



CSURMA/AORMA Use of Liability Waivers

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LIABILITY WAIVERS

OVERVIEW

RECOMMENDATIONS

UPDATES

WAIVER OF LIABILITY

What is it?

- Considered to be a legal contract
- Binding on the parties
- Agreement that the participant – rather than the provider – bears the risk of monetary loss associated with injury
- Intended primarily for CSU/Auxiliary activities that pose a risk of physical injury

**WAIVER OF LIABILITY, PROMISE NOT TO SUE, ASSUMPTION OF RISK, AND
AGREEMENT TO PAY CLAIMS**

Activity: _____

Activity Date(s) and Time(s): _____

Activity Location(s): _____

In consideration for being allowed to participate in the above-referenced Activity, on behalf of myself and my next of kin, heirs, representatives, and assigns, I hereby **release, waive, and discharge from all liability and promise not to sue** the State of California, the Trustees of The California State University, California State University, [Campus name], [Auxiliary Organization name] and their employees, officers, directors, volunteers and agents (collectively the "University") from any and all liabilities or claims, **including claims of the University's negligence**, resulting in any physical or psychological injury (including paralysis and death), illness, damages, property loss, or economic or emotional loss I may suffer because of my participation in the Activity, including travel to, from and during the Activity.

I am voluntarily participating in this Activity. I am aware of the risks associated with traveling to/from and participating in this Activity, which include but are not limited to physical or psychological injury, pain, suffering, illness, disfigurement, temporary or permanent disability (including paralysis), economic or emotional loss, and/or death. I understand that these injuries or outcomes may arise from my own or other's actions, inaction, or negligence; conditions related to travel; or the condition of the Activity location(s). **Nonetheless, I assume all related risks, both known or unknown to me, of my participation in the Activity, including any associated use of University facilities or premises and any travel to, from and/or during the Activity.**

I agree to indemnify and hold the University harmless from any and all claims, actions, suits, costs, expenses, and liabilities for any injuries to myself and for any damage to my property or possessions that arise out of or arise from my participation in the Activity, including any injury or damage that occurs during the use of University facilities or premises and any travel to, from and/or during the Activity. If the University incurs any of these types of expenses, I agree to reimburse the University. If I need medical treatment, I agree to be financially responsible for any costs incurred as a result of such treatment. I am aware and understand that I should carry my own health insurance.

I am 18 years or older. **I understand the legal consequences of signing this document, including (a) releasing the University from all liability, (b) promising not to sue the University, (c) and assuming all risks of participating in the Activity, including travel to, from and during the Activity.**

WAIVER OF LIABILITY

Why do we use it?

- Gives a provider some insulation from civil liability
- Notifies participants of potential dangers
- May prompt participants to use more care
- Gives participants the choice to either
 - Accept personal financial responsibility for consequences of activity; or
 - Not participate



A WAIVER . . .

Is not a substitute for good judgment

Does not relieve provider of meeting minimal expectations

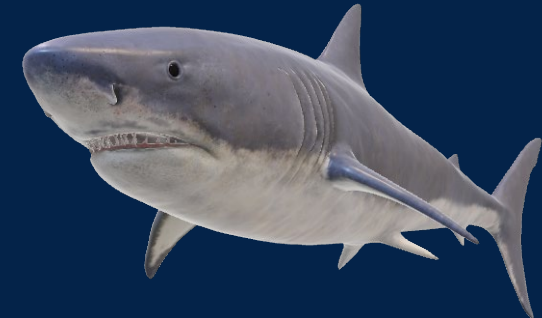
Does not provide a release for “gross” negligence

Provides no guarantee of non-liability

WAIVER OF LIABILITY

When should it be used?

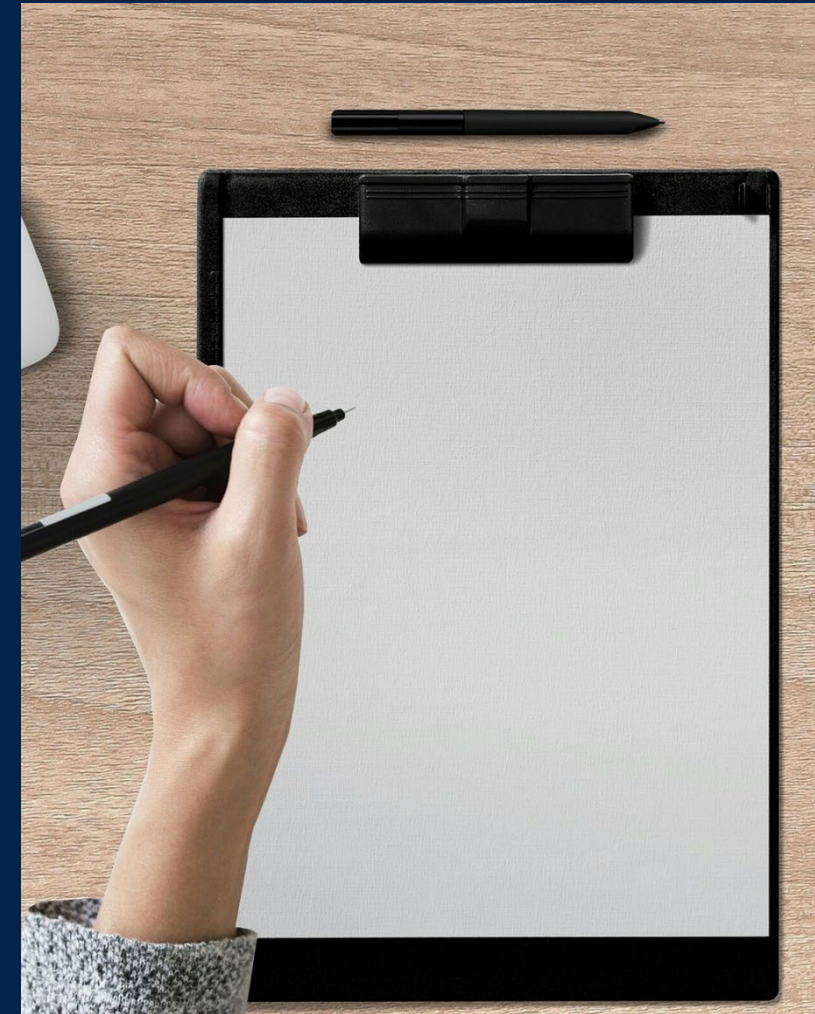
- Risky activity that is not a required job duty or required educational activity
- Examples:
 - Physical activities such as skiing, scuba diving, rock climbing, weightlifting, rafting
 - Travel
 - Minors
 - Animal encounters
 - Use of recreational facilities



WAIVER OF LIABILITY

How do we use it?

- Evaluate risks of the activity
- Fill in information about the activity
 - Activity name/description
 - Dates/times
 - Locations
- Prepare a separate list of risks with acknowledgment if needed



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- ▶ Activity properly described?
 - ▶ Dates match actual activity dates?
 - ▶ Risks described accurately?
 - ▶ Participant had adequate time to consider?
 - ▶ No significant changed circumstances since signing?
 - ▶ No large time gap in participation?
 - ▶ No lapse of membership?
 - ▶ Authentic signature?

VALIDITY CONSIDERATIONS

- ▶ Minors' signatures are not sufficient for waiver
- ▶ Employees acting in course and scope of employment do not need to sign
 - ▶ Their guests do
- ▶ Employees voluntarily participating in activity that is not part of employment should be required to sign
- ▶ Students do not generally need to sign for required coursework
 - ▶ Waiver should be considered if students have a choice of activities and select one with higher risk
 - ▶ Waiver might be required where CSU has little control, such as health placements
- ▶ Each participant should sign an individual waiver form
 - ▶ Using a signature list in lieu of signatures on waiver forms is not recommended

GENERAL GUIDELINES

- ▶ Do not change font or format
 - ▶ Make sure participants have not changed or crossed out any language
- ▶ Keep as a stand-alone document
 - ▶ Add attached and signed list of risks if appropriate
- ▶ Give participants time to consider the waiver
 - ▶ Allow them to take a copy of a waiver to review
 - ▶ Give it to them with sufficient time to read and understand it
- ▶ Do not pressure participants to sign
 - ▶ However, if they do not sign, they cannot be allowed to participate
 - ▶ Provide a low-risk alternative, if feasible
- ▶ Confirm identification matches the signature name and participant name

GENERAL GUIDELINES

RETENTION



AT LEAST THREE YEARS

(FOR MINORS, THREE YEARS OR UNTIL THE MINOR TURNS 20, WHICHEVER IS *LONGER*)

ONGOING ACTIVITIES

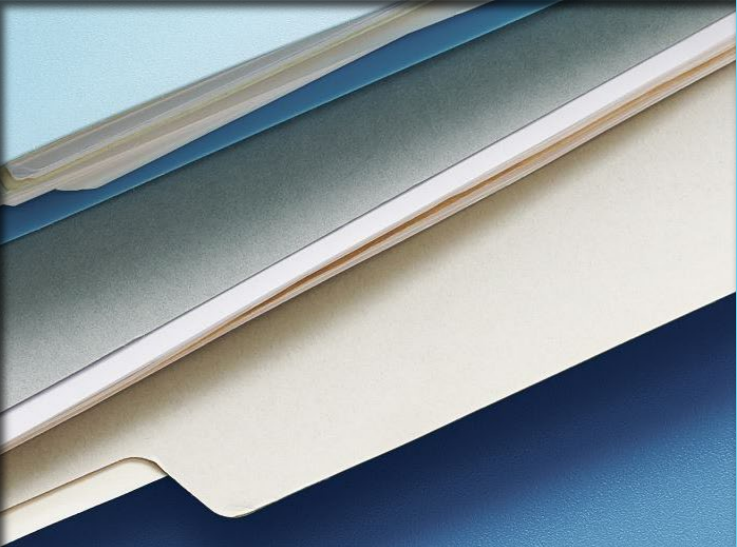
Recommendations:

- Include a start date, but do not specify an end date for ongoing activities of unknown duration
- Include a statement recognizing the ongoing nature of the activity ("Beginning on January 10, 2023 and continuing thereafter, whether on a regular or intermittent basis")
- Have an internal process for regularly getting renewed waivers from participants
 - At least annually
 - Concurrent with a period that makes sense in the context of the activity, such as membership period, retraining, seasons, academic year, calendar year, etc.
 - Sooner if warranted due to changed circumstances

ONGOING ACTIVITIES

Get a new waiver if:

- Nature of activity has changed since time of signing
- Offerings have expanded
- Participant may not understand/expect/remember waiver would still apply
- Dates are not accurate
- Significant time lapse since participant engaged in the activity
- At time of signing, parties contemplated a specific event rather than continuing participation
- Membership has expired or been revoked since time of signing
- **Annually if none of the above warrant sooner**

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- ▶ Instructions note that risks not obvious by the nature and description of the activity should be listed on separate document that explains the risks and is signed to indicate acknowledgment
 - ▶ Electronic signature can now be used for minors (Parent/guardian to sign)
 - ▶ Offers foreign language translations of waiver
 - ▶ Clarification of effective length of time
 - ▶ Information on how to verify authenticity of signatures

KEY CHANGES TO HANDBOOK

KEY CHANGES TO WAIVER FORM

- ▶ Changes title from “Release” to “Waiver”
- ▶ Clarifies that use of facilities is included as part of the assumption of risk
- ▶ Expansion of hold harmless provision to include indemnification obligation
- ▶ Hold harmless/indemnification now includes personal injuries, not just property damage
- ▶ Clarification that English version is authoritative if foreign language translation has been provided

QUESTIONS

