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Plaintiff Bears the Burden of Establishing Mitigation of Front Pay Damages under New Jersey LAD

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On April 5, 2012, the New Jersey Appellate Division addressed the burden of proof for front pay claims, in *Quinlan v. Curtiss-Wright Corporation*, A-5728-06T1 (N.J. App. Div. Apr. 5, 2012) (a case which previously made headlines before the Supreme Court in 2010 and was covered in the December 2010 issue of the *New Jersey eAuthority*). The trial court had placed the burden of proving failure to mitigate front pay damages on the defendant—rather than placing the burden of proving mitigation of front pay damages on the plaintiff—resulting in a jury award to the plaintiff of \$3,650,318.00 in future economic losses. The Appellate Division ordered a new trial on damages, holding that while an employer bears the burden of proving failure to mitigate for *back pay* damages, it was unfair also to compel the employer to “forecast what lucrative jobs will, in fact, be obtainable in the future market and to further demonstrate to the jury that [a] plaintiff will not pursue them.”

Note: This article was published in the May 2012 issue of the *New Jersey eAuthority*.

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