

## Can I file a civil lawsuit against someone who physically assaulted me?

*This article discusses the legal requirements for filing a civil lawsuit as a result of a physical assault. This may be difficult for readers with similar experiences. Please engage in self-care as you read this article.*

In a civil lawsuit, an “**assault**” is a purposeful act by one person that creates a fear of imminent harmful contact in another, and does not have to involve physical contact – just the fear of a harmful touching. When a touching actually occurs, the physical contact is considered a “**battery**” in civil law. People often sue for both assault and battery after a physical assault.

### The essential elements of a civil assault claim are:

1. The defendant acted with **intent** to cause harmful or offensive contact, or threatened to touch you in a harmful or offensive manner.
2. You **reasonably believed** you were about to be touched in a harmful or offensive manner or it reasonably appeared to you that the defendant was about to carry out the threat.
3. You **did not consent** to the defendant's conduct.
4. You were **harmed** and the **defendant's conduct was a substantial factor** in causing that harm.

### The essential elements of a civil battery claim are:

1. The defendant made actual offensive or harmful **contact** with you.
2. The defendant **intended to cause that contact**.

**Contact** is best proved by evidence like corroborating witnesses not closely associated with you who saw what happened. Photographs of any injuries or results from the contact are also helpful, but these only establish that the contact happened, not that you are giving an accurate description of how the contact happened. In addition to proving the contact, you will also need to show the court that the defendant **intended** to cause the contact or engaged in behavior that they believed with substantial certainty would cause the contact.

Sometimes a defendant will admit contact, but then deny liability on other grounds, such as claiming the contact was unintentional or in self-defense. If the defendant was simply reckless and did not consider consequences, or was negligent, then the defendant will not be held liable for assault or battery. In those cases, however, you may be able to sue the defendant under a general “negligence” claim instead. For a negligence claim, you would need to show that the defendant’s actions were negligent (i.e., not reasonable under the circumstances), you were harmed, and the defendant’s negligence was a substantial factor in causing your harm.

You will want to gather as much supporting evidence as possible to back up your version of events, such as witnesses who can confirm that you and the defendant were in the same place at the same time, or evidence that you and the defendant had an ongoing dispute, or a message or voicemail showing the defendant admitted to the physical assault. **You will only need to convince the court that your version of events is "more likely than not" true. Civil causes of action do not need to be proved beyond a reasonable doubt – that is a higher standard reserved for criminal cases.**

Civil assault and battery lawsuits require "**damages**" (injury or harm of some kind) in order to be actionable. In a civil assault and battery case, damages can include physical injuries and the cost to treat those injuries, lost income, and other more subjective harm. These are the different kinds of damages that may result from a physical assault in a civil case:

- **Economic damages** - designed to reimburse you for any costs and expenses associated with the assault. Common components of economic damages include medical bills (including cost of future care) and lost income.
- **Non-economic damages** - these include compensation for "pain and suffering" and other losses that are difficult to quantify, but can be quite significant. Try to document your pain and suffering as much as possible. For example,
  - If you've suffered significant psychological or emotional harm, a psychologist or therapist’s testimony and/or records can help to establish the mental component of your "pain and suffering" damages.
  - If you are being treated by a physician for pain or discomfort resulting from the physical assault, make sure you convey all the details to your physician so that they'll be noted in your medical records.

- If your pain or discomfort is interfering with your ability to lead your normal life, document it in writing as much as you can on a regular basis, such as in a journal.

*If you've got an excellent case — witnesses who will testify to the physical assault, a conviction from a related criminal case — you'll still want to consider the financial side of filing a civil lawsuit. The purpose of a civil lawsuit is to provide financial compensation to the victim, to be paid by the perpetrator. **If the person who assaulted you doesn't have significant assets, there may not be much to recover, even if you're "awarded" a high amount in court.***

### **Potential Avenues for Filing a Civil Assault and Battery lawsuit:**

- You can sue the person who physically assaulted you for Assault and Battery in Small Claims Court if you are claiming damages of \$10,000 or less. Small Claims Court does not allow attorney representation and the rules of evidence are more relaxed.
- You can sue the person who assaulted you in Superior Court if you want to sue for more than \$10,000, however, you should hire an attorney if you intend to file in Superior Court.

### **Information and Evidence for Small Claims Court:**

- Cases for Civil Assault and Battery must be filed with the court within 2 years of the date of the assault and battery (a two-year statute of limitations)
- Documentation of injuries caused by the physical assault (medical records, photos)
- Continual reports from your doctor showing your ongoing recovery (or lack thereof).
- Videos or photos of the physical assault
- Texts or other messaging from the defendant in which they may mention the physical assault
- Receipts, invoices and/or medical records that show the cost of treating your injuries, both physical and psychological
- Your own oral or written testimony and the testimony of any witnesses who observed the assault/battery
- Testimony by, or the records of, your mental health practitioner regarding the severity and impact of your emotional/psychological distress as a result of the physical assault
- Documentation of lost wages