

Notice to EEO Complainant Seeking Compensatory Damages

I. Introduction

A review of your employment discrimination complaint indicates that you are, or may be, seeking compensatory damages as part of the relief you are requesting, or may be entitled to, should you prevail in your complaint. Compensatory damages are awarded to repay a complaining party for losses or suffering experienced due to the alleged discriminatory act or conduct. (However, currently the law does not provide for payment of compensatory damages in complaints alleging violation of the Age Discrimination in Employment Act or the Equal Pay Act.) In order to allow the agency to evaluate the merits of your claim, you are required to provide substantiating evidence of pecuniary damages, nonpecuniary damages, or both, as explained below. In addition, the Equal Employment Opportunity Commission (EEOC) requires that the agency inform you of certain matters relating to your claim for damages.

II. Substantiating a claim for damages

A. Past and Future Pecuniary Compensatory Damages:

1. Past pecuniary losses are monetary expenses incurred as a result of an employer's unlawful action, including job-hunting expenses, moving expenses, medical expenses, psychiatric expenses, physical therapy expenses, and other quantifiable expenses. If you are claiming such losses, you must provide documentary evidence of these expenses, such as paid bills, canceled checks, or receipts.

2. Future pecuniary losses are monetary expenses that are likely to occur after resolution of a complaint, such as the projected cost of physical and/or psychiatric therapy that extends into the future. If you are claiming such future requirements, statements from appropriate health care professionals are recognized as proper substantiation of such claims.

B. Nonpecuniary Compensatory Damages: Nonpecuniary compensatory damages are monetary compensation for your intangible injuries experienced as a result of an employer's unlawful discriminatory action. Consistent with the guidance from the EEOC, you are advised as follows in regard to claiming and substantiating nonpecuniary damages:

1. You must submit objective evidence, such as your statement concerning your emotional pain or suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character or reputation, injury to credit standing, loss of health and any other intangible losses that you believe you incurred as a result of the alleged discriminatory conduct.

2. You may submit statements from others, including family members, friends, health care providers, other counselors (including clergy) addressing, for

example, your outward manifestations, or physical consequences, of emotional distress. Such manifestations may include sleeplessness, anxiety, stress, depression, marital strain, humiliation, emotional distress, loss of self-esteem, or excessive fatigue.

3. Objective evidence, in addition to statements from yourself and others, may include documents indicating expenses, if any, for your medical treatment, counseling, and so forth, that are related to the intangible injury allegedly caused by the discrimination you have claimed.

III. Information you should know about claims for compensatory damages

Whether you are claiming pecuniary, nonpecuniary damages or both, please note the following additional requirements:

A. You must establish a causal connection, or nexus, between the alleged discriminatory action(s) and any resulting physical, emotional or other harm you claim has occurred.

B. You have the duty to mitigate your damages and may not recover damages for any harm that you could have avoided, or minimized, with reasonable effort.

C. The EEOC requires that you be advised that your request for compensatory damages may permit the agency to seek personal and sensitive information from you in order to determine whether the injury you claim is linked solely, partially, or not at all to the alleged discriminatory conduct.

Please provide the requested documentation to this office within [15 to 30 - can vary with circumstances] days of your receipt of this notice. If you are unable to comply with this deadline, please request an extension in writing.

EEO Officer Signature Block

NOTES:

1 This notice should be sent with the notice of acceptance via certified mail, return receipt requested, if complaint suggests compensatory damage claim, or later if claim arises between formal complaint and case assignment to EEOC AJ.

2. Immediately provide any responsive documentation received to agency representative.

Figure 4-16 Sample Notice to EEO Complainant Seeking Compensatory Damages