

GENERAL INDIANA LAW

General negligence and products liability claims are governed by the Indiana Comparative Fault Act. IND. CODE § 34-51-2 and § 34-20-8-1. If plaintiff's fault is greater than 50% of the total fault, plaintiff is barred from recovery. IND. CODE § 34-51-2-7.

Claims against governmental entities are governed by Indiana's common law of contributory negligence in which the plaintiff is barred from recovery if found to be at fault to any extent. *Lee v. Bartholomew Consol. Sch. Corp.*, 75 N.E.3d 518 (Ind. Ct. App. 2017).

Medical malpractice is also governed by common law contributory negligence. *Wilson v. Lawless*, 64 N.E.3d 838 (Ind. Ct. App. 2016). Medical malpractice claims against qualified health care providers must first be filed with the Indiana Department of Insurance for preliminary review and the non-binding but admissible opinion of a three-member medical review panel. IND. CODE § 34-18-8-4. If the health care provider is not qualified, the complaint may be filed in a court of competent jurisdiction. *Rumell v. Osolo Emergency Medical Services, Inc.*, 88 N.E.3d 1111 (Ind. Ct. App. 2017).

Each motorist shall have minimum limits of liability coverage of \$25,000 per person and \$50,000 per accident. IND. CODE § 9-25-4-5.

FEE SHARING

Lawyers in different firms may share fees if (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation; (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and (3) the total fee is reasonable. IND. PROF. CONDUCT R. 1.5(e).

The information contained within this handout is believed to be accurate as of its printing May 2023. It is intended to provide general information only and is not intended to provide legal advice. For legal advice on a specific issue or case, please contact an attorney licensed to practice law in the State of Indiana.



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STATUTE OF LIMITATIONS

General Personal Injury Claims, including Automobile Accidents Two (2) years from the date the cause of action accrues. IND. CODE § 34-11-2-4.

Property Damage Claims Two (2) years from date of accrual for damage to personal property and six (6) years from date of accrual for injury to real property. IND. CODE §§ 34-11-2-4 and -7.

Tort Claims Against Governmental Entities Two (2) years from the date of accrual but a written tort claim notice must be filed within one hundred eighty (180) days from date of incident for claims against political subdivisions and two hundred seventy (270) days from date of incident for claims against the State of Indiana. IND. CODE §§ 34-13-3-6, 34-13-3-8.

Products Liability Two (2) years from date of accrual subject to ten (10) year statute of repose. IND. CODE § 34-20-3-1(b). For asbestos related injuries two (2) years from date of accrual and subsequent injury is a separate cause. IND. CODE § 34-20-3-2(a).

Medical Malpractice Two (2) years after the date of the alleged act, omission, or neglect, except that a minor less than six (6) years of age has until the minor's eighth birthday to file. IND. CODE § 34-18-7-1. If plaintiff does not discover the malpractice or did not know or should not have known of the malpractice within two (2) years of the malpractice, two (2) years from the date of discovery. *Anonymous Physician v. Kendra*, 114 N.E.3d 545 (Ind. Ct. App. 2018). The filing of a proposed complaint tolls the applicable statute of limitations to and including a period of ninety (90) days following the receipt of the opinion of the medical review panel by the claimant. IND. CODE § 34-18-7-3.

Minor's Claims With exception to the deadlines noted for a minor's claim of medical malpractice, a minor's statute of limitations is generally tolled until they reach the age of 18. IND. CODE § 34-11-6-1. If the claim is against a governmental entity, upon reaching the age of 18, minors then have 180 days to file a tort claims notice. IND. CODE § 34-13-3-9; *City of Indianapolis v. Hicks*, 932 N.E.2d 227 (Ind. Ct. App. 2010).

Workers Compensation Two (2) years after the occurrence of the accident, or if death results therefrom, within two years of accrual. IND. CODE § 22-3-3-3. Limitations period begins to run upon the occurrence of the accident rather than when the injury becomes manifest. *Indiana State Police v. Wiessing*, 836 N.E.2d 1038 (Ind. Ct. App. 2005). When the occurrence is continuing, the period begins when the permanence of the injury is discernible. *Harris v. United Water Services, Inc.*, 946 N.E.2d 35 (Ind. Ct. App. 2011).

Wrongful Death Two (2) years from the date of accrual. IND. CODE § 34-23-1-1.

STATUTORY DAMAGE CAPS

General Personal Injury and Automobile Accident Claims No damage caps exist.

Claims Against Governmental Entities \$700,000 for claims accruing after January 1, 2008 and \$5,000,000 total per incident. IND. CODE § 34-13-3-4.

Medical Malpractice Maximum \$1,800,000 for injury or death resulting from an act of malpractice by a qualified health care provider that occurs after June 30, 2019. IND. CODE § 34-18-14-3.

Products Liability No damage caps exist. IND. CODE § 34-20-1-1 et. seq.

Adult Wrongful Death Capped at \$300,000 for the loss of the adult person's love and companionship. IND. CODE § 34-23-1-2.

Punitive Damages Capped at the greater of three (3) times the amount of compensatory damages awarded or fifty thousand dollars (\$50,000). IND. CODE § 34-51-3-4.