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Liability Waivers for On-Farm Activities

Farms often host activities that bring visitors onto the farm, such as school farm visits, volunteer days or agritourism. While such events offer valuable opportunities to raise awareness of your farm activities, accidents can happen -- particularly to a population unfamiliar with hazards typically found on a farm. Farmers frequently are advised to have visitors sign waivers to reduce the farm's risk of liability and potential lawsuits against the farm if a visitor is injured. But how can a liability waiver reduce a farm's legal responsibility? This legal guide discusses how to use liability waivers, what they can accomplish and what to include in a well-drafted liability waiver.

What is a liability waiver?

A liability waiver is an agreement between a farm and a farm visitor. **In return for permission to enter the farm premises (or participate in an activity on the farm), the visitor agrees that the farm is not responsible for injuries that might occur during the visit or activity.** This agreement creates a contract between the farm and the visitor and sends a clear message that the farm is not responsible for personal injuries that occur on its premises. Importantly, **liability waivers do not release farmers from responsibility for an injury that occurs as a result of the farm's blatant disregard of obviously dangerous circumstances (e.g., "gross negligence").**

When should a farm consider adopting a liability waiver?

Whenever a farm hosts, volunteers or makes its land available for agritourism or farm visits, it should consider using a liability waiver. Using liability waivers is an important aspect of risk management.

What should a liability waiver include?

A liability waiver should have a descriptive title, such as "Waiver of Liability," "Release of Liability," "Assumption of Risk," or "Indemnification" or "Indemnity". The waiver is preferably a separate document and not embedded in another document, for example, a registration form.

A liability waiver should be clearly worded and easily understood by visitors. The waiver should plainly state its intent to relieve the farm from any and all legal liability. Use everyday language, not legalese, acronyms or technical terms. Ambiguity and lack of clarity are not your friends. The purpose of the waiver is to be sure that the farm volunteer, participant or visitor understands the risks on the farm or risks associated with a farm activity and actively chooses to personally assume that risk.



Be inclusive and expansive about the type of risks a visitor might encounter. A visitor should fully understand the dangers and harms that he or she might encounter during a visit to your farm. Indicate any physical or health limitations to participating. Do not omit certain risks to avoid ‘scaring away’ the visitor. If a specific hazard is not identified in the liability waiver, the visitor may claim that he or she did not waive liability to harm arising from that hazard. Use of the language “including but not limited to” can help to cover unanticipated risks.

Typical elements of a liability waiver.

1. *Parties Involved*

The liability waiver should identify both the service provider (e.g., farm) and the participant(s). The farm should be identified by name, especially if the farm operates as a formal business entity. The agreement should also list any other entities or individual intended to be protected by the waiver, such as owners, agents, partner organizations, etc.

Each participant should be identified separately (e.g., Mary Jones and Robert Jones, not the “Jones Family”). Minor children should also be included, although minors are unable to legally sign a contract and are therefore not bound by the waiver.¹

2. *Value Being Exchanged Between the Parties*

All contracts, including liability waivers, are required to identify the value that is being exchanged between the parties. Typically, the value offered by the farm in exchange for the waiver of liability is the opportunity to participate in the farm activity or event.

3. *Acknowledgement of Risk*

The waiver should include the statement that the participant is engaging in the activity at his or her own risk. This section should describe the nature of the activity such as how vigorous it is and the fitness level required, identify the inherent risks of the activity including common minor events, some possible serious events and possible catastrophic events that could occur, and the possible injuries of the inherent risks, both minor and major.

The section should require the participant to acknowledge that he or she knows the inherent risks of the activity, understands those risks and agrees to assume responsibility for those risks.

4. *Waiver of Liability*

The participant should agree that the farm (and any other entities or individual intended to be protected by the waiver) will not be held responsible should the participant be injured while on the premises. The waiver should also include incidences of ordinary farm negligence. The release can extend beyond just the participant and can purport to release claims by the participant’s spouse, heirs, administrators and assigns for potential injuries to the participant.

¹ A few states will recognize a waiver signed by a parent on behalf of a minor child.

Because minors cannot be bound by contract, some liability waivers also include an indemnification by the parents of the minor participants that indemnifies the farm against claim or liability for injury to their minor child.

5. *Party Signatures*

Each identified participant should sign the waiver. Minor children also should be included and a parent or guardian should also sign the waiver on the minor's behalf.²

Summary

Importantly, while a liability waiver can limit a farm's risk of liability, the farm still is required to take reasonable care to maintain a safe environment. Farmers should always be attentive to possible hazards on their property and take steps to mitigate those risks.

One size may not fit all when it comes to liability waivers. For example, adult volunteers using mechanized equipment will be exposed to hazards that differ significantly from agritourism events such as hayrides and farm tours. Due to different risk exposures for different farm experiences, a farm may tailor liability waivers to specific activities.

Liability waivers are not a substitute for insurance. While liability waivers help protect farms from liability for injuries, it does not prevent an aggrieved individual from filing a lawsuit. While he or she may not ultimately win the lawsuit, the experience can nonetheless be time-consuming and costly for a farm. Insurance policies that cover the activities typically conducted on the farm is advised.

Lastly, the enforceability of any waiver depends on state law and the language of the waiver. Consult an attorney if you have questions about your liability waiver. For assistance in reviewing and/or drafting a liability waiver, reach out to the Conservation Law Foundation's [Legal Food Hub](#).

This guide was prepared by Mary Rose Scozzafava, Ph.D., a Senior Fellow at Conservation Law Foundation.

Looking for legal help?

*Contact the Legal Food Hub to see if you qualify for **free** legal assistance!*

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² Note that not all states recognize liability waivers for minors, even when signed by a parent.