

Compensatory Damages in Employment Discrimination: How much is it worth?¹

Robin Grimonprez

ABSTRACT

Many people in their life face Employment Discrimination. During or after it happens, they need to know what is the best thing to do to perceive the compensatory damages they deserved. Over the past decades, the number of complaints linked to employment discrimination has increased and many people are still afraid to complain depending on the context. This paper analyzes all the different alternatives using a multi-criteria decision analysis method. The author suggests that the best solution for a person who is a victim of employment discrimination is to seek the help of an independent investigator. Thanks to his experiences and knowledge, he can give his opinion and decide what the best decision to do is - either talk informally to the employer or make an official complaint to the court.

Key words – Damages, Discrimination, Employment Law, Breach of Contract, Monetary Regulations, Personal Injury

INTRODUCTION

If I speak to you about employment discrimination, you would probably say that nowadays in rich, educated and developed countries, it tends to go down. The reality is different, and we see that employment discrimination stagnates or even increases over the years. For instance, with the help of the U.S. Equal Employment Opportunity Commission (EEOC), \$525 million was perceived by victims of employment discrimination in 2015 in the United States.

Employment Discrimination happens when there is a difference in treatment between two equally qualified individuals. This can be based on several aspects such as gender, race, religion, disability, age, sexual orientation, national origin or gender identity. An employment discrimination practice can take many forms and it can occur in many aspects of employment from the refusal to hire to the termination. It can also be seen during the employment with disciplinary actions, denial of training, failure to promote, demotion or harassment.

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A person who is a victim of employment discrimination can go to court and ask his employer to pay compensatory damages. These Damages can be asked when there is any form of injury. The injury can be physical or emotional. The victim is paid for the expenses caused by the discrimination like medical expenses but also for the emotional harm suffered.

In our case, we will especially look at the emotional injury and emotional distress. This kind of injury can happen after being discriminated at work and it can lead to depression, inability to control anger or other emotions, anxiety, sexual dysfunction, inability to sleep or loss of appetite.

Nowadays, Employment Discrimination is a well-known problem that can occur frequently, in any kind of profession. The law and contracts may be unclear on this subject for some people, so it is important to make it clear and try to help people who suffer from it.

How can you prove that you are a victim of employment discrimination? What is the best thing to do to solve your problem? Must you face it alone or with the help of an independent expert?

In this paper, we will look at employment contract and compensatory damages and try to see what a person who is a victim of employment discrimination can do during and after it happens. To do that, we will consider a specific situation and then we will generalize our approach.

METHODOLOGY

DEVELOPMENT OF THE FEASIBLE ALTERNATIVES

To see all the feasible alternatives, we will look at a specific situation. We will consider the case of Sandra. She is part of a big construction company in the United State, and she has been working there for 5 years. She feels she is a victim of employment discrimination based on her gender. She is paid less than her male colleagues, she did not have a promotion recently while her colleagues have had and think she deserved it. Because of that, she suffers from emotional damages like anxiety, loss of appetite and she feels drained all the time.

To get out of this situation that is not acceptable for an employee, Sandra has 4 alternatives:

1. Complain informally to her employer
2. Making a formal internal complaint procedure and mediation
3. Seek the help of an independent investigator
4. Make a claim to the court or tribunal

DEVELOPMENT OF THE OUTCOMES AND CASH FLOWS FOR EACH ALTERNATIVE

Complain informally to her employer

In a common view, the best way to resolve an issue is to do complain informally first. You can try to negotiate with your employer to solve the problem. It will cost you nothing, but you will need to have convincing arguments and a strong speech.

Making a formal internal complaint procedure and mediation

If you can't resolve your problem informally, then you should consider the help of a mediator. Mediation leads to several positives outcomes. It avoids the expense and delay of litigation, it allows both parties to learn from their mistake and to take corrective measures before the problem become too serious and it avoids public disclosure of private matters.

Seek the help of an independent investigator

If nothing has worked before, It makes sense to call an expert and to use his experience. The investigator will conduct the employment discrimination complaint. The investigator will determine appropriate actions to be taken and assess exposure.

Make a claim to the court or tribunal

The last option you have is to go to the court or tribunal.

The outcomes of that alternative are the payment by the employer of compensatory damages, the payment of the money the person should have earned without employment discrimination and the stop of any discriminatory practices.

SELECTION OF A CRITERION

Figure 1 – Quantitative Analysis of the Alternatives evaluated against the Interests

Interests	Alternative 1	Alternative 2	Alternative 3	Alternative 4
Expense	5	3	2	1
Confidentiality	3	3	5	3
Duration	5	3	2	1
Exposure	2	3	5	1
Corrective measures	2	3	4	5
Compensatory damages	2	4	4	5

5=Good; 1= Poor

By Author

To select the best alternative, we will conduct a multi-criteria decision analysis.

If we look at Figure 1, the best alternative seems to be the alternative 3: to seek the help of an independent investigator. We need to go deeper in our analysis to produce a true ratio scale.

FINDINGS

Figure 2 – Relative Weighting

Interests	Weight
Expense	19
Confidentiality	13
Duration	13
Exposure	10
Corrective measures	20
Compensatory damages	25
TOTAL	100

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Figure 3 – Quantitative Analysis adding Weighting Technique

Interests	Wt	Alternative 1	Alternative 2	Alternative 3	Alternative 4	Score Alt 1	Score Alt 2	Score Alt 3	Score Alt 4
Expense	19	5	3	2	1	95	57	38	19
Confidentiality	13	3	3	5	3	39	39	65	39
Duration	13	5	3	2	1	65	39	26	13
Exposure	10	2	3	5	2	20	30	50	20
Corrective measures	20	2	3	4	5	40	60	80	100
Compensatory damages	25	2	4	4	5	50	100	100	125
TOTAL						309	325	359	316

By Author

Selection of the preferred alternative

Considering Figure 2 and 3, we have a multi-criteria decision analysis that gives us a true ratio scale.

It confirms what we found in Figure 1 and we can see that the best alternative is the alternative 3.

However, in terms of compensatory damages, the best alternative is the fourth: Make a claim to the court or the tribunal. If you decide to defend your case to the court in the United States, you can recover up to \$300,000 in compensatory damages while if you seek to the help of an independent investigator, the compensatory damages you will receive can be lower depend on your case and of the methods of the investigator.

Thus, my recommendation for a person who is a victim of employment discrimination is to ask for the help of an independent investigator.

Post-Evaluation of results

Compensatory damages in Employment Discrimination are difficult to analyze because all cases are different and have specific details. Therefore, it is complicated to say to all those who are a victim of employment discrimination to follow this strategy and not another one. In this paper, we found that the best alternative is the third: asking the help of an independent investigator. If a person were to choose another alternative, it can work but it can also be a failure. The good thing is that if you choose an alternative and it doesn't work, you can go for another alternative and do that as many time as you want until you succeed and win your case.

CONCLUSION

At the beginning of this paper, we asked ourselves what is the best thing to do if you are a victim of employment discrimination. We analyzed all the different possibilities and found 2 best alternatives. Going to the court if you want the best compensatory damages or overall, the best alternative is to seek the help of an independent investigator.

We can't be categorical and say this alternative is definitely better than this one because all alternatives can be try, one alternative can be the best for a specific situation and the worse for another kind of situation.

Asking for the help of an independent investigator seems to be the best solution first, with his experience, skills and knowledge, he can see if in your specific situation you need to talk to your employer first, to try to mediate, to make a complaint, to go to the court or to do an investigation.

FOLLOW ON RESEARCH

During the analysis of this paper, we found that one alternative can be good or bad depending on the situation. The logical follow-up to this paper is to do an investigation for all the different kind of employment discrimination (gender, race, religion, disability, age, sexual orientation, national origin or gender identity) and to see which alternative is best for which case.

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About the Author



Robin Grimonprez

SKEMA Business School
Lille, France



Robin Grimonprez is an MSc student in SKEMA Business School on the French campus of Lille, with a major in Project and Programme Management & Business Development (PPMBD). He is graduated from the Catholic University of Lille and has already obtained a Bachelor's Degree in Economy and Finance. His academic career took place in France, England and Brazil. During his studies, he has worked for French companies like "La poste", "Decathlon" or "Patrival" as finance assistant and for an English company "The French Oven" as Manager Assistant.

He lives in Lille, France, and can be contacted at robin.grimonprez@skema.edu