

Using Effective Waivers

Waivers can be effective business tools if used in the proper context. But they require careful planning and implementation. Failure to do so may result in a document that does not provide an effective defense.

Playing To Win—A Risk Management Guide for Nonprofit Sports and Recreation Programs, by David L. Mair and Melanie L. Herman, provides some helpful information regarding the elements of an effective waiver. However, there is no substitute for sound legal advice from your attorney. Some general guidelines for writing waivers include the following:

- Text should be easy to read, with understandable language. Some states outline specific requirements of the waiver's content, text size, and appearance.
- A waiver should be a standalone document, not included within another document.
- The title of a waiver or release must clearly state what it is.
- A waiver must warn of the risks being accepted and provide a clear description of the potential harm associated with the activity.
- A waiver must advise the participant or parent cosigner that they agree to assume the risk of their participation and affirm that acceptance is voluntary.
- A parent or legal guardian must sign a waiver if the participant is under 18 years old. It's a good idea to have both parents sign a waiver, especially if there are custodial issues. Some states do not consider waivers or releases signed by parents on behalf of minors as valid. Consult with personal counsel to be certain that your state will uphold these agreements. If not, create an alternative plan.
- A waiver should specify the parties to which the waiver applies, as well as other parties whose rights will be released.
- Give participants, parents, and volunteers time to review a waiver and ask any questions. Never pressure someone to sign a waiver, or make any changes to the document after it has been signed.

As a student progresses in skill level, consider having a new waiver signed that describes potential risks at the more advanced level. In addition, new waivers should be signed each year, or for each new session.

Constructing a waiver is a complex legal process. Avoid using generic waivers or drafting a waiver without consulting an attorney. Review any waiver you use currently with legal counsel, for the state in which it applies. It is well worth the minimal charge.

If you have a safety or risk management question or a suggestion for a topic, please contact Markel's Risk Management Department at safety1st@markelcorp.com.