

PRECAUTIONARY MEASURE AGAINST COVID-19 EXPOSURE CLAIMS: WAIVER OF LIABILITY

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As some business owners navigate the process of re-opening since Gov. Greg Abbott's order allowing certain businesses to re-open went into effect on May 1, it has become clear that the Coronavirus pandemic (COVID-19) has changed the way many will operate. Among other things, businesses may be operating at the risk of potential future liability for COVID-19 exposure claims. There are several steps companies should consider taking to address such risks as best they can. One legal step that may help is the pre-event liability waiver.

A pre-event liability waiver is a written contract wherein the would-be event participant is informed of the risks of participating in an activity beforehand, acknowledges those risks, and waives the right to sue or otherwise recover against the host for injuries, damages, or other liabilities arising out of the activity.

In Texas, an adult's pre-event liability waiver may be enforceable if the waiver is express and conspicuous. A waiver is express when it explicitly states that the person signing the waiver intends to and does in fact release another party from any claims of negligence. A waiver is conspicuous when it is not hidden, but eye-catching because it has some combination of a clear heading; different font size, type size or color in relation to surrounding text; or all caps, bold, italics or underlining.

However, a waiver of liability has some limitations. Under Texas law, a waiver signed by a parent is not enforceable against a minor child's claims. Although such waiver would bar any claims for past and future medical bills until the child reaches 18 (*i.e.*, claims by the parent that signed the waiver for such bills incurred on the child's behalf), the waiver does not bar recovery for physical pain, suffering and

impairments experienced by the child, as well as future medical bills incurred after the child turns 18. Additionally, some jurisdictions, such as Texas, will not enforce a waiver of liability against anyone for damages that arise from intentional misconduct or gross negligence. And in Texas, pre-event liability waivers are generally not enforceable against employees pre-injury.

It's not entirely clear whether a waiver of liability for COVID-19-related injury would be enforceable, simply because no court has analyzed such a waiver in this specific context. That said, a pre-event liability waiver could prove to be one precautionary measure that may proactively protect businesses from the risk of potential future liability for COVID-19-related negligence claims by adult customers and guests.

If you have questions or would like to discuss further, please contact [Ross Williams](#) or Jennice Lee.

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