

LOUISIANA

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

The categories of damages available in tort are compensatory and punitive. Compensatory damages are awarded based on the proven harm, loss, or injury suffered by a plaintiff, and may include pain and suffering, medical expenses, property damage, and loss of income. Punitive damages are designed to punish particular conduct or make an example of certain offenders, and may not be awarded by a court of Louisiana unless specifically authorized by statute. Some examples of cases in which punitive damages are available include drunk driving accidents (LA CC art. 2315.4) and domestic violence cases (LA CC art. 3546). Punitive damages are not available simply because a plaintiff might prove willful or wanton conduct or even gross negligence by the tortfeasor.

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

Generally, there are no personal injury damages caps. However, there is a \$500,000 cap on general damages against the state or its political subdivisions pursuant to the Louisiana "Governmental Claims Act." *See* La. R.S. § 13:5106(B)(1) (limiting damages for personal injury to any one person at \$500,000 exclusive of property damages, medical care and related benefits, and loss of earnings and future earnings). Similarly, medical malpractice damages against a qualified health care provider are capped at \$500,000 per patient, excluding future medicals. *See* La. R.S. § 40:1299.43.

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

Pursuant to the jurisprudence of Louisiana, attorney's fees are generally not favored. The Courts of Louisiana grant attorney's fees only in those circumstances where it is expressly authorized by statute or contract. *George v. Reliance Ins. Co.*, 2003-379 (La. App. 3 Cir. 10/1/03), 856 So. 2d 1267, 1270. These limited situations may include failure to pay the amount of any claim due any person insured by the contract within sixty days after receipt of satisfactory proof of loss from the claimant when such failure is arbitrary, capricious, or without probable cause or what is sometimes referred to as "bad faith" in regard to a first party insured

(Louisiana R.S. § 22:1973); recovery by an employee after receiving less than the legal minimum wage; or in cases of redhibition (a civil action under Louisiana law against the seller or manufacturer of a known defective product).

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

Interest is available from the date of judicial demand, i.e. the filing of suit. Louisiana R.S. § 13:4203.

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

A right of recovery for economic damage must be proven by a preponderance of the evidence. *See Alderman v. Jacks*, 31,572 (La. App. 2 Cir. 2/24/99), 729 So. 2d 729, 731 (A plaintiff seeking damages must prove by a preponderance of the evidence that the defendant caused the damages. By a preponderance of evidence means evidence which is of greater weight, or more convincing than that which is offered in opposition to it. It is evidence which, as a whole, shows that the fact or causation sought to be proved is more probable than not).

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

Both economic and non-economic damage must be proven by a preponderance of the evidence. *See Alderman v. Jacks*, 31,572 (La. App. 2 Cir. 2/24/99), 729 So. 2d 729.