



December 2023

Nonprofit Organizations and Waivers of Liability in New York

<p>When do nonprofit organizations typically use liability waivers?</p>	<p>Nonprofit organizations typically request their volunteers who participate in volunteer programs or events to sign a liability waiver. Additionally, nonprofit organizations often require participants of the nonprofit’s services or programs to sign a liability waiver.</p>
<p>What is a liability waiver?</p>	<p>A liability waiver is a legal document that the volunteer or participant signs prior to participating in a program or event that acknowledges and assumes the risks of participation and waives the volunteer’s or participant’s right to hold the organization liable if the volunteer or participant is injured or otherwise damaged during the program or event.</p>
<p>What is the purpose of a liability waiver?</p>	<p>A liability waiver is one way that organizations can mitigate their risk of lawsuits. If the organization is sued by a volunteer or participant who was injured during the program or event, the waiver can provide a defense against the lawsuit. Additionally, the simple act of having signed a waiver may dissuade the signer from filing a lawsuit. Note, however, that waivers may not completely absolve the organization from liability in the event of a lawsuit.</p>
<p>What liabilities can be waived?</p>	<p>Generally - and with some exceptions - a volunteer or participant can waive liability for injury or damage related to the program or event activities and risks caused by the ordinary negligence of the organization. Ordinary negligence generally means a failure by the organization to take reasonable care that a reasonable person would take in a similar situation.</p> <p>But liability waivers may not protect the organization for injury or damage caused by the organization’s gross negligence. Gross negligence might be explicit conduct that “smacks” of intentional wrongdoing, such as fraudulent, malicious or bad faith behavior, or it might be implicit, resulting from a reckless indifference to the rights of others.</p>



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If the person who signed the waiver sues anyway, will a New York Court enforce the waiver?	<p>Generally, a liability waiver is enforceable in New York if: (1) it does not violate the public interest; (2) the intention of the parties is expressed in unmistakable language and (3) the statements are clear and coherent.</p> <p>However, the facts matter. Courts will consider the language of the waiver, the cause of the liability and the degree of care provided by the organization.</p>
Can minors sign liability waivers?	<p>New York courts have indicated that contracts signed by minors are voidable, meaning the minor may later disaffirm a contract.</p>
Can a parent sign liability waivers on behalf of their children?	<p>The law in New York is unsettled on this point. Some courts have rejected waivers signed by parents, but without any basis for their conclusion and without further appeal. On the other hand, NYS law explicitly gives parents the right to sign contracts for their minor children under certain circumstances. In the absence of clear legal standards, most businesses and organizations require parents to sign liability waivers on behalf of their children.</p>
What is the jurisprudence supporting the enforcement of liability waivers?	<p>Liability waivers are supported by a legal doctrine called the assumption of risk. The assumption of risk doctrine can be described as barring a person from recovering for injuries from an activity if the person realized the risks, implicitly or expressly, and nevertheless voluntarily participated. Liability waivers are designed to be express assumptions of risk. Here, in exchange for the opportunity to volunteer or participate in the nonprofit's programs or events, volunteers or participants should be able to freely and voluntarily decide to participate and waive their right to sue.</p>
What language should a waiver include to increase the chances that it would be enforced by a NY court?	<ul style="list-style-type: none">• Waivers should be easy to understand, clear, and unambiguous.• Broad or vague language should be avoided.• Waivers should include a specific description of the event or program and the risks being waived.



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	<ul style="list-style-type: none">• Language should be simple and easy for other party to understand.• Make clear that participation is voluntary and that the volunteer or participant is voluntarily and intentionally waiving claims in exchange for the opportunity to participate.
How does insurance and liability waivers work?	Insurance will be your main line of defense if a lawsuit is brought against your organization. Some insurance companies may require liability waivers or make it a factor in determining premiums or coverage. There have been cases where policyholders were denied coverage of claims when they neglected to obtain liability waivers.
Does NY law provide different standards for particularly high-risk activities or other situations?	Yes. There are certain types of liability waivers that are governed by different standards under NY law. For example, courts have recognized a special relationship which impacts waivers between passengers and common carrier, customer and public utility, and employer and employee. Another example is New York's General Obligations Law § 5-326 which governs liability waivers between paying customers or members and pools, gymnasiums, places of public amusement or recreation and similar establishments.

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Deborah Buyer, 212-225-8483 x1, deborah@deborahbuyerlaw.com

Rita Chadha, 212-225-8483x3, rita@deborahbuyerlaw.com

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