

MISSOURI

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

Generally, compensatory and punitive damages are available in tort in Missouri.

An injured party may recover compensatory damages for bodily pain, humiliation, mental anguish, and other injuries that occur as a necessary and natural consequence of the tortious conduct. There is no fixed measure or standard available to the trier of fact in determining the measure of damages for pain and suffering. The measure of damages is simply that which is fair and reasonable. *A.R.B. v. Elkin*, 98 S.W.3d 99, 104 (Mo. Ct. App. W.D. 2003). A plaintiff may plead, prove and recover for his damages for the aggravation of a preexisting condition. *Ratcliff v. Sprint Missouri, Inc.*, 261 S.W.3d 534, 543 (Mo. Ct. App. W.D. 2008)

Compensatory damages include economic and non-economic damages, past and future. Economic damages are damages arising from pecuniary harm, including medical damages, lost wages and lost earning capacity. Non-economic damages are damages arising from nonpecuniary harm, including pain, suffering, mental anguish, inconvenience, physical impairment, disfigurement, loss of capacity to enjoy life and loss of consortium.

Future medical damages can be awarded if the plaintiff adduces competent medical evidence showing future physical conditions of the kind asserted as damages resulted from the original injury. The degree of probability of such damages must be greater than a mere likelihood; it must be reasonably certain to ensue. Consequences which are contingent, speculative, or merely possible may not be considered. *McKersie v. Barnes Hosp.*, 912 S.W.2d 562 (Mo. Ct. App. E.D. 1995).

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

There are no statutory caps on compensatory or exemplary damages awards, against private actors, in tort. There is no exact formula to determine whether a jury's verdict for compensatory damages is excessive, and each case must be decided on its own facts and merits. *Maldonado v. Gateway Hotel Holdings, L.L.C.*, 154 S.W.3d 303 (Mo. Ct. App. E.D. 2003) Both trial courts and appellate courts have remittitur power over a jury's

verdict, but this power is not often exercised. To order a remittitur on the verdict, the award must exceed fair and reasonable compensation for the plaintiff's damages. Remittitur is an appropriate remedy when a jury makes an honest mistake in assessing damages. Stewart v. Partamian, 465 S.W.3d 51, 56–58 (Mo. 2015). The trial court has broad discretion in ordering remittitur and additur, and its decision will not be disturbed on appeal absent an abuse of its discretion. Dieser v. St. Anthony's Medical Center, 498 S.W.3d 419 (Mo. 2016).

There are statutory caps applicable to the recovery of damages against public entities. There is also a statutory cap on non-economic damages awards against health care providers.

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

Generally, no. The general rule in Missouri is that attorneys' fees are only recoverable when a statute specifically authorizes recovery or when attorneys' fees are provided for by contract. *Essex Contracting, Inc. v. Jefferson County*, 277 S.W.3d 647, 657 (Mo. banc 2009). Recovery of attorney fees pursuant to a contractual provision is only available to the prevailing party. *Flamingo Pools, Spas, Sunrooms & More Store, Inc. v. Penrod*, 993 S.W.2d 588, 590 (Mo.App. S.D.1999). The prevailing party is the party that "obtains a judgment from the court, regardless of the amount of damages." *Brooke Drywall of Columbia, Inc. v. Building Constr. Enters., Inc.*, 361 S.W.3d 22, 27 (Mo.App. W.D.2011).

Missouri's offer of judgment rule allows only for recovery of costs but not attorneys' fees. *See Rule 77.04 Mo.R.Civ.P.*

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

Yes, pre-judgment interest is available in tort actions if the defendant has rejected a settlement demand that complies with the requirements of §408.040 R.S.Mo. §408.040 provides that if a claimant has made a demand for payment of a claim or an offer of settlement of a claim, to the party, parties or their representatives, and to such party's liability insurer in known to the claimant, and amount of the judgment or order exceeds the demand for payment or offer of settlement, then prejudgment interest shall be awarded, calculated from a date ninety days after the demand or offer was received, as shown by the certified mail return receipt, or from the date the demand or offer was rejected without counter offer, whichever is earlier. In order for a demand to qualify pursuant to §408.040, the demand must:

1. Be in writing and sent by certified mail return receipt requested;
2. Be accompanied by an affidavit of the claimant describing the nature of the claim, the nature of any injuries claimed and a general computation of any category of damages sought by the claimant with supporting documentation, if any is reasonably available;

3. For wrongful death, personal injury, and bodily injury claims, be accompanied by a list of the names and addresses of medical providers who have provided treatment to the claimant or decedent for such injuries, copies of all reasonably available medical bills, a list of employers if the claimant is seeking damages for loss of wages or earning, and written authorizations sufficient to allow the party, its representatives, and liability insurer if known to the claimant to obtain records from all employers and medical care providers; and
4. Reference this section and be left open for ninety days.

§408.040 further provides that, unless the parties agree in writing to a longer period of time, if the claimant fails to file a cause of action in circuit court within 120 days of the date the the demand or offer was received, then the court shall not award prejudgment interest.

If the claimant is a minor or incompetent or deceased, the affidavit may be signed by any person who reasonably appears to be qualified to act as next friend or conservator or personal representative. If the claim is one for wrongful death, the affidavit may be signed by any person qualified pursuant to section 537.080 to make claim for the death.

In tort actions, a judgment for prejudgment interest awarded pursuant to this section should bear interest at a per annum interest rate equal to the intended Federal Funds Rate, as established by the Federal Reserve Board, plus three percent. The judgment shall state the applicable interest rate, which shall not vary once entered. §408.040.4.

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

Compensatory damages are intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct. *Ellison v. O'Reily Automotive Stores, Inc.*, 463 S.W.3d 426, 439 (Mo.App.2015). All compensatory damages must be provided by substantial evidence to establish a right of recovery. Missouri has no special rules requiring the proof necessary to establish a claim for lost wages. To submit a claim for lost profits, a party must produce evidence that provides an adequate basis for estimating the lost profits with reasonable certainty. To create an adequate basis for an award of lost profits, a plaintiff must provide evidence of the income and expenses of the business for a reasonable time before the interruption caused by defendant's actions, with a consequent establishing of the net profits during the previous period. While an estimate of prospective or anticipated profits must rest upon more than mere speculation, uncertainty as to the amount of profits that would have been made does not prevent a recovery. *Gateway Foam Insulators, Inc. v. Jokerst Paving & Contracting, Inc.*, 279 S.W.3d 179, 186 (Mo. 2009).

With respect to recover of medical expenses, parties may introduce evidence of the actual cost of the medical care or treatment rendered to a plaintiff or a patient whose care is at issue. Actual cost of the medical care or treatment shall be reasonable, necessary, and a proximate result of the negligence or fault of any party. The phrase "actual cost of medical

care or treatment” shall be defined as a sum of money not to exceed the dollar amounts paid by or on behalf of a plaintiff or a patient whose care is at issue plus any remaining dollar amount necessary to satisfy the financial obligation for medical care or treatment by a health care provider after adjustment for any contractual discounts, price reduction, or write-off by any person or entity.” V.A.M.S. § 490.715.5(2).

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

No.