

Should Businesses Require Their Customers to Sign COVID-19 Liability Waivers?

PUBLISHED ON
July 13, 2020

As businesses reopen in Pennsylvania, employers are asking whether they should require their customers or guests to sign waivers that release businesses from liability for the COVID-19 illness.

In Pennsylvania, employer agreements that limit liability generally are enforced when they release a business for liability resulting from their negligent conduct. However, such waivers probably would not protect businesses if they act recklessly or in a grossly negligent manner, which would likely include failure to comply with mandates and guidance from the Pennsylvania Department of Health and the Centers for Disease Control and Prevention.

The following factors are relevant to whether a COVID-19 waiver would be enforceable under Pennsylvania law:

- The waiver language must be narrowly tailored and clear;
- The waiver must particularly state the intention of both parties without any ambiguities; If ambiguities exist, the waiver will likely be unenforceable; and
- The party escaping liability for negligent acts has the burden to prove why the clause is enforceable in court.

The Supreme Court of Pennsylvania recently held that releases of liability for gross negligence are against public policy and are therefore unenforceable. Similarly, it is well-settled law in Pennsylvania that parties cannot be released from liability for their reckless acts.

Therefore, a properly drafted waiver of negligence is likely to be effective, at least with respect to negligent conduct. Any further release of liability is likely to be unenforceable.

If you have any questions on how to draft an enforceable waiver, please contact [Martin Siegel](#) or any member of the [Barley Snyder COVID-19 Response Team](#).

Barley Snyder summer associate Caleb Setlock contributed to this report. He is a rising, third-year law student at Duquesne University School of Law.

WRITTEN BY:



Martin R. Siegel

Counsel

Tel: (717) 718-7581

Email: msiegel@barley.com