

13-2310. Damages for wrongful discharge.

If you should decide in favor of _____ (*plaintiff*) on [any of] [his] [her] claim[s] for discharge [because [he] [she] was discharged because _____ (*insert conduct court has determined to be a violation of public policy*)] [in violation of [an implied contract], [or] [a statute]], then you must fix the amount of money damages that will reasonably and fairly compensate [him] [her] for any of the following elements of damages proved by [him] [her] to have resulted from the wrongful conduct of the defendant[s]:

(*NOTE: Here include the proper elements of damages.*)

[In addition, if you should decide in favor of _____ (*plaintiff*) on [his] [her] claim [for discharge because [he] [she] _____ (*insert conduct court has determined to be a violation of public policy*)] [or] [for discharge in violation of a statute], _____ (*plaintiff*) is entitled to recover an amount of money that will reasonably and fairly compensate [him] [her] for any emotional distress caused by the violation.]

[Any damages for _____ (*list elements of special damages subject to this paragraph*) awarded on the claim for breach of an implied agreement must be damages which were reasonably foreseeable as a consequence of any breach.]

Whether any of these elements of damages has been proved by the evidence is for you to determine. Your verdict must be based upon proof, and not upon speculation, guess or conjecture.

Further, sympathy for a person, or prejudice against any party, should not affect your verdict and is not a proper basis for determining damages.

USE NOTES

This is the basic form of damages instruction for wrongful discharge claims. It must be completed by inserting appropriate elements of general and/or special damages as supported by the law and the evidence. See UJI 13-2311 NMRA et seq. The second paragraph should be included where a claim is based on retaliatory discharge or violation of the New Mexico Human Rights Act [28-1-1 NMSA 1978] and emotional distress damages are sought. The third paragraph should be included where a claim is based on breach of an implied employment agreement and special damages are sought. The trial court must determine what elements of damages are subject to the rule expressed in that paragraph, and those elements of damages should be inserted in the space indicated. See committee commentary.

In appropriate cases, additional instructions such as an instruction on mitigation of damages, see UJI 13-860 NMRA, UJI 13-1811 NMRA; see *also* UJI 13-851 NMRA, or instructions relating to damages arising in the future, see UJI 13-1821 NMRA and UJI 13-1822 NMRA, should be given with this instruction.

[Approved, effective January 1, 1999; as amended by Supreme Court Order No. 08-8300-012, effective June 13, 2008.]