



California Master Gardener Program
MASTER GARDENER VOLUNTEER
University of California Cooperative Extension



WAIVERS CAN BE SAVERS

Waivers, or releases of liability, are instruments designed to protect the University of California (UC) and its employees from legal liability for injuries that may occur to students or other individuals who participate in both voluntary and required activities on and off campus. The frequency of lawsuits has increased as our society has become more litigious, subjecting UC and its employees to more liability exposure. Although some people hold the misconception that waivers are worthless, in fact they are valid and reliable legal tools under California law. Waivers may be used as protection from liability for accidents, activities carrying certain inherent risks, and even the negligence of UC employees in certain circumstances.

UC Office of the President (OP) Risk Services, in conjunction with the Office of the General Counsel, developed several waivers to be used on and off the campuses. These instruments incorporate the legal principles of assumption of risk, waiver of claims including the negligence of UC employees, and indemnity. The templates for these waivers have withstood legal scrutiny when challenged in court. In an effort to reduce the administrative burden to all, time has been taken to make the waivers as easy to use as possible.

Waivers signed prior to participation are viewed by the law as contracts or agreements in which the participant agrees to excuse UC and its employees from fault or liability for personal injuries associated with the activity. If the participant agrees in advance that UC and its employees owe him/her no duty, recovery from negligence is barred. Indemnity and hold-harmless provisions shift the responsibility for legal expenses associated with claims to the participant.

The law that applies to waivers is often used in conjunction with other legal principles. UC and its employees are sometimes protected by immunities such as immunity from suit for participation in a hazardous recreational activity or an injury caused by a natural condition of unimproved public property. However, waivers do not apply to dangerous conditions of public property that cause injury or injury caused by failure to maintain or provide safe equipment.

There are three types of waivers to be signed by adults and parents of minors in individual and group activities. The Use Waivers should be signed by individuals or groups using UC sporting facilities, equipment and services. The Elective or Voluntary Activity Waiver should be signed by students or others participating in activities offered by UC on or off campus that are not required for a degree or academic program. This includes voluntary field trips, study abroad and recreation programs for children. In this waiver, the individual must waive any potential negligence of UC employees in order to participate in the voluntary activity. The last waiver, Required Activities Waiver, is for on or off-campus activities that are required for a degree and supervised by academic personnel. This waiver omits the provision waiving the negligence of UC or its employees.

Waivers should be used in the same format as provided. Appropriate information should be inserted into the blanks for the activity or use to which the waiver is put. A waiver is not invalidated by the passage of time, but obviously, it must be maintained by UC in order to be asserted as evidence in a later lawsuit. The failure of an individual to read a waiver does not excuse compliance. Under California law, it is incumbent upon individuals who do not read or understand English to have the release read or explained to them.

FREQUENTLY ASKED QUESTIONS REGARDING WAIVER OF LIABILITY

QUESTION 1: *Why does everyone now have to sign waivers?*

ANSWER: The new procedure makes the volunteer programs more consistent with other UC programs (which have used a similar waiver for several years). Most importantly the waivers protect the various UC programs and its resources from numerous lawsuits throughout UC.

QUESTION 2: *When I (a volunteer) sign the waiver, does that mean I've signed away all my rights and protection?*

ANSWER: By signing the waiver, you give up your right to sue UC, however, when you are working as a volunteer, you are an agent of UC. If someone were to bring a lawsuit against you and you are working within the course and scope of your duties as a volunteer, (and assuming the conduct was not criminal in nature) UC would stand behind you in defending the lawsuit.

QUESTION 3: *What legal responsibility and potential liability does signing a waiver "put" on a volunteer that wasn't there before?*

ANSWER: There is no additional liability or responsibilities put on volunteers with the waivers.

QUESTION 4: *What does UC continue to cover?*

ANSWER: The waiver does not change the coverage by UC. UC continues to cover the liability incurred when volunteers are performing within the course and scope of their volunteer position.

QUESTION 5: *At the bottom of the waiver, there is a sentence that says, “ I acknowledge that I am signing the agreement freely and voluntarily...” Does that mean I have the option not to sign?*

ANSWER: You may choose not to sign the waiver. However, if you choose not to sign the waiver, or if you alter the waiver in any way, you may not be eligible to participate in the event for which the waiver is required.

QUESTION 6: *What if I sign the waiver now, and years later, I take classes at UC. Have I signed away my right to sue?*

ANSWER: No. The waivers are valid for the current program year only. That is, each time you re-enroll, you will sign a new waiver form. At the end of the program year, the waiver you signed expires. While this creates some extra paperwork, it also helps to ensure fully informed consent for all participants, parents, and volunteers. Please also note that if you resign from the program in writing during the program year, the waiver is terminated from that point forward.

QUESTION 7: *When a volunteer signs the voluntary waiver, are they giving up their right to indemnity by UC in case of a lawsuit?*

ANSWER: If they are individually named in a lawsuit stemming from a sponsored UC event where someone was injured or property was damaged, UC would provide representation for their supervisory responsibilities while in the course and scope of the sponsored, sanctioned UC activity.

QUESTION 8: *After reviewing the Waiver of Liability, I checked my personal liability insurance policy which extends to volunteer activities, however, there is specific exclusion for the “failure to supervise or the negligent supervision of any person.” If I volunteer in a classroom or co-chair in a halfway house program and “supervision” is by a classroom teacher, or halfway house personnel, and I participate in the teaching, am I responsible for any negligent supervision?*

ANSWER: No. If ANR staff/volunteers are teaching in classrooms or programs where a classroom teacher or program personnel are present, the youth or persons in the program are under the supervision of the school or program and the staff/volunteers are acting as instructors. Therefore, you are not supervising and the personal liability insurance policy exclusion regarding “failure to supervise or the negligent supervision of any person” would not apply.

QUESTION 9: *Are other Land Grant Institutions, Universities and Organizations requiring their volunteers to sign waivers?*

ANSWER: Yes, most other states have similar waiver requirements for their volunteers. Additionally, many school districts require waivers for its athletic programs as well as government and private agencies, i.e. the Boy Scouts, and Cal Trans.

QUESTION 10: *I want the UC Program Representative/County Director to discuss UC's waiver with my attorney. May I have my attorney contact them to schedule an appointment to do so?*

ANSWER: Anyone who wishes to have an attorney discuss the waiver may contact UC ANR Controller Jake McGuire in Oakland (510-987-9052 or Jake.McGuire@ucop.edu).