

## IDAHO

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

Idaho recognizes the following types of damages: compensatory, nominal and punitive.

Compensatory damages are split up between special and general damages. These damages are generally synonymous with economic (special) and noneconomic (general) damages.<sup>1</sup> “Economic damages” are defined as “objectively verifiable monetary loss, including but not limited to out-of-pocket expenses, loss of earnings, loss of use of property, cost of replacement or repair, cost of obtaining substitute domestic services, loss of employment, medical expenses, or loss of business or employment opportunities.” Idaho Code § 6-1601(3). “Noneconomic damages” are defined as “subjective, nonmonetary losses including, but not limited to, pain, suffering, inconvenience, mental anguish, disability or disfigurement incurred by the injured party; emotional distress; loss of society and companionship; loss of consortium; or destruction or impairment of the parent-child relationship.”

Nominal damages are available for intentional torts, but not for ordinary negligence. *See Ralphs v. City of Spirit Lake*, 98 Idaho 225, 560 P.2d 1315 (1977). Nominal damages are awarded for the infraction of a protected legal right in the absence of proof of actual injury, to demonstrate, symbolically, that the plaintiff’s person or property have been violated. *See, e.g., Bowler v. Board of Trustees of School Dist. No. 392, Shoshone County, Mullan*, 101 Idaho 537, 617 P.2d 841 (1980); *see also Aztec Ltd., Inc. v. Creekside Inv. Co.*, 100 Idaho 566, 602 P.2d 64 (1979) (nominal damages presumed to flow from trespass to land).

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<sup>1</sup> *See Quick v. Crane*, 111 Idaho 759, 727 P.2d 1187 (1986) (stating that special damages “have a specific monetary amount associated with them,” whereas general damages consist of injuries like the “seemingly unquantifiable” concepts of physical and emotional pain, suffering, trauma, and distress, as well as relational damages such as impairments to one’s marriage or family relationships; *but see Rogers v. Yellowstone Park Co.*, 97 Idaho 14, 539 P.2d 566 (1974) (referring to damages for lost future earnings as “general” damages).

“Punitive Damages” are defined as “damages awarded to a claimant, over and above what will compensate the claimant for actual personal injury and property damage, to serve the public policies of punishing a defendant for outrageous conduct and of deterring future like conduct.” Idaho Code § 6-1601(9). In order to recover punitive damages, “the claimant must prove, by a preponderance of the evidence, oppressive, fraudulent, wanton, malicious or outrageous conduct by the party against whom the claim for punitive damages is asserted.” Idaho Code § 6-1604(1).

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

Idaho Code section 6-1603 imposes a cap on a judgment for noneconomic damages in personal injury cases of \$250,000 per claimant. However, beginning on July 1, 2004, and each July 1 thereafter, the cap on noneconomic damages shall increase or decrease in accordance with the percentage amount of increase or decrease by which the Idaho industrial commission adjusts the average annual wage. Idaho Code § 6-1603(1). The Idaho Supreme Court upheld the constitutionality of this cap in *Kirkland v. Blain County Medical Center*, 134 Idaho 464, 4 P.3d 1115 (2000).

Notably, the cap on noneconomic damages does not apply to causes of action arising out of willful or reckless misconduct, or arising out of an act or acts which the trier of fact finds beyond a reasonable doubt would constitute a felony under state or federal law. Idaho Code § 6-1604(4). In applying the cap, a court must determine whether the total noneconomic damage award for a particular plaintiff exceeds the cap. If so, the court should reduce each defendant's responsibility on a proportional basis, based upon the jury's allocation of fault, so the plaintiff's total judgment does not exceed the cap. *Horner v. Sani-Top, Inc.*, 143 Idaho 230, 141 P.3d 1099 (2006) (rejecting argument that cap should first be applied to plaintiff's noneconomic award, then each defendant's share determined as allocated by the jury).

Punitive damage awards are not subject to the cap on noneconomic damages set forth in Idaho Code section 6-1603. Idaho Code § 6-1604(3). However, under a 2003 amendment to Idaho Code section 6-1604(3), they are subject to a limitation to the greater of \$250,000 or three times the compensatory damage award.

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

In the absence of statutory authorization or contractual agreement, the general rule is that a prevailing party is not entitled to an award of attorney's fees incurred in prosecuting or defending an action. *See, e.g., Stout v. Key Training Corp.*, 144 Idaho 195, 158 P.3d 971 (2007). Further, the fact that a court is sitting in equity confers no general power to award attorney's fees. *Doe v. Shoshone-Bannock*

*Tribes*, 159 Idaho 741, 367 P.3d 136 (2016). In order to be awarded attorney's fees, a party must actually assert the specific statute or common law rule on which the award is based. The court cannot sua sponte make the award or grant fees pursuant to a party's general request. *Bingham v. Montane Resources Associates*, 133 Idaho 420, 987 P.2d 1035 (1999).

One notable exception to this general rule is found in Idaho Code section 12-120(1). Section 12-120(1) provides for the mandatory award of attorney's fees to the prevailing party for claims (whether raised by complaint, counterclaim, cross claim, or third-party claim, where the amount pleaded is \$35,000 or less, so long as written demand for payment was made not less than 10 days prior to the commencement of the action. No attorney's fees shall be allowed to the plaintiff under the section if the defendant tendered to the plaintiff, prior to the commencement of the action, an amount at least equal to ninety-five percent (95%) of the amount awarded to the plaintiff. Idaho Code § 12-120.

There is a separate subdivision that relates specifically to actions for personal injury. Under section 12-120(4), in actions for personal injury where plaintiff's claim for damages does not exceed twenty-five thousand dollars (\$25,000), attorney's fees are recoverable by plaintiff if written demand for the payment of the claim and a statement of claim<sup>2</sup> was served on the defendant's insurer, if known, or if there is no known insurer, then on the defendant, not less than sixty (60) days before the commencement of the action. Idaho Code § 12-120(4). No attorney's fees shall be allowed to the plaintiff under the section if the defendant tendered to the plaintiff, prior to the commencement of the action, an amount at least equal to ninety percent (90%) of the amount awarded to the plaintiff.

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

Generally, in Idaho, there is a right to prejudgment interest where the principal amount of liability is liquidated or capable of ascertainment by mere mathematical processes, but not for sums that are unliquidated. *See* Idaho Code § 28-22-104; *Kidd Island Bay Water Users Co-op. Ass'n, Inc. v. Miller*, 136 Idaho 571, 575, 136 P.3d 609 (2001). However, the Idaho Supreme Court has rejected a claim for prejudgment interest on the liquidated amounts of past medical expenses in a tort action. The Court noted that in a tort action the question of whether any money due awaits an eventual judgment and that the plaintiff had cited no such

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<sup>2</sup> The term "statement of claim" shall mean a written statement signed by the plaintiff's attorney, or if no attorney, by the plaintiff which includes:(a) An itemized statement of each and every item of damage claimed by the plaintiff including the amount claimed for general damages and the following items of special damages: (i) medical bills incurred up to the date of the plaintiff's demand; (ii) a good faith estimate of future medical bills; (iii) lost income incurred up to the date of the plaintiff's demand; (iv) a good faith estimate of future loss of income; and (v) property damage for which the plaintiff has not been paid; and (b) Legible copies of all medical records, bills and other documentation pertinent to the plaintiff's alleged damages. Section 12-120(4)(a)-(b).

authority for such an award. *Van Brunt v. Stoddard*, 136 Idaho 681, 39 P.3d 621 (2001).

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

Damages need only be proved with a reasonable certainty and taken out of the realm of speculation. *Hake v. Delane*, 117 Idaho 1058, 793 P.2d 1230 (1990); *Sanchez v. Galey*, 112 Idaho 609, 733 P.2d 1234 (1986). The mere fact that it is difficult to arrive at the exact amount of damages does not prevent the award of damages; where damages are shown to have resulted, fixing the amount is for the trier of fact. *Smith v. Daniels*, 93 Idaho 716, 471 P.2d 571 (1970).

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

Under Idaho R. Civ. P. 9(g), items of special (economic) damage are required to be identified by category in the pleadings. A failure to identify them will preclude their recovery in the absence of a permitted amendment to the pleadings. *See Willis v. Realty Country, Inc.*, 121 Idaho 3122, 824 P.2d 887 (Ct. App. 1991). With regard to general (noneconomic) damages, however, the pleading must not allege or state a dollar amount or figure, except that it may state that the amount claimed meets a jurisdictional threshold. Idaho R. Civ. P. 9(g).