Liability Waivers: A Gym Owner's Shield Against Lawsuits

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Negligence is, by far, the most common cause of action against a gym. A liability waiver is your shield against those lawsuits. By signing the waiver, a member agrees not to hold you liable for negligence if they are injured at your gym provided they were put on notice, in writing, of possible risks of injury. Because waivers can remove an injured person's right to sue, courts will not hesitate to find flaw in a waiver's wording, scope, or execution. An imperfect waiver is the same as no waiver.

A properly-worded waiver lists an activity's specific risks (the "range of dangers"). A waiver also must lay out for what activities it applies (i.e. for injury stemming from fitness equipment, personal training, nutrition advice, etc.). The idea behind waivers is that if the public is explicitly made aware of an activity's risks, they can take the necessary steps to avoid injury. The examples below illustrate how waivers work in the real world.

HOW WAIVERS WORK

Pretend a gym member severely injured her hand on a gym's machine. Weeks later, the gym is served with a negligence lawsuit seeking $500,000.00 including damages for pain and suffering, medical bills, and lost wages due to her inability to work.

Scenario One (No Waiver):

In this scenario, the gym does not have a waiver. Without a waiver, the lawsuit proceeds on the merits for the next two years (on average) ending with a trial where the member aims to prove the gym's negligence in causing injury. In addition to the possibility of an adverse verdict (or an expensive settlement), in this no-waiver scenario, the gym must pay the hourly rate of an attorney *for two years* to defend it win or lose. This path is expensive, full of headaches, and avoidable by having a proper waiver.

Scenario Two (Ineffective Waiver):

In this scenario, the facts are the same except the woman here signed the gym's waiver. The gym, however, uses a waiver it found online. The gym's waiver provided that members would not sue for any injury related to "any activity at

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the gym" (the terms are generic and not tailored to that gym's offerings).

In response to the lawsuit, the gym's attorney submits the woman's signed waiver and asks the court to dismiss the case. The court refuses - the waiver is ruled worthless. The court explains that the waiver was insufficiently specific and that it could be read to only put the member on notice of injuries from "activities" at the gym (such as classes) but not from equipment. This waiver was ineffective because it did not sufficiently put members on notice of the range of dangers that led to her injury. In this scenario, the court's rejection of the waiver seems harsh however, this example comes from an actual case (*Calarco v. YMCA of Greater Metropolitan of Chicago*, 149 Ill.App.3d 1037 (2nd Dist. 1986)). Once the court throws out this waiver, the case continues its long, expensive (and avoidable) march to trial.

Scenario Three (Effective Waiver):

Here, counsel prepared the gym's waiver tailored to the business' needs. The waiver puts members on notice of risks of injury from "use of the gym, equipment, and facilities." In this scenario, in response to the injured woman's lawsuit, the gym's attorney submits the woman's signed waiver, the court acknowledges that the waiver apprised the member specifically of a risk that led to her injury, and the court quickly dismisses the case. Costly lawsuit avoided.

TAKE-AWAY

Generic waivers found online or borrowed from a fellow-fitness professional are likely ineffective in repelling lawsuits. Waivers are low cost and highly effective in shielding your business from lawsuits. Waiver provisions concerning COVID-19 and other illnesses can be added to your existing liability waiver to further shield your company. Our courts' reluctance to enforce imperfect, generic waivers makes it necessary for every fitness business to have waivers prepared by qualified counsel.