

OKLAHOMA

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

There are two categories of damages available in tort: (1) Compensatory and (2) Punitive. Compensatory damages are awarded to cover actual losses suffered by a plaintiff (physical pain and suffering, mental pain and suffering, disfigurement, loss of earnings, etc.). Punitive damages are those used to punish, deter, and/or reform a defendant. Oklahoma has adopted a multi-level system for determining punitive damages.

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

No. The statute which limited non-economic damages, Okla. Stat. tit. 23, § 61.2, was held to be unconstitutional, based on *Douglas v. Cox Ret. Props.*, 2013 OK 37, 302 P.3d 789. There are, however, statutory caps on punitive damages. Okla. Stat. tit. 23, § 9.1.

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

In an action brought to enforce any lien, the party for whom judgment is rendered shall be entitled to recover reasonable attorneys' fees, to be fixed by the court, which shall be taxed as costs in the action. Okla. Stat. tit. 42, § 176. A prevailing party may be awarded its reasonable attorneys' fees, to be taxed as costs, for a suit predicated on breach of an express warranty and in a civil action to recover for labor or services rendered or for a contract relating to the purchase or sale of goods or merchandise. Okla. Stat. tit. 12, § 939; Okla. Stat. tit. 12, § 936. Moreover, an Oklahoma court will enforce a contract provision which grants the prevailing party attorneys' fees. Otherwise, a litigant will bear its/his/her own attorney fees. *See, e.g., Kay v. Venezuelan Sun Oil Co.*, 806 P.2d 648, 650 (Okla. 1991).

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

Pre-judgment interest, in a personal injury action, does not start to accrue until twenty-four (24) months after the action was filed and ends on the earlier of the date the verdict is accepted by the trial court or the date the judgment is filed with the court clerk. Okla. Stat. tit. 12, § 727.1.

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

Economic damages are those awarded with actual, established monetary expenses resulting from an injury. Typically, the award is based on the actual expenses incurred by the plaintiff. Common expenses needed to establish economic damages include medical bills, medications, lost wages, and property damage.

In short, to determine what damages occurred, you generally must establish the situation before the injuring event. For example, with lost wages, you should determine the individual's economic situation prior to the injury. You then determine where that individual would be financially had the injury not taken place. Your end point should look to show the difference in amount that the person would have earned to the amount they will now earn due to the injury.

Experts may be utilized to help produce economic damage calculations in complex matters.

Okla. Stat. tit. 12, § 3009.1 limits the recovery allowed for medical expenses. Recovery is the actual amount paid for medical expenses, rather than the amount billed for them. If the provider has filed a lien in the case, which is in excess of the amount paid, the recovery for medical expenses cannot be more than the lien amount.

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

Yes. Economic damages compensate expenses/losses which are quantifiable, meaning medical bills and loss of earnings. Non-economic damages compensate expenses/losses, which are less able to quantify, such as present and future pain and suffering.