

# NEW MEXICO INJURY ATTORNEY BLOG

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## **Mitigation of Damages in New Mexico Personal Injury Claims**

When bringing a personal injury claim against another and seeking damages for some harm caused, the mitigation of damages doctrine is an important factor in the outcome of the legal claim. In personal injury claims, the injured person must make a reasonable effort to avoid additional damages and to minimize the damages that they suffer or incur.

If a claimant fails to mitigate his damages, his or her recovery may be reduced. One example that is common in a personal injury case involves medical treatment amount and sometimes, type. Generally at some point after medical treatment begins, the injured person recovers or at least recovers as much as he or she will recover. If the injured party continues to seek treatment that will not improve his condition, the expenses incurred are considered unnecessary and will not be included when determining the value of the claim. Similarly, if a person seeks some sort of alternative medicine treatment that is not orthodox for treatment of the injury, that treatment may not be considered reasonable and the expense for the treatment be disputed in the calculation of damages.

A claimant must mitigate his economic damages. Lost income due to an injury is a compensable element of damages in a personal injury case. Oftentimes, a doctor will direct the party not to work, but then release the party to return to work at some point of medical improvement. Lost wages for time off from work when a doctor has advised it is safe to return to work will not be compensated.

Sometimes an injured party may be physically fit to perform some employment, but not the job the person did before the injury, such as heavy physical work. In that case, the person must still mitigate his economic damages by attempting to find work that he or she can perform considering the physical limitations.

In opposition to excessive and unnecessary treatment is the case in which the injured party fails to seek appropriate medical attention promptly and that failure causes an increase in the injured party's damages. For example, a person injured in an automobile

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accident suffers a broken bone. The person knowingly refuses to seek treatment and that failure leads to the development of infection and unnecessary complications related thereto. Absent a reasonable explanation, the damages due to the initial broken bone will be considered, but the enhanced damages due to the failure of the injured person to act reasonably, and seek treatment, will not be compensated. Of course, in today's climate, the failure to treat may very well be related to lack of medical insurance or other financial considerations which would at least partially offset the failure to mitigate argument.

An injured person who claims another is responsible for his damages has a duty under the law to act reasonably to minimize his damages. The issue can be complicated and certainly there are exceptions. It is advisable to the guidance of an **experienced personal injury attorney** to determine your mitigation obligations. Failure to mitigate can be extremely costly to your claims.

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