

DISTRICT OF COLUMBIA  
COMISSION ON HUMAN RIGHTS

CHAPTER 2: GUIDELINES FOR PAYMENT OF COMPENSATORY DAMAGES, CIVIL  
PENALTIES, AND ATTORNEY'S FEES UNDER THE HUMAN RIGHTS  
ACT OF 1977

4 DCMR § 200 et seq. (1999)

200 PURPOSE

- 200.1 This chapter establishes the substantive and procedural requirements for awards of compensatory damages, civil penalties, and attorney's fees pursuant to §2-1403, 13(a) (1) of the D.C. Code, 2001 Ed.
- 200.2 It is the intent of the Commission in promulgating these guidelines to insure payment to persons aggrieved by unlawful discrimination of all expenses and damages fairly and reasonably attributable to unlawful discriminatory acts or practices.
- 200.3 The damages for which an award may be made shall include all of the damages enumerated herein, if proved, but shall not be limited thereto; it being the Commission's intent to award damages of any nature whatever which can be fairly proved to have resulted from acts of discrimination.

201 LOST INCOME AND EMPLOYEE BENEFITS

- 201.1 Every prevailing complainant shall be entitled to damages equal to all income that would have been received from an employer or any other source of income, whether or not that employer or source of income is a respondent hereunder, absent the unlawful discriminatory acts or practices of the respondent during the period of violation.
- 201.2 Included therein shall be income for overtime work that have been available to the complainant under normal work conditions and work routine, on an estimated basis, during the period of violation.
- 201.3 This category shall also include the monetary equivalent of all sick leave, annual

leave, retirement benefits, annuities, health benefits, and every other normal and usual employee benefit lost during the period of violation as a result of the unlawful discriminatory acts or practices of the respondent.

201.4 Any determination of damages for lost income shall be reduced by all other income received by the prevailing complainant from alternative employment during the period of violation.

## 202 EXCESSS HOUSING AND COMMERCIAL SPACE COSTS

202.1 If, as a result of the unlawful discriminatory acts or practices of the respondent, the prevailing complainant was required, in order to satisfy his or her housing or commercial space needs, to pay rent in excess of that which he or she would have paid but for the unlawful discrimination, and upon proof of being so required, the prevailing complainant shall be entitled to damages equal to the amount actually paid in excess over the rent for a comparable space during the period of violation, or during the period for which the prevailing complainant was obligated by lease to pay rent to a third party, whichever is greater; provided that if the lease period exceeds the period of violation by more than two (2) years from the end of the period of violation.

202.2 If, as a result of the unlawful discriminatory acts or practices of the respondent, the prevailing complainant suffered a demonstrable loss of income as a result of delays occasioned in the obtaining of commercial space in which to conduct his or her business, the prevailing complainant shall be entitled to damages equal to such lost income as can be reasonably proved.

202.3 If, as a result of the unlawful discriminatory acts or practices of the respondent, the prevailing complainant was required to pay a purchase price for housing or commercial property in excess of prices contemporaneously paid for similar housing or commercial property in the same or similar area or neighborhood by persons not unlawfully discriminated against, the prevailing complainant shall be entitled to damages equal to the excess price actually paid.

202.4 If, as a result of the unlawful discriminatory acts or practices of the respondent, the prevailing complainant was prohibited from making an offer to purchase housing or commercial property, or if an offer of the prevailing complainant to purchase housing or commercial property was rejected for an equal or lower offer from another purchaser; the prevailing complainant shall be entitled to damages equal to the difference between his or her actual or intended offer and the actual sales price of the housing or commercial property to the purchaser.

202.5 If the housing or commercial property for which the prevailing complainant intended to make an offer, or for which his or her offer was unlawfully rejected,

is not eventually sold; or if the eventual sales price is equal to above his or her offer; the complainant shall not be entitled to damages unless he or she was required to pay more than his or her original or intended offer for similar housing or commercial property, in which event he or she shall be entitled to damages equal to the excess of the amount paid for similar housing or commercial property over the original or intended offer.

202.6 If, as a result of the unlawful discriminatory acts or practices of the respondent, the prevailing complainant or his or her family or his or her business were required to move or store all or part of his, her or his personal property, or to secure temporary quarters for his or her family, the prevailing complainant shall be entitled to reimbursement of such moving or storage expenses or expenses for such temporary quarters.

### 203. DENIAL OF FULL ENJOYMENT OF PUBLIC ACCOMMODATIONS

203.1 If the prevailing complainant or his or her family were denied the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation in violation of §2-1402.31 of the D.C. Code, 2001 Ed; he or she shall be entitled to reimbursement of all expenses and compensation for all damages resulting from the unlawful discrimination including, but not limited to, the following provisions:

203.2 If, as a result of the unlawful discriminatory acts or practices of the respondent, the prevailing complainant was required to pay prices or charges for the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation in excess of those prices or charges normally levied by the place of public accommodation, the prevailing complainant shall be entitled to damages equal to the excess prices or charges actually paid.

203.3 If, as a result of the unlawful discriminatory acts or practices of the respondent, the prevailing complainant was denied the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, and he or she thereby lost an expected financial benefit or was otherwise hindered or damaged in his or her trade or occupation, the prevailing complainant shall be entitled to damages in compensation for such losses.

203.4 If, as a result of the unlawful discriminatory acts or practices of the respondent, the prevailing complainant or his or her family was denied the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, and he or she or his or her family was inconvenienced thereby, whether through the necessity of seeking other non-discriminating places or public accommodation or otherwise, the

prevailing complainant shall be entitled to such damages as are proved by competent evidence as defined in §213.

## 204 DENIAL OF USE OF EDUCATIONAL INSTITUTIONS

- 204.1 If the prevailing complainant was denied or restricted in his or her use of or access to the facilities and services of an educational institution in violation of §2-1402.41 of the D.C. Code, 2001 Ed., he or she shall be entitled to reimbursement of all expenses and compensation for all damages resulting from the unlawful discrimination, including, but not limited to, the damages specified in §§204.2 and 204.3.
- 204.2 If, as a result of the unlawful discriminatory acts or practices of the respondent, the prevailing complainant was required to pay prices or charges for the use of or access to any facility or service of an educational institution in excess of those charges normally levied by the educational institution, the prevailing complainant shall be entitled to damages equal to the excess prices or charges actually paid.
- 204.3 If, as a result of the unlawful discriminatory acts or practices of the respondent, the prevailing complainant was denied or restricted in his or her use of or access to any facility or service of an educational institution whether through the necessity of seeking other nondiscrimination educational institutions or otherwise, the prevailing complainant shall be entitled to such damages as are proved by competent evidence as defined in §213.

## 205 DAMAGES RESULTING FROM MEDICAL DISABILITY

- 205.1 If the prevailing complainant suffered any physiological, psychological, or emotional problems as a result of the violation of the Human Rights Act of 1977 and incurred expenses or damages therefrom, he or she shall be entitled to reimbursement of such expenses or compensation for such damages based on competent medical evidence thereof, including, but not limited to, the damages specified in this section.
- 205.2 If, as a result of the unlawful discriminatory acts or practices of the respondent, the prevailing complainant incurred any medical or hospital expenses, including, but not limited to, hospitalization, examination, or psychiatric services, he or she shall be entitled to reimbursement of such expenses.
- 205.3 If, as a result of the unlawful discriminatory acts or practices of the respondent, the prevailing complainant suffered any physiological, psychological, or emotional problems, and as a result of such problems, suffered consequential damages such as lost employment, he or she shall be entitled to compensation for such damages.

## 206 TRAVEL EXPENSES

- 206.1 If, as a result of the unlawful discriminatory acts or practices of the respondent, the prevailing complainant was required to incur travel expenses between his or her residence and his or her place of employment during the period of violation in excess of travel expenses that would have been incurred absent the unlawful discrimination, he or she shall be entitled to reimbursement of such excess expenses.
- 206.2 If the daily additional travel required was ten (10) miles or more, or if the total additional travel required was one hundred (100) miles or more, the complainant shall be entitled to compensation for the use of his or her automobile at the Government of the District of Columbia prevailing rate for reimbursement or mileage.
- 206.3 Double recovery of such expense shall not be allowed.
- 206.4 If the prevailing complainant has already been reimbursed for such excess travel expenses from another source, he or she shall not be entitled to such compensation.

## 207 REASONABLE EXPENSES INCURRED AS A RESULT OF PURSUING REMEDIES UNDER THE HUMAN RIGHTS ACT OF 1977

- 207.1 If, as a result of the prevailing complainant's efforts to obtain relief before the Commission, including reimbursement for expenses incurred at the investigative stage prior to the certification of the complaint to the Commission, lost income or other compensation, incurred travel expenses—including parking expenses, or incurred excess expenses for food or lodging, the prevailing complainant shall be entitled to reimbursement of such expenses.
- 207.2 The prevailing complainant shall be entitled to reimbursement of all reasonable costs of prosecuting his or her claim for relief, including, but not limited to, filing fees; witness fees (including expert witness fees); photocopying, transportation of self, witnesses, or representatives to and from hearings; telephone expenses; and postages fees.

## 208 EXCESS EXPENSE RELATING TO EMPLOYMENT

- 208.1 If, as a result of the unlawful discriminatory acts or practices of the respondent,

the prevailing complainant was denied employment and necessarily incurred expenses in order to secure other employment, including, but not limited to employment agency fees, training fees, certification fees, and the cost of uniforms or other equipment necessitated by the other employment, he or she shall be entitled to reimbursement for such expenses.

208.2 If the prevailing complainant was denied employment and thereafter permanently lost the benefit of expenses incurred in anticipation of gaining said employment, he or she shall be entitled to reimbursement for such expenses, including, but not limited to, employment agency fees, training fees, certification fees, and the cost of uniforms or other equipment necessary for the employment.

## 209 PROPERTY DAMAGE

209.1 If, as a result of the unlawful discriminatory acts or practices of the respondent, the prevailing complainant's property was damaged, or the complainant was forced to take action which resulted in damage to his or her property; he or she shall be entitled to reimbursement for any expenses actually incurred in repairing the damage or in replacing the property, if such replacement is found by the Commission to be necessary.

## 210 MENTAL AND PHYSICAL ANGUISH, PAIN AND SUFFERING

210.1 If, as a result of the unlawful discriminatory acts or practices of the respondent, the prevailing complainant was required to undergo medical or psychiatric treatment, or, where no medical treatment was undergone, there exists evidence of anguish, pain and suffering (e.g., headache, nausea, nervousness, insomnia, irritability, loss of weight), he or she shall be entitled to damages proved by competent medical evidence thereof, as defined in §213, in addition to any actual costs for medical attention as defined in §205.

## 211 EMBARRASSMENT, HUMILIATION, AND INDIGNITY

211.1 The natural and unavoidable consequences of any unlawful discriminatory act or practice are personal embarrassment, humiliation, and indignity, and the prevailing complainant shall be entitled to such damages as are proved by competent evidence as defined in §213.

211.2 In awarding damages for embarrassment, humiliation, or indignity; the Commission shall consider whether the unlawful discriminatory acts or practices were accompanied by aggravating factors including but not limited to any of the following:

- (a) Untrue derogatory statements by the respondent regarding the complainant;
- (b) Demotion or termination of the complainant;
- (c) Racial, ethnic, religious, sexual, or other epithets regarding the complainant;
- (d) Occurrence of the unlawful discriminatory acts or practices of the respondent publicly, or within the knowledge of the awardee's family, friends, peers, or acquaintances; and
- (e) Willfulness, recklessness, or repetition of the unlawful discriminatory acts or practices of the respondent to the extent that they constituted harassment or caused unusual inconvenience.

## 212 CIVIL PENALTIES

212.1 If, as a result of an unlawful discriminatory act or practice of the respondent, the Commission finds that the respondent engaged in outrageous conduct, the respondent shall be assessed with civil penalties.

212.2 In determining whether the respondent engaged in outrageous conduct, the Commission shall consider whether the conduct was the result of:

- (a) an evil or intentional act or practice, or
- (b) reckless or callous indifference to the rights of the complainant.

212.3 An evil or intentional act or practice is conduct reflecting a malicious, wanton, fraudulent or willful intent, violence or oppression.

212.4 Reckless or callous indifference is conduct reflecting a conscious indifference to the rights of complainant for which respondent is or should be aware.

212.5 Absent direct proof, the requisite intent may be inferred from all of the surrounding facts and circumstances.

212.6 Civil penalties shall be assessed in accordance with the following schedule:

- (a) An amount not to exceed \$10,000 if the respondent has not been adjudged by the Commission to have committed any prior violation of the District of Columbia Human Rights Act of 1977.
- (b) An amount not to exceed \$25,000 if the respondent has been adjudged by

the Commission to have committed during the five (5) year period ending on the date of the filing of the current complaint one (1) other violation of the District of Columbia Human Rights Act of 1977.

- (c) An amount not to exceed \$50,000 if the respondent has been adjudged to have committed during the seven (7) year period ending on the date of the filing of the current complaint two (2) or more violations of the District of Columbia Human Rights Act of 1977.

212.7 The payment of civil penalties shall be deposited into the District of Columbia General Fund and not be paid to the individual complainant.

### 213 ATTORNEY'S FEES

213.1 If the prevailing complainant was represented by a privately retained attorney in any case in which the Commission has found that the respondent engaged in discriminatory acts or practices in violation of the Human Rights Act of 1977, the complainant shall be entitled to a reasonable attorney's fee for the number of hours reasonably expended by the complainant's attorney on claims upon which the complainant prevailed.

213.2 The reasonable hourly rate multiplied by the reasonable number of hours expended upon successful claims is presumed to be the reasonable attorney's fee.

213.3 In determining a reasonable hourly rate, the Commission shall consider the hourly rate, the Commission may also consider rates charged in the community for similar legal work by attorneys of comparable skill, experience, and reputation.

213.4 The prevailing complainant shall bear the burden of demonstrating that an upward adjustment of the presumed reasonable attorney's fee is necessary to provide fair compensation to the prevailing attorney.

213.5 The unsuccessful respondent shall bear the burden of demonstrating that a downward adjustment of the presumed reasonable attorney's fee is necessary to avoid a windfall to the prevailing attorney.

213.6 In determining whether an adjustment of the presumed reasonable attorney's fee is warranted, the Commission shall be guided by Supreme Court decisions interpreting the attorney's fee provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1988 (1982); and other similar federal fee-shifting laws.

213.7 The complainant's attorney's fee petition shall be filed with the Commission no earlier than twenty (20) days after the issuance of the Commission's Final Decision and Order and no later than thirty (30) days after the issuance of the Commission's Final Decision and Order is appeal to the District of Columbia

Court of Appeals.

213.8 If a motion for reconsideration is filed, then the complainant shall file his or her attorney's fee petition no earlier than twenty (20) days after the issuance of the Commission's Final Decision and Order on Motion for Reconsideration and no later than (30) days after the issuance of the Commission's Final Decision and Order for Reconsideration. Supplemental petitions may be filed as in accordance with §213.7.

214 MISCELLANEOUS

214.1 An award of compensatory damages, civil penalties or attorneys' fees pursuant to these guidelines shall be made only upon written petition of the prevailing complainant, specifying the type and amount of damages claimed. Such petition may be contained in the complainant's pre-hearing statement as outlined in the Commission's Rules of Procedure for Contested Cases, 4 DCMR §413.3.

214.2 Any award made for expenses compensable under §§ 202, 203, 204, 205, and 206 of this guidelines shall be made only upon the production of documentary evidence of such expenses, including, but not limited to bills, receipts, canceled checks, and invoices.

214.3 If such documentation cannot reasonably be produced, an award may be made upon reasonable and credible testimony and evidence.

214.4 Any award of damages or other compensation under §§ 201, 202, 205, 207, 208, 209, 210, 211, 212, and 213 of these guidelines shall be made only upon reliable and probative evidence that will permit the Commission to ascertain a reasonable basis for assessing the amount of the damages or other compensation.

214.5 If an award of damages is made, the respondent shall pay the complainant interest at the rate of eight percent (8%) per annum on out of pocket expenses, from the date incurred to the date of payment, and if the total award is not paid within thirty (30) days from the date of issuance of the Commission's Final Decision and Order, the respondent shall pay interest at the rate of eight percent (8%) per annum until paid.

299 DEFINITIONS

299.1 In addition to the definitions contained in §499 of the District of Columbia Commission on Human Rights Rules of Procedure for Contested Cases, 4 DCMR, chapter 4, the following terms and phrases shall have the meanings ascribed:

Damages – A monetary award made to a prevailing complainant and assessed against a respondent to compensate for injuries sustained as a result of discriminatory acts or practices found by the Commission to be unlawful under the Human Rights Act of 1977.

Civil Penalties – A monetary penalty assessed against the respondent which is paid into the District of Columbia General Fund as a result of the Commission's finding that the respondent's discriminatory acts or practices violated the Human Rights of 1977 and those acts or practices are found to be one of the acts enumerated under §212 of these guidelines.

Period of Violation – The period of time between the initial instance of the respondent's unlawful discrimination against the complainant as determined by the Commission and the date upon which the respondent ceases the discriminatory practice and offers remedy and relief in accordance with this chapter pursuant to an order issued by the Commission under §2-1403.13 of the D.C. Code, 2001 Ed.