

## DELAWARE

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### **1. In your state, what are the categories of damages that are available in tort?**

Compensatory and punitive damages are available in tort actions in Delaware. If a plaintiff is seeking reimbursement for medical expenses, the plaintiff must demonstrate that the value claimed for those medical services is reasonable and that they were proximately caused by the negligence of the tortfeasor.<sup>1</sup> A plaintiff who can prove reasonable necessity of future medical and care expenses is entitled to those as well. While each case is unique, lost earnings damages are generally calculated by estimating a reasonable base salary over the plaintiff's work-life expectancy.

In cases involving auto accidents, there is a no-fault personal injury protection insurance statute in Delaware. 21 *Del. C.* § 2118. Under the statute, a person who sustains injury in an auto accident and is eligible for benefits under the statute is entitled to recover "reasonable and necessary expenses incurred within two years from the date of the accident" for medical bills and lost earnings from their own insurance carrier.<sup>2</sup>

Property damages are also recoverable. Damages are assessed using the fair market value of the property.

Punitive damages are also recoverable where the plaintiff can prove a defendant's conduct was reckless, willful or wanton, consciously indifferent or motivated by malice or fraud.<sup>3</sup>

### **2. Are there any limitations or caps on recovery in tort actions?**

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<sup>1</sup> *Mitchell v. Haldar*, 883 A.2d 32, 37 (Del. 2005); *see also Stayton v. DE Health Corp.*, 117 A.3d 521 (Del. 2015).

<sup>2</sup> *See Gardy v. Hendrix*, 2010 WL 23725, at \*1 (Del. Super. Ct. Jan 4. 2010).

<sup>3</sup> *Estate of Rae v. Murphy*, 956 A.2d 1266, 1270 (Del. 2008).

Delaware has no statutory caps on non-economic damages. There is no statutory cap on punitive damages, though there must be a reasonable relation between the amount of punitive damages awarded and the amount of compensatory damages.<sup>4</sup>

**3. Are attorneys' fees available in tort actions? If so, under what circumstances?**

Generally, in the absence of a contractual provision or a statute, attorney's fees are not recoverable by the prevailing party. However, in limited scenarios a court can award attorney's fees if it deems necessary.

**4. Are there any instances in tort actions when pre-judgment interest is available for recovery?**

Pre- and post-judgment interest is available for recovery. Generally, pre-judgment interest is only available where the damages were easily determined prior to litigation. Interest is not self-executing and must be requested as an item of damages.<sup>5</sup> Post-judgment interest attaches upon entry of judgment.

**5. In your state what proof is necessary to establish a right of recovery for economic damages, i.e. lost wages, medical expenses, etc.?**

The plaintiff must prove that the value claimed for medical services was reasonable and that the need for those services was proximately caused by the defendant's negligence.<sup>6</sup> Lost earnings damages must be proven with reasonable certainty. They are generally calculated by estimating a reasonable base salary over the plaintiff's work-life expectancy. The work-life expectancy is determined by a combination of factors including "mortality tables, the testimony of others in the same profession, the plaintiff's general health and physical condition at the time of the injury, [and] whether the plaintiff would have been subject to compulsory retirement and the dangers of the occupation[.]"<sup>7</sup>

**6. Is there any distinction in your state relative to recovery for economic versus non-economic damages?**

A plaintiff has the burden to prove damages by a preponderance of the evidence, but is "not required to claim and prove with mathematical precision the exact sums of money representing their damages for mental anguish."<sup>8</sup> Plaintiffs must simply furnish enough evidence for the jury to make a reasonable determination of the damages.<sup>9</sup>

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<sup>4</sup> *Cloroben Chem. Corp. v. Comegys*, 464 A.2d 887, 892 (Del. 1983).

<sup>5</sup> *Reserves Development LLC v. Severn Say. Bank, FSB*, 961 A.2d 521, 525 (Del. 2008).

<sup>6</sup> *See Mitchell*, 883 A.2d at 37.

<sup>7</sup> *Brandt v. Rokeby Realty Co.*, 2007 WL 2229658, at \*2 (Del. Super. Ct. Aug. 3, 2007).

<sup>8</sup> *Beebe Med. Ctr., Inc. v. Bailey*, 913 A.2d 543, 557 (Del. 2006).

<sup>9</sup> *Id.*