

## WASHINGTON

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

Washington courts allow recovery for pain and suffering (both mental and physical) past and with reasonable probability to be experienced in the future (WPI 30.06); the reasonable value of necessary medical care, treatment, and services received to the present time (and that care, treatment, and services with reasonable probability to be required in the future) (WPI 30.07.01, .02); the reasonable value of earnings, earning capacity, employment, salaries, business opportunities, employment opportunities lost to the present time and with reasonable probability to be lost in the future (WPI 30.08.01, .02). *See generally* WPI 30. Punitive damages are not available under Washington law except where explicitly authorized by statute. Washington courts have consistently held that punitive damages are contrary to public policy. *See, e.g., Spokane Truck & Dray Co. v. Hoefler*, 2 Wash. 45, 56 P. 1072 (1891) (punitive damages are “unsound in principle and unfair and dangerous in practice”).

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

There is no statutory cap on personal injury or wrongful death plaintiff's noneconomic damages in Washington. The Washington Supreme Court deemed such caps on non-economic damages unconstitutional as a violation of the plaintiff's constitutional right to trial by jury. *Sofie v. Fibreboard Corp.*, 112 Wn.2d 636 (1989). Additionally, Washington has adopted pure doctrine of comparative negligence in tort cases, so that a claimant's award is diminished in proportion to the claimant's fault, but the claimant's fault, no matter how great, will not act as a complete bar to recovery. WASH. REV. CODE § 4.22.005.

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

Following the traditional rule in the United States (the “American rule”), civil actions in Washington generally require that each party pay its own attorney's fees and costs. There are exceptions, however, on the basis of statutory authority, contractual agreement, or in equity. *Cosmopolitan Eng'g Grp. Inc., v. Ondeo*

*Degremont, Inc.*, 159 Wn.2d 292, 149 P.3d 666 (2006). The amount of any such award is generally left to the discretion of the trial court, and will only be overturned if found manifestly unreasonable or based on untenable grounds. *Clausen v. Icicle Seafoods, Inc.*, 174 Wn.2d 70, 272 P.3d 827 (2012).

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

**Post-judgment interest.** Post-judgment interest begins accruing, generally at a statutorily prescribed rate established when the judgment is entered, as of the date on which a valid judgment is entered. WASH. REV. CODE § 4.56.110(4) (2012); *In re Marriage of McLaughlin*, 46 Wn. App. 271, 729 P.2d 659 (1986).

**Prejudgment interest.** Prejudgment interest is awarded under Washington law under the premise that a party who retains money rightfully owed another party should be charged interest on the amount owed. Prejudgment interest, however, should not be awarded where the amount in question has not been determined with exactness. Prejudgment interest will only be awarded when the amount is liquidated or when an unliquidated claim is determinable without resorting to discretion but by reference to a fixed contractual standard. *Forbes v. Am. Bldg. Maint. Co. W.*, 170 Wn.2d 157, 240 P.3d 790 (2010); *Hansen v. Rothaus*, 107 Wn.2d 468, 730 P.2d 662 (1986).

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

**Medical bills.** A plaintiff can recover for all medical expenses, past, present, and future. Medical expenses include the reasonable value of necessary medical care, treatment, and services received. To do so, the plaintiff must prove the reasonableness of the medical expenses claimed. The plaintiff is entitled to recover only the reasonable value of medical services received, not necessarily the total of all bills paid. *Cox v. Spangler*, 141 Wn.2d 431, 5 P.3d 1265 (2000); *Patterson v. Horton*, 84 Wn. App. 531, 929 P.2d 1125 (1997).

**Increased risk of harm.** Washington pattern jury instructions employ a “reasonable probability” standard of proof in providing for future damages. WPI 30.05, 30.06, 30.07.02, 30.09.02. The value of future damages in Washington is reduced to their present value and may be demonstrated by expert testimony. *Cornejo v. State*, 57 Wn. App. 314, 788 P.2d 554 (1990).

**Disability and disfigurement.** Damages for disability or disfigurement have been available as noneconomic damages under Washington law for many years. *See Gray v. Wash. Water Power Co.*, 30 Wash. 665, 71 P. 206 (1903). Such damages are meant to compensate a person for loss of the ability to lead a normal life and can be demonstrated by pointing to activities or interests an injured plaintiff will

no longer be able to enjoy. *Kirk v. Wash. State Univ.*, 109 Wn.2d 448, 746 P.2d 285 (1987).

**Loss of enjoyment of life.** Loss of enjoyment of life is not available under Washington's survival statutes because the loss of enjoyment of life must be experienced prior to death. *Estate of Otani v. Broudy*, 151 Wn.2d 750, 92 P.3d 192 (2004).

**Pain, suffering and emotional distress.** Washington plaintiffs are entitled to damages for conscious pain and suffering, as well as emotional distress, with accompanying physical injury. These damages are considered together under Washington law. While physical symptoms must generally be demonstrated to recover for emotional distress, in the case of specific torts involving intentional or willful conduct by the defendant, such as outrage, emotional distress damages are recoverable even without physical manifestation. *Brower v. Ackerley*, 88 Wn. App. 87, 943 P.2d 1141 (1997).

**Loss of Consortium.** Loss of consortium damages are recoverable in Washington in cases of death or personal injury to a child, spouse, registered domestic partner or parent. *See* WASH. REV. CODE §§ 4.20.020, 4.24.010 (2012). In wrongful death cases, such damages are only recoverable when sought by a statutory beneficiary. *Roe v. Ludtke Trucking, Inc.*, 46 Wn. App. 816, 732 P.2d 1021 (1987). There are two tiers of statutorily prescribed beneficiaries. The first tier includes the child, children, spouse, or registered domestic partner, of the deceased. In addition, if there are no first tier beneficiaries, parents and siblings who were dependent on the deceased for support may recover damages. *Schumacher v. Williams*, 107 Wn. App. 793, 28 P.3d 792 (2001).

**Lost Income, Wages, Earnings.** A plaintiff may recover both lost wages, compensation for the regular wages a plaintiff would have collected but was unable to due to injury, and loss of earning capacity when a plaintiff suffers permanent disability or permanent diminution in the ability to earn money. In the first case, the plaintiff must establish that his injury caused him to lose the wages. A plaintiff need not be a wage earner to recover for loss of earning capacity. *See generally Dep't of Labor & Indus. v. Granger*, 159 Wn.2d 752, 154 P.3d 839 (2007).

**Lost Opportunity Doctrine.** Washington recognizes lost chance as a compensable interest, including lost chance of survival, even where a plaintiff would have had less than a 50% chance of survival had the chance not been lost. *Herskovits v. Group Health Coop.*, 99 Wn.2d 609, 664 P.2d 474 (1983). This doctrine has been extended to recognize a lost chance at slowing an illness. *Shellenbarger v. Brigman*, 101 Wn. App. 339, 3 P.3d 211 (2000).

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

No.