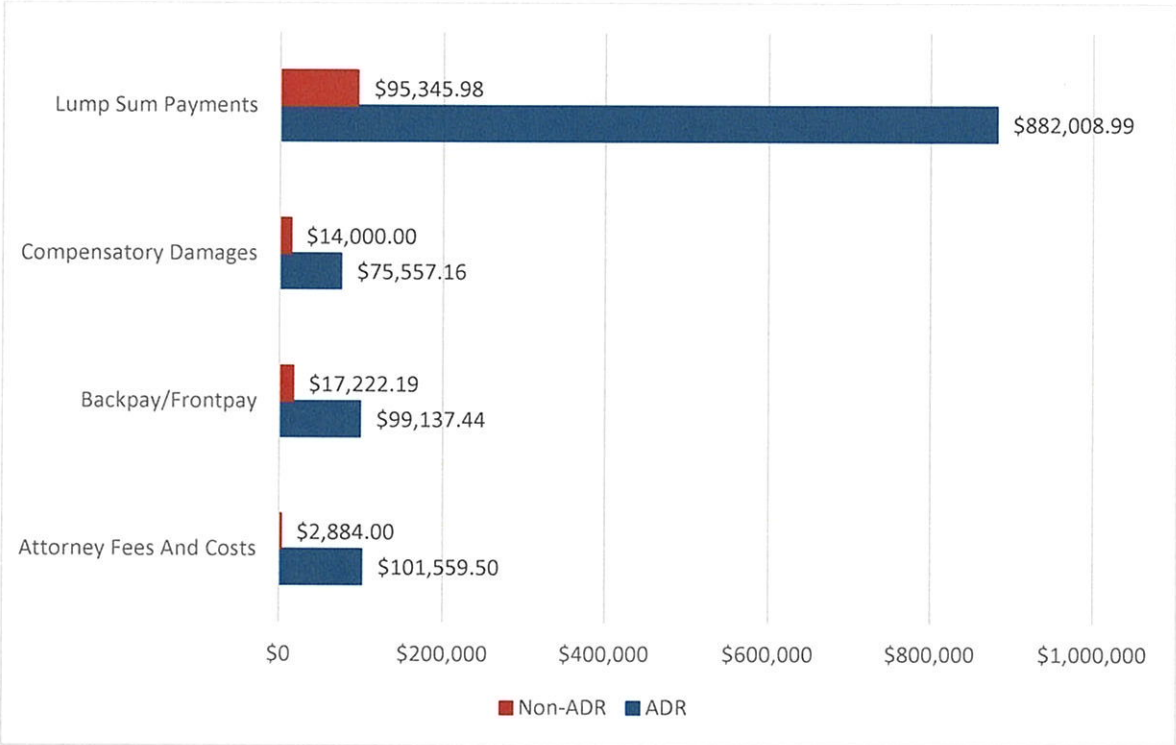
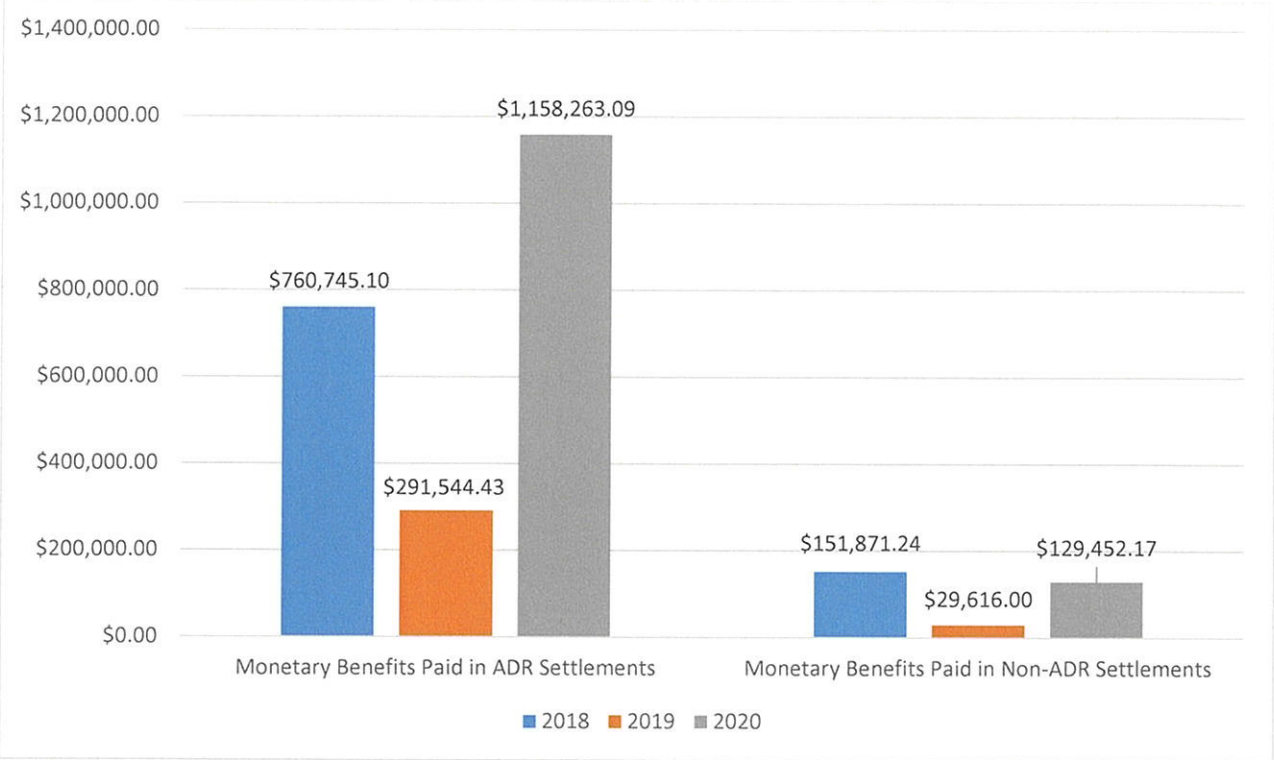


FIGURE 6: FY 2018-2020 COMPARISON OF MONETARY BENEFITS PAID IN SETTLEMENTS - PRE-COMPLAINTS



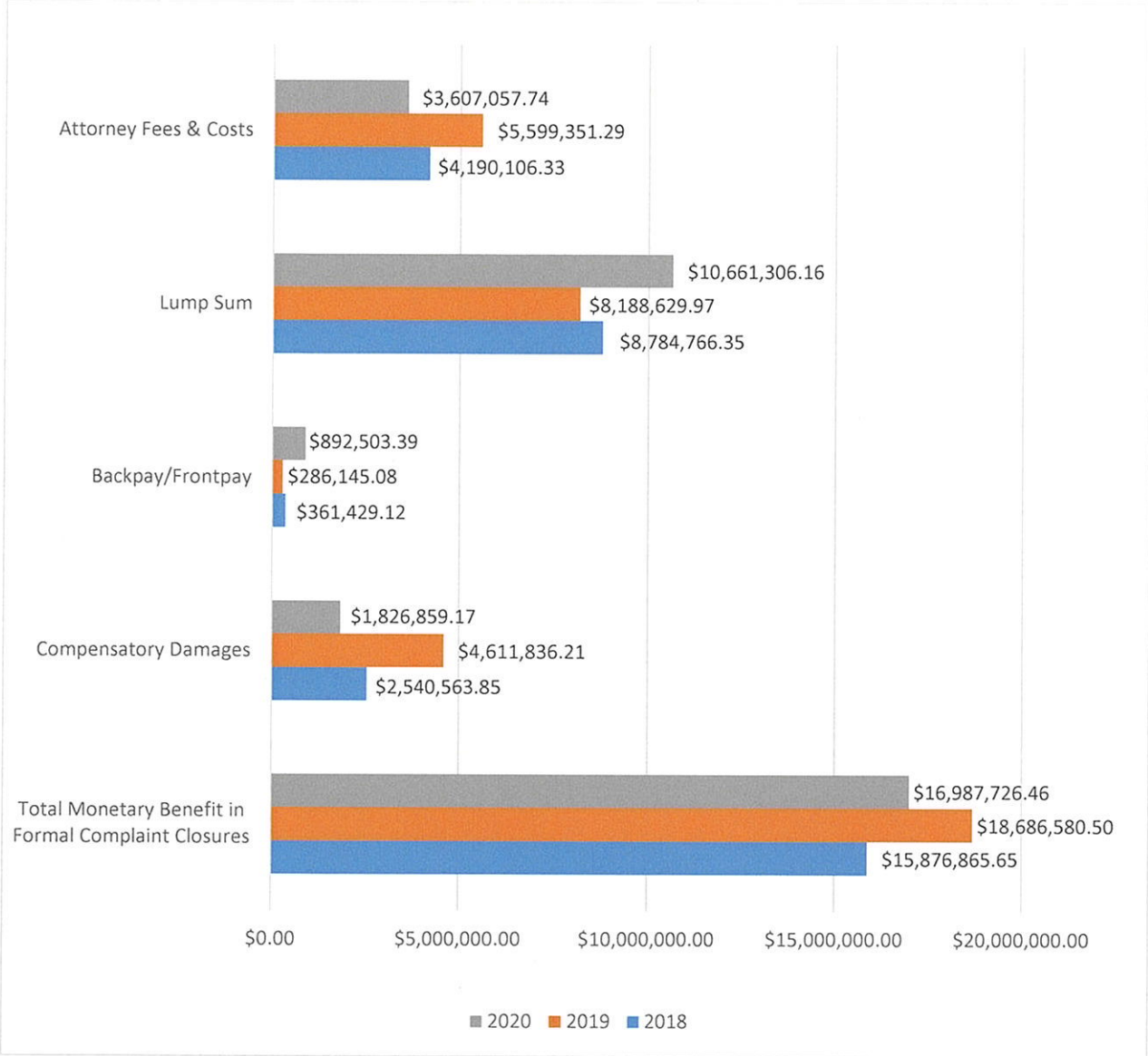
2) Formal Complaints

DoD civilian employees or applicants for DoD employment filed 2,907 formal EEO complaints in FY 2020. This is an increase from FY 2019 (1,972 complaints), but a decrease from FY 2018 (3,170 complaints).

In FY 2020, 763 complaints that were closed[21] involved monetary benefits, non-monetary benefits, or both. Of these 763 complaints, 659 received a monetary payment, totaling $16,987,726.46 in compensatory damages, backpay/frontpay, lump sum payments, and attorney fees for FY 2020. This is less than FY 2019 ($18,776,330.47), but more than FY 2018 ($15,876,865.65). Figure 7 shows a three-year comparison of the total payouts of monetary benefits in closures.

[21] Due to the time involved in the EEO complaint process, it is possible that the closed formal complaints are connected to complaints that were filed prior to FY 2020.

FIGURE 7: FY 2018-2020 MONETARY BENEFITS PAID OUT IN FORMAL COMPLAINT CLOSURES[22]



Closures can contain a non-monetary benefit in addition to, or independent of, a monetary benefit. In FY 2020, 467 complaints received a non-monetary benefit as part of the closure. Table 12 provides a summary of the non-monetary benefit and whether or not it accompanied a monetary benefit.

[22] In FY 2019, there were also monetary benefits categorized as "other" in the total amount of $617.95.

TABLE 12: FY 2020 NON-MONETARY BENEFITS IN FORMAL COMPLAINT CLOSURES[23]

Non-Monetary Benefit	Total Closures That Received Monetary & Non-Monetary Benefits	Total Closures That Received Only Non-Monetary Benefits
Hire	5	4
Promotion	15	10
Expungement	40	19
Reassignment	52	68
Discipline Removal Rescinded	39	24
Accommodations	17	10
Training	51	59
Apology	19	6
Disciplinary Action Rescinded or Modified	39	18
Performance Evaluation Modified	47	17
Leave Restored	103	41
Neutral Reference	40	25

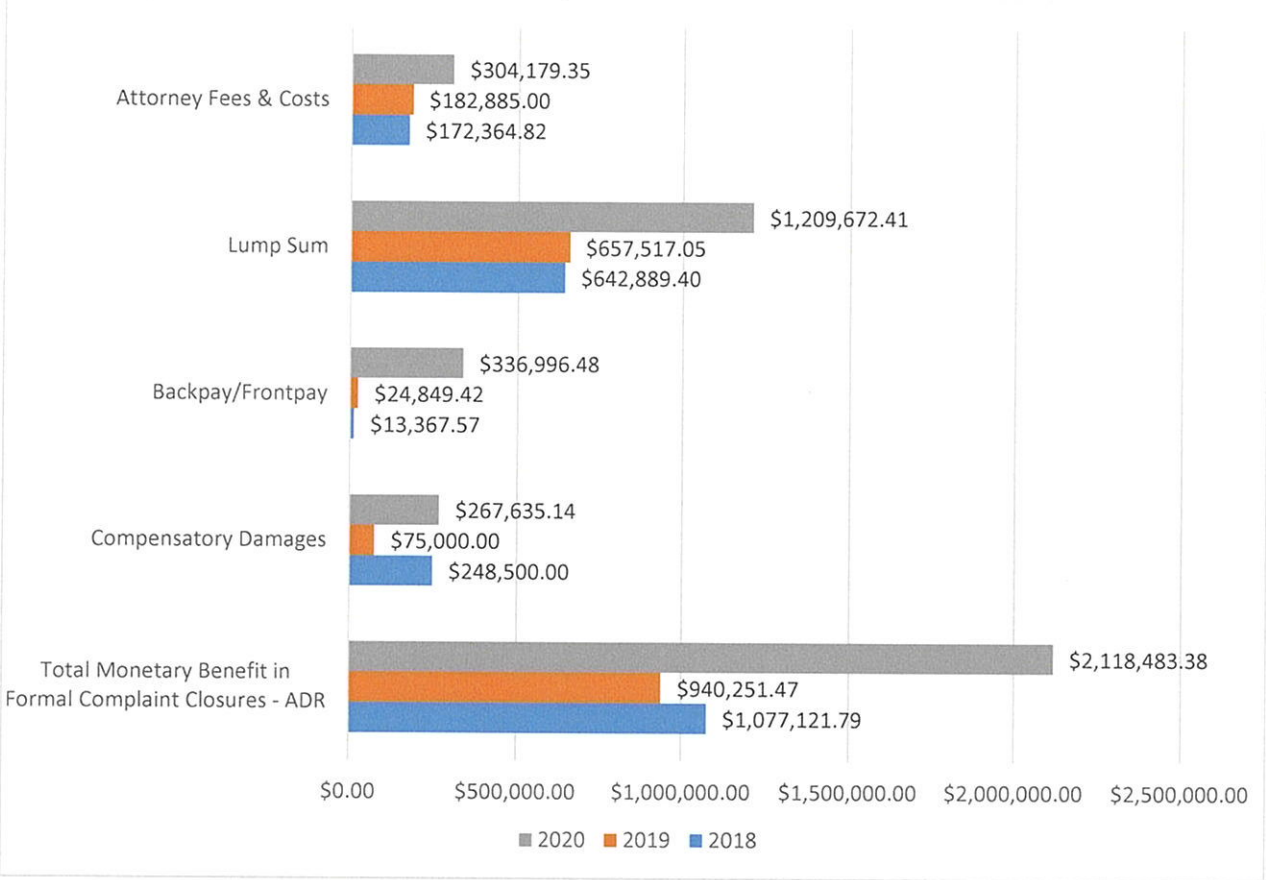
A complainant may also resolve a formal complaint by employing ADR methods. In FY 2020, 490 complaints were offered ADR and 311 accepted (63.5 percent). Of those 490 formal complaints, 202 (41.2 percent) were settled or withdrawn. This percentage of complaints being settled or withdrawn is a decrease from both FY 2018 (61.3 percent) and FY 2019 (61.0 percent).[24]

The Department also used ADR to pay out $2,118,483.38 in monetary benefits in 97 complaint closures. This is an increase from both FY 2018 ($1,077,121.79) and FY 2019 ($940,251.47). Figure 8 demonstrates a three-year comparison of the total payouts of monetary benefits in closures that used ADR.

[23] There may be more than one non-monetary benefit per complaint.

[24] For FY 2018, 503 complaints were offered ADR and 302 accepted (60.0 percent). Of those 302 formal complaints, 185 (61.3 percent) were settled or withdrawn. For FY 2019, 360 complaints were offered ADR and 213 accepted (59.2 percent). Of those 213 formal complaints, 130 (61.0 percent) were settled or withdrawn.

FIGURE 8: FY 2018-2020 MONETARY BENEFITS PAID OUT IN FORMAL COMPLAINT CLOSURES USING ADR



In FY 2020, 121 formal complaints received a non-monetary benefit as part of ADR closure. Table 13 provides a summary of the non-monetary benefits.

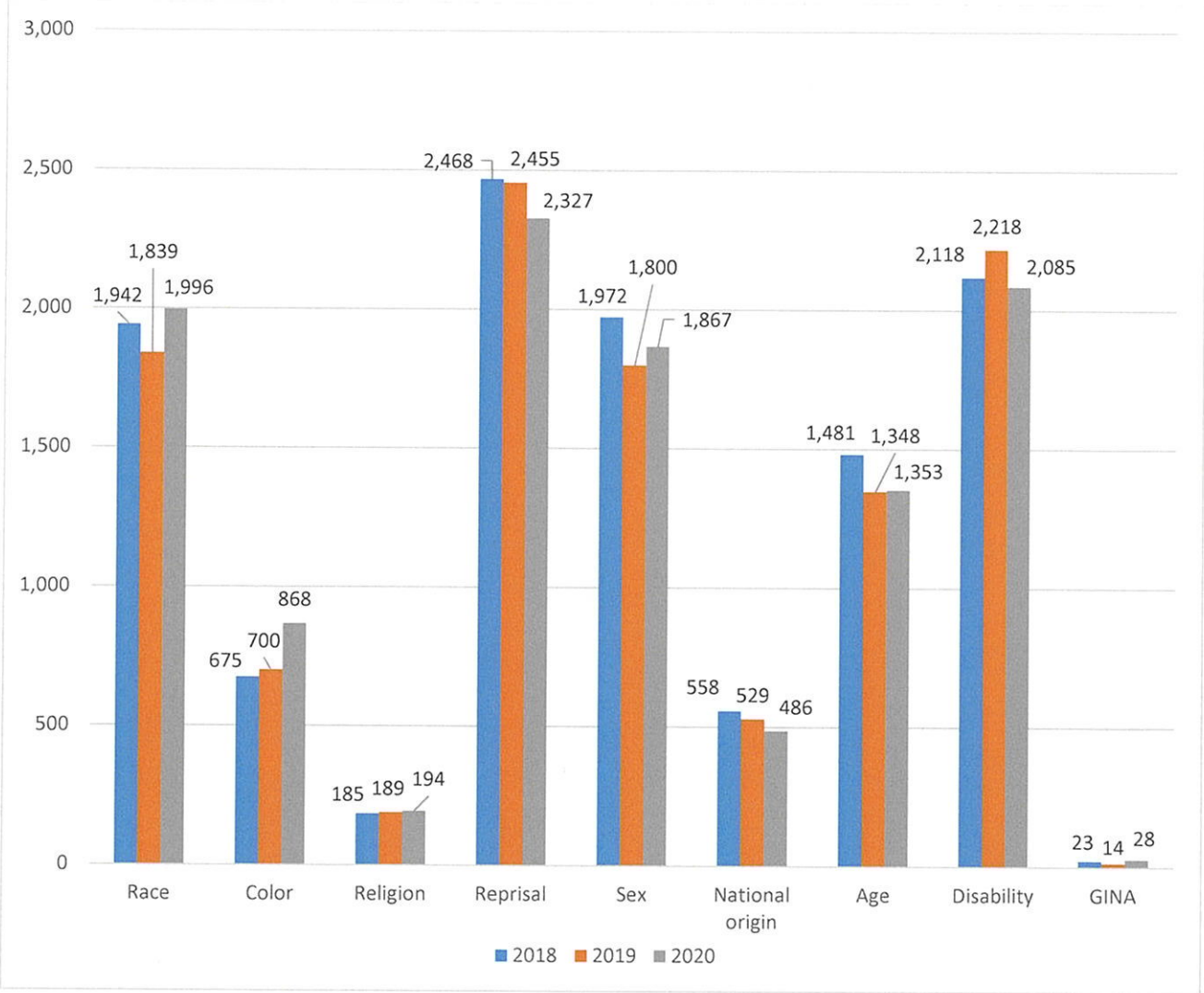
TABLE 13: NON-MONETARY BENEFITS IN ADR CLOSURES

Non-Monetary Benefit	Total ADR Closures That Received Non-Monetary Benefit
Hire	0
Promotion	2
Expungement	9
Reassignment	39
Discipline Removal Rescinded	10
Accommodations	9
Training	28
Apology	3
Disciplinary Action Rescinded or Modified	7
Performance Evaluation Modified	12
Leave Restored	31
Neutral Reference	11

(a) Common Issue Allegations

During FY 2020, 2,907 formal complaints were filed containing 11,204 allegations. The top identified basis of FY 2020 allegations was reprisal (2,327 allegations or 20.8 percent of all allegations). Disability (2,085 allegations or 18.6 percent of all allegations), race (1,996 allegations or 17.8 percent of all allegations), sex (1,867 allegations or 16.7 percent of all allegations), and age (1,353 allegations or 12.1 percent of all allegations) were in the next tier of common bases cited in FY 2020 formal complaints. Figure 9 provides the three-year trend of allegations by basis.

FIGURE 9: FY 2018-2020 COMPARISON OF BASES IN ALLEGATIONS IN FORMAL COMPLAINTS



The most frequent allegation across all bases was non-sexual harassment, with a total of 3,387 allegations (30.2 percent of all allegations). Figure 10 shows the number of non-sexual harassment allegations by basis for FY 2020 alone. Figure 11 shows the comparison of non-sexual harassment allegations by basis for FY 2018 through FY 2020.

FIGURE 10: FY 2020 NON-SEXUAL HARASSMENT ALLEGATIONS BY BASIS

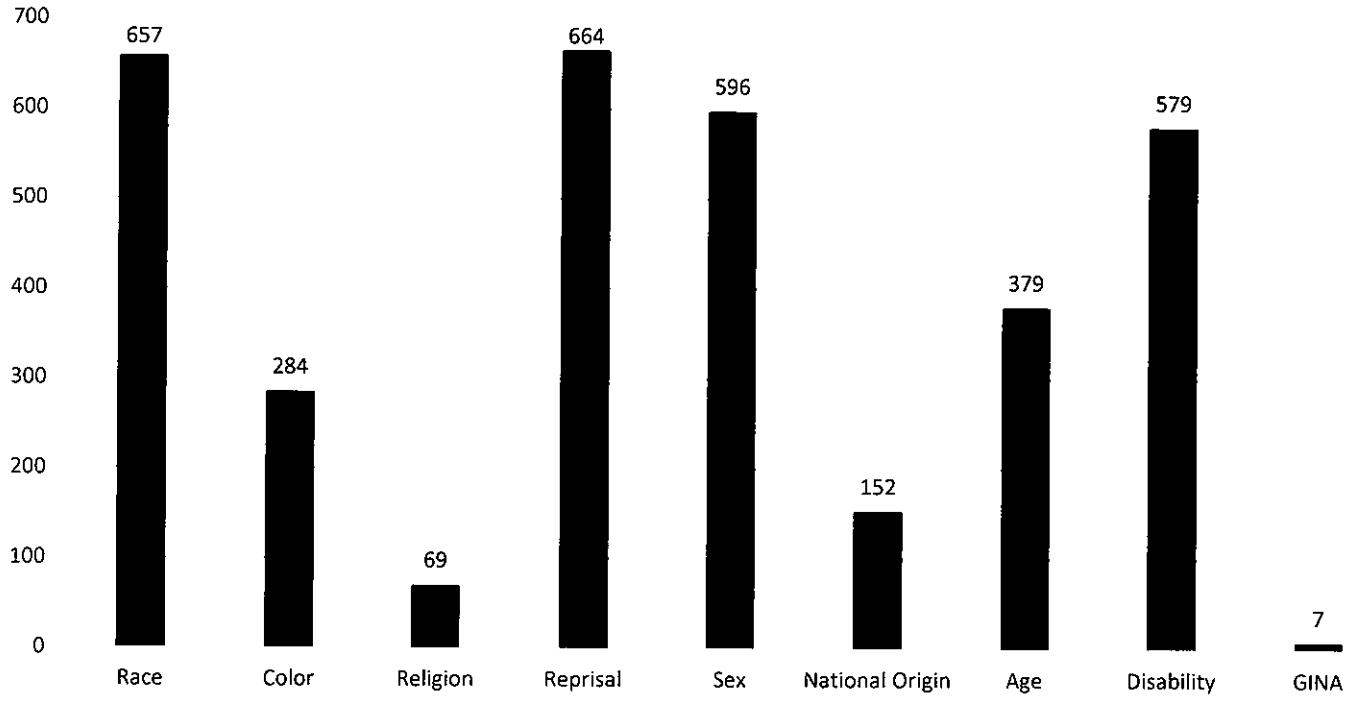
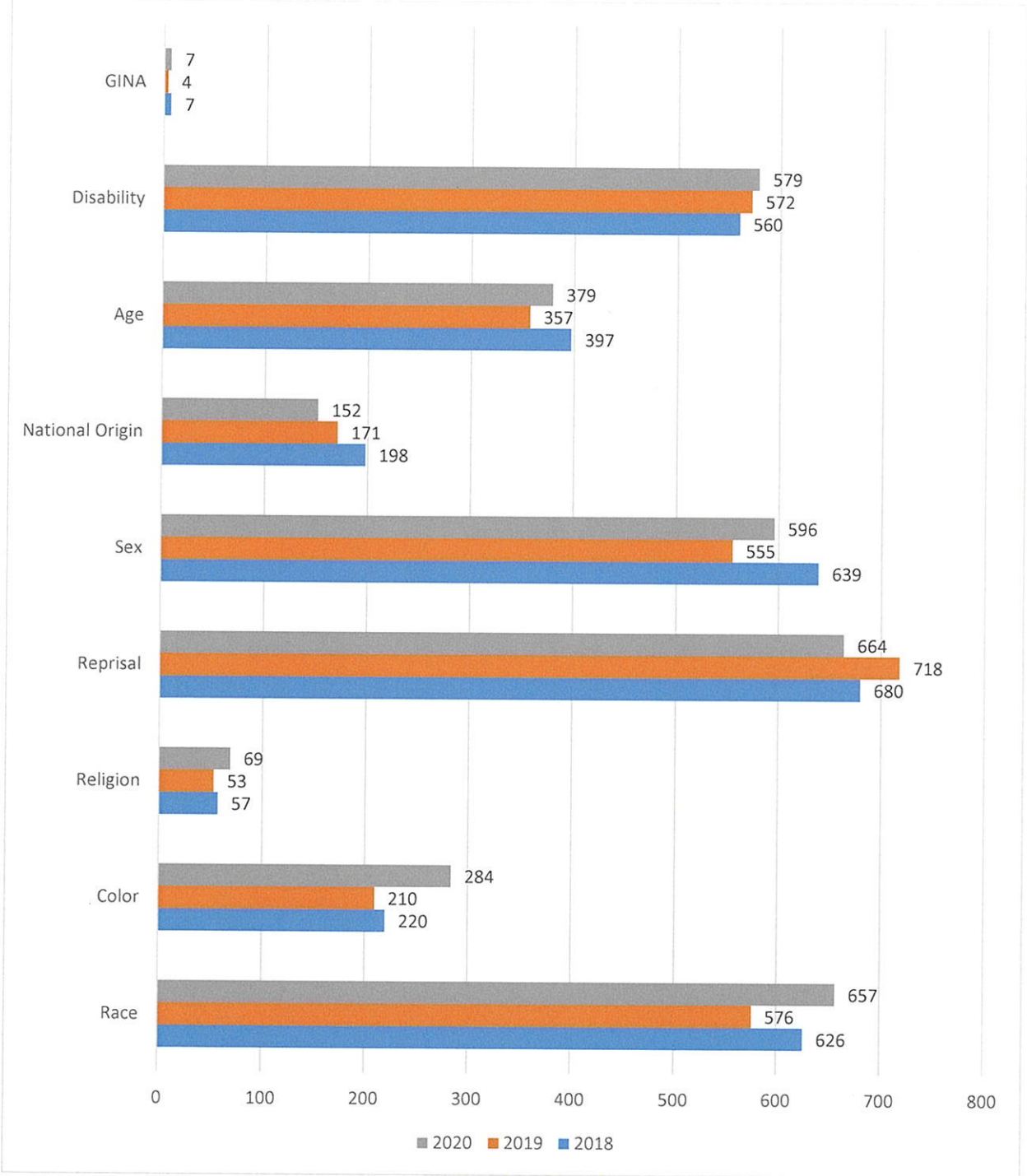


FIGURE 11: FY 2018-2020 COMPARISON OF NON-SEXUAL HARASSMENT ALLEGATIONS BY BASIS



Other top issues identified in allegations were assignment of duties, evaluation/appraisal, and promotion/non-selection. Figure 12 shows the breakout of these next three top allegations per basis (not including non-sexual harassment). These are the same next three top allegations per basis (not including non-sexual harassment) of the sum of complaints FY 2018 through FY 2020.

FIGURE 12: FY 2020 TOP 3 ISSUES (AFTER NON-SEXUAL HARASSMENT) BY BASIS

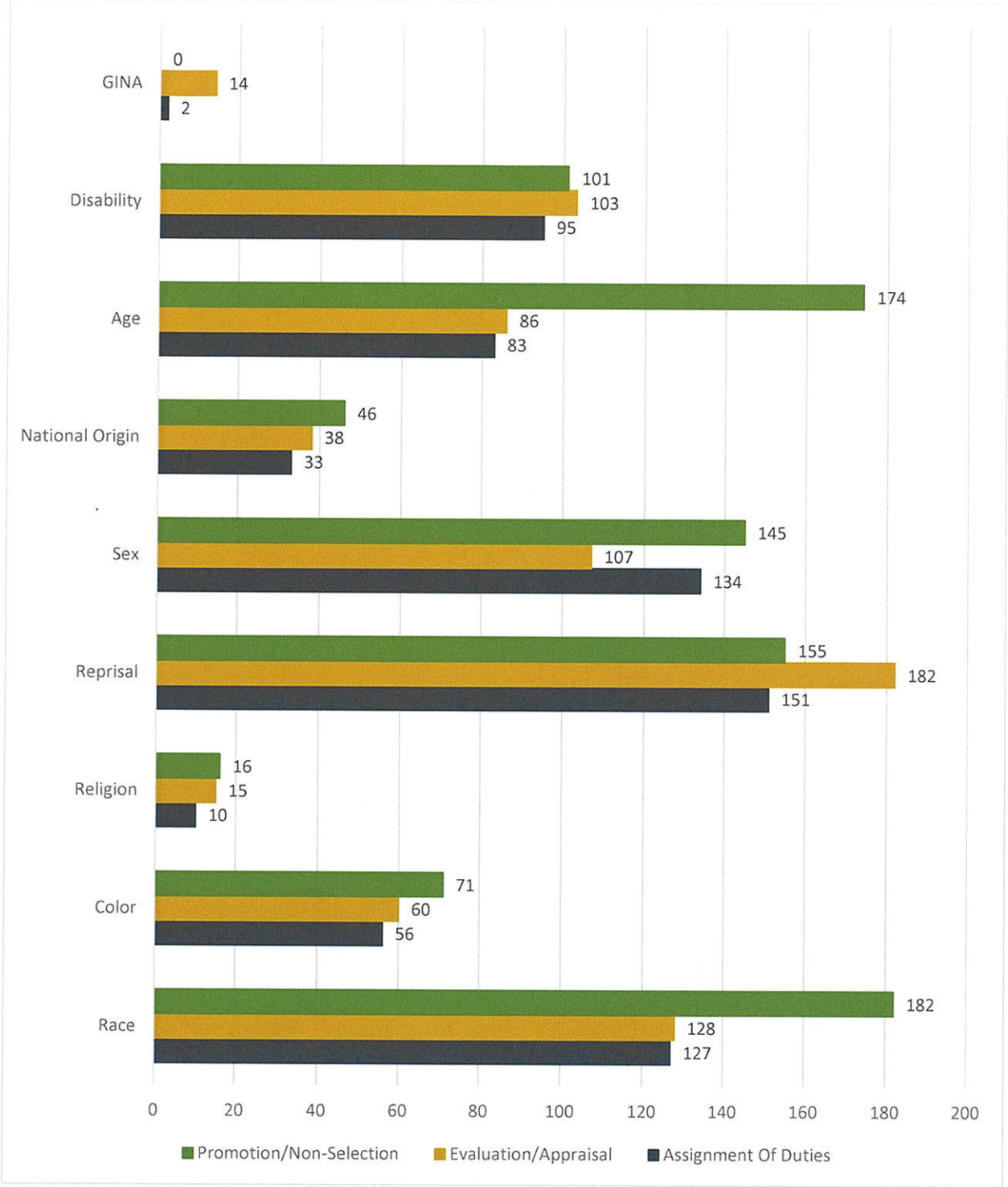


Figure 12 demonstrates the top allegations (other than non-sexual harassment) from the total allegations. However, allegations based on national origin, disability, and GINA, when viewed independently from non-sexual harassment, had different top issues than those identified in Figure 12. Tables 14 through 16 show these distinctions.

TABLE 14: FY 2020 TOP 3 ISSUES (AFTER NON-SEXUAL HARASSMENT) - NATIONAL ORIGIN[25]

Promotion/Non-Selection (46 allegations)
Evaluation/Appraisal (38 allegations)
Termination (34 allegations)

TABLE 15: FY 2020 TOP 3 ISSUES (AFTER NON-SEXUAL HARASSMENT) - DISABILITY[26]

Reasonable Accommodation (303 allegations)
Termination (175 allegations)
Time and Attendance (114 allegations)

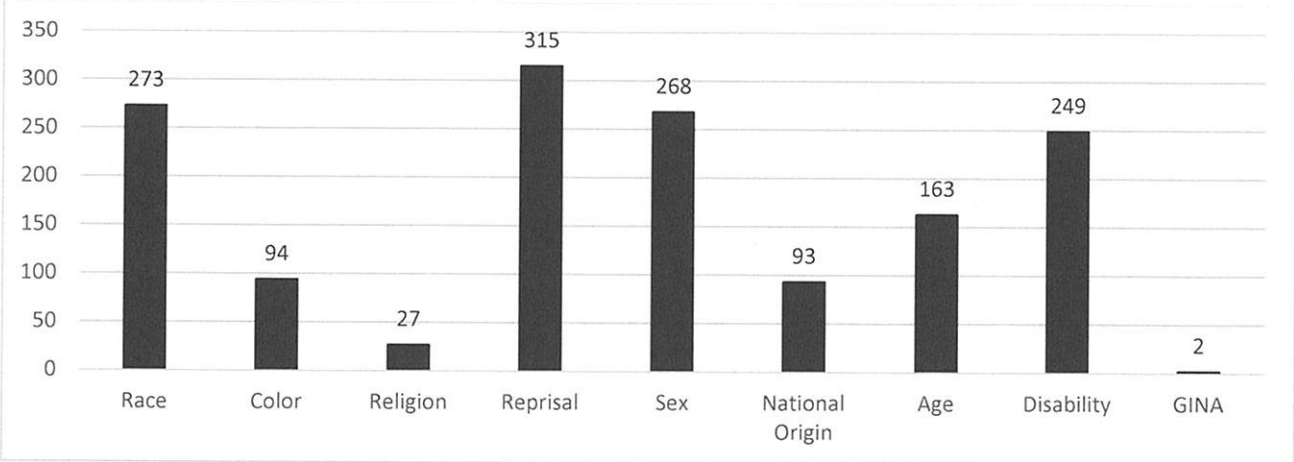
TABLE 16: FY 2020 TOP 3 ISSUES (AFTER NON-SEXUAL HARASSMENT) - GINA[27]

Evaluation/Appraisal (14 allegations)
Assignment of Duties (2 allegations)
Reassignment – Denied (1 allegation)

(b) Common Issue Settlements

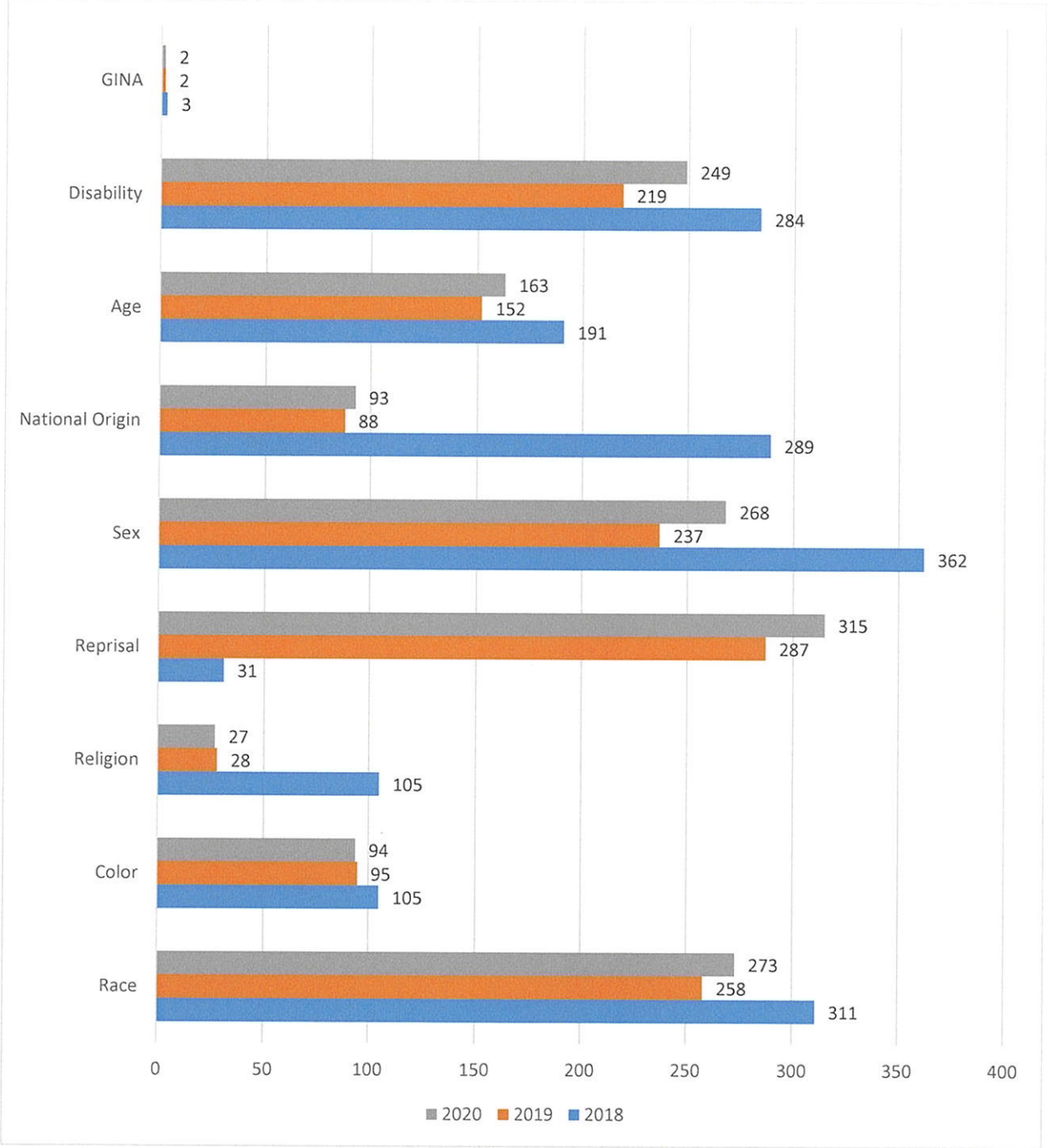
In FY 2020, 4,478 allegations in 743 complaints were settled. The most frequent allegation settled across all bases was non-sexual harassment, with a total of 1,484 allegations settled (33.1 percent of all settled allegations). Figure 13 shows the number of FY 2020 non-sexual harassment allegations in settlements by basis. Figure 14 shows the comparison of non-sexual harassment allegations in settlements by basis for FY 2018 through FY 2020.

FIGURE 13: FY 2020 NON-SEXUAL HARASSMENT ALLEGATIONS IN SETTLEMENTS BY BASIS



[25] The bolded issues in the bulleted lists are the issues that were not in the top three most common issues for DoD as a whole.
[26] Ibid.
[27] Ibid.

FIGURE 14: FY 2018-2020 COMPARISON OF NON-SEXUAL HARASSMENT ALLEGATIONS IN SETTLEMENTS BY BASIS



Other top issues identified in allegations in settlements were assignment of duties, evaluation/appraisal, and promotion/non-selection. Figure 15 shows the breakout of these next three top allegations in settlements per basis (not including non-sexual harassment). These are the same next three top allegations in settlements per basis (not including non-sexual harassment) for the sum of complaints, FY 2018 through FY 2020.

FIGURE 15: FY 2020 TOP 3 ISSUES IN ALLEGATIONS (AFTER NON-SEXUAL HARASSMENT) IN SETTLEMENTS BY BASIS

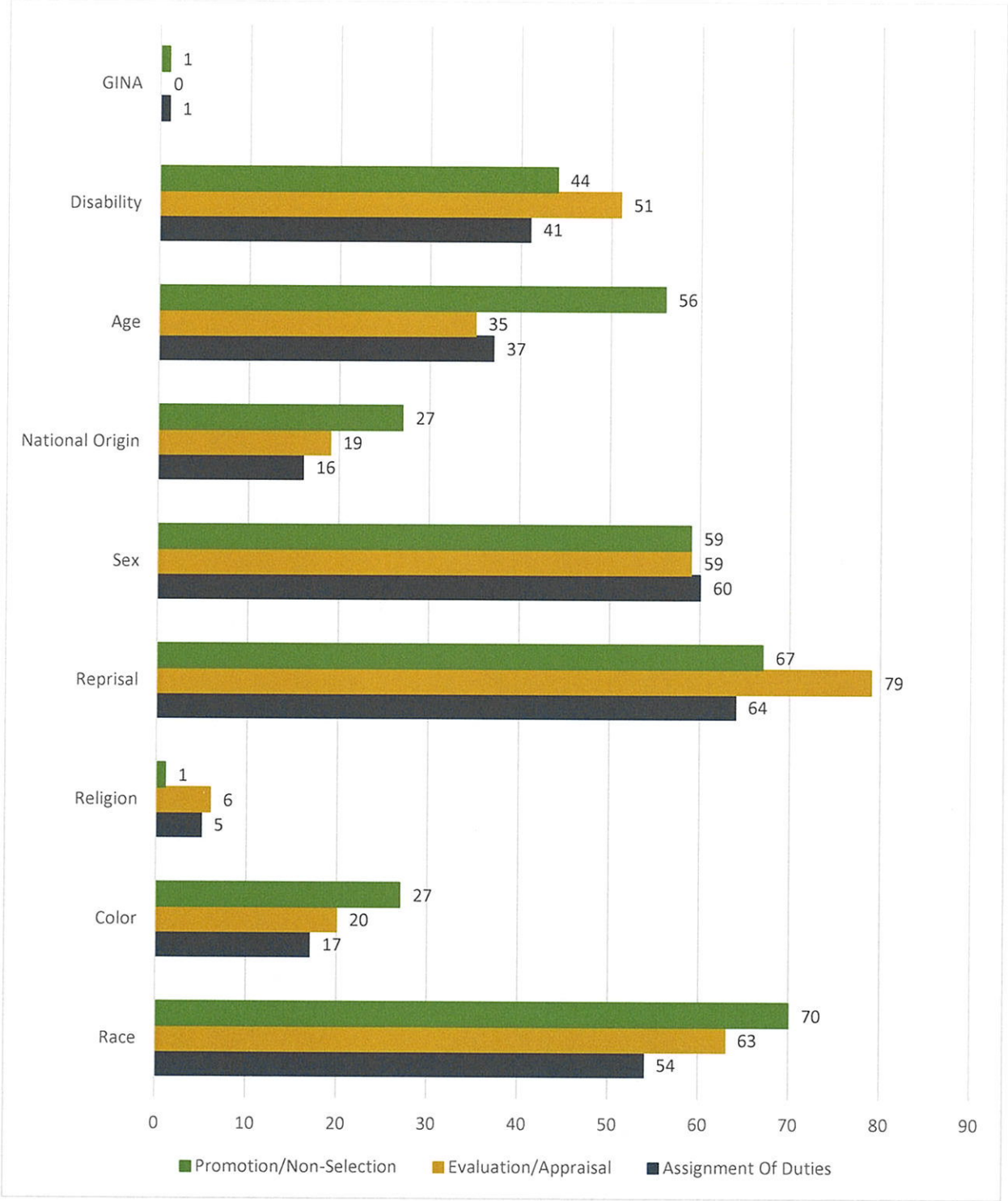


Figure 15 demonstrates the top settled allegations (other than non-sexual harassment) from the total amount of settled allegations. However, settled allegations based on color, religion,

disability, and GINA, when viewed independently from non-sexual harassment, had different top issues in settled allegations than those identified in Figure 15. Tables 17 through 20 show these distinctions.

TABLE 17: FY 2020 TOP 3 ISSUES (AFTER NON-SEXUAL HARASSMENT) IN SETTLEMENTS - COLOR[28]

Promotion/Non-Selection (27 allegations)
Evaluation/Appraisal (20 allegations)
Time and Attendance (17 allegations)

TABLE 18: FY 2020 TOP 3 ISSUES (AFTER NON-SEXUAL HARASSMENT) IN SETTLEMENTS - RELIGION[29]

Terms/Conditions of Employment (7 allegations)
Evaluation/Appraisal (6 allegations)
Appointment/Hire (5 allegations)

TABLE 19: FY 2020 TOP 3 ISSUES (AFTER NON-SEXUAL HARASSMENT) IN SETTLEMENTS - DISABILITY[30]

Reasonable Accommodation (126 allegations)
Termination (55 allegations)
Evaluation/Appraisal (51 allegations)

TABLE 20: FY 2020 TOP 3 ISSUES (AFTER NON-SEXUAL HARASSMENT) IN SETTLEMENTS - GINA[31]

Promotion/Non-Selection (1 allegation)
Awards (1 allegation)
Discipline – Suspension (1 allegation)

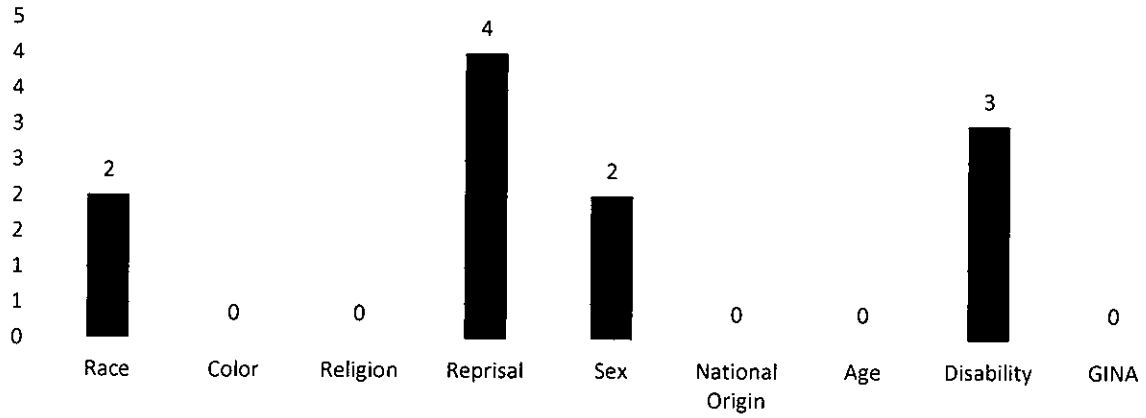
(c) Common Issue Findings

In FY 2020, there were 25 findings in FADs or final orders. This is a decrease from both FY 2019 (28 findings) and FY 2018 (30 findings). Additionally, FY 2020 had 55 allegations in those 25 findings, which was a decrease from the 73 allegations in FY 2019, but an increase from the 51 allegations in FY 2018.

[28] The bolded issues in the bulleted lists are the issues that were not in the top three most common issues for DoD as a whole.
[29] Ibid.
[30] Ibid.
[31] Ibid.

In FY 2020, the most frequent finding across all bases was for non-sexual harassment, with a total of 11 allegations receiving a finding (20.0 percent of all allegations in findings). Non-sexual harassment was also the most frequent allegation with a finding in both FY 2019 (21.0 percent of all allegations in findings) and FY 2018 (31.4 percent of all allegations in findings). Figure 16 shows the breakdown by basis of how many non-sexual harassment allegations were addressed in a finding.

FIGURE 166: FY 2020 NUMBER OF ALLEGATIONS IN FINDINGS OF NON-SEXUAL HARASSMENT BY BASIS

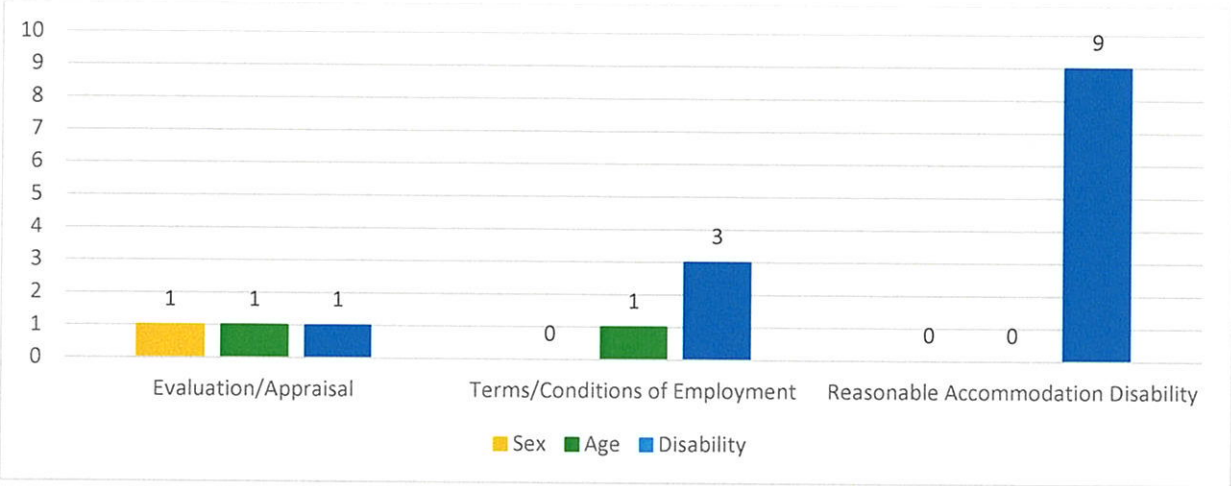


Reprisal was the most frequent basis of a finding of non-sexual harassment in FY 2020, as well as both FY 2019 and FY 2018. However, in FY 2020 it was 36 percent of the findings, an increase from FY 2019 (31.2 percent), but a decrease from FY 2018 (56.3 percent).

The top three issues addressed in a finding (outside of non-sexual harassment) in FY 2020 were reasonable accommodation (10 allegations), evaluation/appraisal (7 allegations), and terms/conditions of employment (7 allegations).

Figure 17 shows the breakout of these next three top allegations per basis (not including non-sexual harassment). While reasonable accommodation remains the top issue for allegations involved in findings (other than non-sexual harassment) for FY 2018 through FY 2020, promotion/non-selection and terms/conditions of employment are the other top issues in allegations involved in findings (other than non-sexual harassment) in the sum of complaints, FY 2018 through FY 2020.

FIGURE 17: FY 2020 TOP 3 ISSUES (AFTER NON-SEXUAL HARASSMENT) IN FINDINGS BY BASIS



Actions Planned or Taken for Improvement Measures

1) Ensuring compliance with DoDI 1020.04.

As identified in the Department's FY 2019 No FEAR Act report, DoD recognized the disparity between non-sexual harassment allegations and all other allegations and discussed steps to address the matter. Thanks to the collaborative efforts of the Defense Equal Opportunity Reform Group, the Department is pleased to report that, on June 30, 2020, DoD issued DoDI 1020.04, "Harassment Prevention and Response for DoD Civilian Employees." This new policy strengthens initiatives to improve prevention and resolution of harassment among our civilian workforce. It requires DoD Components to identify the venues for reporting harassment – including non-EEO harassment – and to outline the processes and timelines to respond to reports of harassment.

In addition, DoDI 1020.04 encourages DoD civilian employees to report harassment and requires the DoD Component to keep the employee updated regarding the complaint's progress through the process while attempts are made to seek resolution. This new policy has the potential to reduce the volume of non-EEO harassment complaints made using the EEO process. The DoD Components have until December 31, 2021, to implement DoDI 1020.04. The Department will monitor implementation and analyze the impact of this new policy to determine any effect it may have on current EEO harassment data.

2) Emphasize ADR Benefits.

The EEO complaint process encourages utilization of ADR at multiple phases throughout the lifecycle of a complaint. When successfully implemented in the informal phase, ADR resolves matters before they escalate to the formal stage. Resolving issues during the informal stage provides timely and effective redress for aggrieved parties and reduces the need for resource intensive formal processes. The Department will continue to emphasize the benefits of ADR. The Department will evaluate existing use of ADR in the DoD's EEO informal and formal

complaint processes to identify ways to appropriately incorporate or bolster ADR practices or methods.

3) Data Collection.

As previously stated, in FY 2020 DoD employed a new data collection and analysis system, allowing the Department to aggregate and analyze EEO formal complaint data with greater efficiency and accuracy. For FY 2021, DoD is evaluating expansion of this system to collect additional EEO data and address the identified gaps (e.g., a more fulsome cache of informal complaint data).