



#### OFFICE LOCATION

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## PRACTICE AREAS

Workers Compensation

Personal Injury

Motor Vehicle Accidents

Wrongful Death

# Wrongful Death Lawsuit & Claims Questions

6/15/2010

**Q:** What if a person dies before bringing a personal injury lawsuit?

**A:** It depends on whether a person dies as a result of the injuries or from unrelated causes. If a person injured in an accident subsequently dies because of those injuries, that person's heirs may recover money through a lawsuit. Every state has a law permitting an action when someone causes the wrongful death of another. If a person with a personal injury claim dies from unrelated causes, the claim survives in most cases and may be brought by the executor or personal representative of the deceased person's estate.

**Q:** What if an unborn fetus dies?

**A:** Many states require that a child must be born alive for its death to constitute the first element of a wrongful death action, so the death of a fetus might not be actionable. An attorney can tell you what the precise law is in your state.

**Q:** When someone dies, what is the difference between the civil and criminal cases that can be brought regarding the death?

**A:** A criminal case arises when the government seeks to punish an individual for an act that has been classified as a crime. A civil case, on the other hand, usually has to do with a dispute over the rights and duties that individuals and organizations legally owe to each other. The burden of proof is higher in a criminal case, and the penalty imposed is a criminal sanction, whereas, in a civil case, the defendant will typically have a monetary judgment entered against him/her.

**Q:** Are punitive damages recoverable in wrongful death actions?

**A:** In most states, a plaintiff may not recover punitive damages in a wrongful death action. There are some states, however, that do have specific statutes that permit recovery of punitive damages.



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**Q:** Are all state laws the same regarding wrongful deaths?

**A:** No, there are many differences between each state's wrongful death laws. Determining the state in which you should bring a wrongful death action is a very important decision, because some states do not allow certain types of damage awards and/or may have different statutes of limitation that establish the timeframe within which you must file suit.

**Q:** Can I bring a wrongful death action if the deceased never held a job?

**A:** Yes, even if the decedent never held a job, he/she may have contributed in some other way to the family. A good example of such a decedent is a housewife, who contributes services, guidance and nurturing her family. These contributions are quantifiable as "pecuniary losses" in a wrongful death action.

**Q:** Can someone sue for the pain and suffering of a decedent?

**A:** Yes, in addition to the wrongful death, a decedent's family may recover damages for the pain and suffering that the decedent endured prior to death.

**Q:** Can I bring a wrongful death action based on the death of a child or an elderly person?

**A:** Yes, you can recover damages in a wrongful death cause of action for the death of either a child or an elderly person. For a variety of reasons, however, the damage awards for both classes of decedent are usually modest.