

A brick mason was hired by a builder under a written one-year contract, at an annual salary of \$45,000, with employment to begin on March 1. Because the builder was unable to secure enough building contracts to keep all its employees busy during the season beginning March 1, it notified the brick mason on February 15 that it could not afford to employ him as a mason. At the same time, however, the builder offered to employ the mason, for the same contract period, as a night guard at an annual salary of \$25,000. The mason declined the offer and remained unemployed during the year. No employment for brick masons was available in the community during the year, but the mason could have obtained other employment as a day laborer that would have paid up to \$25,000 a year.

At the end of the year, in an action against the builder for breach of contract, how much, if anything, is the mason entitled to recover?

- A. \$20,000 (the \$45,000 contract price less the \$25,000 the mason could have earned in other employment).
- B. \$45,000 (the contract price).
- C. Nothing, because the builder did not act in bad faith when it discharged the mason.
- D. Nothing, because the mason did not mitigate his damages.

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

A nonbreaching party's remedies for breach include **compensatory damages**—ie, a sum of money that would put that party in the same position as if the contract had been 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 will be **reduced**, however, by compensation the employee earned or **could have earned** had he/she made **reasonable efforts** to **secure comparable employment** (ie, mitigate damages).

Here, the builder breached the employment contract before the brick mason's employment began. As a result, the mason can seek compensatory damages for his unpaid salary under the contract. And since there was no *masonry* work available in the community for the one-year contract period, the mason could not reasonably mitigate his damages by securing comparable employment. Therefore, the mason is entitled to recover the full \$45,000 contract price (**Choices A & D**).

(Choice C) A lack of bad faith (ie, dishonesty or improper motive) does not excuse a party from paying damages after breaching a contract.

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.

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