

WAIVERS CAN BE SAVERS

Waivers 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 activities on or 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 have the misconception that waivers “are not worth the paper they are written on”, 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 agreement in which the participant agrees to excuse the University and its employees from fault or liability for personal injury sustained during the activity. If the participant agrees in advance that the University and its employees are released from liability, recovery is barred. Indemnity and hold harmless provisions also shift the responsibility for legal expenses associated with claims against the participant, should they cause an injury to another participant.

Waivers are often used in conjunction with other legal principals. The University and its employees are often protected by immunities, such as immunity from suit for participation in a hazardous recreational activity or an injury caused by a nature condition of unimproved University property.

OP Risk Services, in conjunction with the Office of General Counsel, developed several waivers to be used on the campuses. These documents incorporate the legal principles of assumption of risk, waiver of claims (including the negligence of University employees), and indemnification. The templates for these waivers have withstood legal scrutiny when challenged in court, and take into account any new cases that interpret waiver language. 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 general templates for waivers provided for your use. The General Waiver is for use in on and off general campus activities that may involve risks that the University wishes to protect against. The Facility Use Waiver is designed for use where there is no specific activity planned, but an individual would like to a campus facility, such as a room, recreational location, or other area of campus. The Student Organization Waiver may be used by student organizations or clubs as it not only releases the University, but also releases the student organization/club.

Waivers are generally not used when the activity is required when an activity is required either from a student’s course of studies (including electives), an employee’s duties, medical treatment, or in child care, since the courts rarely uphold them, if at all.

Waivers should be used in the same format as provided to you. Please do not change the font, type, or language of a waiver without consulting a University attorney. Appropriate information should be inserted into the blanks to reflect accurate information about the activity. A waiver is not invalidated by the passage of time, but it must be maintained by the University in order to be asserted as a defense in a subsequent lawsuit or claim.

Please contact campus or hospital risk management if you have any questions about the use of these waivers.