

13-851. Damages; personal employment.

The [unpaid balance of the] contract price, less [the greater of] [the amount _____ actually earned from other employment in the time made available as a result of the breach] [or] [the amount _____ could through the exercise of reasonable diligence have earned, in the time made available as a result of the breach, from employment of the same quality as [his] [her] employment under the breached contract].

USE NOTE

This instruction should be given with UJI 13-843 NMRA when the claim for damages arises from breach of an employment contract. The portion in braces should be given only when the breaching party raises mitigation of damages as an affirmative defense; in that case, UJI 13-860 NMRA should also be given.

Within the braces, the appropriate bracketed language should be selected, depending on whether the mitigating amount was actually earned from other employment obtained in place of the breached contract or was income that could reasonably have been earned during the period of the breach through employment similar to that under the breached contract. If both elements of mitigation are included, the first bracketed phrase should usually be incorporated into the instruction together with the bracketed "[or]". Under the proper facts, however, both elements of mitigation could appropriately be deducted from damages, and the instruction would have to be modified.

This instruction may be supplemented when other relief, such as reliance damages, is requested. It is intended to provide a common, but not an exclusive, instruction for breach of employment agreements.

[Adopted, effective November 1, 1991.]