

NEW HAMPSHIRE

Joseph G. Mattson
Elizabeth E. Ewing
WADLEIGH, STARR & PETERS
95 Market Street
Manchester, NH 03101
Phone: (603) 669-4140
Cell: (603)-206-7274
Fax: (603) 669-6018
Email: jmattson@wadleighlaw.com
www.wadleighlaw.com

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

Compensatory damages, for past and future injuries, including medical expenses, loss of earnings, loss of earning capacity, permanent impairment including loss of enjoyment of life, physical and mental pain and suffering directly attributable to the injury, emotional distress if the plaintiff experiences physical symptoms, and enhanced compensatory damages if the tort was committed wantonly, maliciously, or oppressively. Double and treble damages are available by statute in certain cases, including consumer protection (RSA 358-a:10); willful trespass resulting in injury to certain property (RSA 227-J:8; RSA 539:3, RSA 539:4); and misuse of social security numbers (RSA 275-A:4-b).

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

No. A statute that limited the amount of non-economic damages to be awarded was held unconstitutional in Brannigan v. Usitalo, 587 A.2d 1232, 1233 (N.H. 1991). However, a trial judge may order remittitur if the verdict is manifestly exorbitant or conclusively against the weight of the evidence. Akwa Vista, LLC v. NRT, Inc., 8 A.3d 97, 105 (N.H. 2010).

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

Attorneys' fees are available in "instances where litigation is instituted or unnecessarily prolonged through a party's oppressive, vexatious, arbitrary, capricious or bad faith conduct and cases in which parties are forced to litigate against an opponent whose position is patently unreasonable," and when "an individual is forced to seek judicial assistance to secure a clearly defined and established right, which should have been freely enjoyed without such intervention, an award of counsel fees on the basis of bad faith is appropriate." Van Der Stok v. Van Voorhees, 866 A.2d 972, 977 (N.H. 2005). In limited circumstances, attorneys' fees may also be available to a plaintiff other than a

governmental entity “where the action conferred a substantial benefit on not only the plaintiffs who initiated the action, but on the public as well.” Jesurum v. WBTSCC Limited Partnership, 151 A.3d 949, 960 (N.H. 2016).

Attorneys’ fees are also available by statute in the following types of cases:

Consumer protection (RSA 358-A:10, I);
Debt collection (RSA 358-C:4, I(a), V);
Antitrust (RSA 356:11, II; RSA 356:4-c);
Prizes and gifts (RSA 358-O:8);
Retail installment sales (RSA 361-C:2);
Trade secrets (RSA 350-B:4);
New motor vehicle arbitration (RSA 357-D:10);
Motor vehicle leasing (RSA 361-D:24);
Gasoline franchises (RSA 39-C:7);
Business practice between motor vehicle manufacturers, distributors, and dealers (RSA 357-C:5, I);
Financial right to privacy (RSA 359-C:13; RSA 359-C:21);
Presite built and prefabricated homes (RSA 205-B:4);
Telemarketing sales (RSA 359-E:11);
Identity theft (RSA 359-I:3);
Rent-to-own agreements (RSA 358-P:11);
Workers’ compensation (RSA 281-A:44; RSA 281-A:52);
Leases governed by the UCC (RSA 382-A:2A-108(4)(b));
Wage claims (RSA 275:53, III);
Minimum wage (RSA 279:29);
Whistleblower protection (RSA 274-E:2, II);
Bad checks (RSA 544-B:1);
Unauthorized insurance (RSA 406-B:7);
Art dealers (RSA 352:10);
Consumer credit reporting (RSA 359-B:16, III); and
Miscellaneous other cases that are unlikely to be relevant to hospitality and retail clients.

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

Pre-judgment interest, calculated from the date of the writ or the filing of the petition to the date of judgment, is added to the amount of damages upon the motion of a party. RSA 524:1-b; State v. Exxon Mobil Corp., 126 A.3d 266, 309 (2015).

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

“One who claims damages has the burden of proof; he or she must, by a preponderance of the evidence, show . . . the extent and amount of such

damages.” Mahoney v. Town of Canterbury, 834 A.2d 227, 234 (N.H. 2003). The plaintiff must establish “by proof the extent of the harm and the amount of money representing adequate compensation with as much certainty as the nature of the tort and the circumstances permit.” Carbone v. Tierney, 864 A.2d 308, 317 (N.H. 2004). However, economic damages need not “be calculated with mathematical certainty, and the method used to compute damages need not be more than an approximation.” Id.

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

Neither emotional distress nor pain and suffering damages, unlike economic damages, may be calculated using a formula or mathematical tool. Steel v. Bemis, 431 A.2d 113, 116 (N.H. 1981).