

What Are My Remedies in a Discrimination Case?

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The remedies that are available in an employment discrimination case will depend on (1) the facts of the case and (2) the statute involved.

Make whole relief. In general, the idea will be to provide "make whole" relief, which essentially means to put the plaintiff back into the situation she would have been in if the discrimination had not occurred.

Reinstatement and hiring. If the plaintiff was discharged unlawfully, the court should order her to be reinstated, with no loss of seniority. If the employer unlawfully refused to hire her, the court should order that she be hired, and credited with the seniority she would have earned if she had been hired earlier. If there truly is no vacancy, then the court will order "front pay" instead of reinstatement or hiring. The amount of front pay will be based on an estimate of how much she would have earned in the future.

Back pay. The court will order payment of back pay from the date of discrimination to the date of the court judgment. In order to make the plaintiff whole, this will include wages, probable overtime payments, sick leave, vacation, pension benefits, health insurance, and anything else that has a monetary value. The court will then reduce that amount by the amount that the plaintiff earned (or with reasonable effort should have earned) during the same period of time.

Compensatory damages are available in cases arising under Title VII (discrimination because of race, sex, national origin, religion) and the Americans with Disabilities Act (ADA), but not the Age Discrimination in Employment Act (ADEA). This will include things that are somewhat imprecise and don't always have a clear monetary value such as humiliation, emotional distress, inconvenience, loss of reputation.

Punitive damages are available in cases arising under Title VII (discrimination because of race, sex, national origin, religion) and the Americans with Disabilities Act (ADA), but not the Age Discrimination in Employment Act (ADEA). These damages are designed to punish past wrongdoing and deter future wrongdoing, and the plaintiff must prove that the employer acted with "malice" or in reckless disregard for federally protected legal rights. There are lots of detailed rules about exactly how and when an employer can be required to pay punitive damages, as well as rules as to how much these damages can be.

Caps on damages. Most federal statutes have caps (upper limits) on how many dollars can be recovered for compensatory damages and punitive damages. These caps range from \$50,000 to \$300,000 (based on the compensatory and punitive damages combined), depending on how many employees an employer has. Two forms of damages are excluded from the caps: back pay and front pay.

Liquidated damages. Three statutes allow a court, in specific circumstances, to award liquidated damages equal to the amount of back pay: Equal Pay Act, Age Discrimination in Employment Act (ADEA), Family and Medical Leave Act (FMLA).

Attorney fees. A prevailing plaintiff can recover attorney fees under Title VII, the Age Discrimination in Employment Act (ADEA), and the Americans with Disabilities Act (ADA). In addition, prevailing parties recover "costs" which include filing fees, transcripts, and other items.