



Liability Waivers for Re-Opening During and After the COVID-19 Pandemic

Circus studios across the country are in the process evaluating how to reopen in ways that will protect both their communities and their bottom lines. Liability waivers are a routine and well-known way that studios allocate financial responsibility for potential accidents. It is currently unknown whether courts across the United States would enforce such a contract in the context of COVID-19, and each state has different requirements and restrictions on what types of waivers they will enforce. To draft an enforceable document, see a lawyer who can advise you on your own state. However, the following template provides guidance with sample clauses and concepts to consider to allow you to guide your conversation with your lawyer and analysis of your contracts.

It is virtually impossible to draft a liability waiver that would be enforced in all fifty states. Be wary to assume a catch-all document will be enforced in all situations.¹ Rather, your waiver should be tailored to your risk-management plan and situation.

Clause Type	Clause language	Explanation
Consideration	In consideration of the services provided by the facility, their agents, owners, officers, volunteers, participants, employees, independent contractors, volunteers, interns, and all other persons or entities acting in any capacity on their behalf (hereinafter collectively referred to as "Releasees"),	It is a basic principle of contract law that agreements are only enforced if there is an exchange--a unilateral gift is not an enforceable contract. As such, to be enforceable, the release should acknowledge that it is in exchange for the classes, training, or facility access. Some states have held that it is against public policy to force an employee to waive liability for breaches by their employer. ²

¹ For example, Connecticut, Montana, and Virginia do not enforce liability waivers. *Hanks v. Powder Ridge Restaurant Corp.*, 276 Conn. 314, 326 (2005); Mont. Stat. § 28-2-702; *Hiatt v. Lake Barcroft Cmty. Ass'n, Inc.*, 244 Va. 191, 195 (1992). Florida will not enforce liability waivers signed by a parent or guardian on behalf of a minor. Other states will enforce waivers for simple negligence, but not for gross negligence, recklessness, or intentional conduct. *Mero v. City Segway Tours of Washington DC, LLC*, 962 F. Supp. 2d 92, 100 (D.D.C. 2013); (“Because District of Columbia law prohibits release from liability for grossly negligent, reckless, or intentional acts, the Agreement will not be held to indemnify defendant with respect to such conduct.”); *Houston Expl. Co. v. Halliburton Energy Servs., Inc.*, 269 F.3d 528, 531–32 (5th Cir. 2001); *Simmonds Equip., LLC v. GGR Int’l, Inc.*, 126 F. Supp. 3d 855, 867 (S.D. Tex. 2015).

² *Brown v. Soh*, 280 Conn. 494, 503 (2006).



<p>Representations</p>	<p>I represent that I am in good health and have had no known exposure to COVID-19 and no symptoms of COVID-19, including [FILL IN SYMPTOMS], for 14 days prior to attending the facility. I acknowledge that if I believe I have had any exposure to COVID-19, I will immediately cease attendance at the facility until I can again warrant that I have had no known exposure for the 14 day period and alert the facility if I have been on the premises since my exposure.</p>	<p>You could incorporate what promises you want the students to make in return. This could be used to show you took due care to mitigate the risk of community members coming in with known exposures and ensure that your students are aware and responsible for the portions of safety that rely on their care.</p>
<p>Promises to abide by new precautions</p>	<p>The facility is making its best efforts to reduce the risk of transmission of COVID-19. But the safety of the community is in the hands of every one of us. I expressly agree and promise to abide by the safety precautions [AS FOLLOWS: ___ or CONTAINED IN: _____].</p>	<p>By promising to comply with your safety protocols, you may be able to show you used reasonable care and hold a student responsible if they are not using due care. Most states have a doctrine that shifts liability if the person suing was not using due care--known as comparative or contributory negligence.</p>
<p>Clear and unambiguous Risk</p>	<p>I am aware that training during and after the COVID-19 pandemic involves certain inherent risks, dangers and hazards, which can result in serious infection, personal injury or death. I further acknowledge, understand, appreciate, and agree that my participation may result in possible exposure to and illness from COVID-19. While protocols and personal discipline may reduce this risk, the risk of serious injury, illness, and even death is not possible to fully mitigate.</p>	<p>Many states require that for a liability waiver to be enforced, the waiver must be clear and unambiguous. One component of this is clearly identifying the risks in question—in this case, the risk of contracting COVID-19.</p>
<p>Assumption of risk</p>	<p>I hereby freely agree, to assume and accept all known and unknown risks of exposure to COVID-19, even arising from the negligence</p>	<p>As a general principle on law, when a person knows of the risk of an activity,</p>



	<p>of the releasees or others and assume full responsibility for my participation. I further recognize and acknowledge that the risks inherent in training can be greatly reduced by: [Fill out or reference the other documents/procedures you have distributed]</p>	<p>that person accepts the risk when voluntarily engaging in the pursuit. Therefore, that person cannot sue for damages based upon injuries which arise from the given activity. By acknowledging the known risks, your students can be shown to have voluntarily accepted the risks you cannot mitigate.</p>
<p>Clear and unambiguous release</p>	<p>I hereby waive, release, and discharge all claims that I have or may have in the future, and covenant not to sue your business, its administrators, directors, agents, officers, volunteers, employees, contractors, other participants, any sponsors, advertisers, owners, and lessors of the premises on which the activity takes place (each considered one of the "releasees" herein) from all liability, claims, demands, losses, damages, on my account caused or alleged to be caused in whole or in part by the negligence of the releasees or otherwise, including negligent rescue operations.</p>	<p>Some courts limit the enforcement of exculpatory contracts to instances where such agreements were unambiguous and the intention to be relieved from liability was clear, unequivocal and so understandable that an ordinary and knowledgeable person would know what he or she is contracting away. Some require an express statement it releases a party from liability for its own negligent acts.</p>
<p>Indemnification agreement</p>	<p>I further agree that if, despite this release, waiver of liability, and assumption of risk, I or anyone on my behalf makes a claim against any of the releasees, I will indemnify, defend, and hold harmless each of the releasees from any loss, liability, damage, or cost, including attorneys' fees, which any of the aforementioned may incur as a result of such a claim.</p>	<p>In the event that a waiver is not enforced, or fees are incurred in enforcing it, an indemnity clause shifts the liability to the party signing your agreement for bringing the claim.</p>



<p>As-is clause</p>	<p>I accept for use as-is the equipment to be used in activities governed by this agreement.</p>	<p>In some states, as-is clauses can provide protection for claims regarding the condition of property. They generally mean the user is accepting the property in its present state or condition. It's unknown if states who enforce as-is clauses would apply it to COVID-19 exposure on the property, but having the clause could be useful in some jurisdictions.</p>
<p>Acknowledgement of Understanding</p>	<p>I have read this Agreement and I fully understand its terms. I understand that I am giving up substantial rights, including my right to sue the facility and its staff for injuries resulting from the inherent risks of training during and after the COVID-19 pandemic, and the ordinary negligence of the facility and staff. I further acknowledge that I am signing this agreement freely and voluntarily, without inducement or assurance of any nature, and intend my signature to be a complete and unconditional release of all liability to the greatest extent allowed by the laws of the state of [STATE.]</p>	<p>Although contract law generally holds people to the agreements they sign, regardless of having read it, a waiver is a <i>voluntary</i> relinquishment of a <i>known right</i>. A clause such as this can in some states contribute to showing it is a "clear and unambiguous" release. States generally strictly construe contract against the drafter. Some states also hold waivers to a rigorous standard, requiring a showing that the agreement was fairly and honestly negotiated and understandingly entered into. <i>Natchez Reg'l Med. Ctr. v. Quorum Health Res., LLC</i>, 879 F. Supp. 2d 556, 562–63 (S.D. Miss. 2012)</p>
<p>Parental consent - option</p>	<p>I, hereby covenant and promise that I am the minor's parent and/or legal guardian, and on behalf of myself and the minor, understand the nature of the above referenced activities</p>	<p>The state of Florida does not generally allow parents to waive liability on behalf of minors. Other states will</p>



	<p>and the minor's health, experience, and capabilities and believe the minor to be able to participate in such activity safely. I understand the risk of exposure to injury and/or infectious diseases including COVID-19, for myself and my child, as a participant, spectator, classes, and/or presence at the facility. I hereby waive, release, discharge, and covenant not to sue, and agree to defend, indemnify, and hold harmless each of the releasees from all liability, claims, demands, losses or damages on the minor's or my account which were caused or alleged to be cause in whole or in part by the negligence of the releasees or otherwise, including but not limited to injury, negligent rescue operations, and/or exposure to infectious diseases and I further agree that if, despite this release, I, the minor, or anyone else on the minor's behalf makes a claim against any of the above releasees, I will defend, indemnify, and hold harmless each of the releasees from any litigation expenses, attorneys' fees, loss liability, damage, or cost which any releasee may incur as the result of any such claim.</p>	<p>examine the clause with strict scrutiny. In any event, a separate clause may be needed to waive liability on behalf of another. The same could apply to adults who are under legal guardianship or are otherwise unable to legally contract.</p>
<p>Parental consent - option</p>	<p>In consideration of _____ _(print minor's name) ("Minor") being permitted by the facility to participate in its activities and to use its equipment and facilities, I further agree to indemnify and hold harmless the facility from any and all claims which are brought by, or on behalf of Minor, and which are in any way connected with such use or participation by Minor.</p>	<p>If you intend to use the same agreement for minors and adults, in some states it could work to have just one clause acknowledging the parent is signing on the minor's behalf with indemnification by the parent or guardian.</p>
<p>Forum selection, consent to jurisdiction, and choice of law clause</p>	<p><u>Governing Law, forum, and consent to jurisdiction.</u> This Agreement, and all claims or causes of action (whether in contract, tort <i>or statute</i>) that may be based upon, arise out of or relate to this Agreement, or the</p>	<p>A "choice of law" provision insures that the law of a designated jurisdiction will govern the dispute regardless of where the</p>



	<p>negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed by, <i>and enforced in accordance with</i>, the internal laws of the State of [____], <i>including its statutes of limitations and without regard to its choice of law principles</i>. The undersigned herein irrevocably consents to the jurisdiction of the courts in [____], which shall be the sole forum for the resolution of any disputes that arise out of or relate to the parties' relationship.</p>	<p>dispute is adjudicated. A "forum or venue selection" clause is a different sort of provision that sets the particular state or court where adjudication will be addressed. A consent to jurisdiction clause prevents a party from objecting that a chosen venue does not have personal jurisdiction over them.</p>
<p>Merger clause, Integration clause</p>	<p>The parties intend this statement of their agreement to constitute the complete, exclusive, and fully integrated statement of their agreement. As such, it is the sole expression of their agreement, and [they are not bound by any other agreements of whatsoever kind or nature]/[the other agreements entered by the parties are incorporated here by reference and consist of _____].</p>	<p>An integration clause is a provision in a contract that states that the contract contains the complete and final agreement between the parties and supersedes any other oral or written agreements between the parties on the same subject matter. In some states, it can help prevent an argument that the contract was modified by oral statements or representations <i>before</i> the agreement was entered into. It is important to consider if you have other agreements besides the current waiver, and incorporate those here so that they are not superseded but you nonetheless prevent the argument that the studio agent or staff told the student they meant</p>



		something other than what is written.
No oral modification clause	This Agreement may not be changed orally, and no modification, amendment or waiver of any provision contained in this Agreement, or any future representation, promise or condition in connection with the subject matter of this Agreement shall be binding upon any party hereto unless made in writing and signed by both parties.	In order to prevent the argument that the contract was modified by oral statements <i>after</i> the contract was entered, some states recognize no-oral modification clauses.
No strike-outs	In order to participate in classes or other events at the facility, the undersigned accepts the entire agreement. No written modification or strike-out of the originally typed agreement shall be effective unless signed by both parties.	While the savvy student may think they can cross out the portions of the waiver they don't like, and your front desk staff may not be comfortable confronting them with the choice to sign the full agreement, it could be useful to have a clause requiring studio consent to the modification. While that would not keep the student from modifying the agreement before entering it, in some courts, it could allow the full agreement to be enforced against the student.
Severability	I agree that if any portion of this Agreement is held to be invalid, that portion shall be severable, and the remaining agreement shall continue to have full force and effect.	A severability clause in a contract, when enforced, allows certain parts to remain in effect even if others are illegal or unenforceable. Since states often hold that waivers or clauses are not enforceable, a severability clause could keep the remainder of the agreement from being thrown out.



<p>Binding effect of agreement</p>	<p>In the event of my death or incapacity, this Agreement shall be effective and binding upon my heirs, estate, next of kin, executors, administrators, assigns and representatives.</p>	<p>In the unfortunate event that the student who contracts COVID-19 does not survive to recover from the illness, you need to be able to enforce the agreement against their next of kin, who based on state law may or may not be bound to the release.</p>
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