

## Businesses seeking COVID-19 liability waivers won't automatically be immune from lawsuits

By Ian Mallin | May 28, 2020 10:00 PM



Some business owners are seeking protection from coronavirus-related lawsuits by requiring that customers sign liability waivers before entering their establishments. But legal experts warn that such measures are not ironclad protections for the proprietors.

The company requires a customer to sign a waiver and the customer gets injured and decides to sue, can the customer's lawyer get the waiver thrown out? The answer is, sometimes, yes," said Walter O'Brien, a senior fellow at the Cato Institute's Robert A. Levy Center for Constitutional Studies.

Some have vied, in terms of the enforceability of liability waivers. In Virginia, liability waivers are generally *unenforceable*. In contrast, waivers in Florida are *enforceable* if they meet certain criteria, namely that the waivers be signed in clear, unambiguous, unambiguous, and specific.

But even enforceable waivers can be challenged in the courts. [See](#) Marc Lambert filed off the personal injury lawsuit of a former employee of a Florida company.

"Even if a particular waiver is fully legally enforceable, in some jurisdictions like Arizona, the issue of whether a customer intended to relinquish a legal right will be a question for the jury, not the judge," he told the Washington Examiner via email.

Business owners who take their cases to court can sometimes be surprised. For instance, beyond the best state can decide the case. For example, USA Today World Report, located in Orlando, Florida, [reports](#) that patrons absolve themselves of liability when entering the Magic Kingdom. According to O'Brien, the jury could view the trial as *Child versus Goldilocks* and suspect David T. That waiver were to get challenged in court.

"Thing is big, and you're small," he wrote. "In some of these factors that make courts throw waivers out, they don't necessarily say (it's in the law) but (the reasons) are hovering in the background so (the courts) will be more considerate to customers."

Liability waivers also don't shield owners who knowingly allow their establishments to become pandemic peril zones, according to Devin Watkins, an attorney at the National Health Care Competitive Enterprise Institute.

"I've known your employee has COVID and you send them to interact with a customer, and they catch COVID, a lot of states say that can't be waived," he told the Washington Examiner.

Recent weeks have seen high-profile instances of potential negligence from owners who failed to keep customers from infecting one another while visiting their establishments.

Holiday travelers ignored social distancing rules and packed into a pool in Missouri's Lake of the Ozarks spent over the Memorial Day weekend.

In Port Washington, Wisconsin, patrons crowded into a bar without objection from the proprietor.

For Watkins, a liability waiver is not an escape hatch for the owners.

"In most states, you can't waive intentional, reckless, or grossly negligent conduct," he said. "It's not like, 'I wasn't aware, I should have been doing things a little better.' ... Any kind of waiver that violates public policy, we can't allow you to waive this kind of our liability."

O'Brien stressed that there are no odds to negligent behavior. Customers are equally required to think before heading into a potentially dangerous situation, such as drinking at a packed local bar or crowding into a pool.

"With COVID, there can't be a person left in the country who hasn't heard that COVID-19 is dangerous," he said.

Liability waivers for the coronavirus are incredibly new, but as state legislatures expect that an increasing number of cases will go to court, as customers return to their favorite restaurants or bars, become infected, and sue the owner for exposing them to the disease.

"As a personal injury lawyer, already receiving calls about cases related to the transmission of COVID-19, I think we are bound to see a number of lawsuits around the country, alleging customers contracted the virus at a business," he said.

Despite customers being able to challenge the validity of a liability waiver, proving that they were infected at a specific business would be hard to prove.

"These cases will be very hard to win because the customer will need to prove not only that the company was negligent but that he or she actually contracted the virus at the business versus at the other sources of exposure," Lambert said.

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