

FAQs: Illinois Civil Procedure Amendment Imposes 6% Prejudgment Interest in Personal Injury and Wrongful Death Actions

Hinshaw Alert | 3 min read

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On May 28, 2021, Illinois Governor J.B. Pritzker signed an amendment to the Illinois Code of Civil Procedure, 735 ILCS 5/2-1303, that applies a 6% prejudgment interest rate on all damages awarded in personal injury and wrongful death cases. Starting July 1, 2021, all personal injury and wrongful death actions will begin to accrue prejudgment interest from the date the action is filed or July 1, 2021, whichever date is later. Prejudgment interest accrual is limited to five years.

Frequently Asked Questions

Q: Who does it apply to?

A: The new prejudgment interest law applies, with certain exceptions, to all personal injury or wrongful death actions. The interest applies to all categories of damages except punitive damages, sanctions, statutory attorneys' fees, and statutory costs.

Prejudgment interest cannot be assessed against the state, local government, school districts, community college districts, or any other governmental entity. This means that cases where both a public and nonpublic entity may be jointly and severally liable could give rise to significant conflicts between the defendants over their ability to cut off prejudgment interest with an early settlement offer.

Personal injury and wrongful death actions filed in or removed to federal court will not provide a safe harbor from prejudgment interest. Prejudgment interest is a matter of substantive state law. (Post-judgment interest in federal cases is procedural and will continue to be governed by 28 U.S.C. § 1961.)

Q: When Does Prejudgment Interest Start to Accrue?

A: The law is effective as of July 1, 2021. After July 1, prejudgment interest will begin to accrue on the date an

action is filed. For injuries that occurred before the Act's effective date, interest will start to accrue on the *later of* the date the action is filed or the effective date of the bill. This means that pending actions will start accruing interest as of July 1.

If a plaintiff voluntarily dismisses a lawsuit and later refiles, prejudgment interest does not accrue during the period between dismissal and refiling. Additionally, as noted above, prejudgment interest can only run for a total of five years. This effectively caps the total amount of prejudgment interest that could be added to a judgment at 30% of the award (6% interest for a total of five years).

Q: Is it Possible to Limit Exposure to Prejudgement Interest?

A: Yes. The prejudgment interest law allows defendants to limit their exposure to prejudgment interest by making an early settlement offer. The value of the highest written settlement offer made within the first 12 months after the lawsuit is filed is credited against the judgment amount rendered at trial for purposes of calculating prejudgment interest. If the judgment is greater than defendant's highest settlement offer, then the plaintiff is awarded accrued interest only on the difference. If the judgment is less than or equal to the offer, plaintiff is not eligible for a prejudgment interest award.

This provision is intended to encourage parties to settle early. However, 12 months is an extremely short time period within which to investigate and accurately assess the value of a case and to make an informed decision on a settlement offer. It puts immense pressure on the parties to conduct discovery efficiently. For example, if the plaintiff is unresponsive to the defendant's discovery requests, defense counsel's ability to assess liability and review the plaintiff's items of special damage in order to formulate an early settlement offer may be negatively affected. This may increase the need for court intervention to obtain timely discovery responses from plaintiffs.

Another question that arises from the 12-month qualifying settlement offer provision is how additional defendants added after the 12-month period has expired are to be treated. A related issue is the question of notice where the plaintiff makes full use of the time allowed to effect service of process under Supreme Court Rule 103(b). In that situation, a defendant may only have eight months in which to put together an appropriate settlement offer.

Q: How Will This Rule Impact Litigation Strategy?

A: The prejudgment interest law places a premium on the early, pre-suit investigation of potential claims. Defendants—on notice of an accident, injury, or event resulting in personal injury or death with the potential for litigation—should be highly proactive in securing medical records, witness statements, and items of special damage before a suit is filed and the 12-month period for making a settlement offer commences to run. A well-formulated settlement offer should be considered at the earliest possible moment in order to mitigate the accrual of prejudgment interest as much as possible.

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Albert C. Angelo

Partner

📞 312-704-3000



Joshua G. Vincent

Partner

📞 312-704-3463

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