

EMPLOYMENT RELATIONSHIP--DAMAGES.

This issue reads:

“What amount of damages is the plaintiff entitled to recover?”

You are to answer this issue only if you have answered the (*state number(s)*)<sup>1</sup> issue(s) in favor of the plaintiff. If you have so answered those issue(s), the plaintiff would be entitled to recover nominal damages even without proof of actual damages. Nominal damages consist of some trivial amount such as one dollar in recognition of a technical injury to the plaintiff resulting from the [breach of the employment agreement] [wrongful termination] [adverse employment action].

In order to recover more than nominal damages, the burden of proof is on the plaintiff to prove, by the greater weight of the evidence, two things:

First, that the plaintiff has suffered actual damages by reason of the [breach of the employment agreement] [wrongful termination] [adverse employment action].

Second, the amount of such actual damages.<sup>2</sup>

Actual damages consist of that amount of money necessary to place the plaintiff in the

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1. If the employer's just cause defense instruction is given, state the issue numbers (e.g., “first,” “second,” etc.) of both the “breach” (see N.C.P.I.-- Civil 640.12 (“Employment Relationship: Breach Of Agreement For Definite Term”)) and “just cause” (see N.C.P.I.-- Civil 640.14 (“Employment Relationship: Employer’s Defense Of Just Cause”)) issues.

2. Absent other evidence, the plaintiff would be entitled to the compensation provided in the employment agreement for the unexpired portion of the plaintiff’s employment. See DAN B. DOBBS, HANDBOOK ON THE LAW OF REMEDIES, § 12.25. However, “[b]ringing an action for wrongful discharge presupposes the existence of an employment contract. The employment contract must be for a definite period of time in order for the employer to be liable in damages on a contract action. Where no definite period of time is contemplated in the contract, it is terminable at will by either party, with or without cause[.]” ALAN D. WOODLIEF, JR., NORTH CAROLINA LAW OF DAMAGES § 20:1 (5th ed. 2009), “except in those instances where the employee is protected from discharge by statute.” *Buffaloe v. UCB*, 89 N.C. App. 693, 695, 366 S.E.2d 918, 920 (1988).

See also *Brookshire v. N.C. Dep’t of Transp.*, 180 N.C. App. 670, 675, 637 S.E.2d 902, 906 (2006) (“[T]he N.C. Administrative Code [Tit. 25,1B.0425 (2003)] and N.C. Gen. Stat. § 24-5(b) bar an award of interest on [an award of] back pay . . .”).

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same economic position in which *he* would have been if the [breach] [wrongful termination] [adverse employment action] had not occurred.

(If you find, by the greater weight of the evidence, that the plaintiff's actual damages include future losses, then the amount you allow for future losses must be reduced to present value, because a smaller sum received now is equal to a larger sum received in the future.)

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the plaintiff has suffered actual damages under the rules I have explained to you, then you will answer this issue by writing that amount in the blank space provided.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue by writing a nominal amount such as “One Dollar” in the blank space provided.