20.03 PAST EARNINGS

The (first, second, etc.) item of economic loss claimed by the plaintiff is the value of (work time) (earnings) (profits) (salaries) lost by the plaintiff from the (insert date of the accident) to (insert date of trial). To calculate this amount, you must deduct federal [and state] income taxes that would have been paid.

Use Note

This instruction should be used with Instruction 20.01A or 20.01B when past wage loss is claimed.

Comment

An award of damages for loss of past earnings or wages has been approved in Walker v. Alaska Road Commission, 388 P.2d 406, 407 (Alaska 1964); Saslow v. Rexford, 395 P.2d 36, 42 (Alaska 1969); National Bank of Alaska v. McHugh, 416 P.2d 239, 244 (Alaska 1966); Beaulieu v. Elliott, 434 P.2d 665, 673-674 (Alaska 1967); Fruit v. Schreiner, 502 P.2d 133, 145 (Alaska 1972); State v. Guinn, 555 P.2d 530 (Alaska 1976); Teamsters Local 959 v. Wells, 749 P.2d 349, 361 (Alaska 1988). See also American National Watermattress Corp. v. Manville, 642 P.2d 1330, 1341 (Alaska 1982). In Patrick v. Sedwick, 413 P.2d 169, 173-75 (Alaska 1974); and Bemis v. Bertram, 532 P.2d 1012 (Alaska 1975), damages awards for (reasonable value of) “loss of time” were approved in principle. In these latter cases, the phrase “loss of time” rather than “loss of wages” was used because the parties involved did not have regular employment with determinable wage losses. (Patrick-housewife; Maloney-various prior employment.)

Beaulieu v. Elliott, 434 P.2d 665 (Alaska 1967), held that an award for past wage loss should include a deduction for income taxes that would have been paid.

In Spruce Equipment Co. v. Maloney, 527 P.2d 1295 (Alaska 1974), there was evidence that the plaintiff engaged in recreation and gainful personal activities but made no effort to secure other employment. On those facts, the Court held that it was error not to instruct the jury on the plaintiff’s duty to mitigate his losses. Id. at 1300-01. The Court’s discussion refers to modifications that should have been made to include this concept in the instruction on lost wages. Nevertheless, nothing in the rationale of the Spruce Equipment decision suggests that it would be inappropriate to give a general instruction on the duty to mitigate, rather than an instruction specifically discussing this duty in the context of past lost wages. In these instructions, the general concept of mitigation is addressed in Instruction 20.18A.