

# TABLE OF CONTENTS

---

---

<b>INTRODUCTION .....</b>	<b>i</b>
<b>CHAPTER 1: INTRODUCTION TO DAMAGES .....</b>	<b>1</b>
I. GENERAL DISCUSSION OF DAMAGES .....	4
A. EEOC REGULATIONS CODIFY REMEDIES AND RELIEF .....	5
II. TOWARD THE 30TH ANNIVERSARY OF THE CIVIL RIGHTS ACT OF 1991: WHAT THE FUTURE HOLDS FOR AWARDS OF COMPENSATORY DAMAGES .....	9
<b>CHAPTER 2: TITLE VII EQUITABLE DAMAGES.....</b>	<b>11</b>
I. TRAINING .....	11
II. PURGING EMPLOYER'S RECORDS OF NEGATIVE INFORMATION.....	14
III. REQUIRING EMPLOYER TO APOLOGIZE.....	18
IV. INJUNCTIVE RELIEF .....	19
A. PRELIMINARY INJUNCTIONS .....	20
1. Likelihood of Success.....	20
2. Irreparable Harm .....	21
B. INTERIM INJUNCTIVE RELIEF FOR GOVERNMENT EMPLOYEES.....	21
1. EEOC's Authority to Enjoin Employment Practices .....	23
C. INTERIM ADMINISTRATIVE RELIEF FOR GOVERNMENT EMPLOYEES.....	24
D. INTERIM RELIEF MAY ENJOIN FUTURE DISCIPLINE WITHOUT AN INDEPENDENT REVIEW .....	26
V. BACK PAY .....	28
A. LOSS OF OPPORTUNITY .....	32
B. LIMITATIONS ON BACK PAY .....	37
1. Interim Earnings May Be Set Off Against an Award of Back Pay .....	38
2. Commencing the Period for Back Pay .....	41
3. Commencing the Period for Back Pay in Disability Claims Alleging a Failure to Provide Reasonable Accommodation .....	41
4. Subsequent Promotions in an Award of Back Pay.....	42
5. Ending the Period for Back Pay .....	47
6. Subsequent Disabling Injury.....	52
7. Voluntary Resignation or Retirement .....	53
8. Other EEOC Decisions on Ending Back Pay Period .....	57
9. Effect of Bonuses or Other Discretionary Salary Increases .....	57
C. BACK PAY LIMITED TO TWO YEARS PRIOR TO ADMINISTRATIVE COMPLAINT .....	59
1. Continuing Violations and Back Pay .....	59
2. Back Pay Awards in Continuing Violations Claims Generally Available Only in Hostile Work Environment Cases .....	59
D. HEALTH INSURANCE AND RELATED BENEFITS .....	61
E. SENIORITY BENEFITS .....	61
F. OVERTIME.....	62
G. INTEREST ON BACK PAY .....	67

H.	DETERMINING BACK PAY BY COMPARING EARNINGS OF OTHER EMPLOYEES .....	72
I.	OTHER BENEFITS OF EMPLOYMENT .....	74
VI.	FRONT PAY .....	75
A.	AN AWARD OF FRONT PAY DOES NOT REQUIRE EXPERT TESTIMONY .....	85
B.	SUPREME COURT DECIDES THAT FRONT PAY IS NOT SUBJECT TO CAPS.....	86
C.	WHEN FRONT PAY IS APPROPRIATE .....	88
D.	SOCIAL MEDIA AS EVIDENCE TO SUPPORT FRONT PAY CLAIM .....	94
E.	DURATION OF FRONT PAY .....	95
F.	OTHER CONSIDERATIONS IN AWARDING FRONT PAY .....	106
G.	FRONT PAY MAY NOT BE APPROPRIATE WHERE THERE WAS A FAILURE TO MITIGATE DAMAGES .....	107
H.	FACTORS LIMITING OR CUTTING-OFF FRONT PAY .....	112
VII.	FRINGE BENEFITS .....	114
A.	CALCULATING THE VALUE OF FRINGE BENEFITS .....	115
B.	EMPLOYER MATCHING FOR PENSION AND 401(K) PLANS.....	117
C.	THRIFT SAVINGS PLAN (TSP) BENEFITS.....	118
D.	SURVIVOR BENEFITS .....	120
E.	ANNUAL AND OTHER LEAVE .....	120
VIII.	REINSTATEMENT .....	124
A.	WHEN REINSTATEMENT IS NOT PRACTICAL .....	126
B.	REINSTATEMENT NOT APPROPRIATE WHERE SAME ACTION WOULD HAVE BEEN TAKEN .....	128
C.	AFTER-ACQUIRED EVIDENCE .....	129
D.	WHERE HOSTILITY MAKES EMPLOYMENT RELATIONSHIP IMPOSSIBLE.....	132
E.	WHERE INNOCENT EMPLOYEE WOULD BE DISPLACED .....	134
F.	REINSTATEMENT DOES NOT PRECLUDE FRONT PAY .....	137
G.	RERUNNING THE SELECTION PROCESS .....	137
H.	AWARDING THE POSITION WHERE COMPLAINANT NOT CONSIDERED FOR THE POSITION .....	138
I.	FAILURE TO MITIGATE DAMAGES DOES NOT PRECLUDE REINSTATEMENT ..	139
IX.	BUMPING.....	139
A.	EEOC AUTHORITY TO ORDER BUMPING.....	142
X.	REINSTATEMENT MAY REQUIRE REPAYMENT OF ANY LUMP SUM PAYMENT FOR UNUSED ANNUAL LEAVE .....	143
XI.	UNION DUES MAY BE DEDUCTED FROM AN AWARD OF BACK PAY .....	144

**CHAPTER 3: THE CIVIL RIGHTS ACT OF 1991 AND COMPENSATORY DAMAGES ..... 145**

I.	OVERVIEW OF THE 1991 ACT .....	145
A.	NO CLAIM FOR COMPENSATORY DAMAGES PRIOR TO 1991.....	146
II.	COMPENSATORY DAMAGES ARE AVAILABLE IN ADMINISTRATIVE HEARINGS..	147
A.	THE EEOC RULES IT HAS AUTHORITY TO ORDER DAMAGES.....	147
B.	A DISPUTE WITHIN THE CIRCUITS .....	149
C.	THE SUPREME COURT SETTLES THE DISPUTE.....	154
III.	DAMAGE PROVISIONS OF THE CIVIL RIGHTS ACT OF 1991 ARE NOT RETROACTIVE .....	158
A.	WHERE UNLAWFUL EMPLOYMENT ACT CONTINUED AFTER ENACTMENT .	160

B. ALLOCATING REMEDIES WHERE CONDUCT CONTINUED AFTER ENACTMENT.....	162
IV. COMPENSATORY DAMAGES DO NOT PUNISH BAD CONDUCT.....	163
V. COMPENSATORY DAMAGES NOT AVAILABLE IN CASES OF DISPARATE IMPACT.....	164
VI. COMPENSATORY DAMAGES NOT AVAILABLE WHEN THE EMPLOYER ACTED WITH LEGITIMATE AS WELL AS DISCRIMINATORY MOTIVES.....	164
VII. COMPENSATORY DAMAGES NOT AVAILABLE UNDER THE ADEA.....	167
VIII. COMPENSATORY DAMAGE AWARDS ARE LIMITED BY STATUTORY CAPS.....	167
A. DAMAGE CAPS APPLY TO EACH AGGRIEVED INDIVIDUAL.....	170
IX. TRIAL BY JURY.....	174
X. ADMINISTRATIVE HEARINGS AND BIFURCATED PROCEEDINGS.....	175
XI. TYPES OF DAMAGES AVAILABLE.....	177
XII. PECUNIARY DAMAGES.....	177
A. PAST PECUNIARY DAMAGES.....	178
B. PAST PECUNIARY DAMAGES MUST BE PROVEN.....	182
C. FUTURE PECUNIARY DAMAGES.....	188
XIII. NONPECUNIARY DAMAGES.....	191
A. INCONVENIENCE.....	195
B. LOSS OF FUTURE EARNINGS CAPACITY.....	195
C. DAMAGE TO PROFESSIONAL REPUTATION.....	199
D. FUTURE EMOTIONAL DISTRESS.....	201
E. LOSS OF CONSORTIUM.....	202
F. LOSS OF OPPORTUNITY.....	202
XIV. INTEREST.....	202
XV. RAISING A CLAIM FOR COMPENSATORY DAMAGES.....	203
A. WHEN A CLAIM FOR COMPENSATORY DAMAGES MUST BE RAISED BEFORE THE EEOC.....	204
B. WHERE A FEDERAL AGENCY ACTS TO DISMISS A CLAIM AS MOOT.....	206
C. IN CASES WHERE THERE IS NO HEARING.....	207
D. A CLAIM FOR DAMAGES MAY BE RAISED ON APPEAL FROM A FINAL AGENCY DECISION.....	208
E. IN CASES WHERE AN EEOC HEARING IS HELD.....	209
F. ON APPEAL FROM THE MSPB.....	210
XVI. EXHAUSTION OF REMEDIES.....	211
A. A FEDERAL COURT MAY BAR A CLAIM FOR DAMAGES IF NOT RAISED IN ADMINISTRATIVE FORUM.....	211
XVII. NOMINAL DAMAGES.....	215
XVIII. PUNITIVE DAMAGES.....	218
XIX. NO COMPENSATORY DAMAGES FOR STRESS RELATED TO FILING A COMPLAINT.....	220
<b>CHAPTER 4: PROVING DAMAGES.....</b>	<b>223</b>
I. PROOF OF DAMAGES.....	223
II. NATURE, SEVERITY AND DURATION OF THE HARM.....	227
A. GARDEN VARIETY COMPENSATORY DAMAGES.....	228
B. EVIDENCE OF MORE SUBSTANTIAL DAMAGES.....	230
III. CAUSATION.....	233

A.	PROOF OF CAUSATION IN NONPECUNIARY DAMAGES .....	233
B.	PROOF OF CAUSATION IN PECUNIARY DAMAGES.....	236
IV.	PROOF OF ACTUAL HARM OR INJURY .....	242
V.	PROOF OF LOSS OF EARNINGS .....	248
VI.	PROOF OF DAMAGES WITHOUT A HEARING .....	250
VII.	PROOF OF PECUNIARY DAMAGES.....	252
A.	PROOF OF FUTURE PECUNIARY DAMAGES .....	260
VIII.	PROOF OF NONPECUNIARY DAMAGES.....	264
A.	EMOTIONAL HARM CAN BE PROVEN FROM COMPLAINANT'S TESTIMONY ALONE .....	265
1.	The Plaintiff's Testimony as Evidence for Damages .....	266
2.	The Need for Corroborating Evidence to Substantiate Plaintiff's Testimony and Large Awards.....	271
3.	The Sufficiency of the Evidence Provided .....	274
B.	DOCUMENTING EVIDENCE OF NONPECUNIARY DAMAGES.....	277
C.	GENERAL ALLEGATIONS OF EMOTIONAL HARM GENERALLY WILL SUPPORT ONLY MODEST AWARDS.....	278
IX.	CREDIBILITY OF WITNESSES.....	279
X.	EXPERT WITNESSES.....	289
A.	EXPERT TESTIMONY IS NOT REQUIRED TO PROVE DAMAGES.....	290
B.	USE OF EXPERT WITNESSES .....	296
C.	TYPES OF EXPERT WITNESSES .....	298
D.	EXPERT WITNESSES AND ECONOMIC HARM.....	299
E.	EXPERT TESTIMONY AND EMOTIONAL HARM.....	301
F.	TESTIMONY OF TREATING PHYSICIAN OR OTHER HEALTH CARE PROVIDER GENERALLY DOES NOT REQUIRE CERTIFICATION OR DISCLOSURE AS AN EXPERT .....	308
G.	EXPERT TESTIMONY AND PHYSICAL INJURIES .....	311
H.	OTHER USE OF EXPERTS.....	312
I.	EXPERT REBUTTAL TESTIMONY.....	317
XI.	EMPLOYER'S USE OF REBUTTAL WITNESSES.....	319
XII.	RECORD MAY NOT BE SUPPLEMENTED ON APPEAL.....	321
<b>CHAPTER 5: MITIGATION AND OFFSET.....</b>		<b>323</b>
I.	OFFSETS AND THE DUTY TO MITIGATE DAMAGES .....	323
A.	BACK PAY MAY BE CALCULATED USING A PERIODIC RATHER THAN AN AGGREGATE COMPARISON OF EARNINGS.....	325
B.	REASONABLE DILIGENCE IN SEEKING OTHER EMPLOYMENT .....	328
1.	Unconditional Offer of Reemployment May End Right to Back Pay.....	329
2.	An Unconditional Offer of Reinstatement Must Include Reasonable Accommodation, if Needed .....	333
3.	An Unconditional Offer of a Position Intended to Cut Off Back Pay Must Be in the Same Geographic Location.....	336
4.	Failure to Mitigate Damages Does Not, in Itself, Bar Reinstatement .....	336
5.	Extended Leave of Absence Without Pay May Signal Unavailability for Work.....	338
C.	DUTY TO MITIGATE EXTENDS TO MAINTAINING FUTURE EMPLOYMENT....	338

D.	CONTINUED EMPLOYMENT AFTER DENIAL OF A PROMOTION; CONSTRUCTIVE DISCHARGE .....	341
E.	MITIGATING DAMAGES IN CLAIMS OF SEXUAL HARASSMENT.....	346
F.	REASONABLE DILIGENCE MUST BE IN LIGHT OF THE PARTICULAR FACTS OF A CASE .....	347
G.	THE DUTY TO MITIGATE REQUIRES A SUSTAINED EFFORT TO FIND WORK..	351
H.	PURSUING EDUCATION EFFECTIVELY REMOVES AN INDIVIDUAL FROM THE WORKFORCE .....	352
	1. Cases Where Pursuing Education Ended the Period for Back Pay .....	353
	2. Cases Where Pursuing Education Did Not End the Period for Back Pay..	355
I.	SUBSTANTIALLY EQUIVALENT EMPLOYMENT .....	358
II.	REASONABLE DILIGENCE IN SEEKING ALTERNATIVE EMPLOYMENT MAY INCLUDE CONSIDERATION OF THE ATTRIBUTES OF THE PLAINTIFF .....	363
A.	REASONABLE DILIGENCE.....	365
B.	REASONABLE DILIGENCE AND SELF-EMPLOYMENT .....	367
C.	INABILITY TO WORK BECAUSE OF DISABILITY .....	370
III.	BURDEN IS ON EMPLOYER TO SHOW FAILURE TO MITIGATE.....	372
A.	BURDEN SHIFTS WHERE EMPLOYEE MAKES NO EFFORT TO FIND OTHER EMPLOYMENT .....	377
B.	EMPLOYEE'S BURDEN LOWERED WHERE WORK IN THE SAME FIELD IS NOT AVAILABLE BECAUSE OF EMPLOYER'S MISCONDUCT .....	379
C.	DOCUMENTING EFFORTS TO MITIGATE DAMAGES .....	382
IV.	FAILURE TO MITIGATE MAY BAR FRONT PAY.....	383
V.	NO DUTY TO MITIGATE WHERE EMPLOYEE IS STILL ON COMPANY ROLLS .....	383
VI.	MITIGATION AND OTHER DAMAGES .....	385
A.	EEOC HOLDS NO DUTY TO MITIGATE NONPECUNIARY DAMAGES .....	385
B.	DUTY TO MITIGATE OTHER PECUNIARY DAMAGES .....	385

**CHAPTER 6: OTHER FACTORS IMPACTING CALCULATIONS  
OF REMEDIES..... 389**

I.	COLLATERAL SOURCE RULE.....	389
A.	UNEMPLOYMENT COMPENSATION.....	394
B.	WORKERS' COMPENSATION BENEFITS .....	395
C.	PUBLIC ASSISTANCE BENEFITS.....	397
D.	DISABILITY INSURANCE BENEFITS.....	397
E.	VETERAN'S AND SOCIAL SECURITY BENEFITS .....	399
F.	PENSION BENEFITS.....	401
G.	HEALTH INSURANCE BENEFITS .....	402
II.	THE EGGSHELL PLAINTIFF.....	405
III.	THE EFFECT OF PREEXISTING INJURIES ON A CLAIM FOR DAMAGES .....	407
A.	WHERE PREEXISTING CONDITION WOULD HAVE WORSENED.....	413
B.	ALLOCATING CAUSATION.....	418
C.	MULTIPLE CAUSES OF EMOTIONAL HARM.....	424
IV.	TAX CONSEQUENCES OF COMPENSATORY DAMAGES.....	428
A.	COMPENSATORY DAMAGES AWARDS FOR EMOTIONAL INJURIES ARE GENERALLY TAXABLE INCOME .....	428
B.	TRENDING: STATE AND LOCAL ENTITIES EXEMPTING COMPENSATORY DAMAGES FROM TAXABLE INCOME: THE CIVIL RIGHTS TAX RELIEF ACT ....	429

C.	TAXATION OF ATTORNEY FEES.....	429
D.	TAX WITHHOLDING OF DAMAGE AWARDS.....	430
E.	ENHANCEMENT OF DAMAGES TO ADJUST FOR TAXES: TAX GROSS-UP .....	431
F.	TAX GROSS-UP UNDER THE FMLA.....	437
G.	COMPENSATION TO OFFSET THE EFFECT OF A LUMP SUM PAYMENT OF BACK PAY, NOT SUBJECT TO THE STATUTORY CAPS .....	438
H.	ADDITIONAL AWARD TO COMPENSATE FOR TAX CONSEQUENCE OF NONPECUNIARY DAMAGES.....	440
V.	SEEKING REVIEW OF DAMAGE AWARDS IN FEDERAL COURT AFTER A FAVORABLE DECISION BY THE EEOC .....	441
VI.	SEEKING ENFORCEMENT OF EEOC DAMAGE AWARDS IN FEDERAL COURT .....	444
VII.	A NOTE ABOUT TIMELINESS.....	447
VIII.	EFFECT OF FAILING TO DISCLOSE EXISTENCE OF COMPLAINT OF DISCRIMINATION IN BANKRUPTCY PROCEEDING.....	447

**CHAPTER 7: CONSIDERATIONS IN APPROACHING SETTLEMENT..... 451**

I.	A FINDING OF DISCRIMINATION IS NOT REQUIRED TO SETTLE A COMPLAINT ..	452
II.	THERE MUST BE A MEETING OF THE MINDS .....	453
III.	ENFORCEABLE AND UNENFORCEABLE PROVISIONS UNDER SETTLEMENT AGREEMENTS .....	455
IV.	PARTIES MUST BE AWARE OF AVAILABLE RELIEF .....	457
V.	SETTLEMENT AGREEMENTS MUST STATE THE PARTIES' AGREED UPON TERMS WITH PARTICULARITY .....	458
VI.	AGENCIES SHOULD CONSIDER THE OVERALL COST TO THE GOVERNMENT.....	459
VII.	NO PERSONNEL ACTION IS REQUIRED FOR SETTLEMENT .....	460
VIII.	CONFIDENTIALITY CLAUSES .....	461
IX.	LUMP SUM SETTLEMENTS .....	462
X.	A GOOD FAITH RESPONSE IS REQUIRED TO DAMAGE INQUIRIES DURING SETTLEMENT DISCUSSIONS.....	463
XI.	OLDER WORKERS BENEFIT PROTECTION ACT .....	465
XII.	WHERE RETIREMENT BENEFITS ARE INVOLVED .....	469
XIII.	ENFORCEMENT OF SETTLEMENT AGREEMENTS .....	470
XIV.	COMPENSATORY DAMAGES ARE NOT AVAILABLE FOR BREACH OF A SETTLEMENT AGREEMENT .....	472
XV.	ATTORNEY FEES AVAILABLE FOR SUCCESSFUL PETITION TO ENFORCE SETTLEMENT AGREEMENT .....	472
XVI.	INTEREST ON DELAYED PAYMENT OF MONETARY BENEFITS AFTER SETTLEMENT.....	472
XVII.	OFFERS OF RESOLUTION.....	473
XVIII.	SAMPLE SETTLEMENT PROPOSAL .....	475

**CHAPTER 8: REMEDIES UNDER OTHER STATUTES ..... 481**

I.	THE EQUAL PAY ACT .....	481
A.	COMMISSION AWARDS OF LIQUIDATED DAMAGES IN EQUAL PAY ACT CASES.....	483
II.	DAMAGES UNDER THE ADA AND REHABILITATION ACT OF 1973.....	485

A.	AGENCIES ARE LIABLE FOR COMPENSATORY DAMAGES WHEN THEY FAIL TO MAKE A GOOD FAITH EFFORT TO PROVIDE REASONABLE ACCOMMODATION .....	486
B.	ENTITLEMENT TO DAMAGES UNDER THE ADA AND REHABILITATION ACT RESULTING FROM UNLAWFUL PREEMPLOYMENT MEDICAL EXAMINATIONS AND INQUIRIES.....	487
C.	IMPROPER MEDICAL DISCLOSURES MAY WARRANT REMEDIES IN CLASS ACTION VIOLATIONS.....	491
III.	FAMILY MEDICAL LEAVE ACT .....	492
IV.	DAMAGES ARE NOT AVAILABLE UNDER THE ADEA.....	493
A.	BACK PAY AWARDS UNDER THE ADEA ARE MANDATORY .....	496
V.	DAMAGES UNDER THE WHISTLEBLOWER PROTECTION ACT.....	496
VI.	THE GENETIC INFORMATION NONDISCRIMINATION ACT .....	496

**CHAPTER 9: MANAGING DISCOVERY ABOUT DAMAGES ..... 499**

I.	DISCOVERY BY THE EMPLOYEE .....	499
II.	DISCOVERY BY THE EMPLOYER.....	500
A.	DISCOVERY REGARDING EFFORTS TO MITIGATE BACK PAY .....	501
B.	DISCOVERY REGARDING EMOTIONAL HARM .....	502
III.	PSYCHOTHERAPIST-PATIENT PRIVILEGE .....	503
IV.	BIFURCATED DISCOVERY.....	505
V.	PROTECTIVE ORDERS .....	506
VI.	MEDICAL EXAMINATIONS .....	508
A.	SOURCES OF AUTHORITY FOR CONDUCTING MEDICAL EXAMINATIONS ..	508
1.	Medical Examinations Are Authorized by EEOC MD-110 .....	509
2.	Medical Examination Under Rule 35 of Federal Rules .....	510
3.	Guidance on Medical Examinations in AJ Handbook.....	511
B.	WHEN MEDICAL EXAMINATIONS ARE APPROPRIATE .....	512
C.	MEDICAL EXAMINATION GRANTED .....	517
D.	WHO MAY ATTEND THE MEDICAL EXAMINATION.....	522
E.	OTHER MATTERS RELATED TO MEDICAL EXAMINATIONS.....	523
VII.	WHERE EVIDENCE OF DAMAGES IS NOT REVEALED THROUGH DISCOVERY.....	523

**CHAPTER 10: CALCULATING AN AWARD OF DAMAGES..... 527**

I.	DETERMINING AN APPROPRIATE AWARD .....	527
A.	COUNSEL CAN INFLUENCE AN AWARD OF DAMAGES.....	528
B.	AWARDS OF COMPENSATORY DAMAGES SHOULD BE CONSISTENT WITH AWARDS IN OTHER CASES EVIDENCING SIMILAR HARM .....	529
C.	INITIAL EEOC DAMAGE AWARDS WERE LIMITED .....	530
D.	COMMISSION RULES SET NO FORMULA FOR CALCULATING DAMAGES ....	538
E.	FACTORS AFFECTING AN AWARD OF DAMAGES.....	538
F.	MULTIPLE CAUSES OF EMOTIONAL HARM.....	544
G.	POST JUDGMENT INTEREST .....	545
II.	APPELLATE REVIEW OF DAMAGE AWARDS.....	545
A.	ON APPEAL AN AWARD OF DAMAGES MAY BE REDUCED TO THE MAXIMUM WARRANTED BY THE FACTS.....	548
B.	APPEALING AN AWARD OF DAMAGES IN THE ADMINISTRATIVE FORUM TO THE EEOC .....	550

C. CREDIBILITY DETERMINATIONS AND DAMAGES.....	551
D. BURDEN IS ON THE PARTY SEEKING TO MODIFY DAMAGES TO PRODUCE EVIDENCE.....	554
E. IN GENERAL, ADDITIONAL EVIDENCE MAY NOT BE ADDED ON APPEAL....	555
F. CLAIM FOR COMPENSATORY DAMAGES MAY PRECLUDE DISMISSAL OF AN ADMINISTRATIVE CLAIM FOR MOOTNESS.....	555
G. EEOC IMPOSES NO REQUIREMENT TO REPAY AWARD OF DAMAGES PENDING APPEAL.....	556
H. OPTIONS WHEN AN AGENCY FAILS TO IMPLEMENT RELIEF ORDERED BY THE EEOC.....	556

**CHAPTER 11: ATTORNEY FEES AND COSTS ..... 559**

I. ATTORNEY FEES ARE NOT RECOVERABLE FOR ADEA ADMINISTRATIVE CLAIMS.....	564
II. <i>PRO SE</i> COMPLAINANTS MAY NOT RECOVER ATTORNEY FEES.....	564
III. COMPUTING ATTORNEY FEES.....	566
A. COMPLAINANT HAS THE BURDEN TO ESTABLISH ENTITLEMENT TO ATTORNEY FEES.....	566
B. ATTORNEY FEES ARE GENERALLY NOT AVAILABLE FOR TIME SPENT PRIOR TO FILING A COMPLAINT, EXCEPT WHERE AN AGENCY SUBSEQUENTLY FILES AN APPEAL.....	567
C. FEES ARE AWARDED BASED ON THE NUMBER OF HOURS REASONABLY EXPENDED.....	571
1. Time Spent on FOIA Requests May Be Hours Reasonably Expended.....	576
2. Time Spent Attending EEO Investigations May Be Reasonably Expended.....	577
3. Time Spent on Related Matters and Clerical Tasks May Be Recovered Where Clerical Tasks Are an Integral Part of the Attorney's Work.....	577
4. Filing an Unsuccessful Request to Reconsider Is Not Reasonable Expenditure of Time to Warrant Award of Attorney Fees.....	578
5. Attorney Fees May Be Awarded Where the Matter Must Be Retried.....	578
6. It May Be a Reasonable Expenditure of Attorney Time for Complainant's/Plaintiff's Counsel to Spend More Hours Prosecuting a Claim Than for Defense Counsel to Defend the Claim.....	580
D. CONTINGENCY FEE ARRANGEMENTS SHOULD NOT IMPACT FEE SHIFTING.....	580
E. WHERE FEE REDUCTION IS APPROPRIATE.....	582
1. Awards May Be Reduced Where There Is Duplication of Work.....	582
2. Awards May Be Reduced Where Employee Prevails on Fewer Than All Claims Raised.....	587
3. Attorney Fees May Be Denied if Relief Is Insubstantial.....	596
4. Attorney Fees May Be Denied or Reduced Where Fee Petition Lacks Specificity.....	599
F. REASONABLE HOURLY RATE.....	601
1. Agency Has Burden of Proof to Argue That Complainant's Retention of Out-Of-Area Counsel Was Unreasonable.....	607
2. Complainant Can Claim Fees at Current Rather Than Historical Rates....	612



3.	Attorney Firm Overhead and the Hourly Rate .....	613
G.	ATTORNEY FEES AVAILABLE WHEN ATTORNEY MUST PERFORM ADDITIONAL WORK DUE TO AGENCY'S ACTIONS .....	613
H.	ATTORNEY FEES AVAILABLE FOR PREPARING AND DEFENDING A PETITION FOR ATTORNEY FEES .....	615
I.	FEES FOR USE OF PARALEGALS AND LAW CLERKS .....	618
J.	WHERE ATTORNEYS PERFORM WORK GENERALLY DONE BY PARALEGALS .....	620
K.	ATTORNEY TRAVEL TIME .....	620
L.	ATTORNEY FEES AWARDS MAY BE ENHANCED .....	622
IV.	COMPUTING COSTS .....	624
A.	WITNESS FEES .....	625
B.	TRAVEL AND MEAL EXPENSES .....	626
C.	TELEPHONE EXPENSES .....	628
D.	REVENUE TAXES .....	628
E.	RESEARCH COSTS .....	628
F.	PRINTING AND SCANNING COSTS .....	629
G.	CONSULTANTS .....	630
V.	INTEREST ON ATTORNEY FEES .....	631
VI.	ATTORNEY FEES AND SETTLEMENT AGREEMENTS .....	632
VII.	COUNSEL FOR COMPLAINANT HAS NO INDIVIDUAL RIGHT TO APPEAL AN AWARD OF ATTORNEY FEES .....	636
VIII.	COMPLAINANTS CAN FILE CIVIL ACTIONS AFTER PREVAILING BEFORE THE EEOC SOLELY ON THE ISSUE OF ATTORNEY FEES .....	636
IX.	FILING OF A CIVIL ACTION CEASES PROCESSING OF ANY CLAIM FOR ATTORNEY FEES IN THE ADMINISTRATIVE FORUM .....	640
X.	AWARDS OF ATTORNEY FEES CAN BE DEDUCTED ON COMPLAINANT'S TAX RETURNS .....	640

**CHAPTER 12: A SUMMARY OF SELECTED COMMISSION DAMAGE  
AWARDS ..... 641**

I.	AWARDS UP TO \$10,000 .....	641
II.	AWARDS OF \$10,001 TO \$25,000 .....	659
III.	AWARDS OF \$25,001 TO \$50,000 .....	673
IV.	AWARDS OF \$50,001 TO \$100,000 .....	685
V.	AWARDS IN EXCESS OF \$100,000 .....	702

**CHAPTER 13: A HISTORICAL CHART OF SIGNIFICANT EEOC  
NONPECUNIARY DAMAGE AWARDS ..... 719**

**APPENDIX: TABLE OF CONTENTS ..... 767**

APPENDIX A:	EEOC FEDERAL SECTOR REGULATIONS ON REMEDIES— 29 CFR PART 1614 .....	769
APPENDIX B:	SECTION 102 OF THE CIVIL RIGHTS ACT OF 1991 (42 USC 1981A) ....	779
APPENDIX C:	COMPENSATORY AND PUNITIVE DAMAGES AVAILABLE UNDER SECTION 102 OF THE CIVIL RIGHTS ACT OF 1991, EEOC NOTICE NO. N 915.002 .....	781

APPENDIX D: EEOC REGIONAL ATTORNEYS' MANUAL, 2005, PART 2,II.D.—  
NONPECUNIARY COMPENSATORY DAMAGES: ISSUES  
FOR REVIEW WITH CLAIMANTS PRIOR TO FILING SUIT ..... 795

**TABLE OF CASES..... 805**

**INDEX ..... 843**