

## VERMONT

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

Vermont permits the traditional common law damages of economic (e.g. medical/health care and lost wages), and non-economic losses, such as pain and suffering and mental anguish. Vermont courts will also impose punitive damages if plaintiff makes a showing that such damages are appropriate. “Punitive damages require a showing of essentially two elements. The first is wrongful conduct that is outrageously reprehensible. ... The second is malice, defined variously as bad motive, ill will, personal spite or hatred, reckless disregard, and the like.” *Fly Fish Vt., Inc. v. Chapin Hill Estates, Inc.*, 2010 VT 33 ¶1, 187 Vt. 541, 548-49, 996 A.2d 1167, 1173 (internal citations omitted).

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

There are no limitations or caps on recovery in tort actions.

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

Absent a statutory or contractual provision, Vermont follows the “American Rule”, requiring parties to bear their own attorney’s fees. Courts may deviate from this rule, but “only in exceptional cases and for dominating reasons of justice.” *Monahan v. GMAC Mortg. Corp.*, 2005 VT 110, ¶ 76, 179 Vt. 167, 196, 893 A.2d 298, 322 (internal citations of quotations omitted).

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

Pre-judgment interest is available in all cases where monetary relief is awarded at a statutory rate of 12% per annum, or rate agreed upon in contract. Vt.R.Civ.Proc. 54; 9 Vt.Stat.Ann. § 41a(a).

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

Plaintiffs must prove, by a preponderance of the evidence, the nature and extent of their injuries, and must show that such damages are the direct, necessary, and probable result of defendant's negligent act. *Callan v. Hackett*, 170 Vt. 609, 609, 749 A.2d 626, 628 (2000). Any evidence that is relevant and otherwise admissible under this standard may be used to establish a right of recovery for economic damages.

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

There is no distinction in Vermont relative to recovery for economic versus non-economic damages.