

## In This Issue

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All the best to your and your families for a holiday season and New Year of peace and happiness.

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## Do Waivers Really Work?

As we come to the end of 2014, the perennial question about liability waivers remains a matter of debate. Do they really work? Is it worth the time and trouble of getting, and keeping, signed waivers?

I believe that a well-drafted liability waiver is definitely worth including as **one of the elements** of a risk management program. To reduce the chance of being found liable when an injury occurs, you also need to have:

- A ‘reasonably’ safe premises and activity
- Proper instruction and/or supervision on the premises and of the activity,
- Included a warning of dangers for participants,
- The carefully-drafted liability waiver signed **before** the activity occurs,
- Proper procedures for explaining and obtaining signatures, and keeping the documents for easy retrieval, and
- A good procedure to deal with any losses.

Keep in mind that under-age children do not have legal authority to sign waivers. Parents or guardians, but waivers in these cases are of limited value. Signed liability waivers relating to children should not be destroyed on the ‘regular’ basis. Instead, keep them for an extended retention period as in most provinces children have an extended period for starting a lawsuit.

When presenting a waiver form for signature, the process should include:

- Informing the person of the need to sign a liability waiver before they can participate;
- Explaining what the purpose of the waiver is;

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- Providing signers sufficient time to read, if they want to, and be sure they understand it before signing; and
- Determining if they appear capable of signing (e.g. sufficient understanding of the language (English or French), and seeming to not be under the influence of alcohol or drugs or otherwise mentally confused.

While these steps may seem demanding, you will find that most often it is a simple to complete the process.

Finally, if an injury occurs, you will need to have several documents to use as evidence if a lawsuit is filed. These include:

- Records of your methods of maintaining the premises and its equipment. (Log books are a convenient method for recording these steps.)
- Records of training and supervision of workers (paid and volunteer).
- Your processes to screen, and if necessary, exclude anyone not be able to participate safely, or where the activity could not safely accommodate their needs.

In the end, yes, liability waivers are “worth it”. Using the steps listed above will improve your chances of enforcing waivers.

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