



MATTHIESEN, WICKERT & LEHRER, S.C.
ATTORNEYS AT LAW

MATTHIESEN, WICKERT & LEHRER, S.C.
Hartford, WI ❖ New Orleans, LA ❖ Orange County, CA
❖ Austin, TX ❖ Jacksonville, FL ❖ Boston, MA
Phone: (800) 637-9176
gwickert@mwl-law.com
www.mwl-law.com

NO PAY, NO PLAY LAWS

Most states now have mandatory car insurance laws that require all drivers to have some type of insurance. Compulsory insurance laws are an effort to keep insurance premiums at a lower cost for everyone. However, a growing problem is how to enforce these laws and give an incentive for everyone to follow compulsory insurance laws in their particular state. A number of states have passed what are called “No Pay, No Play” laws which aim to limit the compensation for people who are breaking the compulsory insurance law when they are injured in a car accident. One theory behind No Pay, No Play laws is that drivers who refuse to get auto insurance should not be allowed to benefit from someone else’s compliance with the law while simultaneously denying that benefit to others. Additionally, No Pay, No Play laws have been challenged as unconstitutional in several states. New Jersey and Louisiana have upheld their respective No Pay, No Play laws as constitutional under both the state Constitution and the U.S. Constitution. Recently, however, the Supreme Court of Oklahoma struck down their No Pay, No Play statute as violating the state’s Constitution.

No Pay, No Play laws are typically triggered when an uninsured driver is injured in an accident with another insured driver and the insured driver is at fault. However, under No Pay, No Play law, the injured uninsured driver is only able to collect economic damages, such as medical and property, and is not allowed to recover non-economic damages, such as pain and suffering. Additionally, some states go even further to limit economic damages. For example, Louisiana bars injured uninsured drivers from recovering for bodily injury for the first \$15,000 and bars from recovering for property damage for the first \$25,000. Some states do have exceptions to their No Pay, No Play laws. For example, Alaska does not limit recovery for uninsured drivers if an uninsured driver is injured by a liable driver who was under the influence at the time of the accident, acted recklessly or with intent, or fled the scene of the accident. No Pay, No Play laws vary widely from state-to-state and each may have different exceptions.

The following chart details individual state laws regarding “No Pay, No Play” laws and its exceptions.

STATE	RULE	AUTHORITY
ALASKA	A person who suffers personal injury or death may not recover non-economic damages if the injury or death occurred while the person was driving uninsured. However, this does not apply if the uninsured driver was injured by a liable driver who was under the influence, acted recklessly or with intent, or fled the scene.	Alaska Stat. § 09.65.320

STATE	RULE	AUTHORITY
CALIFORNIA	<p>An injured person cannot recover non-economic damages if that person was under the influence at the time of the accident and was convicted of that offense, the injured driver’s vehicle was not insured, or the injured driver cannot establish financial responsibility as required by the state. However, if the uninsured driver was injured by another driver that was under the influence and convicted of that offense, then that uninsured driver may recover non-economic losses.</p>	Cal. Civ. Proc. Code § 3333.4
INDIANA	<p>Prohibits certain uninsured motorists from collecting non-economic damages against the at-fault motorist and his or her insurance carrier. The individual must be uninsured at the time of the accident and have had a prior violation of the financial responsibility laws. A <i>previous violation</i> is defined as:</p> <ol style="list-style-type: none"> 1. An individual who owns a motor vehicle that is involved in an accident and for which financial responsibility is not in effect as required by I.C. § 9-25-4; and 2. During the 5 years immediately preceding, the individual has been required to provide proof of future financial responsibility under I.C. § 9-25-8-6(b). 	I.C. § 27-7-5.1; I.C. § 34-30-29.2
IOWA	<p>If a person was injured in an automobile accident while that person was in the process of committing a felony and was convicted of that felony, the injured person is barred from non-economic recovery.</p>	I.C.A. § 613.20
KANSAS	<p>If an injured person fails to maintain personal injury protection benefits required by law, that injured person has no cause of action to recover non-economic losses sustained as a result of an accident while operating an uninsured vehicle. Additionally, any person who is injured in an accident who was driving under the influence and convicted of this crime is barred from recovering non-economic damages.</p>	K.S.A. § 40-3130

STATE	RULE	AUTHORITY
LOUISIANA	If a person is injured in an accident and that person failed to maintain car insurance, the injured person is barred from bodily injury recovery for the first \$15,000 and barred from property damage recovery for the first \$25,000 of the cause of action. These limitations on recovery do not apply if the tortfeasor was under the influence at the time of the accident and was convicted of that crime, if the tortfeasor acted intentionally, or if the tortfeasor fled the scene of the accident. Additionally, no insurer shall lose subrogation rights for claims paid under the applicable insurance policy for the recovery of any sums in excess of the first \$15,000 of bodily injury and the first \$25,000 of property damages.	The Supreme Court of Louisiana upheld their No Pay, No Play laws as constitutional. <i>Progressive Sec. Ins. v. Foster</i> , 711 So.2d 675 (La. 1998). L.S.A.-R.S. § 32:866
MICHIGAN	Damages shall not be assessed in favor of an injured motorist who, at the time of the accident, did not have the requisite insurance by law.	M.C.L.A. § 500.3135(2)(c)
MISSOURI	Uninsured motorists injured in an accident waive their ability to pursue a cause of action against the tortfeasor unless it can be proven that the tortfeasor was under the influence at the time of the accident.	Mo. Rev. Stat. § 303.390
NEW JERSEY	New Jersey statute bars uninsured motorists that are injured, drivers under the influence that are injured, or acting with the intent to injure himself or others while operating a vehicle from economic and non-economic recovery from the tortfeasor.	New Jersey Supreme Court upheld New Jersey's No Pay, No Play laws as constitutional. <i>Caviglia v. Royal Tours of America</i> , 842 A.2d 125 (Sup. Ct. of N.J. 2004). N.J.S.A. § 39:6A-4.5
NORTH DAKOTA	In any action against an insured driver arising out of an accident where the injured driver is uninsured, the insured driver may not be assessed for non-economic damages where the uninsured driver has at least one conviction of driving without insurance.	N.D.C.C. § 26.1-41-20

STATE	RULE	AUTHORITY
OKLAHOMA	<p>In December 2014, Oklahoma’s “No Pay, No Play” statute was found <i>unconstitutional</i> by the Supreme Court of Oklahoma as violating Oklahoma’s state constitution. The statute stated that uninsured drivers injured in accidents could not recover non-economic damages from insured tortfeasors unless they could show the tortfeasor was under the influence and convicted of that offense at the time of the accident.</p>	<p>In <i>Montgomery v. Potter</i>, 341 P.3d 660, 2014 OK 118, the Supreme Court of Oklahoma ruled Oklahoma statute 47 O.S. § 7-116 violated the Oklahoma State Constitution because the statute targeted a specific group people, uninsured motorists, and prevented them from recovering certain non-economic damages without considering who was at fault. The Court reasoned that the statute holds uninsured drivers to a different and stricter standard than other plaintiffs injured in automobile negligence cases by creating an impermissible special class and restricting damages in civil negligence actions.</p>
OREGON	<p>An uninsured plaintiff may not recover non-economic damages from insured tortfeasor unless the tortfeasor was acting intentionally or recklessly or, the tortfeasor was engaged in a felony act at the time of the accident.</p>	<p>O.R.S. § 31.715</p>

These materials and other materials promulgated by Matthiesen, Wickert & Lehrer, S.C. may become outdated or superseded as time goes by. If you should have questions regarding the current applicability of any topics contained in this publication or any publications distributed by Matthiesen, Wickert & Lehrer, S.C., please contact Gary Wickert at gwickert@mwl-law.com. This publication is intended for the clients and friends of Matthiesen, Wickert & Lehrer, S.C. This information should not be construed as legal advice concerning any factual situation and representation of insurance companies and/or individuals by Matthiesen, Wickert & Lehrer, S.C. on specific facts disclosed within the attorney\client relationship. These materials should not be used in lieu thereof in anyway.