
January 1995

DISCRIMINATION COMPLAINTS

Monetary Awards in Federal EEO Cases





United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-257454.2

January 3, 1995

The Honorable John Glenn
Chairman, Committee on Governmental
Affairs
United States Senate

Dear Mr. Chairman:

In May 1993 correspondence¹ we reported to you the amount of money paid in fiscal years 1989 to 1992 to federal employees and their attorneys as a result of employment discrimination complaints.² The payments were made either directly by the agencies through their own funds or through the Judgment Fund. The Judgment Fund provides a permanent indefinite appropriation to pay certain settlements and judgments against the federal government.

On February 24, 1994, you asked us to update the payment information we provided in May 1993. This fact sheet provides the information for fiscal years 1989 through 1993 and, where possible, fiscal year 1994.

Results in Brief

Although exact payment figures were not readily available, at least \$87.4 million was paid by federal agencies and the Judgment Fund to federal employees and their attorneys since fiscal year 1989 as a result of federal equal employment opportunity cases.³ Of that amount, approximately \$30.6 million was paid in fiscal years 1993 and 1994.

Much of the \$87.4 million was back pay to federal employees. However, at least \$30.5 million was for attorney fees and costs. Of that amount, about \$8.7 million was paid in fiscal years 1993 and 1994.

¹Monetary Payments in Federal EEO Cases (GAO/GGD-93-45R, May 25, 1993). We also issued an earlier report Discrimination Complaints: Payments to Employees by Federal Agencies and the Judgment Fund (GAO/HRD-89-141, Sept. 25, 1989).

²Although we refer to payment recipients as employees, the payment amounts reported in this fact sheet may include payments to federal job applicants as well as employees. Just as employees can, applicants for federal jobs can file employment discrimination complaints with agencies that they applied to and sue those agencies in federal district court. We could not readily determine from the data we used whether a complainant was an employee or an applicant.

³In addition to payments to employees and their attorneys, the government also has other discrimination complaint processing costs. We reported that civilian cabinet departments and certain Department of Defense agencies estimated that they incurred costs of about \$139 million in fiscal year 1991 to counsel complainants and process complaints. See Federal Workforce: Agencies' Estimated Costs for Counseling and Processing Discrimination Complaints (GAO/GGD-92-64FS, Mar. 26, 1992).

Background

Federal employment discrimination complaints are resolved in various ways. For example, an agency may provide a complainant with appropriate training if training is at issue. Another way to resolve a complaint is to provide the complainant with monetary relief through back pay, which gives the complainant the salary he or she would have received had the alleged discrimination not occurred.

Federal employment discrimination complaints are handled through administrative procedures and the courts. When a federal employment discrimination complaint is resolved by administrative procedures and the corrective action includes monetary relief, the money is paid from the agency's funds. Generally, federal agencies are to follow regulations set forth at 29 C.F.R. part 1614 to administratively process and resolve employee discrimination complaints.⁴

When a lawsuit is filed, any resulting monetary relief is generally paid from the Judgment Fund. However, the Judgment Fund does not pay monetary relief in every case. For example, the legislation that created the U.S. Postal Service requires it to use its own funds to pay monetary relief resulting from lawsuits. Therefore, any payments made by the Postal Service are not included in Judgment Fund data.⁵

Generally, a prevailing party in a discrimination case at the administrative or judicial level, which is commonly defined as a complainant who obtains at least some relief on the merits of his or her claim, can receive reasonable attorney fees and costs.⁶ The kinds of costs which can be awarded at both the administrative and judicial levels are those authorized by 28 U.S.C. 1920 and include recorder fees, expert witness fees, the cost of copying documents, court filing fees, and the cost of serving court documents.

Scope and Methodology

To ascertain the amount of agency-made payments, we used data that the Equal Employment Opportunity Commission (EEOC) maintains. To ascertain the amount of Judgment Fund payments, we used data that GAO maintains. We used these same sources for our May 1993 letter.

Each year, EEOC asks agencies with 100 or more employees to complete EEOC Form 462 (Annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints). Among other items, agencies are to report the amount of back pay awarded and the amount of attorney fees and costs awarded. Agencies are to submit the completed form to EEOC, and EEOC publishes the information in its annual Federal Sector Report on EEO Complaints and Appeals. The most current published report covers fiscal year 1992.

⁴Part 1614 became effective October 1, 1992. Before that date, agencies were to follow regulations at 29 C.F.R. part 1613.

⁵However, back pay and attorney fees and costs awarded by the Postal Service during administrative processing of complaints are generally included in our agency-paid amounts (see table 1).

⁶However, if the claim is based on an alleged violation of the Age Discrimination in Employment Act or the Equal Pay Act, a prevailing party cannot recover attorney fees at the administrative level.

For this fact sheet, we used EEOC's published totals for back pay and attorney fees and costs. When these were not published—as was the case for fiscal year 1993—we used the agency-completed forms to compute the total. Fiscal year 1993 was the latest year for which all agencies had submitted data.

We did not verify the data the agencies submitted to EEOC. Although EEOC contacts agencies about data that appear questionable, such as conflicting numbers or items not adding to totals, it relies on the agencies to provide complete and accurate information.

GAO must certify that the Judgment Fund is the correct appropriation before the Department of the Treasury can make payments from this Fund.⁷ Treasury notifies GAO after it makes payment, and GAO then includes the payment information in its records.

We extracted from GAO Judgment Fund records data on payments in discrimination cases for fiscal years 1989 through 1994. Fiscal year 1994 data include most but not all payments made that year. Treasury notification was pending on some payments that GAO certified, and information on other payments required posting to GAO's records. Fiscal year 1994 data include all postings through the middle of October 1994.

The Judgment Fund file contains different categories of discrimination cases, and each category has its own identifying code. One of the categories is "government employee;" we attempted to extract data on only these cases. However, for fiscal year 1989 and perhaps part of fiscal year 1990, the categories were not used, and all discrimination cases were identified by the same code.⁸ As a result, the payments made in fiscal year 1989, and perhaps 1990, may include payments made to persons and organizations other than federal employees and their attorneys. However, as explained in our May 1993 letter, if our data include these other payments, the amounts may be relatively small.⁹

This fact sheet focuses on discrimination complaints filed by and payments made to federal civilian employees. However, Judgment Fund data can include payments to military personnel and/or their attorneys. Military personnel, like civilian employees, can sue the Department of Defense in federal district court. For any resulting payment, Judgment Fund records do not distinguish between civilian and military personnel.¹⁰

⁷The Department of the Treasury, the Department of Justice, and GAO share responsibility for administration of the Judgment Fund.

⁸The new codes were implemented in fiscal year 1990, but exactly when is uncertain.

⁹Our May 1993 letter noted that nonfederal employee cases accounted for about 9 percent (\$541,000) of all discrimination payments in fiscal year 1991 and about 3 percent (\$265,000) of all payments in fiscal year 1992.

¹⁰The section in this fact sheet on payments made by federal agencies should not include payments to military personnel. EEOC Form 462 does not request data about complaints filed by and payments made to military personnel. EEOC's complaint processing responsibilities cover civilian but not military personnel.

Our general policy is to present dollar amounts over several years in their present value. However, the amounts in this fact sheet are in “actual” dollars. We did not present the amounts in present value because you requested information about actual expenditures, and we made no comparisons among the fiscal years for which we provided data.

We generally made no attempt to determine the age of the cases that generated the payments. However, given the length of time it often takes to resolve discrimination cases, it is likely that for many cases the incident that caused the discrimination complaint occurred sometime before the year in which payment was made.

Our work was done in Washington, D.C., between March and October 1994 in accordance with generally accepted government auditing standards.

Payments Federal Agencies Made

As table 1 shows, agencies reported awarding at least \$47.6 million in back pay and attorney fees and costs during fiscal years 1989 through 1993. Attorney fees and costs are combined and reported as a single amount on EEOC Form 462 and are reported as a single amount here.

Table 1: Monetary Awards Paid by Federal Agencies in Discrimination Complaint Cases, Fiscal Years 1989 Through 1993

Dollars in millions

Fiscal year	Amount awarded by agencies	
	Back pay	Attorney fees and costs
1989	\$4.3 ^a	\$2.9
1990	8.0	2.5
1991	4.4	3.3
1992	5.9	2.1
1993 ^b	10.8	3.4
Total	\$33.4	\$14.2

Note 1: Dollar values are rounded.

Note 2: Our May 25, 1993, letter reported payments from fiscal years 1989 through 1991.

^aWe computed this amount. EEOC did not publish a back pay amount for fiscal year 1989 because one or more large agencies that could significantly affect the governmentwide total did not report back pay. We computed the amount using back pay awards that were reported on EEOC Form 462 and from readily available information at EEOC on agency adjustments to reported figures. The amount is about \$1 million more than the amount for fiscal year 1989 that we reported in our May 1993 letter. This increase resulted mostly from adjustments we made based on the identification of additional information.

^bWe computed the 1993 amounts from payment data agencies reported to EEOC. The amounts are subject to change; agencies can amend the data they report to EEOC up to the time EEOC publishes the data.

Source: Unless otherwise noted, the source for amounts awarded was EEOC’s fiscal year 1992 Federal Sector Report on EEO Complaints and Appeals.

In a November 1992 decision, EEOC concluded that the Civil Rights Act of 1991 makes compensatory damages available to federal complainants during the administrative processing of their complaints. Such damages would be in addition to any awards of back pay and attorney fees and

costs. EEOC Form 462 does not request data on compensatory damages; EEOC is considering whether to amend the form to collect these data.

Judgment Fund Payments

As table 2 shows, approximately \$39.8 million was paid from the Judgment Fund over the 1989-1994 fiscal year period for employment discrimination complaint cases involving federal agencies. This amount includes back pay and attorney fees. Attorney fees may or may not be specifically identified in the payment, depending on the wording of the settlement or judgment. About \$16.3 million of the \$39.8 million was specifically identified as attorney fees.

Table 2: Judgment Fund Payments for Discrimination Complaint Cases From Federal Agencies, Fiscal Years 1989 Through 1994

Dollars in millions		
Fiscal year	Payments for attorney fees	Total payments
1989	\$1.8	\$3.1
1990	3.3	6.2
1991	1.9	5.7
1992	4.0	8.4
1993	1.7	6.0
1994	3.6	10.4
Total	\$16.3	\$39.8

Note 1: Dollar values are rounded. As explained in the scope and methodology section, the amounts for fiscal year 1994 include most but not all fiscal year 1994 payments.

Note 2: Our May 25, 1993, letter reported Judgment Fund payments from fiscal years 1989 through 1992.

Source: GAO Judgment Fund data.

Two amounts in table 2 for fiscal years 1989 and 1990 are slightly smaller than the amounts reported in our 1993 letter. These slight decreases were caused by two exclusions. We excluded from table 2 the amounts for several cases found not to involve federal employees. These amounts totaled about \$115,000 over the 1989-1994 period.

We excluded about \$192,000 from the attorney fees column but not from the total payments column. This amount, which was paid over the 1989-1994 period, represents reimbursements for court costs paid under 28 U.S.C. 1920. Attorneys are usually the ultimate recipients of these reimbursements. The amount of court costs and the amount of attorney fees are not always separately identified in the Judgment Fund awards.

We are sending copies of this fact sheet to the Ranking Minority Member, Senate Committee on Governmental Affairs; the Chairman and Ranking Minority Member, House Post Office and Civil Service Committee; the Chairman and Ranking Minority Member, House Subcommittee on the Civil Service; and the Chairman, EEOC. Copies will also be made available to others on request.

The information for this fact sheet was developed by Steve Wozny, Assistant Director; Anthony Assia, Evaluator-in-Charge; and Theresa Davis, Secretary. Please contact me on (202) 512-5074 if you have any questions concerning this fact sheet.

Sincerely yours,

A handwritten signature in black ink that reads "Nancy R. Kingsbury". The signature is written in a cursive style with a large, prominent 'N' and 'K'.

Nancy Kingsbury
Director
Federal Human Resource Management
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