

OHIO

Adam J. Russ
FRANTZ WARD LLP
200 Public Square, Suite 3000
Cleveland, OH 44114
Phone: (216) 515-1648
Cell: (330) 207-8607
Fax: (216) 515-1650
Email: aruss@frantzward.com
www.frantzward.com

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

In Ohio, there are two types of damages: *compensatory damages* for economic and non-economic loss (O.R.C. § 2315.18) and *punitive damages* (O.R.C. § 2315.21).

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

There are no limits on compensatory damages for economic losses in tort actions in Ohio; however, there are caps on non-economic and punitive damages. *See* O.R.C. §§ 2315.18(B)(2), 2315.21(D).

Non-Economic Damages: For non-medical malpractice tort actions, Ohio caps the damages to the greater of \$250,000 or three times the economic damages. The award amount is capped at \$350,000 per plaintiff and \$500,000 per tort occurrence. *See* O.R.C. §§ 2315.18(B)(2). There is no cap in wrongful death cases or if the plaintiff has suffered a catastrophic injury (*e.g.*, permanent and substantial physical deformity, loss of limb, injury that causes inability to independently care for oneself, etc.). *See* O.R.C. §§ 2315.18(B)(3)(a) and (b).

Punitive Damages: Punitive damages must be proven by “clear and convincing evidence.” *See* O.R.C. § 2315.21(D)(4). They are only recoverable when the trier of fact has awarded compensatory damages, and the actions or omissions of the defendant rises to the level of malice or aggravated or egregious fraud, or the defendant authorized, participated in, or ratified the such conduct of an agent. *See* O.R.C. § 2315.21(C)(1).

If the defendant is an individual or small employer (not more than 100 full-time employees or not more than 500 employees in manufacturing), the damages cannot exceed 10% of net worth and are capped at \$350,000.

For all other defendants, punitive damages cannot exceed two times the amount of compensatory damages. However, for non-individual and non-small employer

defendants, there is no cap on punitive damages if the defendant acted purposely or knowingly and the defendant has been convicted of or pled guilty to a felony criminal offense that contained the culpable state of mind of purposely or knowingly.

Some other limitations apply. For example, punitive damages are not recoverable against a city, political subdivision, or state. R.C. 2744.05(A). In a wrongful death suit, punitive damages are only available as a part of the survivorship claim.

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

Yes, attorneys' fees may be awarded alongside punitive damages; however, attorneys' fees are distinct from punitive damages, and fees must be explicitly excluded in contracts. The fees are recoverable as a part of compensatory damages but only if punitive damages are awarded. *See Danial v. Lancaster*, 2009 Ohio 3599 (8th Dist. 2009). A contract excluding punitive damages does not simultaneously exclude attorneys' fees. *See Neal-Pettit v. Lahman*, 125 Ohio St. 3d 327, 331 (2010).

Even though attorneys' fees are awarded alongside punitive damages, the attorneys' fees are not included in the punitive damages caps.

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

Yes, pre-judgment interest is available for recovery in any tort case under O.R.C. 1343.03(C); however, there must be a separate evidentiary hearing for the motion for pre-judgment interest. *See Pruszynski v. Reeves*, 117 Ohio St. 3d 92 (2008). Prejudgment interest in Ohio is established each October 15th for the following year by the tax commissioner and equals 3% above the then-applicable federal short-term interest rate. O.R.C. § 5703.47. No prejudgment interest is available for future damages awards. O.R.C. § 1343.03(C)(2).

Pre-judgment interest is not available on punitive damages. O.R.C. 2315.21(D)(3).

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

There is no statutorily-required proof for each type of damages.

Compensatory Damages: plaintiff will need to provide authenticated medical bills and expert testimony for future medical expenses. *See Burton v. Dutiel*, 2015 Ohio 4134 (5th Dist. 2015). In establishing medical expenses, a plaintiff may introduce the invoiced amount for medical services provided, but a defendant has

the corresponding ability to offer evidence of any negotiated “write off” amount for those same services. *Robinson v. Bates*, 112 Ohio St.3d 16, 2006-Ohio-6362, 857 N.E.2d 1195.

Lost Earning Capacity: plaintiff will need to prove loss of future earnings with expert testimony and data of potential earnings. *See Eastman v. Stanley Works*, 2009 Ohio 634 (10th Dist. 2009).

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

Yes, Ohio carries this distinction; compensatory damages are divided into two categories:

Economic Damages: O.R.C. § 2315.18(A)(2). This loss pertains to wages, salaries, medical expenses, and other fees incurred with the tort action outside of attorneys’ fees.

Non-Economic Damages: O.R.C. § 2315.18(A)(4). This loss pertains to pain and suffering, loss of society, claims of consortium, and other intangible loss.