

5.3 Damages—Mitigation

The plaintiff [name] has a duty to use reasonable efforts to mitigate damages. To mitigate means to avoid or reduce damages.

The defendant [name] has the burden of proving by a preponderance of the evidence:

> First, that the plaintiff [name] failed to use reasonable efforts to mitigate damages;
and

> Second, the amount by which damages would have been mitigated.

Comment

As to mitigation of damages in an action under the Age Discrimination in Employment Act, see Instruction 11.13 (Age Discrimination—Damages—Back Pay—Mitigation).