

A businesswoman sold her business to a company for \$25 million in cash pursuant to a written contract signed by both parties. Under the contract, the company agreed to employ the businesswoman for two years as a vice president at a salary of \$150,000 per year. After six months, the company, without cause, fired the businesswoman.

Which of the following statements best describes the businesswoman's rights after being fired?

- A. She can get specific performance of her right to serve as a vice president of the company for two years.
- B. She can recover the promised salary for the remainder of the two years if no comparable job is reasonably available and she does not take another job.
- C. She can recover the promised salary for the remainder of the two years if she remains ready to work.
- D. She can rescind the contract of sale and get back her business upon tender to the company of \$25 million.

Explanation:

Purpose of compensatory damages

Primary (expectation measure)	Place nonbreaching party in same position as if contract had been performed Expectation measure includes: Expectation damages Incidental damages Consequential damages
Fallback (reliance measure)	When expectation measure too speculative, place nonbreaching party in same position as if no contract had been formed Reliance measure includes: Reliance damages Liquidated damages Restitution

The primary objective of **compensatory damages** is to place the nonbreaching party in the same position as if the contract had been fully performed. Therefore, when an **employer breaches** an employment agreement, the **employee is entitled** to recover the **unpaid salary** under the contract. The employee's total recovery is **reduced**, however, by any compensation the employee earned or **could have earned** by making **reasonable efforts to secure comparable employment** (ie, mitigate damages).

Here, the company breached the contract by firing the businesswoman without cause after six months. To avoid a reduction in her damages, the businesswoman must make reasonable efforts to mitigate damages (ie, do more than remain ready to work) **(Choice C)**. However, if no comparable job is reasonably available and she does not take another job, then she has the right to recover her promised salary for the remainder of the two years.

(Choice A) Specific performance is an equitable remedy whereby the court orders a party to perform its contract because monetary damages are inadequate to compensate the loss. But courts usually refuse to order breaching employers (or employees) to *perform* an employment agreement because money damages are sufficient.

(Choice D) Absent a material breach of contract, rescission (ie, cancellation of the contract) is an inappropriate remedy. Here, the company's unjustified termination of the businesswoman likely was *not* a material breach because it represented only a small part of a large contract and can easily be remedied by an award of damages.

Educational objective:

When an employer breaches an employment agreement, the employee can recover the unpaid salary under the contract. That recovery is reduced by the compensation the

employee earned or could have earned by making reasonable efforts to secure comparable employment.

References

Restatement (Second) of Contracts § 347 (Am. Law Inst. 1981) (measure of damages).

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