

## KENTUCKY

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

- 1) Compensatory Damages: Economic damages, emotional damages, loss of consortium, loss of affection and companionship (only parents may recover for the loss of minor child)
- 2) Punitive Damages
- 3) Consequential Damages
- 4) Incidental Damages

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

Yes, in the following cases:

- 1) In cases against the Commonwealth of Kentucky: the amount of compensatory damages for a single claim for the recovery of money shall not exceed \$250,000, exclusive of interests and costs. If a single act of negligence results in multiple claims, the total award may not exceed \$400,000, to be equitably divided among the claimants, but no individual claimant may receive more than \$250,000. There is no right to collateral or dependent claims which are dependent on loss to another and not the claimant. There is no right to damages for mental distress or pain or suffering, and thus, no compensation is allowed. (KRS § 49.040).
- 2) DRAM Shop: There is no liability against a person selling or serving intoxicating beverages for damages caused by an intoxicated person to a third party, unless (1) a reasonable person should know that the person served in already intoxicated at the time of serving, or the intoxicating beverage was consumed by force or by falsely representing that the beverage contains no alcohol. (KRS § 413.241).
- 3) Economic Loss Doctrine: Kentucky maintains the economic loss doctrine, which applies to commercial transactions. This doctrine holds that when the only damage caused by a product is to the product itself, the owner of the product may not bring a tort suit, but may only recover under contract.

Giddings & Lewis, Inc. v. Indus. Risk Insurers, 348 S.W.3d 729, 738-39 (Ky. 2011).

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

Yes. Kentucky follows the American Rule on attorney fees, under which a prevailing litigant may not recover its attorney fees from the losing party. However, there are two exceptions. First, a party may recoup its attorney fees if provided for by the terms of the contract or negotiable instrument that is the subject. Second, attorney fees may be recouped if the jurisdiction has a fee statute.

An example of a statute that allows this is the Kentucky Consumer Protection Act, which allows successful plaintiffs to recover attorney fees.

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

Yes. Judges have the discretion to award pre-judgment interest on unliquidated damages, and it is recoverable as a matter of right on liquidated damages. Recently, the pre-judgment interest rate was reduced from 8 to 4 percent, though contracting parties may continue to fix their own rate. Unifund CCR Partners v. Harrell, 509 S.W. 3d 25 (Ky. 2017) and Ky. HB 223.

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

1. Lost wages: Typically, the court will look to what wages a person has lost during the time they are recovering from their injury. Proof of lost wages would be based on the amount of money a person would have made had the injury not occurred. To calculate future lost wages, the court takes the difference between the amount the person makes with a disability and the amount the person would have made without the disability. UPS v. Rickert, 996 S.W.2d 446, 469 (Ky. 1999). In order to prove future lost wages, the claimant must have a medical expert testify about a permanent injury and how said injury affects the claimant's ability to work.
2. Medical Expenses: In order to prove medical expenses, the claimant must show that the expenses incurred were as a result of the alleged injury. An expert may have to testify regarding these expenses. See Garno v. Selectron USA, 2010 Ky. App. Lexis.

Overall, a claimant must prove a loss, and tie said loss to the alleged injury. In order to prove the same, the claimant must provide documentation or an expert to show the jury how the loss and injury are tied.

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

Yes, Kentucky distinguishes between economic and non-economic damages, which include pain and suffering.