

U.S. Department of Defense



Department of Defense Fiscal Year 2019 Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR Act Report)

Updated June 18, 2020

The estimated cost of this report for the Department of Defense is approximately \$53,000 in Fiscal Years 2018-2019. This includes \$450 in expenses and \$53,000 in DoD labor.

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LIST OF ACRONYMS

CFR	Code of Federal Regulations
DEORG	Defense Equal Opportunity Reform Group
DoD	Department of Defense
DoDD	DoD Directive
DoDI	DoD Instruction
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
FY	Fiscal Year
ODEI	Office for Diversity, Equity, and Inclusion
U.S.C.	United States Code
USD(P&R)	Under Secretary of Defense for Personnel and Readiness

INTRODUCTION

Each fiscal year (FY), Executive agencies must provide an annual report to Congress on the number and severity of discrimination and whistleblower cases brought against them. Public Law 107-174, “The Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act of 2002,” and its implementing regulation, title 5, Code of Federal Regulations (CFR), section 724.302, require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws. The No FEAR report for FY 2019 is the second annual No FEAR report providing a composite DoD assessment and analysis of equal employment opportunity (EEO) complaint data.

LEGISLATIVE REQUIREMENT

The No FEAR Act, enacted on May 15, 2002, directed Federal agencies to post quarterly equal employment opportunity (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 regulation¹ for each fiscal year 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 EEOC regulations;
- Agency policy for taking disciplinary action against employees who violate discrimination laws or commit other prohibited personnel practices;
- 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; and
- 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 Equal Employment Opportunity Commission’s (EEOC) Annual Federal Equal Employment

¹ 5 C.F.R. § 724.302.

Opportunity Statistical Report of Discrimination Complaints (Form 462). In addition, the Components provide the Office for Diversity, Equity, and Inclusion (ODEI) with additional data required under the No FEAR Act. For FY 2019, ODEI prepared this Composite Report by compiling and analyzing all of the submissions from the Components.

Table 1 indicates the DoD Components that provided data.

TABLE 1: PARTICIPATING COMPONENTS

Military Departments	Department of the Army (Army)
	Department of the Navy (Navy)
	Department of the Air Force (Air Force)
DoD Agencies and Field Activities	Army and Air Force Exchange Service (AAFES)
	Defense Commissary Agency (DeCA)
	Defense Contract Audit Agency (DCAA)
	Defense Contract Management Agency (DCMA)
	Defense Counterintelligence and Security Agency (DCSA) ²
	Defense Finance and Accounting Service (DFAS)
	Defense Human Resources Activity (DHRA)
	Defense Intelligence Agency (DIA)
	Defense Information Systems Agency (DISA)
	Defense Logistics Agency (DLA)
	Defense Media Activity (DMA)
	Department of Defense Education Activity (DoDEA) ³
	Defense Threat Reduction Agency (DTRA)
	Missile Defense Agency (MDA)
	National Geospatial-Intelligence Agency (NGA)
	National Reconnaissance Office (NRO) ⁴
	National Security Agency (NSA)
Office of the Inspector General (OIG)	
Uniformed Services University of the Health Sciences (USU)	
Washington Headquarters Service (WHS)	
Other DoD Components	Joint Chiefs of Staff (JCS)

² Formerly Defense Security Service.

³ DoDEA provided data for EEO complaints, but not for the other data topics under the No FEAR Act.

⁴ NRO provided data for No FEAR Act, but the data for the EEO complaints was not ready in time for preparation of this report.

THE NUMBER OF FEDERAL CASES AND THE DISPOSITION OF SUCH CASES⁵

The first requirement in the No FEAR Act is 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. The following table provides the total number of cases for FY 2019:

TABLE 2: FEDERAL COURT CASES⁶

Statute	Cases Opened in FY 2019 ⁷	Cases Resolved in FY 2019 ⁸		Cases Pending at Close of FY 2019 ⁹
		Settled	Other	
Title VII, Civil Rights Act of 1964 42 U.S.C. § 2000e-16	195	42	119	312
Age Discrimination in Employment Act 29 U.S.C. §§ 631, 633a	64	11	40	102
Fair Labor Standards Act of 1938 29 U.S.C. §206(d)	4	3	1	11
Section 501 of Rehabilitation Act 29 U.S.C. § 791	69	16	39	111
Equal Pay Act 29 U.S.C. § 206(d)	3	0	2	3
Whistleblower Protection Act 5 U.S.C. § 2302(b)(1)	6	1	5	8
Genetic Information Nondiscrimination Act of 2008 (GINA) 42 U.S.C. § 2000ff	0	1	0	0
TOTAL	341	74	206	547

JUDGMENT FUND REIMBURSEMENT¹⁰

The Department of the Treasury, Financial Management Service manages the Judgment Fund, which is available to the Federal government for court judgments and Justice Department compromise settlements of lawsuits against the Federal Government. The No FEAR Act

⁵ 5 C.F.R. 724.302(a)(1) and 5 C.F.R. 724.302(a)(2)(i).

⁶ Does not include data from DoDEA.

⁷ This column includes the total number of cases that were opened in FY 2019. It is not a sum of cases resolved or pending.

⁸ These columns include any case that was resolved in FY 2019. These cases may have been opened in FY 2019 or any previous FY. The case may have been settled (first column), or otherwise resolved, such as withdrawing the complaint (second column).

⁹ This column includes the number of cases that were still pending resolution at the close of FY 2019. These cases may have been opened in FY 2019 or during a previous FY.

¹⁰ 5 C.F.R. 724.302(a)(2)(ii) and 5 C.F.R. 724.302(a)(2)(iii).

requires that Federal agencies reimburse the Judgment Fund for personnel discrimination payments made in accordance with 28 U.S.C. §§ 2414, 2517, 2672, or 2677.¹¹

For FY 2019, the following DoD Components reimbursed the Judgment Fund as follows:

TABLE 3: JUDGMENT FUND REIMBURSEMENT

Component	\$ Reimbursed to Judgment Fund	\$ Attributed to Attorneys' Fees	Adjustment to Agency Budget
Army	\$522,000	\$0	\$0
Navy	\$572,800	\$65,000	\$637,800
Air Force	\$90,000	\$15,000	\$0
DCSA	\$10,000	\$0	\$0
DLA	\$2,464.69	\$0	\$0
OIG	\$23,000	\$23,000	\$23,000
TOTAL	\$1,220,264.69	\$103,000	\$660,800

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

DISCIPLINARY ACTIONS¹²

The Department disciplined 121 DoD employees during FY 2019 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 2019 is as follows:

TABLE 4: DISCIPLINARY ACTIONS

Statute ¹³	# of Employees Disciplined and Type of Discipline		
	DoD Total	DoD Component Breakdown	Nature of Discipline
Title VII, Civil Rights Act of 1964 42 U.S.C. § 2000e-16	5	DTRA (1)	Suspension (1)
		WHS (4)	Disciplinary Warning (1) Termination (1) Removal (1)

¹¹ 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), 29 U.S.C. § 631, 29 U.S.C. § 633a, 29 U.S.C. § 791 and 42 U.S.C. § 2000e-16.

¹² 5 C.F.R. 724.302(a)(3) and 5 C.F.R. 724.302(a)(5)

¹³ Accordingly, the data listed in Table 4 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.

			Suspension (1)
Age Discrimination in Employment Act of 1967 29 U.S.C. §§ 631, 633a	3	WHS (3)	Disciplinary Warning (1) Termination (1) Suspension (1)
Fair Labor Standards Act of 1938 29 U.S.C. § 201, et seq.	0	-	-
Section 501 of the Rehabilitation Act of 1973 29 U.S.C. § 791	4	WHS (4)	Removal (2) Suspension (1) Termination (1)
Equal Pay Act of 1963 29 U.S.C. § 206(d)	0	-	-
Whistleblower Protection Act of 2012 5 U.S.C. § 2302(b)(1)	2	Army (2)	Removal ¹⁴
Genetic Information Nondiscrimination Act of 2008 42 U.S.C. § 2000ff	0	-	-
Matters that did <u>NOT</u> result in a Federal court case	107	Army (46)	Removal ¹⁵
		DeCA (39)	Letter of Concern (2) Letter of Reprimand (10) Letter of Warning (1) Removal (5) Suspension (18) Termination (3)
		DFAS (7)	Reduction-in-Grade ¹⁶ Reprimand Suspension Termination
		DLA (11)	Counseling (2) Letter of Warning (1) Removal (2) Reprimand (4) Suspension (1) Reduction-in-Grade (1)
		DMA (4)	Reprimand (3) Suspension (1)

¹⁴ Data distinguishing the number of removals was not available.

¹⁵ Data distinguishing the number of removals was not available.

¹⁶ Data distinguishing the number of terminations, suspensions, reductions-grade, or reprimands was not available.

EEO COMPLAINT DATA¹⁷

Civilian employees who believe they have experienced work-related discrimination have multiple venues to pursue relief, including filing an EEO complaint under the authority of Part 1614 of Title 29, CFR, and as outlined by EEOC Management Directive 110. When an individual first reports a concern to his or her Component's EEO office, the individual enters the *pre-complaint* phase and is referred to as the *aggrieved*. The pre-complaint phase is an informal phase that allows the EEO professionals to aid the aggrieved in resolving the concern early. This can be done through mediation between the aggrieved and responding management official, or by simply assisting the complainant to identify options to address his or her concern.

If the issue is not resolved during the informal pre-complaint phase, the individual has the option to pursue a formal complaint process. If the individual elects to file a formal EEO complaint he or she becomes the *complainant*, and the accepted allegations undergo an investigation to develop a complete factual record which will be used by a trier of fact to determine whether the allegations are substantiated. The Defense Human Resources Activity Investigations and Resolutions Directorate conducts most EEO investigations for DoD.¹⁸

An EEO complainant must identify the **basis**¹⁹ and **issue**²⁰ when bringing forward a complaint of discrimination. A complainant may allege multiple bases and issues in one complaint. A Final Agency Decision (FAD) or Final Order is issued by the Component after reviewing the investigative summary and report of investigation. A Final Order occurs after an Administrative Judge issues a decision followed by the Component's decision on whether it will adopt the decision of the Administrative Judge.

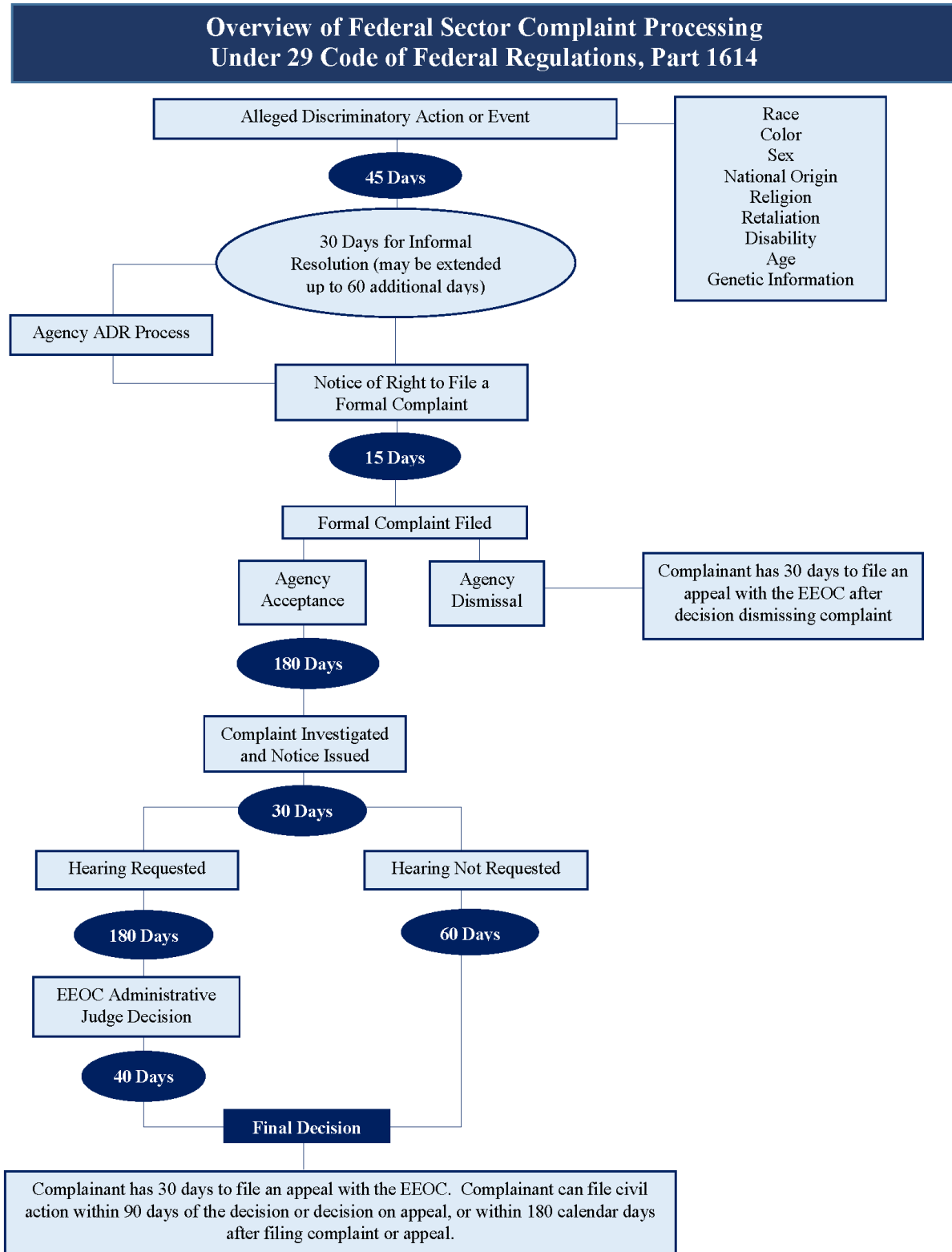
¹⁷ 5 C.F.R. 724.302(a)(4)

¹⁸ Some Components have internal investigators or contract for their own investigative support.

¹⁹ The *basis* of complaints 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.

²⁰ The *issue* 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.

FIGURE 1: EEO COMPLAINT PROCESS



According to the Form 462 filed by each DoD Component for FY 2019, DoD counseled 4,912 individuals in connection with 5,020 pre-complaints in FY 2019. Of these pre-complaints, 2,140 were settled or withdrawn and 1,821 moved into the formal complaint phase. The remaining 1,059 pre-complaints were still pending at the pre-complaint phase.

TABLE 5: PRE-COMPLAINT PHASE

Pre-Complaint Phase	
Total Pre-Complaints	5,020
On hand at beginning of FY	823
Initiated during FY	4,197
Total Completed during FY	4,073
Settled	418
Withdrawn	1,722
Filed formal	1,821
Decision to file formal pending	112 ²¹
Pending	947

In FY 2019, DoD had 6,086 formal complaints, including unresolved complaints from previous years and newly initiated complaints. At the end of the fiscal year, 2,698 had been closed, with 3,388 remaining pending.

TABLE 6: FORMAL COMPLAINTS TOP LINE RESULTS

Formal Complaints	
Top-line Totals	6,086
On hand at beginning of FY	4,098
Filed during FY	1,972
Remanded (not on hand or filed during FY)	16
Closed during FY	2,698
Withdrawn	246
Settled	718
Final Agency Action (FAD or Final Order)	1,734
Pending at end of FY	3,388

The 1,972 formal complaints filed in FY 2019 contained 10,896 allegations. A complainant may allege multiple bases for each allegation in a single complaint. The top two identified bases of FY 2019 allegations were reprisal (2,405 allegations or 22.1 percent of all allegations) and disability (2,180 allegations or 20.0 percent of all allegations). Race (1,821 allegations or 16.7

²¹ These matters are considered “completed” instead of “pending” because the pre-complaint phase ended with sending a Notice of Right to File to the Complainant. The Complainant then has 15 days to decide whether to file a formal complaint. The 112 precomplaints marked here were in that 15-day time period at the close of FY 2019.

percent of all allegations) and sex (1,758 allegations or 16.1 percent of all allegations) were in the next tier of common bases cited in FY 2019 formal complaints. Table 7 lists all the allegations by basis.

TABLE 7: FY 2019 FORMAL COMPLAINT ALLEGATIONS BY BASIS

Formal Complaints	
Basis	# of Allegations
Race	1,821
Color	689
Religion	188
Reprisal	2,405
Sex	1,758
National Origin	515
Disability	2,180
Age	1,326
GINA ²²	14

A complainant may also allege multiple issues in a single complaint. The most frequent issue identified in the FY 2019 allegations was non-sexual harassment (3,192 allegations, or 29.3 percent of all allegations). Non-sexual harassment was alleged nearly 3.5 times more frequently than the next most common issue, which was promotion/non-selection (877 allegations, or 8.1 percent of all allegations). Table 8 lists all the allegations by issue.

²² Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits genetic information discrimination in employment.

TABLE 8: FY 2019 FORMAL COMPLAINT ALLEGATIONS BY ISSUE

Formal Complaints			
Issue	# of Allegations	Issue	# of Allegations
Appointment/Hire	533	Pay (Including Overtime)	144
Assignment of Duties	776	Promotion/Non-Selection	877
Awards	155	Reassignment – Denied	120
Conversion to Full-Time	6	Reassignment – Directed	240
Discipline – Demotion	65	Reasonable Accommodation	632
Discipline – Reprimand	326	Reinstatement	0
Discipline – Suspension	365	Religious Accommodation	8
Discipline – Removal	268	Retirement	46
Discipline – Other	374	Sex-Stereotyping	3
Duty Hours	155	Telework	117
Evaluation/Appraisal	694	Termination	592
Examination/Test	33	Terms/Conditions of Employment	502
Harassment – Non-Sexual	3,192	Time and Attendance	495
Harassment – Sexual	146	Training	263
Medical Examination	29	Other	10

As shown in Table 6, there were 718 settlements during FY 2019. There were 4,130 allegations resolved in those 718 settlements. Tables 9 and 10 identify the bases and issues of the resolved allegations.

TABLE 9: FY 2019 FORMAL COMPLAINT SETTLED ALLEGATIONS BY BASIS

Formal Complaints	
Basis	# of Allegations Settled
Race	698
Color	241
Religion	79
Reprisal	880
Sex	712
National Origin	220
Age	790
Disability	503
GINA	7

TABLE 10: FY 2019 FORMAL COMPLAINT SETTLED ALLEGATIONS BY ISSUE

Formal Complaints			
Issue	# of Allegations Settled	Issue	# of Allegations Settled
Appointment/Hire	148	Pay (Including Overtime)	49
Assignment of Duties	299	Promotion/Non-Selection	284
Awards	57	Reassignment – Denied	31
Conversion to Full-Time	0	Reassignment – Directed	60
Discipline – Demotion	7	Reasonable Accommodation	169
Discipline – Reprimand	158	Reinstatement	1
Discipline – Suspension	138	Religious Accommodation	3
Discipline – Removal	63	Retirement	17
Discipline – Other	105	Sex-Stereotyping	11
Duty Hours	58	Telework	62
Evaluation/Appraisal	298	Termination	145
Examination/Test	10	Terms/Conditions of Employment	205
Harassment – Non-Sexual	1,364	Time and Attendance	196
Harassment – Sexual	75	Training	98
Medical Examination	14	Other	5

Each DoD Component’s Form 462 identified that there were 28 findings of discrimination in the Department in FY 2019. 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 73 allegations in those 28 findings. Tables 11 and 12 identify the bases and issues of those findings, respectively.

TABLE 11: FY 2019 FORMAL COMPLAINT ALLEGATIONS RECEIVING A FINDING BY BASIS

Formal Complaints	
Basis	# of Allegations Receiving a Finding
Race	14
Color	1
Religion	2
Reprisal	19
Sex	5
National Origin	0
Age	3
Disability	29
GINA	0

TABLE 12: FY 2019 FORMAL COMPLAINT ALLEGATIONS RECEIVING A FINDING BY ISSUE

Formal Complaints			
Issue	# of Allegations Receiving a Finding	Issue	# of Allegations Receiving a Finding
Appointment/Hire	1	Pay (Including Overtime)	2
Assignment of Duties	0	Promotion/Non-Selection	10
Awards	2	Reassignment – Denied	1
Conversion to Full-Time	1	Reassignment – Directed	2
Discipline – Demotion	1	Reasonable Accommodation	7
Discipline – Reprimand	2	Reinstatement	0
Discipline – Suspension	0	Religious Accommodation	0
Discipline – Removal	9	Retirement	0
Discipline – Other	0	Sex-Stereotyping	0
Duty Hours	2	Telework	0
Evaluation/Appraisal	1	Termination	2
Examination/Test	0	Terms/Conditions of Employment	4
Harassment – Non-Sexual	19	Time and Attendance	1
Harassment – Sexual	4	Training	0
Medical Examination	2	Other	0

AGENCY’S POLICY²³

The Department has multiple policies and offices providing oversight to protect against unlawful employment discrimination. Specifically, ODEI has two policies within its purview that address these issues:

- 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:
 - Establishes an accountability framework, based on federal laws, regulations, and other applicable guidance, that evaluates DoD Components’ efforts to identify and eliminate barriers and gaps that inhibit progress of the implementation of diversity and inclusion efforts.
 - Prohibits unlawful employment discrimination based on race, sex (including pregnancy, gender identity, and sexual orientation when based on sex stereotyping), color, national origin, age, religion, disability, genetic information or reprisal for previous EEO activity.

²³ 5 C.F.R. 724.302(a)(6)

- Identifies and eliminates 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:
 - Prohibits discrimination based on race, color, religion, sex, national origin, mental or physical disability, or age.
 - 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.

In addition to DoD policies, 22 of the responding Components reported having their own policies addressing these topics.

AGENCY’S TRAINING PLAN²⁴

The Department also has two policies concerning training. DoDD 1440.1, noted above, 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) 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.” The policy instructs that employees are to be trained at a new employee orientation program, or within 90 days of the employee’s start date. The policy then states that the training will be consistent with section 202 of Public Law 107-174. In addition, the policy specifically instructs DoD Components to “provide training programs to teach employees at all levels how to identify and prevent sexual harassment.”

In addition, 22 of the responding Components reported having their own training plans.

ANALYSIS

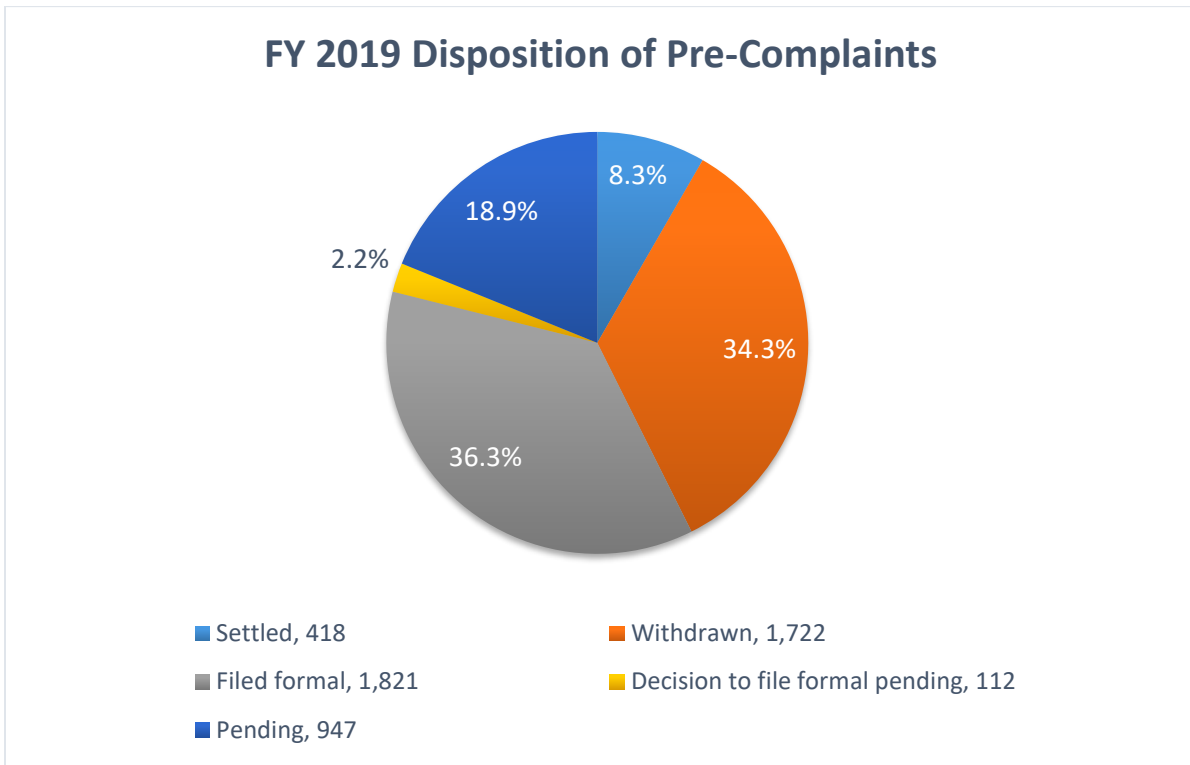
A) Examination of Trends

1) Pre-Complaints

As previously identified, the Department had 5,020 pre-complaints, 2,140 of which settled or were withdrawn, as shown in Figure 2. The total number of FY 2019 pre-complaints decreased from FY 2018 by approximately 30.7 percent.

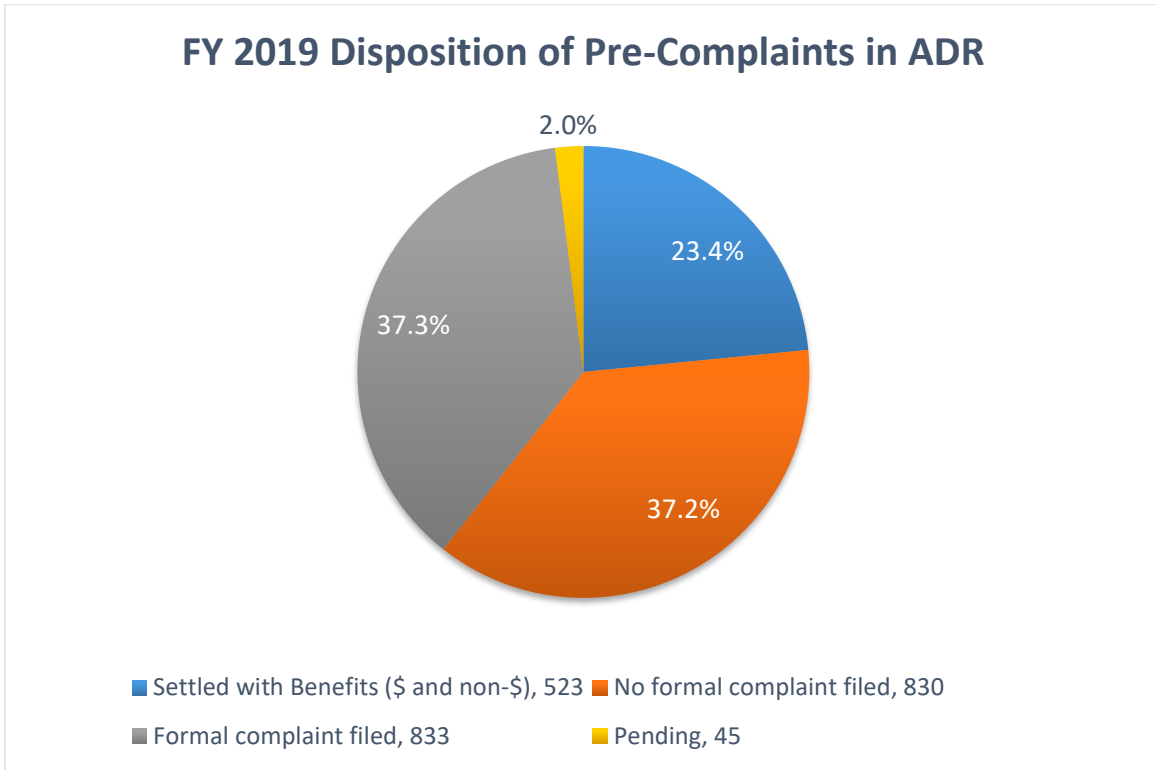
²⁴ 5 C.F.R. 724.302(a)(9)

FIGURE 2: FY 2019 DISPOSITION OF PRE-COMPLAINTS



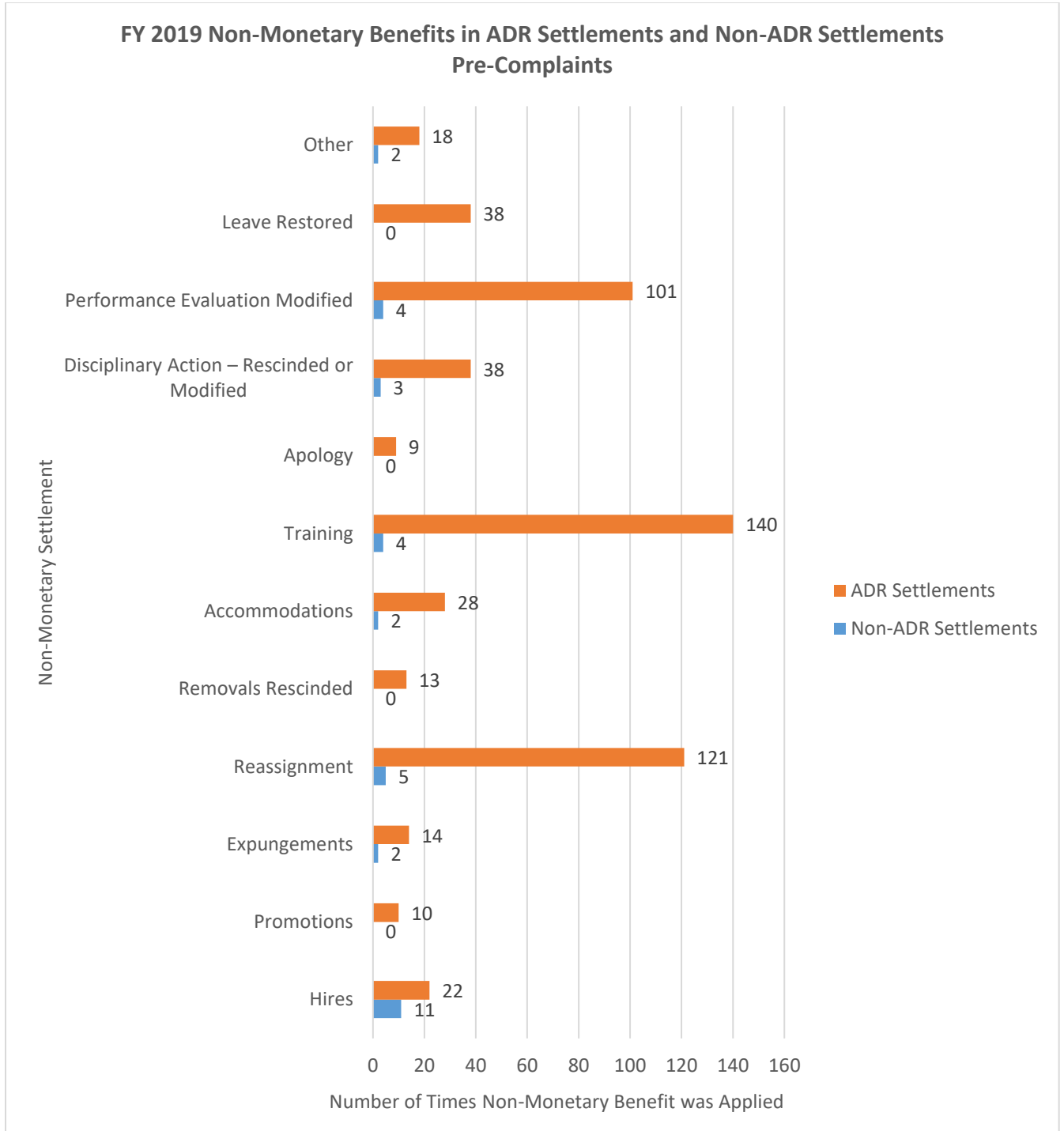
The Department encourages resolution at the lowest level and the first opportunity for the Department to resolve EEO complaints is through an alternative dispute resolution (ADR) process during the pre-complaint phase. For FY 2019, 3,709 aggrieved parties were offered ADR and 2,242 accepted. Between FY 2018 and FY 2019, a larger percentage of aggrieved parties were offered ADR, increasing from 53.7 percent of pre-complaints in FY 2018 to 73.9 percent of pre-complaints in FY 2019. However, the percentage of aggrieved parties choosing to use the ADR process decreased from 62.8 percent in FY 2018 to 60.4 percent. Figure 3 shows the disposition of the pre-complaints that were accepted into the ADR process:

FIGURE 3: FY 2019 DISPOSITION OF PRE-COMPLAINTS IN ADR



Using ADR allowed the Department to provide 552 aggrieved parties with non-monetary benefits to resolve pre-complaints. Conversely, 33 aggrieved parties received non-monetary benefits to resolve pre-complaints without ADR. This trend is similar to FY 2018, which also demonstrated ADR was more likely to resolve matters with non-monetary benefits in the pre-complaint process. A non-monetary benefit generally consists of the organization taking steps to reverse or mitigate an adverse employment action. It does not necessarily mean that there was no monetary payment; just that other reparation was provided to the aggrieved. Figure 4 shows the differences in the non-monetary benefits between FY 2019 settlements that occurred with ADR versus those that did not.

FIGURE 4: FY 2019 NON-MONETARY BENEFITS IN ADR SETTLEMENTS AND NON-ADR SETTLEMENTS - PRE-COMPLAINTS



Of course, not all settlements resolve a pre-complaint without a monetary payment. In FY 2019, 63 pre-complaint settlements resulted in the payout of \$332,139.42 in compensatory damages, backpay/frontpay, lump sum payments, and attorney fees for the aggrieved. This is less than the 164 pre-complaint settlements and \$1,039,485.58 paid in monetary settlements during FY 2018. Again, the ADR process resolved significantly more pre-complaints than the non-ADR processes, and also paid out more in dollars. Figure 5 and Figure 6 show the breakdown of monetary benefits in ADR settlements, first by the number of occurrence, then by amount of dollars.

FIGURE 5: FY 2019 MONETARY BENEFITS IN ADR SETTLEMENTS AND NON-ADR SETTLEMENTS - PRE-COMPLAINTS (NUMBER)

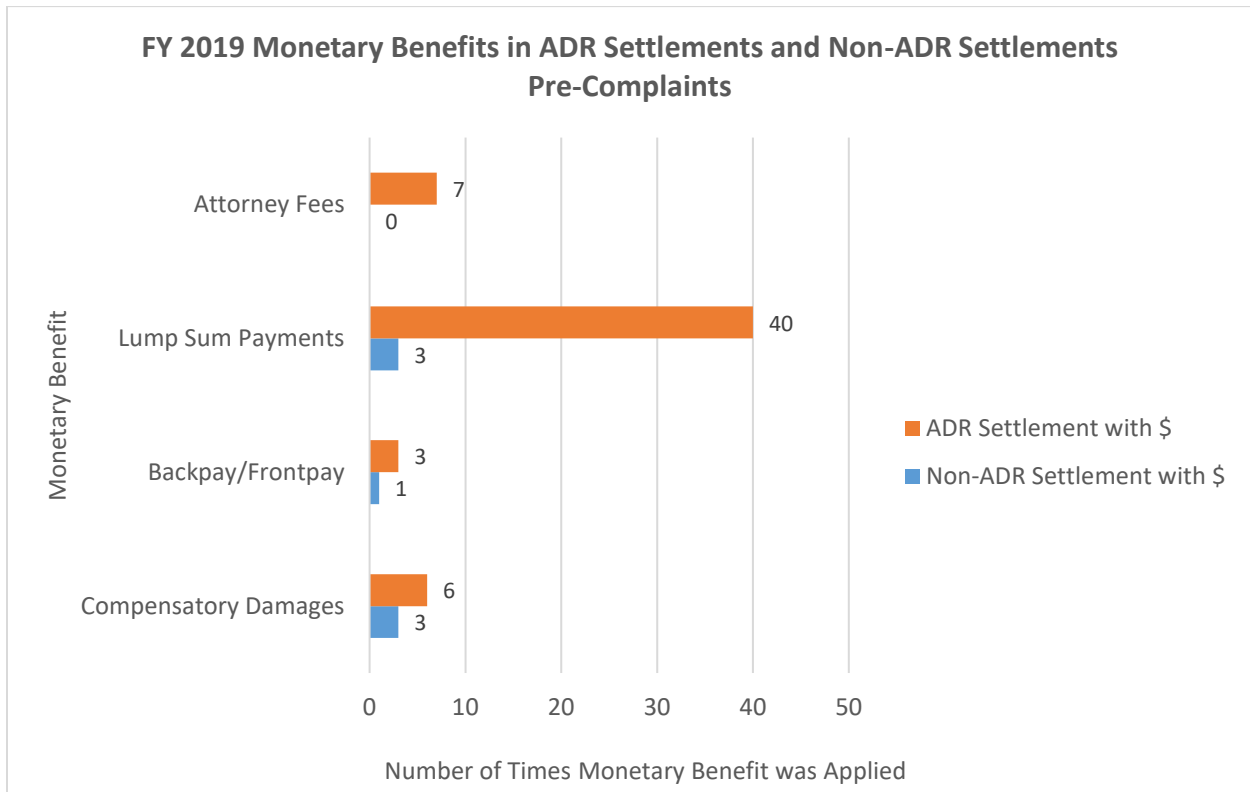
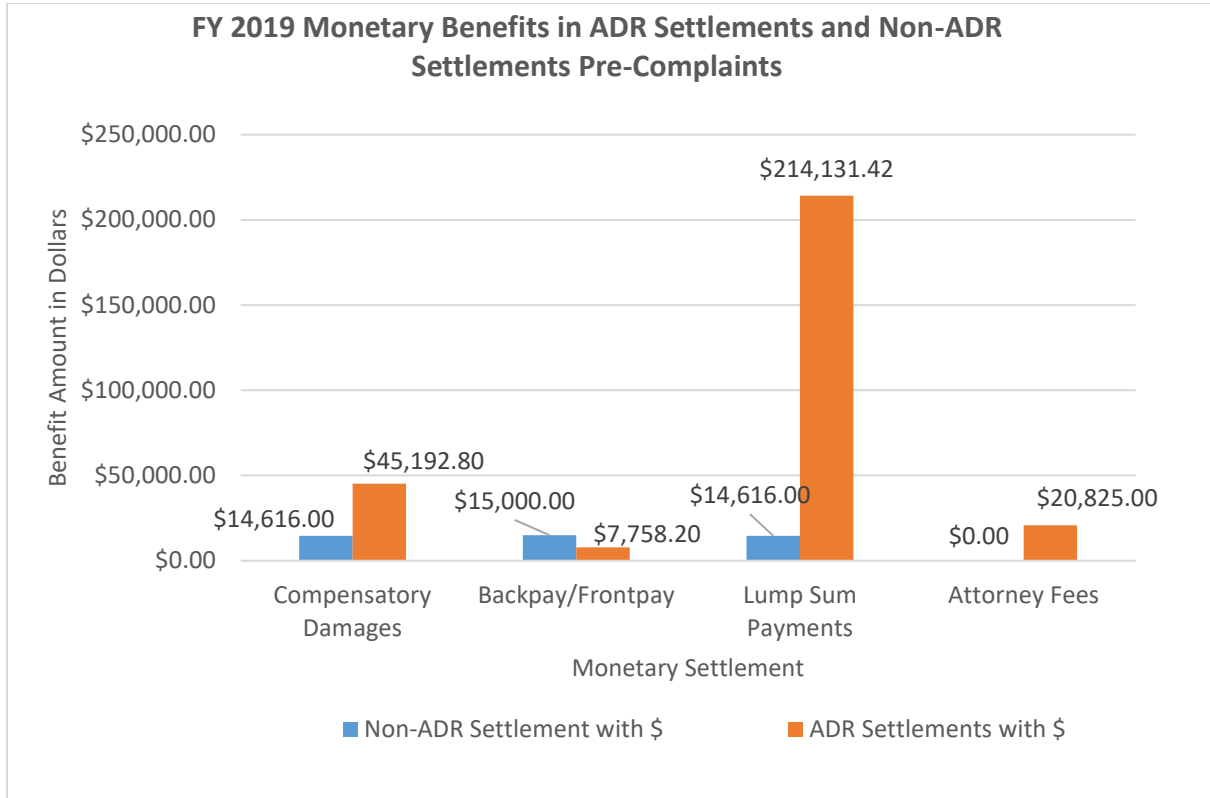


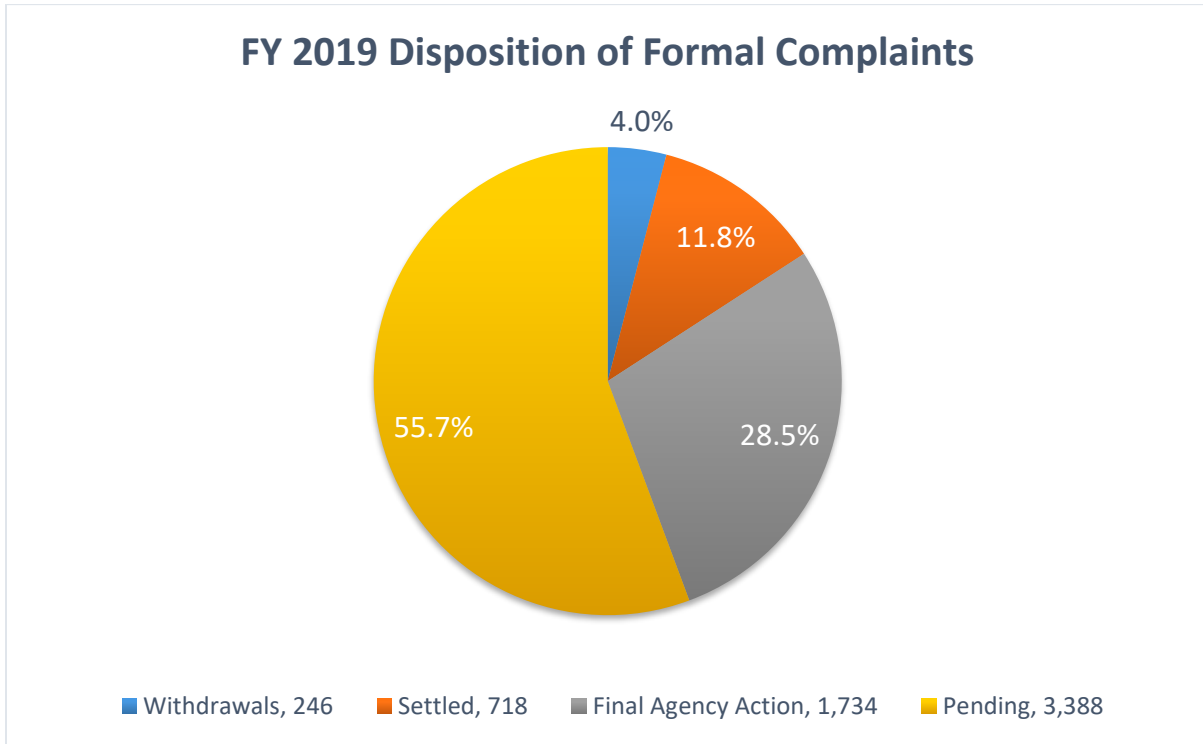
FIGURE 6: FY 2019 MONETARY BENEFITS IN ADR SETTLEMENTS AND NON-ADR SETTLEMENTS - PRE-COMPLAINTS (DOLLARS)



2) Formal Complaints

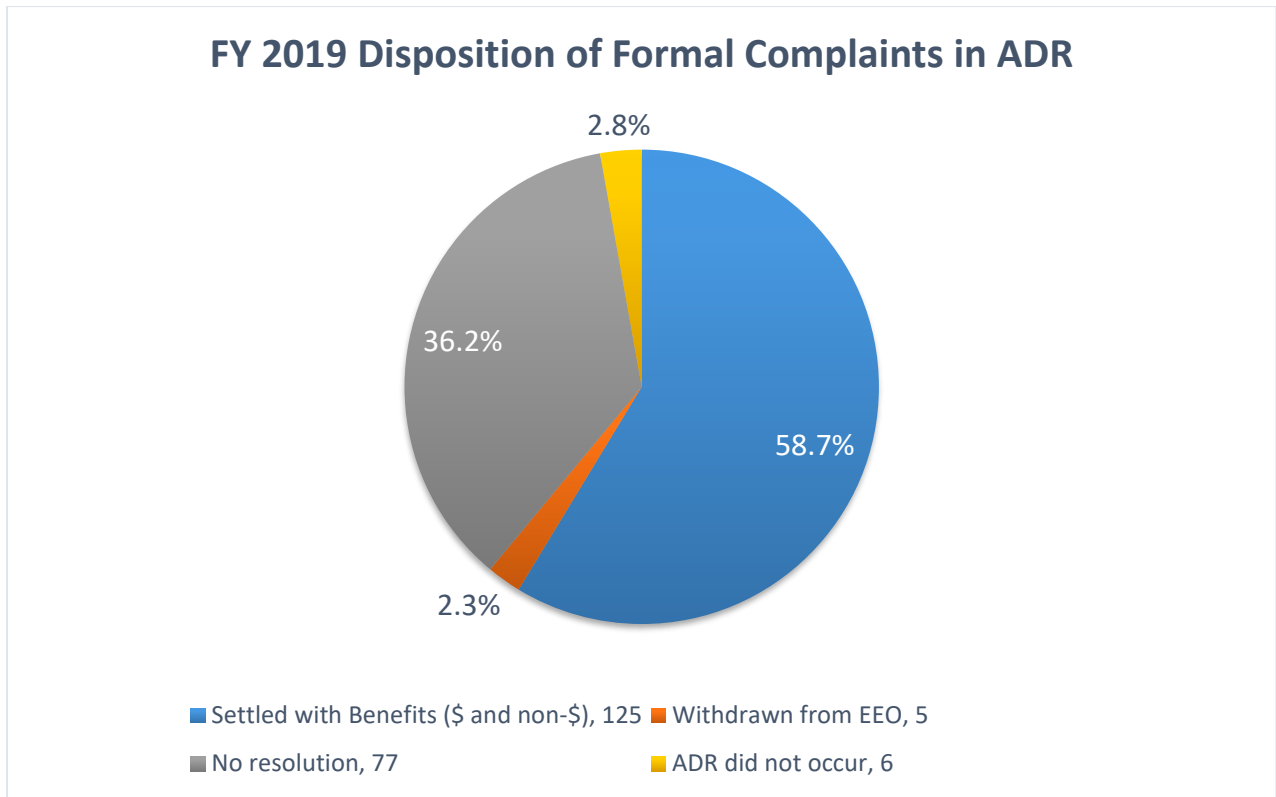
As previously identified, the Department had 6,086 active formal complaints, and closed 2,698 during the fiscal year. The remaining 3,388 formal complaints were pending at the close of the fiscal year. The number of FY 2019 formal complaints decreased from FY 2018 by 33.4 percent. While there were fewer complaints that carried over from FY 2018 to FY 2019 (4,098 complaints) than there were from FY 2017 to FY 2018 (5,933), there were also fewer complaints formally filed in FY 2019 (1,972 complaints) than FY 2018 (3,170 complaints). The disposition of the FY 2019 formal complaints is demonstrated in Figure 7.

FIGURE 7: FY 2019 DISPOSITION OF FORMAL COMPLAINTS



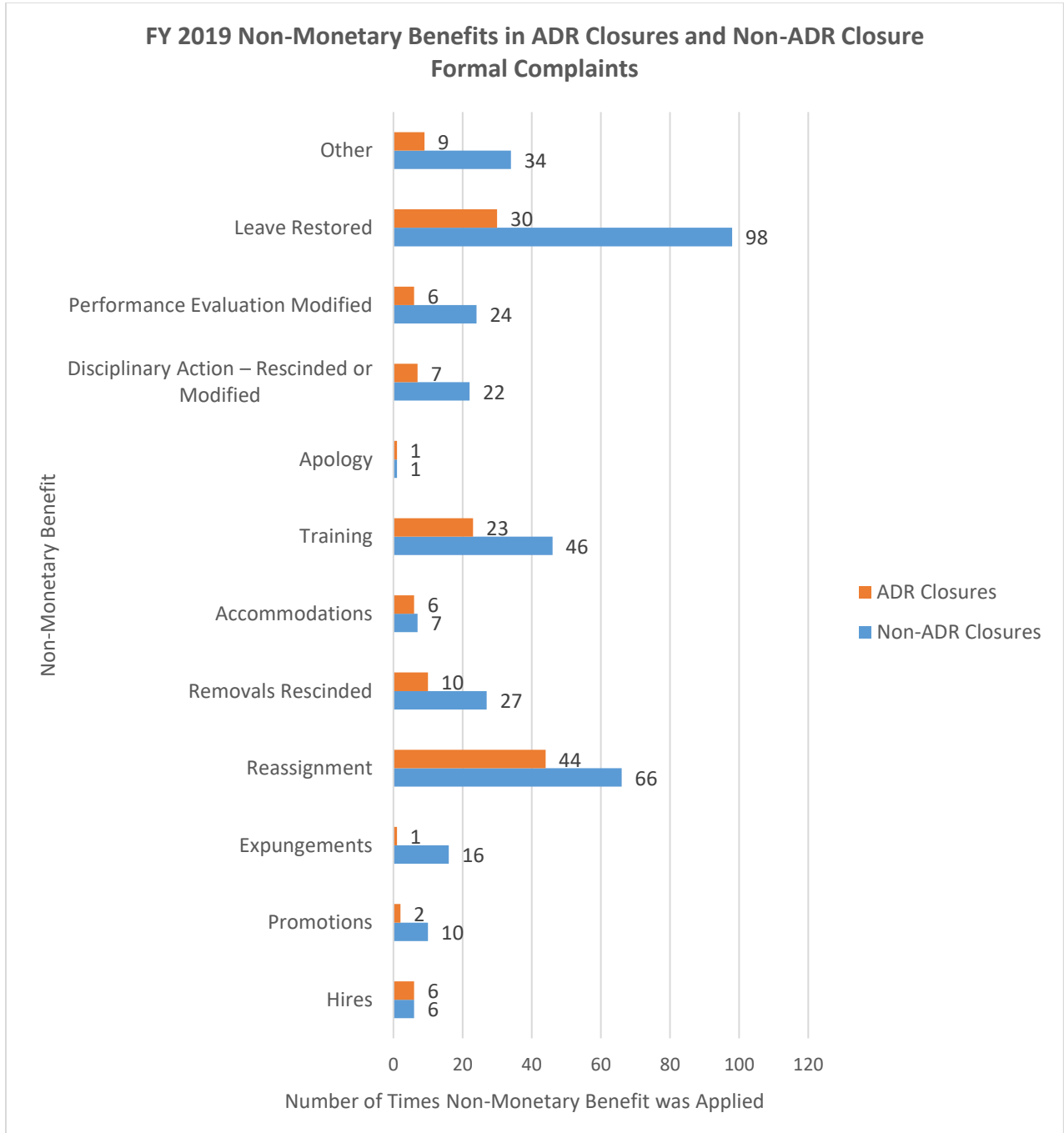
A complainant may also resolve a formal complaint by employing ADR methods during the formal complaint phase. For FY 2019, 360 complainants were offered ADR and 213 accepted (59.1 percent). Of those 213 formal complaints, 130 (61.0 percent) were settled or withdrawn. While these numbers are less than those in FY 2018, the percentages are similar, with 60.4 percent of complainants offered ADR accepting and 61.8 percent of those complaints settling or being withdrawn. Figure 8 shows the disposition of the FY 2019 formal complaints that were referred into the ADR process.

FIGURE 8: FY 2019 DISPOSITION OF FORMAL COMPLAINTS IN ADR



Using ADR allowed the Department to provide non-monetary benefits in 145 formal complaints. Non-monetary benefits were provided in 357 formal complaints without employing ADR. Figure 9 shows the differences in the non-monetary benefits provided pursuant to ADR versus those that did not use ADR.

FIGURE 9: FY 2019 NON-MONETARY BENEFITS IN ADR CLOSURES AND NON-ADR CLOSURE - FORMAL COMPLAINTS



Of course, not all complaints are resolved without a monetary payment. In FY 2019, monetary benefits were provided in 671 cases resulting in a total payout of \$18,755,370.27 in compensatory damages, backpay/frontpay, lump sum payments, and attorney fees for the complainant. While the number of occurrences of monetary benefits paid out in FY 2019 is smaller than that of FY 2018 (828 occurrences), the dollar amount paid in FY 2019 is greater than the \$17,638,868.61 paid in FY 2018.

FIGURE 10: FY 2019 MONETARY BENEFITS IN ADR CLOSURES AND NON-ADR CLOSURES - FORMAL COMPLAINTS (NUMBER)

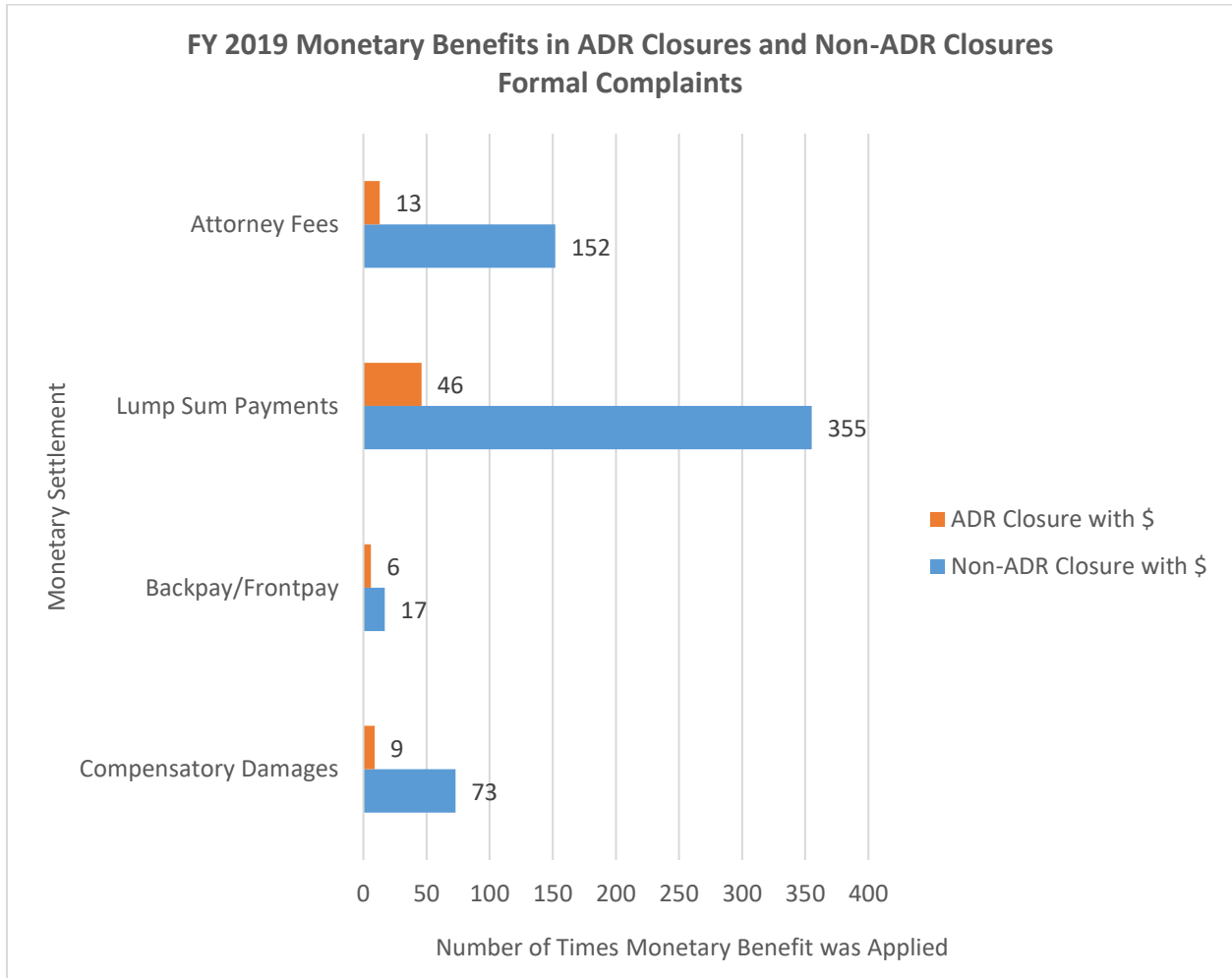
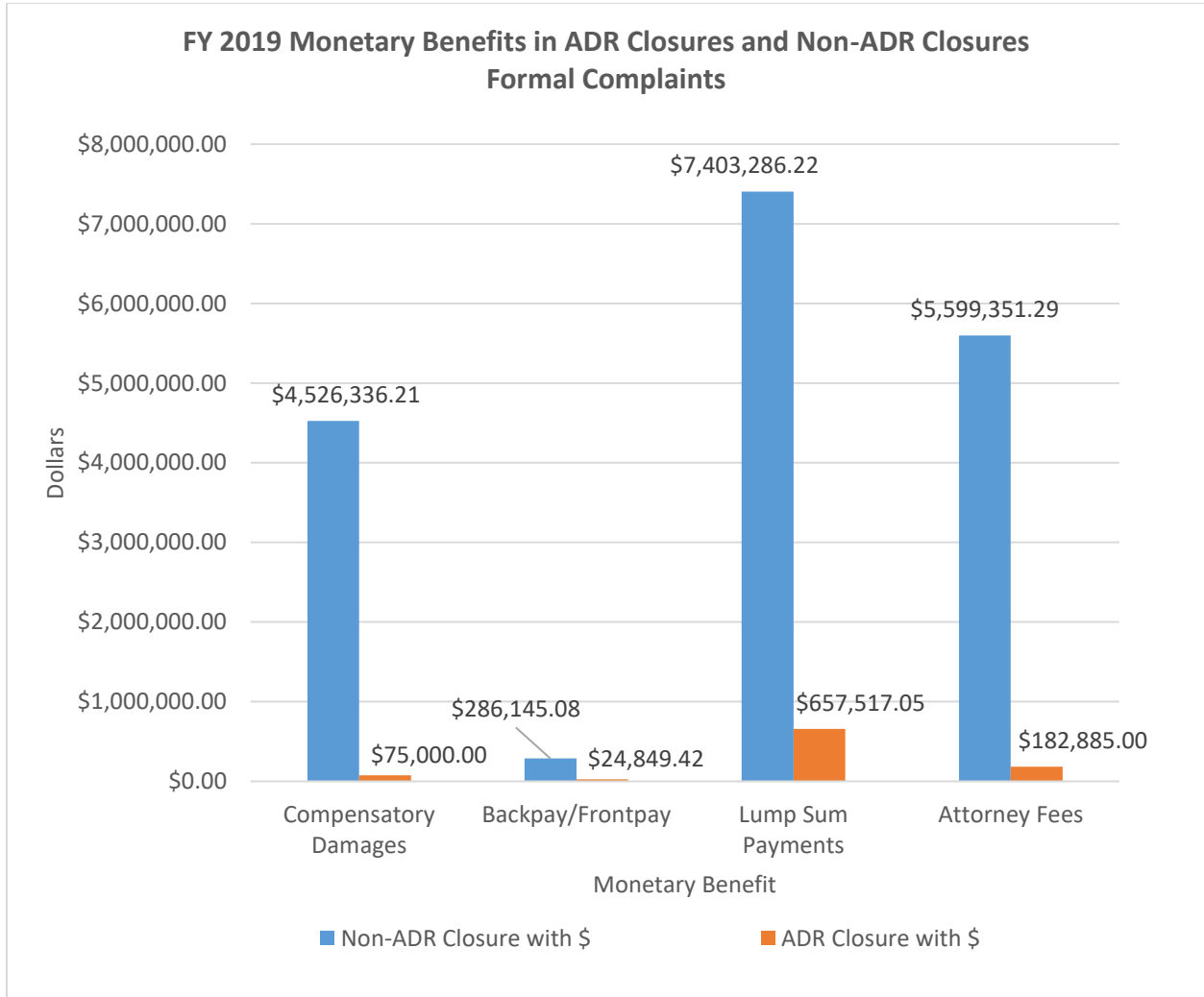


FIGURE 11: FY 2019 MONETARY BENEFITS IN ADR CLOSURES AND NON-ADR CLOSURES - FORMAL COMPLAINTS (DOLLARS)



Of note, compensatory damages and attorney fees awarded in Non-ADR closures increased between FY 2018 and FY 2019, while the other categories decreased. In ADR closures, compensatory damages and lump sum payments increased between FY 2018 and FY 2019, while the other categories decreased. Figures 12 and 13 provide a visual representation of the differences in monetary benefits in ADR and non-ADR closures between FY 2018 and FY 2019.

FIGURE 12: COMPARISON OF MONETARY BENEFITS IN NON-ADR CLOSURES FY 2018-FY 2019 (DOLLARS)

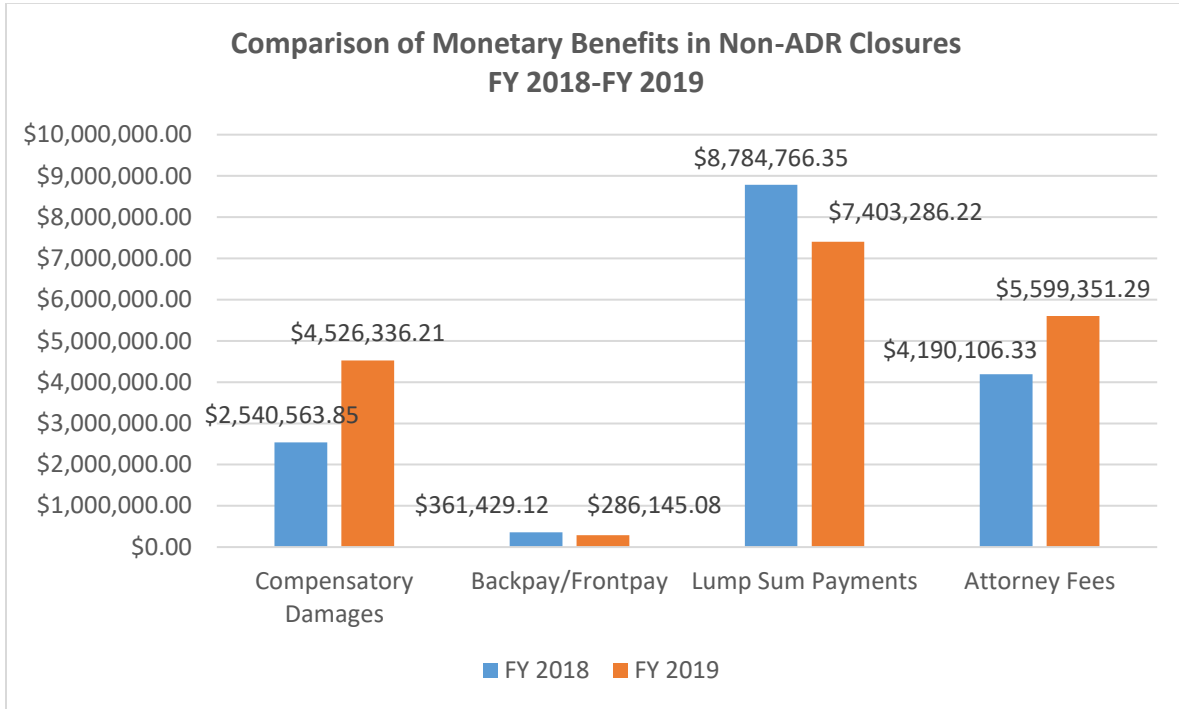
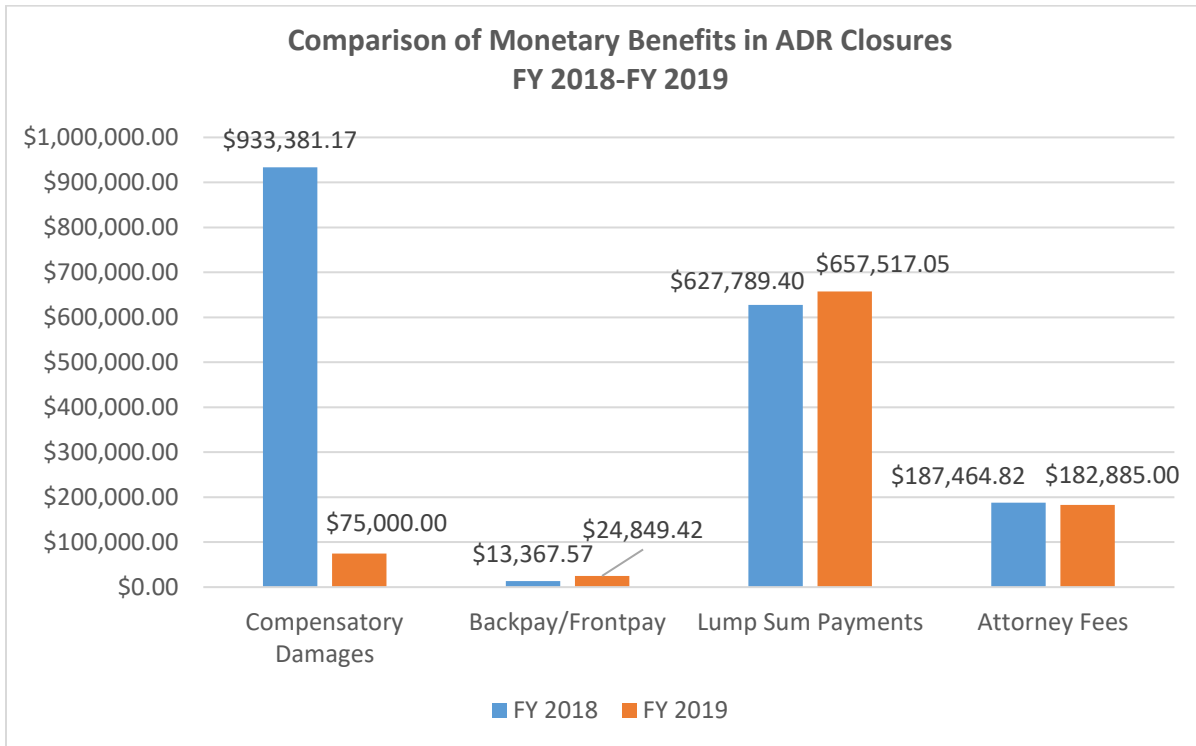


FIGURE 13: COMPARISON OF MONETARY BENEFITS IN ADR CLOSURES FY 2018-FY 2019 (DOLLARS)

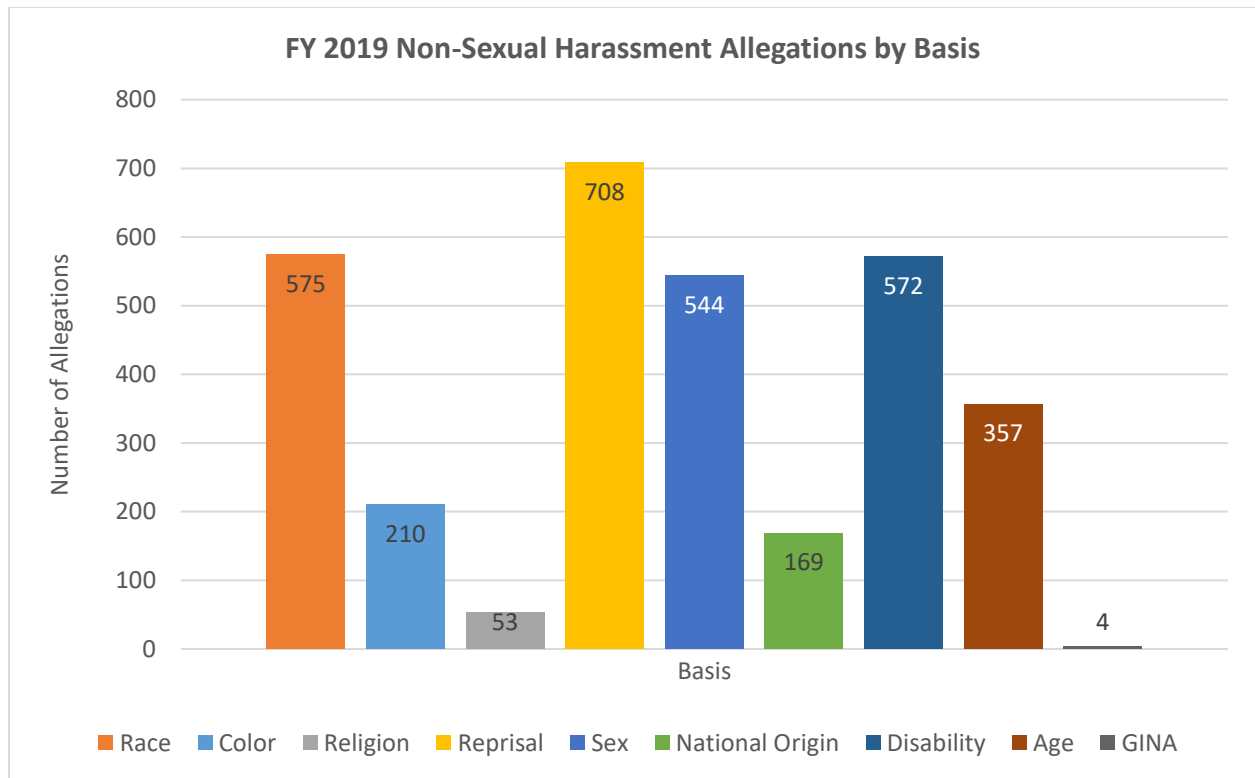


(a) Common Issue Allegations

During FY 2019, 1,972 formal complaints were filed containing 10,896 allegations. As previously mentioned, the top two identified bases of FY 2019 allegations were reprisal (2,405 allegations or 22.1 percent of all allegations) and disability (2,180 allegations or 20.0 percent of all allegations). Race (1,821 allegations or 16.7 percent of all allegations) and sex (1,758 allegations or 16.1 percent of all allegations) were in the next tier of common bases cited in FY 2019 formal complaints. These common basis are the same as FY 2018, with reprisal and disability as the top two identified bases (21.9 percent and 18.6 percent, respectively), and race (17.2 percent) and sex (17.1 percent) in the next tier.

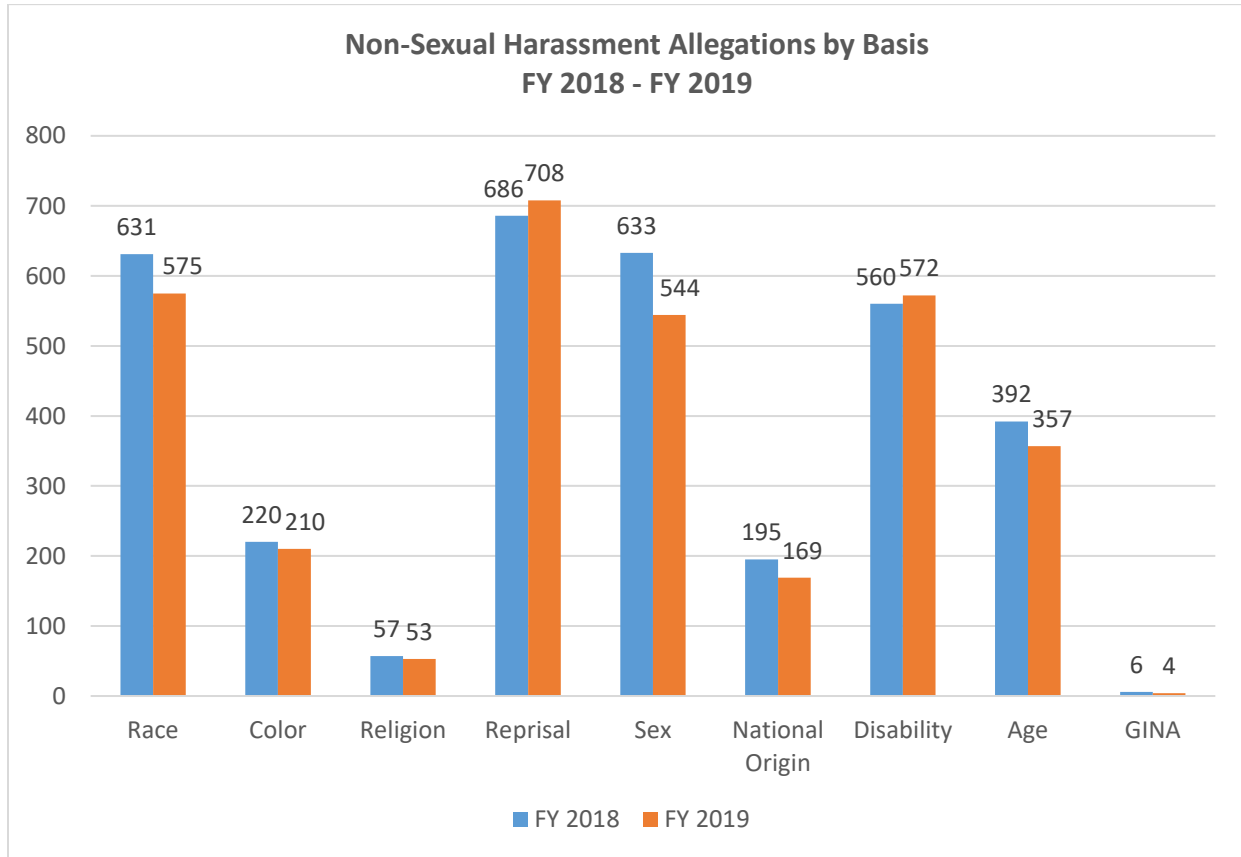
The most frequent allegation across all bases was non-sexual harassment, with a total of 3,192 allegations (29.3 percent of all allegations). Figure 14 shows the breakdown of how many non-sexual harassment allegations were made by basis.

FIGURE 14: FY 2019 NON-SEXUAL HARASSMENT ALLEGATIONS BY BASIS



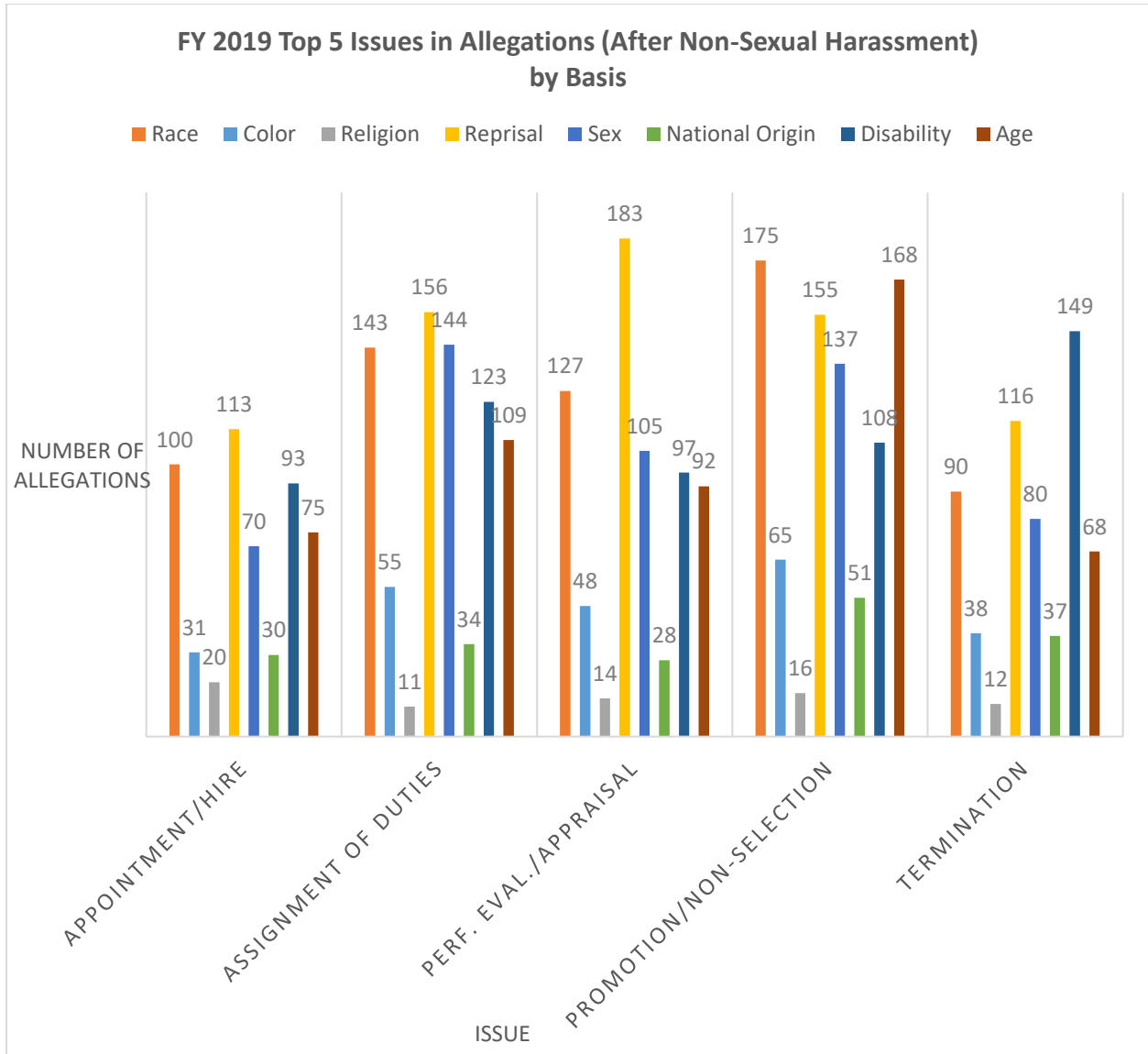
This is similar to FY 2018, which also had non-sexual harassment as the most frequent allegation (29.7 percent of FY 2018 allegations). There were also similar patterns in the bases of these non-sexual harassment allegations between FY 2018 and FY 2019. Figure 15 shows the comparison of non-sexual harassment allegations between FY 2018 and FY 2019.

FIGURE 15: NON-SEXUAL HARASSMENT ALLEGATIONS BY BASIS - FY 2018-FY 2019



Other top issues identified in allegations were assignment of duties, evaluation/appraisal, promotion/non-selection, reasonable accommodation, and terms/conditions of employment. Figure 16 shows the breakout of the next five top allegations per basis (not including non-sexual harassment).

FIGURE 16: FY 2019 TOP 5 ISSUES (AFTER NON-SEXUAL HARASSMENT) BY BASIS²⁵



These were similar to the allegations identified in FY 2018, with one exception: FY 2018 included terms/conditions of employment instead of termination.

Figure 16 demonstrates the top allegations (other than non-sexual harassment) from the total allegations. However, allegations based on color, reprisal, sex, and disability, when viewed independent from non-sexual harassment, had different top issues than those identified in Figure 16.

²⁵ Figure 16 excludes GINA as a basis because the number of allegations was too few to be visible on a chart, receiving no more than 2 allegations on an issue, at most.

Specifically, the top five issues based on color outside non-sexual harassment does not include appointment/hire. The top five issues based on color outside non-sexual harassment are:²⁶

- Promotion/Non-Selection (56 allegations)
- Assignment of Duties (55 allegations)
- Evaluation/Appraisal (48 allegations)
- Termination (38 allegations)
- **Time and Attendance (35 allegations)**

The top five issues based on reprisal outside non-sexual harassment does not include appointment/hire or termination. The top five issues based on reprisal outside non-sexual harassment are:²⁷

- Evaluation/Appraisal (183 allegations)
- Assignment of Duties (156 allegations)
- Promotion/Non-Selection (155 allegations)
- **Terms/Conditions of Employment (120 allegations)**
- **Time and Attendance (120 allegations)**

The top five issues based on sex outside non-sexual harassment does not include appointment/hire. The top five issues based on sex outside non-sexual harassment are:²⁸

- Assignment of Duties (144 allegations)
- Promotion/Non-Selection (137 allegations)
- **Harassment – Sexual (121 allegations)**
- Evaluation/Appraisal (105 allegations)
- Termination (80 allegations)

The top five issues based on disability outside non-sexual harassment does not include appointment/hire. The top five issues based on disability outside non-sexual harassment are:²⁹

- **Reasonable Accommodation (267 allegations)**
- **Assignment of Duties (123 allegations)**
- Termination (147 allegations)
- Promotion/Non-Selection (108 allegations)
- Evaluation/Appraisal (97 allegations)

²⁶ The bolded issues in the bulleted lists are the issues that were not in the top five most common issues for DoD as a whole.

²⁷ The bolded issues in the bulleted lists are the issues that were not in the top five most common issues for DoD as a whole.

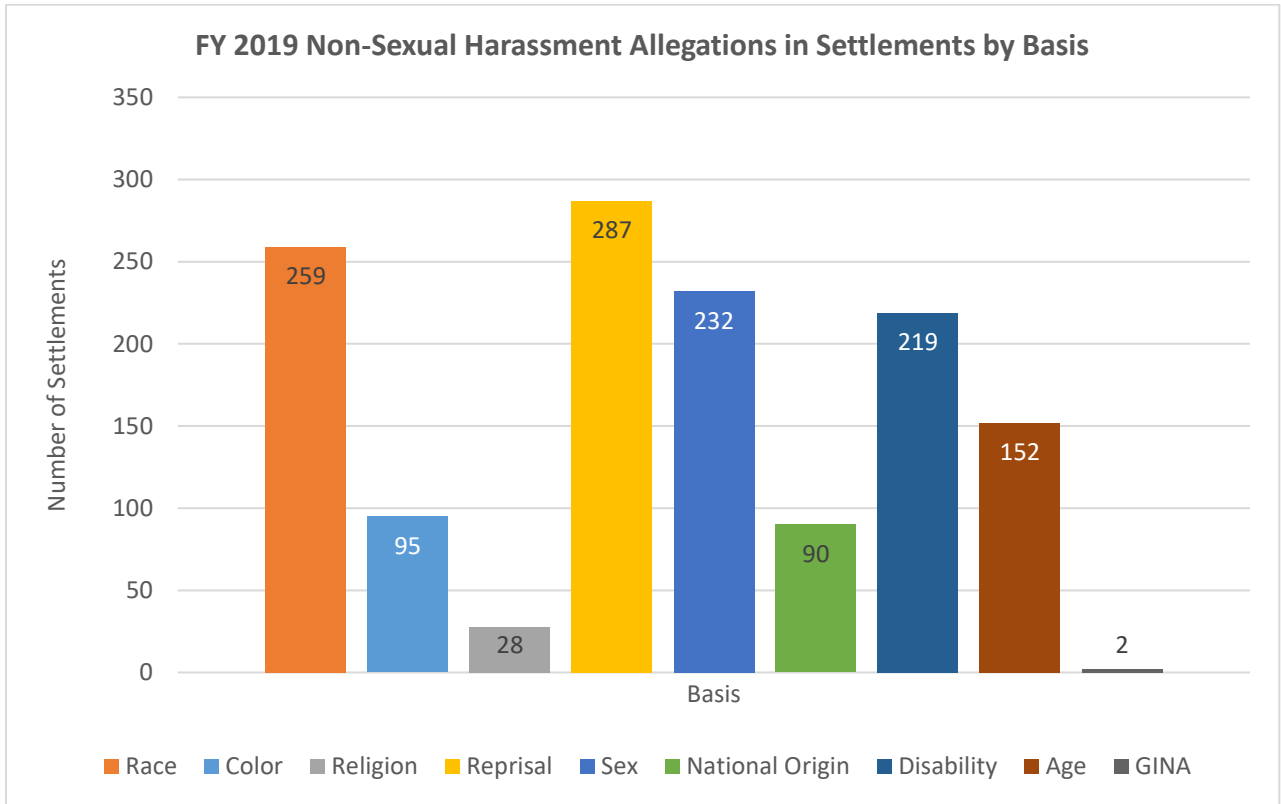
²⁸ The bolded issues in the bulleted lists are the issues that were not in the top five most common issues for DoD as a whole.

²⁹ The bolded issues in the bulleted lists are the issues that were not in the top five most common issues for DoD as a whole.

(b) Common Issue Settlements

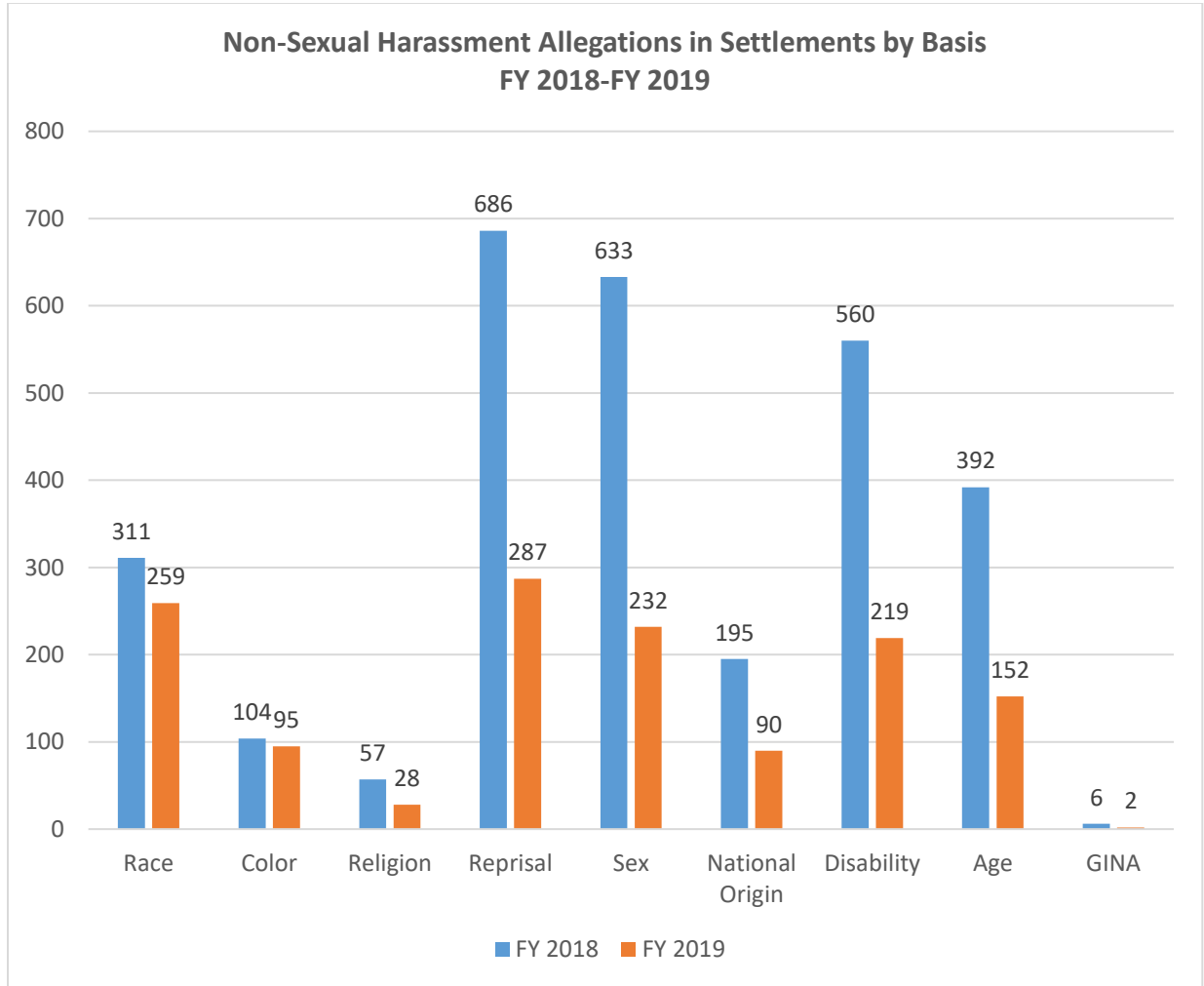
In FY 2019, there were 4,130 allegations of which 718 were settled. The most frequent allegation settled across all bases was non-sexual harassment, with a total of 1,675 allegations settled (40.6 percent of all settled allegations). Figure 15 shows the breakdown of how many non-sexual harassment allegations were made by basis.

FIGURE 17: FY 2019 NON-SEXUAL HARASSMENT SETTLEMENTS BY BASIS



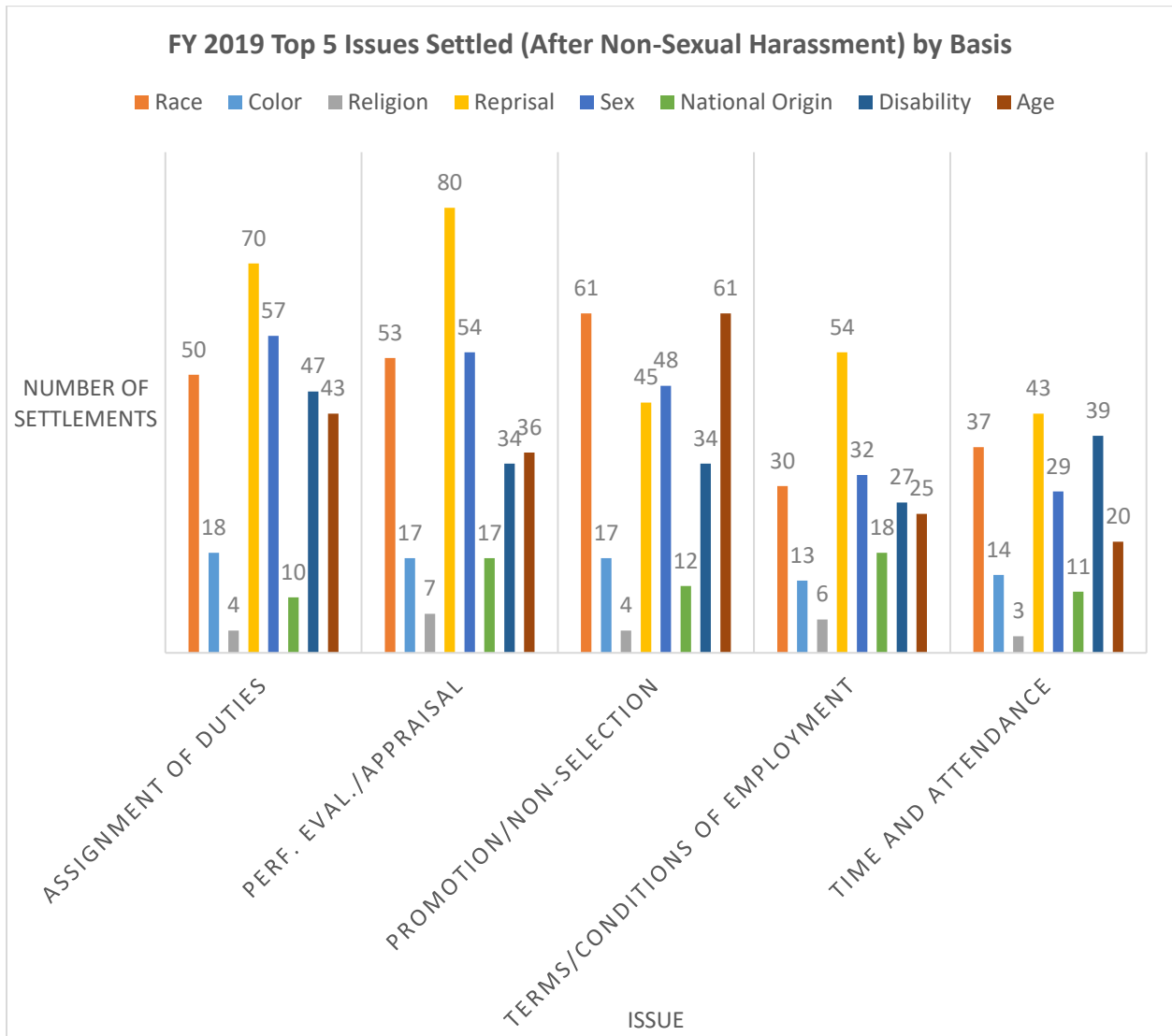
This is similar to FY 2018, when non-sexual harassment was the most frequent allegation in settlements (31.8 percent of FY 2018 settled allegations). There were also similar patterns in the basis of these non-sexual harassment settlements between FY 2018 and FY 2019. Figure 18 shows the comparison of non-sexual harassment allegations in settlements between FY 2018 and FY 2019.

FIGURE 18: NON-SEXUAL HARASSMENT ALLEGATIONS IN SETTLEMENTS BY BASIS - FY 2018-FY 2019



Other top issues identified in settlements were assignment of duties, evaluation/appraisal, promotion/non-selection, terms/conditions of employment, and time and attendance. Figure 19 shows the breakout of the next five top allegations per basis (not including non-sexual harassment).

FIGURE 19: FY 2019 TOP 5 ISSUES SETTLED (AFTER NON-SEXUAL HARASSMENT) BY BASIS³⁰



In FY 2018, the top five issues settled (after non-sexual harassment) included were appointment/hire, assignment of duties; evaluation/appraisal, promotion/non-selection, and terms/conditions of employment.

Figure 19 demonstrates the top settled allegations from the total allegations. However, allegations based on race, religion, reprisal, sex, or disability, when viewed independent from non-sexual harassment, had different top issues than those identified in Figure 19.

³⁰ Figure 19 excludes GINA as a basis because the number of allegations was too few to show up on a chart, receiving no more than 2 settled allegations on an issue, at most.

Specifically, the top five issues based on race outside non-sexual harassment that were settled also includes appointment/hire. The top issues based on race outside non-sexual harassment that were allegations involved in settlements are:³¹

- Promotion/Non-Selection (61 allegations)
- Evaluation/Appraisal (53 allegations)
- Assignment of Duties (50 allegations)
- Time and Attendance (37 allegations)
- **Appointment/Hire (30 allegations)**
- Terms/Conditions of Employment (30 allegations)

The top five issues based on religion outside non-sexual harassment that were settled does not include time and attendance. The top issues based on religion outside non-sexual harassment that were allegations involved in settlements are:³²

- Evaluation/Appraisal (7 allegations)
- **Duty Hours (6 allegations)**
- Terms/Conditions of Employment (6 allegations)
- Assignment of Duties (4 allegations)
- **Discipline-Suspension (4 allegations)**
- Promotion/Non-Selection (4 allegations)

The top five issues based on reprisal outside non-sexual harassment that were allegations involved in settlements does not include time and attendance. The top five issues based on sex outside non-sexual harassment that were allegations involved in settlements are:³³

- Evaluation/Appraisal (80 allegations)
- Assignment of Duties (70 allegations)
- Terms/Conditions of Employment (54 allegations)
- Promotion/Non-Selection (45 allegations)
- **Discipline-Reprimand (44 allegations)**

The top five issues based on sex outside non-sexual harassment that were allegations involved in settlements does not include time and attendance. The top five issues based on sex outside non-sexual harassment that were allegations involved in settlements are:³⁴

- **Harassment-Sexual (59 allegations)**
- Assignment of Duties (57 allegations)

³¹ The bolded issues in the bulleted lists are the issues that were not in the top five most common issues for DoD as a whole.

³² The bolded issues in the bulleted lists are the issues that were not in the top five most common issues for DoD as a whole.

³³ The bolded issues in the bulleted lists are the issues that were not in the top five most common issues for DoD as a whole.

³⁴ The bolded issues in the bulleted lists are the issues that were not in the top five most common issues for DoD as a whole.

- Evaluation/Appraisal (54 allegations)
- Promotion/Non-Selection (48 allegations)
- Terms/Conditions of Employment (32 allegations)

The top five issues based on national origin outside non-sexual harassment that were allegations involved in settlements does not include time and attendance. The top five issues based on national origin outside non-sexual harassment that were allegations involved in settlements are:³⁵

- Terms/Conditions of Employment (18 allegations)
- Evaluation/Appraisal (17 allegations)
- Promotion/Non-Selection (12 allegations)
- **Discipline-Reprimand (11 allegations)**
- Time and Attendance (11 allegations)

The top five issues based on disability outside non-sexual harassment that were allegations involved in settlements does not include terms/conditions of employment. The top five issues based on disability outside non-sexual harassment that were allegations involved in settlements are:³⁶

- **Reasonable Accommodation (135 allegations)**
- Assignment of Duties (47 allegations)
- Time and Attendance (39 allegations)
- Evaluation/Appraisal (34 allegations)
- Promotion/Non-Selection (34 allegations)

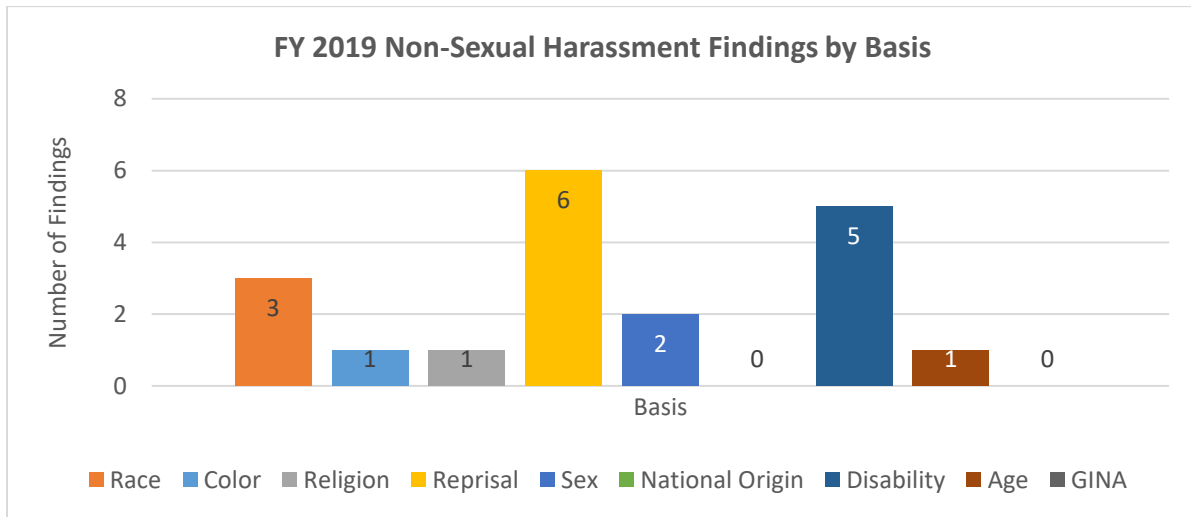
(c) Common Issue Findings

In FY 2019, there were 28 findings in FADs or final orders. This is a decrease from the 30 findings in FADs or final orders in FY 2018. However, despite a decrease in findings, the number of allegations in these findings increased from the 51 in FY 2018 to 73 in FY 2019. The most frequent finding across all bases was for non-sexual harassment, with a total of 19 allegations receiving a finding (26.0 percent of all allegations in findings). Non-sexual harassment was also the most frequent allegation with a finding in FY 2018, with it being 31.4 percent of all allegations in findings. Figure 20 shows the breakdown by basis of how many non-sexual harassment allegations were addressed in a finding.

³⁵ The bolded issues in the bulleted lists are the issues that were not in the top five most common issues for DoD as a whole.

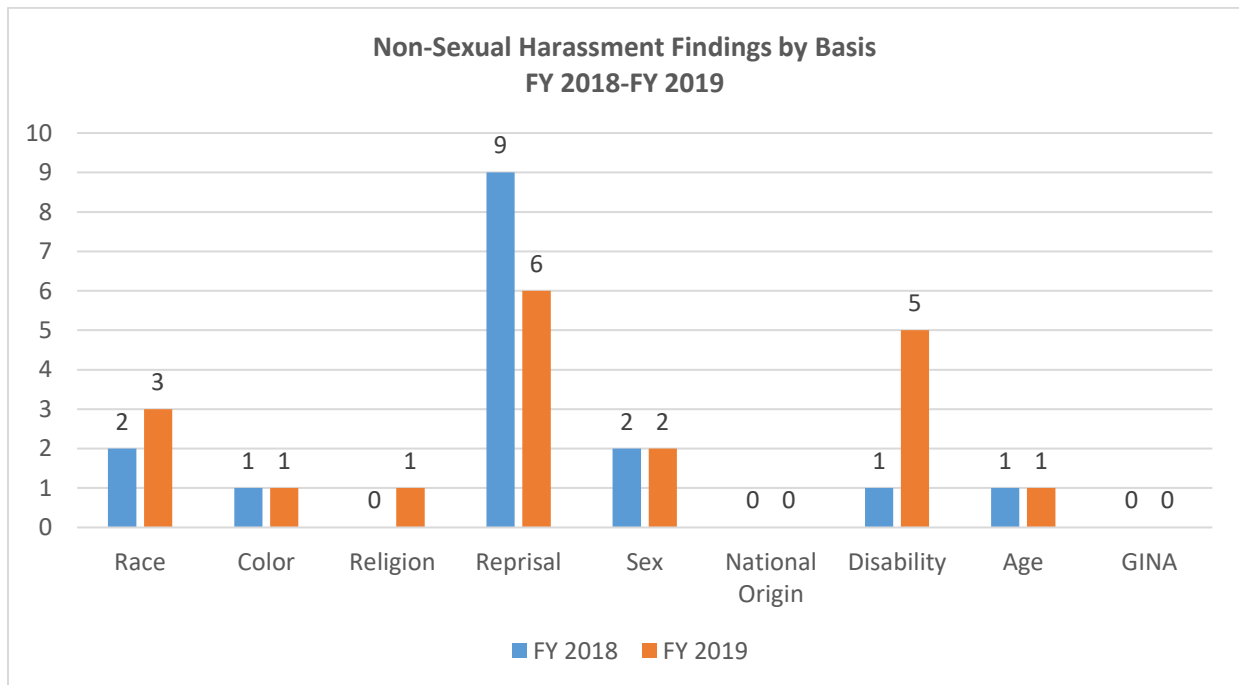
³⁶ The bolded issues in the bulleted lists are the issues that were not in the top five most common issues for DoD as a whole.

FIGURE 20: FY 2019 NON-SEXUAL HARASSMENT FINDINGS BY BASIS³⁷



Reprisal was the most frequent basis of a finding of non-sexual harassment in both FY 2019 and FY 2018, with a decrease from FY 2018 (9 out of 16, or 56.25 percent) to FY 2019 (6 out of 19, or 31.58 percent). There was, however, an increase in disability as a basis in a finding of non-sexual harassment from FY 2018 (1 out of 16, or 6.25 percent) to FY 2019 (5 out of 19, or 26.32 percent), as shown in Figure 21.

FIGURE 21: NON-SEXUAL HARASSMENT FINDINGS BY BASIS - FY 2018-FY 2019



³⁷ There were no findings for allegations of non-sexual harassment based on religion, national origin, or GINA in FY 2018.

The top two issues that were addressed in a finding (outside of non-sexual harassment) are sexual harassment (6 allegations) and reasonable accommodation (7 allegations). In addition, as shown in Figure 22, the basis of disability had the most allegations involved in findings for discrimination (29 allegations), and also had the greatest increase of findings, as demonstrated in Figure 23.

FIGURE 22: FY 2019 NUMBER OF ALLEGATIONS IN FINDINGS BY BASIS

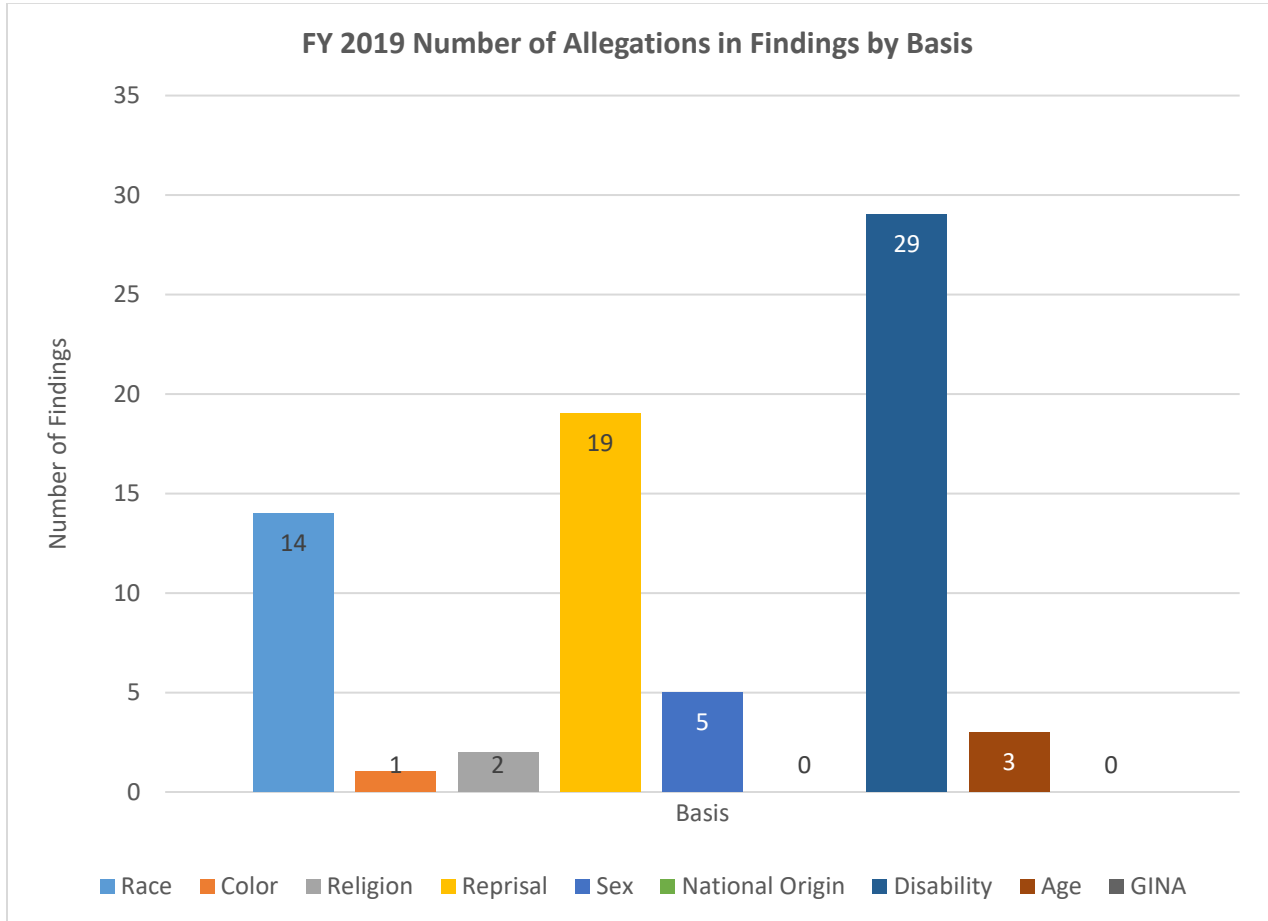
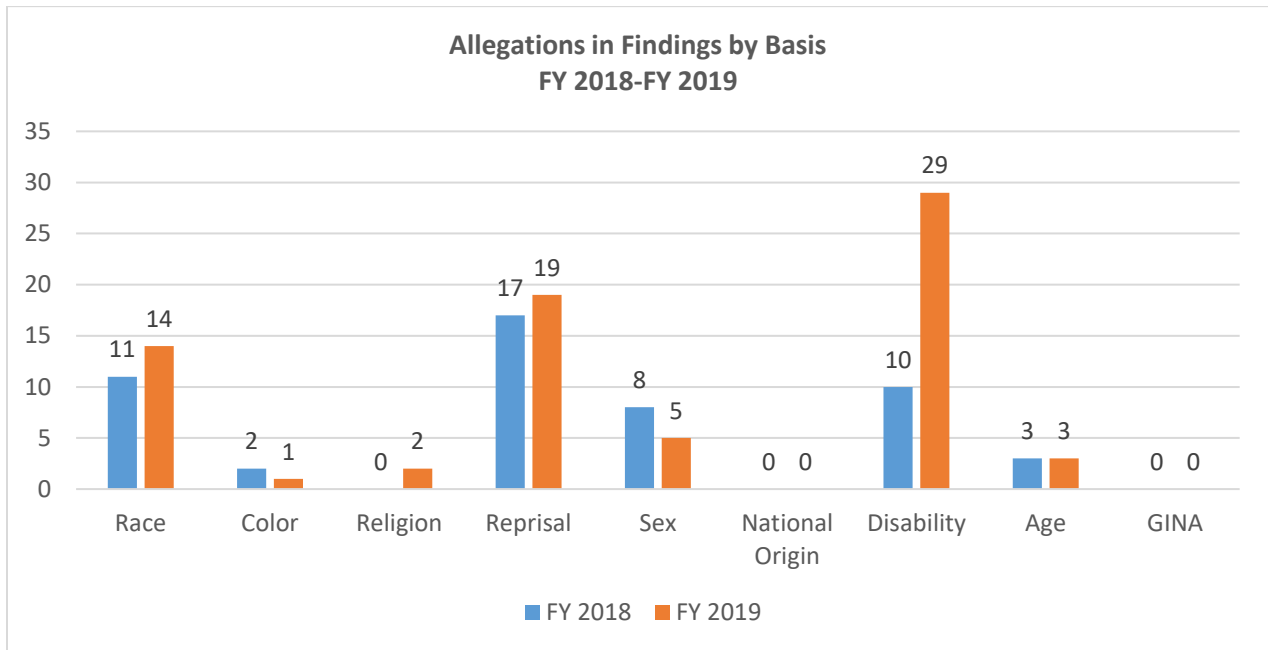


FIGURE 23: ALLEGATIONS IN FINDINGS BY BASIS - FY 2018-FY 2019



B) Actions Planned or Taken for Improvement Measures

The disparity between non-sexual harassment allegations and all the other allegations remains a topic of interest to the Department. The Department is aware of harassment concerns among its Total Force and considers prevention and response of all types of harassment to be a priority. Accordingly, as stated in DoD’s FY 2018 No FEAR report, the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) established the Defense Equal Opportunity Reform Group (DEORG) and assigned the Executive Director of the Office of Force Resiliency as its chair in July of 2018. The DEORG consists of representatives from all DoD stakeholders, including the Military Departments, ODEI, and Civilian Personnel Program. This collaborative approach aids in developing strategies to identify, report, and resolve all types of harassment.

The DEORG established two working groups, one to focus on harassment occurring in the DoD civilian employee population, and the other focusing on Service members. In July of 2019, each working group proposed solutions to the DEORG which were then reviewed. The Department is currently refining these proposed solutions and preparing them for implementation.

WAY FORWARD

The Department aims to achieve unity of effort and purpose across DoD in the execution of unlawful discrimination and harassment prevention initiatives and activities. The Department will continue to incorporate insights from its prevention subject matter experts who have experience in developing evidence-based prevention methods. The Department will also continue to track complaint data to evaluate the effectiveness of current policies and processes in addition to making recommendations for the future to ensure a climate of diversity and inclusion founded on dignity and respect.