



CIVIL JUSTICE TAX FAIRNESS ACT OF 2015 (CJTFA, H.R.3550/S.2059)

With the enactment of the Small Business Job Protection Act of 1996 (P.L. 104-188), non-economic damages recovered in cases that do not arise from a physical injury—including employment cases brought under civil rights laws and other worker protection statutes—became taxable. Non-economic damages compensate people for pain, suffering, and related health effects. As a result, current tax law penalizes workers who successfully vindicate their rights under various federal, state, and local laws. These laws include Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act Amendments Act, the Family and Medical Leave Act, whistleblower protection statutes, and those regulating any aspect of the employment relationship.

In addition, workers who recover compensation for multiple years of back or front pay in one lump sum must pay taxes at higher rates because the entire amount is taxed in the year the settlement or award is received. For example, a servicemember who recovers several years of back pay under the Uniform Services Employment and Reemployment Rights Act (USERRA) loses a significant amount of the recovery to federal income tax. The servicemember loses out twice: first when s/he is not paid properly, and then later when s/he is taxed at the rate of a much higher wage-earner instead of at the lower rate that would have applied had s/he not been treated illegally by her employer.

The bipartisan **Civil Justice Tax Fairness Act of 2015 (CJTFA, [H.R.3550/S.2059](#))** was introduced by Representatives John Lewis (D-GA) and Jim Sensenbrenner (R-WI) and Senators Susan Collins (R-ME) and Ben Cardin (D-MD) in the 114th Congress. If passed, the CJTFA will end these inequities in unlawful discrimination cases (including employment and civil rights claims) by excluding non-economic damages from gross income and by allowing income averaging for multiple years of back or front pay.

NELA and its coalition partners urge the enactment of the CJTFA in the 114th Congress because:

- **Current tax law is unfair, arbitrary, and irrational.** There is no rational justification for taxing non-economic damages received by an employee who was subjected to years of sexual harassment and suffered severe emotional distress and physical illness, but not taxing non-economic damages in slip and fall cases. According to Representative Lewis, “to single out civil rights violations in this way sends a message that their impact is somehow less demeaning, less debilitating, less damaging.”
- **The CJTFA promotes tax fairness by correcting inequities in the tax treatment of settlements and awards in employment and civil rights cases.** The CJTFA would exclude from gross income non-economic damage awards received by plaintiffs in discrimination cases and personal injury cases alike. The bill would also tax lump sum recoveries for front or back pay as if they had been received in the year they would have been earned and provide an exemption from the alternative minimum tax (AMT). These provisions would restore Congress’ intent that workers should be “made whole” when their rights are violated.
- **The CJTFA encourages fair and prompt settlements, reduces costly litigation, and preserves judicial resources.** Under current law, employers who want to resolve workplace claims are penalized because they must “gross up” their settlement offers to compensate workers for the additional taxes they must pay on their recoveries. Judges, in some cases, have also “grossed up” jury awards to cover the tax consequences. The inability to settle claims results in more cases going to trial and expending scarce judicial resources. The CJTFA would remedy these problems, benefiting employees, employers, and the justice system.
- **The CJTFA has bipartisan support in Congress and has been endorsed by both civil rights/employee organizations and business.** Over the years, Senators and Representatives on both sides of the aisle, including chairs and ranking members of the Senate Finance and House Ways and Means Committees, have cosponsored this bill. Organizations including NELA, the Association of Corporate Counsel, the American Bar Association, and the American Association for Justice support the CJTFA. As Senator Collins said, “this bill is a ‘win-win’ for civil rights plaintiffs and defendant businesses.”