

GUIDELINES FOR THE ADMINISTRATION OF RELEASE OF LIABILITY, WAIVER OF CLAIMS, ASSUMPTION OF RISK AND INDEMNITY AGREEMENTS

If you require a Release of Liability, Waiver of Claims, Assumption of Risk and Indemnity Agreement (hereinafter **LU Waiver**) for your specific activity, or if you have questions about an event or would like to be trained on how to administer waivers, please contact Risk Management and Purchasing Services at ext 1534 for assistance.

A waiver is a legal contract between two parties; the participant in a program and the organization offering the program. The participant waives legal rights associated with physical and legal risks.

The participant's signature creates a binding contract indicating that the participant will not hold the organization, or any person associated with the organization that is named in the waiver, responsible or "liable" for any injuries which the participant receives. In other words, the participant is assuming all physical and legal risks associated with the activity.

Participants must be of legal age to sign a waiver independently. If under legal age, the participant and the participant's legal guardian must sign Waivers or Assumption of Risk Forms. The Form must include a subsection that incorporates a guardian's signature of informed consent for the minor's participation.

An informed consent is a legal contract between two parties; the participant (or the legal guardian of the participant) in a program and the organization offering the program. The participant or guardian waives legal rights associated with physical risks.

Typical waivers should not be used when participation is mandatory for a course credit. A type specific Informed Consent (Child or Adult) is usually required in such instances and can be obtained / administered at time of class registration.

There are inherently two types of risk associated with events or activities. Physical risks and legal risks:

Physical Risks

All physical activities have physical risks associated with the activity - physical risks, dangers and hazards that are inherent to the activity. These are risks that are unavoidable, reasonable and in many sports and recreational activities desirable.

Legal Risks

This is the risk that the organizers of an activity will behave negligently towards a participant. Organizers must meet a reasonable standard of care required by law.

Waiver and Informed Consent Administration

Guidelines for Administration of Waivers

Risk Management and Purchasing Services has provided two Release of Liability, Waiver of Claims, Assumption of Risk and Indemnity Agreements (hereafter **LU Waiver**) for use related to campus activities. Each form incorporates a section for signature of informed consent by the legal guardian, if so required.

The first LU Waiver is to be used for events that are sanctioned by the University.

The second LU Waiver is to be used by any group (third party) that is undertaking an activity or participant related event on Campus. The form has underlined fields to include the name of the organizing group as a party to the LU Waiver along with the University. It is a requirement that the University be included or named in the waiver as the event or activity is taking place in a facility of property owned by the University.

The organizers of the activity or event will be responsible for the following:

Give advance notice of the requirement to sign the LU Waiver to all participants if possible. For example, mention of the requirement to sign a waiver could be made in promotional literature distributed or mailed out to potential participants.

Ensure that one – two person(s) take responsibility for administration of waivers for the event/activity. The administrator must be 19 years of age or over and should be given a brief overview of how waivers should be administered. Bearing in mind that these persons may some day have to appear in court to testify as to the execution of the document, these people should be mature and responsible individuals.

The Risk Management and Purchasing office is to be notified about planned events and have the opportunity to review procedures. Event planners may be asked to meet with our department to complete a risk assessment and review due diligence requirements.

Administration and Witnessing LU Waivers

Ensure that the LU waiver is signed by the participant in front of the University employee, contracted instructor or trained student group member, who is acting as the witness.

The witness should observe the following:

That waivers are administered in the same manner for all participants – i.e. each participant is given the same information about being required to sign the waiver, told what the waiver means, and given time to read and process the waiver.

Before witnessing the Waiver or Informed Consent by signing the document beside the signature of the participant or their parent/legal guardian, the witness should observe the following points:

- ensure the person is of sound mind and body;
- if required, check picture identification to ensure the person signing the Waiver/Informed consent is the same as the participant on the Waiver;
- ensure that the name of the participant and address are complete;
- ensure that the participant/parent/legal guardian has signed and dated the Waiver;
- ensure that the participant/parent/legal guardian has not changed or crossed out any of the wording on the Waiver;
- the witness should ask each participant/parent/legal guardian: "Have you read and do you understand the Waiver and Indemnity Agreement?";
- the participant/parent/legal guardian must respond affirmatively.

Only after the above points have been confirmed should the witness sign the Waiver/Informed Consent.

All participants must sign an LU WAIVER.

If minors are participating in an activity, please have both participant and parent/guardian sign until final determination of process. A faxed signature from the parent is acceptable.

If the participant requests an explanation of the meaning of the waiver form, the following explanation should be given:

- "The document you are asked to sign is a Waiver of Liability and Indemnity Agreement. It is a legal document and by signing the Waiver and Indemnity, you are giving up certain legal rights, including the right to sue, should you be injured while participating in this activity."
- As the Waiver is written in clear terms, the witness should not attempt to get into a more elaborate explanation, but should suggest the participant re-read the document. If the participant insists on questioning the witness or is troubled by the language in the Waiver referring to the negligence of the University, the participant should be directed to consult with Risk Management and Purchasing.

Identify all participants who have signed the waiver and are eligible to participate (wrist bands, hand stamp, entrance ID, etc). This is particularly important for “age of majority” events. Organizers must try to ensure that only individuals with signed waivers participate in the event.

Executed LU Waivers should be filed and safeguarded for a period of not less than ten years. Waivers signed in years previous to the year of the accident may be of value in establishing the participant's/parent's/legal guardian's understanding of the nature of the document.

Any incidents or accidents that occur during an activity (off-campus or on-campus) must be reported immediately to Campus Security (673-6562 or after hours #2661) for an accident report. Risk Management and Purchasing Services will also require a copy of the accident report as well as the original copies of the Waivers that were signed.

PLEASE NOTE: These guidelines are **NOT** applicable to the informed consents and waivers required for research involving the use of human subjects/participants. Please contact Research Services if you require assistance with an application and documentation for this purpose.

Frequently Asked Questions

1. Which document do I use?

- Participants 18 years of age and older must sign a WAIVER (except for Credit Course activities).
- Participants 18 years of age and older that are signing a document for a Credit Course activity must sign an ADULT INFORMED CONSENT.
- Minors under the age of 18 must have their parent/legal guardian sign a CHILD INFORMED CONSENT.

2. What is a waiver and what is an informed consent?

- A waiver is a contract between two parties. The person signing the waiver (participant in an activity) agrees to give up the right to sue.
- An informed consent is an agreement whereby the parent/guardian of a minor acknowledges and assumes the possible risks associated with the activity and gives consent for a minor to participate.

3. What steps do I take next?

- Copy two page Waivers or Informed Consents in a back to back format
- Give advance notice of the requirement to sign the Waiver or Informed Consent to all participants if possible. For example, mention of the requirement to sign a Waiver or Informed Consent could be made in promotional literature distributed or mailed out to potential participants.

4. When can they be signed?

Generally, Waivers and Informed Consents cannot be filled out and signed on the day that the event occurs or the day that the transportation leaves for the event. They must be filled out and signed prior to that time. This ensures that the participants or their parents/legal guardians have sufficient time to consider the legal implications of signing the Waiver or the Informed Consent.

However, the exception to this is when the Waiver or Informed Consent has been sent out to the participants with sufficient advance notice. The document can then be brought back on the first day of class and signed in front of an appropriate witness. If you are planning to distribute the Waivers or Informed Consents in this fashion, please ensure that you track the date that you sent out the waivers, to ensure that there is proof that prior copies were distributed, in case this comes up later.

5. Who can be a witness?

- Specific employees of the University, specific persons contracted to provide instruction for the University, or members of student groups should be designated and trained to deal with the administration of Waivers and Informed Consents and act as witnesses to the execution of the Waivers and Informed Consents. Bearing in mind that these persons may some day have to appear in court to testify as to the execution of the document, these people should be mature and responsible individuals.
- **WAIVERS AND ADULT INFORMED CONSENTS** must be executed in the presence of specifically designated employees of the University; specific persons contracted to provide instruction for the University, or trained members of student groups. The only alternative is to have the document executed by the participant and witnessed by a lawyer then mailed into the University.
- **CHILD INFORMED CONSENTS** should be executed in the presence of specifically designated employees of the University. The only exception is if the distance of the parents/legal guardians from the University makes it administratively impossible. In this case the Informed Consents may be signed by the parent/legal guardian and witnessed by a person that is not of their immediate family. Witnesses must print their name and supply their address and telephone number for the form to be complete.

6. How do I administer and witness a Waiver or Informed Consent?

Waivers and Informed Consents must be signed by the participant or their parent/legal guardian in front of the University employee, contracted instructor or trained student group member, who will act as witness. Before witnessing the Waiver or Informed Consent by signing the document beside the signature of the participant or their parent/legal guardian, the witness should observe the following points:

- a) ensure the person is of sound mind and body;
- b) check picture identification to ensure the person signing the Waiver/Informed consent is the same as the participant on the Waiver or the parent/legal guardian on the Informed Consent;
- c) ensure that the name of the participant and address are complete;
- d) ensure that the participant/parent/legal guardian has signed and dated the Waiver or Informed Consent;
- e) ensure that the participant/parent/legal guardian has not changed or crossed out any of the wording on the Waiver or the Informed Consent;
- f) the witness should ask each participant/parent/legal guardian: "Have you read and do you understand the Waiver/Informed Consent?";
- g) the participant/parent/legal guardian must respond affirmatively.

Only after the above points have been confirmed should the witness sign the Waiver/Informed Consent.

7. What if they ask me to explain the document?

- WAIVER - If the participant requests an explanation of the meaning of the Waiver, the following explanation should be given:

"The document you are asked to sign is a Waiver of Liability and Indemnity Agreement. It is a legal document and by signing the Waiver and Indemnity, you are giving up certain legal rights, including the right to sue, should you be injured while participating in this activity."

- As the Waiver is written in clear terms, the witness should not attempt to get into a more elaborate explanation, but should suggest the participant re-read the document. If the participant insists on questioning the witness or is troubled by the language in the Waiver referring to the negligence of the University, the participant should be directed to consult with Risk Management and Purchasing Services.
- INFORMED CONSENT - If the participant/parent/guardian requests an explanation of the meaning of the Informed Consent they should be encouraged to re-read the document as the document is written in clear terms. If the participant/parent/legal guardian insists on questioning the witness further, they should be directed to consult with Risk Management and Purchasing.

8. What should I do with the Waivers/Informed Consents after they are signed?

Executed Waivers/Informed Consents should be filed and safeguarded for a period of not less than ten years. Waivers/Informed consents signed in years previous to the year of the accident may be of value in establishing the participant's/parent's/legal guardian's understanding of the nature of the document.

9. What do I do if there is an accident during the activity?

Any incidents or accidents that occur during an activity (off-campus or on-campus) must be reported immediately to Campus Security (673-6562 or after hours #2661) for an accident report. Risk Management and Purchasing will contact you to obtain original copies of the Waivers/Informed Consents that were signed.

10. Who can approve the use of the Waiver/Informed Consents for non-course related activities?

- *STUDENTS' UNION CLUBS*: the group must have the approval of the Vice President (Finance) of the Student's Union who will issue the appropriate Waiver to the group. These Waivers must be filed with the Students' Union Vice President prior to the commencement of the event.
- *RESIDENCE STUDENTS' ASSOCIATION OR RESIDENCE SERVICES EVENTS*: the group must have the approval of the Manager of Residence Services for the event prior to requesting the Waivers. These Waivers can be obtained from Risk Management and Purchasing Services.
- *CAMPUS RECREATION CLUBS*: the group must have the approval of the Campus Recreation department who will also issue the appropriate Waiver to the group.
- *OTHER UNIVERSITY GROUPS*: the group must have the approval of the Dean of the Faculty for the event prior to requesting the Waivers. These Waivers can be obtained from Risk Management and Purchasing Services.