

## WAIVERS CAN BE SAVERS

Waivers or releases of liability are instruments designed to protect the University and its employees from legal liability for injuries that may occur to students or other individuals who participate in both voluntary and required activities on and off campus. The frequency of lawsuits has increased as our society has become more litigious, subjecting the University and its employees to more liability exposure. Although some people hold the misconception that waivers are worthless, in fact they are valid and reliable legal tools under California law. Waivers may be used as protection from liability for accidents, activities carrying certain inherent risks, and even the negligence of University employees in certain circumstances.

Waivers signed prior to participation are viewed by the law as contracts or agreements in which the participant agrees to excuse the University and its employees from fault or liability for personal injuries associated with the activity. If the participant agrees in advance that the University and its employees owe him/her no duty, recovery from negligence is barred. Indemnity and hold-harmless provisions shift the responsibility for legal expenses associated with claims to the participant.

The law that applies to waivers is often used in conjunction with other legal principles. The University and its employees are sometimes protected by immunities such as immunity from suit for participation in a hazardous recreational activity or an injury caused by a natural condition of unimproved public property. However, waivers do not apply to dangerous conditions of public property that cause injury or injury caused by failure to maintain or provide safe equipment.

OP Risk Services, in conjunction with the Office of the General Counsel, developed several waivers to be used on the campuses. These instruments incorporate the legal principles of assumption of risk, waiver of claims including the negligence of UC

employees, and indemnity. The templates for these waivers have withstood legal scrutiny when challenged in court. In an effort to reduce the administrative burden to the campuses, time has been taken to make the waivers as easy to use as possible.

There are three types of waivers to be signed by adults and parents of minors in individual and group activities. The Use Waivers should be signed by individuals or groups using University sporting facilities, equipment and services. The Elective or Voluntary Activity Waiver should be signed by students or others participating in activities offered by the University on or off campus that are not required for a degree or academic program. This includes voluntary field trips, study abroad and recreation programs for children. In this waiver, the individual must waive any potential negligence of University employees in order to participate in the voluntary activity. The last waiver, Required Activities Waiver, is for on or off-campus activities that are required for a degree and supervised by academic personnel. This waiver omits the provision waiving the negligence of the University or its employees.

Waivers should be used in the same format as provided to you. Appropriate information should be inserted into the blanks for the activity or use to which the waiver is put. A waiver is not invalidated by the passage of time, but obviously, it must be maintained by the University in order to be asserted as evidence in a later lawsuit. The failure of an individual to read a waiver does not excuse compliance. Under California law, it is incumbent upon individuals who do not read or understand English to have the release read or explained to them. Please contact campus or hospital risk management if you have questions about the use of these waivers.