

PENNSYLVANIA HUMAN RELATIONS COMMISSION
"DAMAGE CALCULATION GUIDANCE"
GUIDANCE ON THE AWARD OF EMBARRASSMENT AND HUMILIATION
DAMAGES AND CIVIL PENALTIES UNDER THE PENNSYLVANIA HUMAN
RELATIONS ACT

1. AUTHORITY

This Guidance is an exercise of the authority granted to the Pennsylvania Human Relations Commission ("Commission") to formulate policies to effectuate the purposes of the Pennsylvania Human Relations Act ("PHRA").¹ Further, it is an exercise of the Commission's legislative mandate to construe the provisions of the PHRA liberally for the accomplishment of the purposes thereof.²

2. SCOPE

This Guidance shall apply to discrimination under the PHRA in the context of housing and/or commercial property which is based on "race, color, familial status, age, religious creed, ancestry, sex, national origin or handicap or disability of any person, prospective owner, occupant or user of such housing accommodation or commercial property . . . use of a guide animal because of the blindness or deafness of the user, use of a support animal because of a physical handicap of the user or because the user is a handler or trainer of support or guide animals or because of the handicap or disability of an individual with whom the person is known to have a relationship or association."

In issuing this Guidance, the Commission reiterates its longstanding position that this Guidance is not intended to impose hard and fast rules that must be absolutely applied without regard to the specific facts involved. Nothing in this Guidance shall affect statutory or other regulatory requirements.

¹ The Commission has the power and the duty "[t]o formulate policies to effectuate the purposes of [the Pennsylvania Human Relations Act] and make recommendations to agencies and officers of the Commonwealth or political subdivisions of government or board, department, commission or school district thereof to effectuate such policies." 43 P.S. § 957(e).

² "The provisions of [the Pennsylvania Human Relations Act] shall be construed liberally for the accomplishment of the purposes thereof . . ."43 P.S. § 962(a).

This Guidance may not be cited as binding legal authority for any Commission ruling, adjudication, or other legally binding action. The rationales set forth in this Guidance may be cited as the basis for Commission action only to the extent the Commission believes the rationale is valid in the context of a specific proceeding.

This Guidance is intended to demonstrate the way the Commission will exercise its administrative discretion in adjudicating cases unless it is convinced otherwise during a specific proceeding. The Commission, as in the past, remains committed to ensuring that its adjudicative determinations are made on a case-by-base basis after consideration of all evidence of record. To this end, this Guidance may be deviated from when the Commission believes that any statute or regulation requires it, or that it is otherwise appropriate to do so.

3. PURPOSE

The purpose of this Guidance is to provide clarity to all Pennsylvanians regarding how the Commission will evaluate damages resulting from discrimination in housing and/or commercial property for humiliation and embarrassment pursuant to 43 P.S. § 959(f)(1). Additionally, this Guidance clarifies the Commission's assessment of civil penalties pursuant to 43 P.S. § 959(f)(2).³

4. NECESSITY

The PHRA recognizes the grave injury to public health and welfare that discrimination causes. 43 P.S. § 952(a). Courts have held that the size of an intangible damage award is largely intuitive and is a matter over which the jury or the trial judge sitting without a jury has a great deal of discretion.⁴ The Commission finds that it is important for the public to be able to predict how the Commission will evaluate intangible and discretionary damages. Accordingly, the Commission has set forth the following Guidance to clarify

³ The PHRA provides that "in those cases alleging a violation of Section 5(d), (e) or (h) or 5.3 where the underlying complaint is a violation of Section 5(h) or 5.3, the Commission may award actual damages, including damages caused by humiliation and embarrassment, as, in the judgment of the Commission, will effectuate the purposes of this act, and including a requirement for report of the manner of compliance." In addition, the PHRA empowers the Commission to assess a civil penalty against Respondent in a complaint of discrimination filed under Sections 5(h) or 5.3. 43 P.S. § 959(f)(1)(2).

⁴ Laudon v. Loos, 694 F. Supp. 253, 255 (E.D. Mich. 1988).

how the Commission will calculate damages involving embarrassment and humiliation and its imposition of civil penalties.

5. GUIDANCE HUMILIATION & EMBARRASSMENT DAMAGES

Pennsylvania Appellate Courts have not articulated a framework to be used for evaluating damages caused by humiliation and embarrassment. Humiliation and embarrassment are somewhat synonymous with emotional distress. The Commission adopts the below framework to evaluate these damages.

Damage Range: \$5,000 to \$35,000

This amount is appropriate to award in cases where Complainant describes their reaction to unlawful discrimination with general vague descriptions of emotional distress, humiliation, and/or embarrassment. Testimony of Complainant is typically unsupported by witness/es testimony or medical corroboration.

Damage Range: \$50,000 to \$100,000

This amount is appropriate to award in cases where Complainant describes with specificity a significant reaction to unlawful discrimination. Testimony of Complainant is typically supported by witness/es testimony or medical corroboration.

Damage Range: Greater than \$100,000

This amount is appropriate to award in cases where Complainant describes a significant reaction to unlawful discrimination often involving ongoing acts of discrimination which occur or are felt over a significant period. Testimony of Complainant is typically supported by witness/es testimony or medical testimony. This tier is reserved for the most egregious cases.

The following factors, if present, will generally be found to increase the effect of discrimination on Complainant within each tier:

- (1) Egregiousness of Respondent's behavior towards Complainant;
- (2) Whether Complainant suffered physical harm or threat of physical harm in addition to harm to their mental health;
- (3) The nature of the evidence offered to describe the harm (e.g. testimony by Complainant, testimony by others, expert testimony);
- (4) Whether the discrimination was a single act or was ongoing; and

- (5) Whether Complainant was particularly susceptible to being injured by discrimination due to their personal history. In this case, damages will be awarded to reasonably compensate Complainant for the effect on their pre-existing condition.

The factors described above are not an exclusive list. The value of Complainant's injuries may be established by testimony or documentary evidence and/or inferred from the circumstances.

6. GUIDANCE CIVIL PENALTY

In determining the amount of a civil penalty, the Commission considers the following factors:

- (1) Whether Respondent has previously been adjudged to have committed unlawful housing discrimination;
- (2) Respondent's financial resources;⁵
- (3) The nature and circumstances of the violation;
- (4) The degree of Respondent's culpability;
- (5) The goal of deterrence; and
- (6) Other matters as justice may require.

Each discriminatory practice established constitutes a separate violation for which the Commission may assess a civil penalty.

⁵ The burden of producing evidence of financial resources falls upon Respondent, because such information is peculiarly within Respondent's knowledge. A civil penalty may be imposed without consideration of a Respondent's financial situation if Respondent fails to produce evidence that would tend to mitigate the amount to be assessed. See Campbell v. United States, 365 U.S. 85, 96 (1961).