

## ILLINOIS LAW MANUAL

### CHAPTER VII INTENTIONAL TORTS & DEFAMATION

#### E. PUNITIVE DAMAGES

##### 1. Basic Law

An injured party may be entitled to punitive or exemplary damages where the conduct bringing about the harm is willful and wanton or outrageous or where the defendant acted with actual malice, fraud, deliberate violence or gross negligence. Loitz v. Remington Arms Co., 138 Ill. 2d 404 (1990). The rationale for awarding punitive damages is to punish the wrongdoer and to deter future wrongful conduct. Deal v. Byford, 127 Ill. 2d 192 (1989). Punitive damages are a form of relief and are not considered to be an independent cause of action. Kleinwort Benson North America, Inc. v. Quantum Financial Services, Inc., 181 Ill. 2d 214 (1998). A claim for punitive damages cannot automatically be pled; rather, pursuant to motion and following a hearing before the court, the complaint may be amended to include a prayer for relief seeking punitive damages if the plaintiff establishes a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages. 735 ILCS 5/2-604.1. While the court will make the determination as to whether the facts of a particular case may justify the imposition of punitive damages, it is for the trier of fact to

determine whether such evidence has been established. However, any award of punitive damages must be proportionate to the wrong committed. State Farm Mutual Automobile Insurance Company v. Campbell, 538 U.S. 408 (2003). Punitive damages are not allowable unless actual or compensatory damages are recovered. Tonchen v. All-Steel Equipment, Inc., 13 Ill. App. 3d 454 (1973).

##### 2. Applicability of Punitive Damages

Generally speaking, a claim for punitive damages may potentially be sought in actions involving bodily injury or physical damage to property or product liability based on strict tort liability. 735 ILCS 5/2-604.1. Punitive damages are not recoverable against municipal defendants under the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101. However, such damages are potentially available under other statutes including the Public Utilities Act, 220 ILCS 5/5-201 and the Antitrust Act, 740 ILCS 10/1, et seq. which provides for treble damages. Similarly, prior to the 1995 amendments to the

Nursing Home Care Act, 210 ILCS 45/3-602, long term care facilities were subject to treble damages where it was established that a resident's rights were violated. Presently, while less punitive in nature, Section 3-602 provides for actual damages plus costs and attorney's fees for a violation of the Act. Punitive damages may also be recovered in workers compensation retaliatory discharge matters. Kelsay v. Motorola, Inc., 74 Ill. 2d 172 (1978).

Punitive damages are expressly prohibited in medical and legal malpractice cases pursuant to 735 ILCS 5/2-1115. Even though a decedent may have been entitled to punitive damages based on his cause of action while alive, it has been determined that such a cause of action abates at death such that punitive damages cannot be recovered under the Wrongful Death Act. See, 740 ILCS 180/1. Additionally, punitive damages are typically not available in

actions brought under the Survival Act. See, 755 ILCS 5/27-6. However, an exception has been recognized in cases brought under the Public Utilities Act. National Bank of Bloomington v. Norfolk & Western Ry., 73 Ill. 2d 160 (1978). Punitive damages may not be awarded for a loss of consortium claim. Hammond v. North American Asbestos Corporation, 97 Ill. 2d 195 (1983). While punitive damages are typically not permitted in contract actions, an exception may exist where the breach itself amounts to an independent willful tort. Wallace v. Prudential Ins. Co., 12 Ill. App. 3d 623 (1973). With regard to punitive damages awarded against corporations, Illinois has adopted the "complicity rule" such that punitive damages cannot be awarded against a corporation for the acts of its employees based on a theory of *respondeat superior* unless some actual fault by the officers of the corporation has been shown. Price v. Highland Community Bank, 722 F.Supp. 454, 461 (N.D. Ill. 1989).