

Model Liability Waiver for Association Event Attendees

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Should our association require all attendees to agree to a liability release and waiver (“waiver”) as a condition of attendance, assuming the risk of attendance and agreeing not to hold our association liable if the attendee contracts the novel coronavirus at the event?

If an association believes it can get most of its prospective attendees to agree to such a waiver, it cannot hurt the association from a legal risk management perspective, and may well help it, to require such waivers. That being said, waivers are regularly challenged and nullified by courts for a variety of reasons; as such, they can virtually never be viewed as a complete liability shield and should never be relied on as such. Most courts, for example, will not enforce a waiver if it finds that the plaintiff was harmed by gross negligence. If the association does end up utilizing attendee waivers, consider adding a provision to the form whereby attendees affirmatively agree to engage in certain health-and-safety-beneficial conduct while attending the event (e.g., wearing a mask at all times in public areas, engaging in appropriate social distancing, not venturing off-site to risky environments (e.g., crowded bars), and not attending the event if the attendee is ill or has had recent exposure to a COVID-19 case). It goes without saying, but waivers are no substitute for the association – and the event venues – undertaking the necessary health and safety measures.

Below is a model attendee liability waiver for consideration by associations in connection with future in-person association events:

MODEL ATTENDEE LIABILITY WAIVER AND ASSUMPTION OF RISK

Attendee assumes all risks and accepts sole responsibility for any injury (including, but not limited to, personal injury, disability, and death), illness, damage, loss, claim, liability, or expense, of any kind, that

attendee may experience or incur in connection with attending the EVENT. Attendee hereby releases, covenants not to sue, discharges, and holds harmless ASSOCIATION, its employees, agents, and representatives, of and from any such claims, including all liabilities, claims, actions, damages, costs, or expenses of any kind arising out of or relating thereto.

Specifically relating to the global COVID-19 pandemic, attendee acknowledges the highly contagious nature of COVID-19 and voluntarily assumes the risk of exposure or infection by attending the EVENT, and that such exposure or infection may result in personal injury, illness, disability, and/or death to attendee. Attendee understands that the risk of becoming exposed to or infected by COVID-19 at the EVENT may result from the actions, omissions, or negligence of others who may attend the event or their families, colleagues, or others with whom they may have contact. Accordingly, attendee understands and agrees that this release includes any claims based on the actions, omissions, or negligence of ASSOCIATION, its employees, agents, and representatives, whether a COVID-19 infection occurs before, during, or after participation in the EVENT.

In addition to all other rules and regulations relating to the attendee's attendance at the EVENT, attendee agrees to comply with all COVID-related procedures that may be implemented by ASSOCIATION and EVENT VENUE, including, but not limited to, mask-wearing and social distancing requirements and restrictions on certain activities that carry higher COVID-related risk, in order to protect as much as possible the health and safety of all EVENT attendees.

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This article should not be taken as legal advice; the advice of a knowledgeable legal professional is strongly encouraged.