

1 [Adopted, effective November 1, 1991; as amended by Supreme Court Order No. S-1-RCR-2025-
2 00126, effective for all cases pending or filed on or after December 31, 2025.]

3 **Committee commentary.** — Ordinary rules for measuring damages for breach of contract may
4 be applied in an employment context. [~~Board~~*Bd.* of [~~Education~~*Educ.* of Alamogordo [~~Public~~
5 ~~School District~~ *Pub. Sch. Dist. No. 1 v. Jennings*, 1985-NMSC-054, ¶ 14, 102 N.M. 762, 701 P.2d
6 361[~~(1985)~~]. Damages may include lost wages while unemployed, the cost and inconvenience of
7 searching for a new job, moving costs for relocating, as well as any other actual pecuniary losses,
8 and possibly punitive damages. *Vigil v. Arzola*, 1983-NMCA-082, ¶ 32, 102 N.M. 682, 699 P.2d
9 613[~~(Ct. App. 1983)~~], rev[is]ed in part, 1984-NMSC-090, 101 N.M. 687, 687 P.2d 1038[~~(1984)~~].
10 The doctrine of mitigation (also called ["avoidable consequences"]) in wrongful discharge
11 cases is based on the principle that a wrongfully discharged employee will not be permitted to
12 remain idle at his previous employer's expense when suitable work is available and will not be
13 placed in a better position by the award of damages than he would have occupied had the contract
14 been performed. Consequently, income that the employee earned or reasonably could have earned
15 from similar employment during the period of the breach will be deducted from damages. *See*
16 *Jennings*, 1985-NMSC-054 [~~supra~~]; *Spurck v. [~~Civil Service Board~~ *Civ. Serv. Bd.*, [231 ~~Minn.~~*
17 ~~483,~~] 42 N.W. 2d 720 (~~Minn.~~1950). Employment is ["similar"] if it is of the same quality.
18 *Parker v. Twentieth Century-Fox Film Corp.*, 3 Cal. 3d 176[~~, 474 P.2d 689, 89 Cal. Rptr. 737~~]
19 (~~Cal.~~ 1970). Also, income that the employee actually earned from any other employment during
20 the period of the breach will be deducted. *Jennings*, 1985-NMSC-054[~~supra~~]; *Spurck*, 42 N.W. 2d
21 ~~720~~ [~~supra~~]. Income in mitigation of damages must, however, relate to employment that the
22 employee could not have pursued had he remained employed under the breached contract, rather
23 than to activities which the employee could have undertaken while also continuing with the

- 1 original employment. *See Sandler v. U.S. Development Co.*,~~[-44 Wash. App. 98,]~~ 721 P.2d 532
- 2 (Wash. Ct. App. 1986); *Soules v. [~~Independent School District~~]*Indep. Sch. Dist. No. 518, 258
- 3 N.W.~~[-]~~2d 103 (Minn. 1977).
- 4 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]