

WAIVERS OF LIABILITY
Frequently Asked Questions and Guidelines

I. FAQ 2

II. How to draft the waiver:..... 4

I. FAQ

1. **What is a waiver?**

- Inform prospective participants of potential risks involved with an activity
- Allow an individual to voluntarily choose to incur risks
- Secure an agreement from the individual to hold harmless the University

2. **When are waivers needed?**

Required	<ul style="list-style-type: none">• When minors are involved
Strongly Recommend	<ul style="list-style-type: none">• Activities with overnight travel• Out of town trips• High risk activities
May be Appropriate	<ul style="list-style-type: none">• Elective or voluntary field trips• Recreational activities• Short distance travel
No Waiver	<ul style="list-style-type: none">• Required for class credit• An event or activity in which faculty/staff is acting in the course and scope of employment• Activities with little risk• Volunteer (see volunteer forms)

3. **Why use a waiver? If there is no waiver, where does liability fall?**

If an individual were injured or caused some property damage that gave rise to a claim, the University would be liable if it were found to be negligent. In other words, the University is liable for its negligent acts when there is no waiver. This becomes a question of fault, and several factors are considered. Some factors are whether the event was “required” in any way (e.g. did the students participate because it was required for class credit toward their degree?) and whether the event benefited the University in some way. Each situation is different, and that is why we are here to consult with you.

4. Do volunteers sign waivers?

If your students are volunteering for the University (doing an activity for the benefit of the UO, like cleaning up the campus or staffing an event), they should be filling out the Volunteer form on this page: <http://orm.uoregon.edu/content/volunteers>

5. If we don't use a waiver, do we still need to give information regarding the risks of the event?

Yes, we highly recommend giving risk-related information up front. This will go a long way if the question of liability arises.

Provide information about the event in all your materials and online. This gives participants a meaningful opportunity to consider these risks and opt out of participating if they want to. We can also help provide disclaimer language. When participants fully understand what they are signing up for and that there is no coverage for them should something go wrong, then they assume the risks of participating.

6. What if family members will be attending the event, can they sign a waiver?

Before inviting family members to join in a UO event, like a field trip, consider the following:

- a. What is the role of the family member? Does it impede on the function of the event?
- b. Will having family diminish faculty members ability to complete duties – is there back-up staff?
- c. Are family members paying for participation – same as others on the trip? If department wants to pay for a family member to join a staff member, this needs very high level approval (Dean or VP) and it is very rare.
- d. Is the family member a minor?
 - i. Minors need additional attention and supervision, is there staff for that?
 - ii. If this person is the only minor, are the parents aware of this? Is the activity appropriate for minors (both the activity and the crowd they will be in)?
 - iii. If alcohol can be present, who is in charge of keeping minors separate? This is imperative, and it usually creates too great a risk to manage while also being attentive to the group activity.

If a family member will be joining, we require a waiver and confirmation of approval from the dean. The waiver will be unique to the family member, as we need to clarify roles/responsibilities and may need to address financial obligations.

7. Can we use electronic waivers?

Yes, if the department has implemented Org Sync or worked with IT to build a unique log in ID that connects with participant's Duck IDs. Otherwise, the waiver must be signed physically, using Adobe or other programs that stamp a unique number for signatures are not sufficient. Departments would be responsible for retaining electronic signed copies for 6 years.

II. How to draft the waiver:

1. **Follow the form.** Fill in the blanks. Do not alter the template language without approval from Risk Management.
2. **Use clear language.** To be legally enforceable, it must be clear that the party signing the release knew what they were signing and intended to sign it.
3. **Be specific.** Waivers that are too vague will not be enforced. Provide as much detail as you can about the event, the risks that may be encountered, the locations, dates, and times.
4. **Include safety information.** If you will be providing helmets and you expect all participants to wear them, include this information in the waiver. For example “I agree to wear a helmet while participating in the Activity, and I will comply with all safety instructions.”
5. **Voluntary participation is required.** The event should be truly voluntary when using a waiver. Participants are voluntarily releasing their legal rights and assuming the risk of participating. If they do not want to assume the risk, they should have another option. For class-related field trips and events, this may mean providing an opt-out activity or an assignment in lieu of the trip.
6. **One copy per person.** Group waivers are disfavored because it does not give each participant adequate time to read and appreciate the meaning of the waiver they are signing.

III. After providing the waiver to participants.

1. How do I get everyone to sign a waiver?

You must make a plan for dispensing waivers to participants, allowing them time to read and appreciate the meaning of the waiver, and then turn it back in to you. Then, we recommend a checking process; make sure that each participant has submitted their duly signed waiver (and any other required paperwork) before the start of the event.

Some groups have an information session prior to the event where they receive paperwork and ask questions. Then they can submit paperwork during a period of time. Finally, before the event begins, each participant is checked for eligibility and only participants who are cleared may attend the event.

Alternatively, sometimes waivers are given at the time of the event. Be sure to provide participants with enough time to read and appreciate the waiver, and do not begin any activities until the waivers have been duly signed and submitted. If participants have begun the activity or traveled somewhere to participate, and then they are asked to sign a waiver, this will likely invalidate the “voluntary” nature of the waiver.

2. What if a participant will not sign the waiver?

Waivers should be uniformly required prior to participating in the event. If you do not require a waiver for one participant, it should not be required for any.

Alternatively, some groups have the ability to negotiate a waiver or to increase the cost of an event for participants who do not sign waivers. These are unique circumstances and should be discussed with Risk Management.

3. How long do I keep signed waivers?

The sponsoring unit is required to retain the waiver for three years after the end of the event or activity for which the waiver was signed. Please see the University Archives: Records Retention Schedule (Hold Harmless, Liability Waiver, and Release Records) for more information.

4. Do I need to keep paper copies or electronic?

If you comply with the electronic records keeping requirements, you may keep electronic copies in lieu of paper. We recommend marking your files with the date of creation and the date that the records can be destroyed.