



CAN BUSINESSES LIMIT THEIR LIABILITY FOR COVID-19 SPREAD?

As the world is adjusting to life during the COVID-19 pandemic, it has become possible for businesses to host employees and customers and even, in some cases, to hold events. Although this is a welcome return to some semblance of normalcy, it also predictably increases the risk that COVID-19 may spread. One way for businesses to limit their potential exposure to liability for such spread is through the use of liability waivers.

A liability waiver is a contractual agreement whereby one party (e.g., a customer or client) waives the right to sue and assumes the risk of injury. If carefully drafted and responsibly presented and executed, such waivers can promote businesses' safe operations and also limit exposure to liability associated with the possible spread of disease or infection.

Waivers, if entered freely and voluntarily, are generally enforceable in Massachusetts. Waivers should be written, require a signature and be clearly brought to the attention of the party agreeing to their terms. The party must be informed of the risks associated with COVID-19, as well as any heightened risk posed by the activity in question. For example, if the activity involves travel or close contact, the specific risks should be explained. In addition, the waiver must be sufficiently broad to include all activities contemplated.

Businesses cannot waive liability associated with gross negligence or reckless or intentional conduct. Businesses also cannot waive liability arising out of their failure to comply with a statutory requirement. Therefore, it is crucial that businesses continue to exercise caution in preventing spread of infections, which includes following the most recent guidance of the Center for Disease Control, World Health Organization, and state and local public health authorities.

Although no waiver can guarantee immunity from legal action, they can be a crucial tool for limiting businesses' exposure. Many businesses, especially those hosting customers and clients, should consider whether a COVID-19 liability waiver might be right for them.



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