# 5.3 Damages—Mitigation

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

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

First, that the plaintiff 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).

*Revised March 2025*