

Guidance on Drafting and Use of Warnings
(Disclaimers, Waivers, Releases, and similar written instruments)
June 16, 2021

This document is intended to create guidance for the university community generally and event/activity organizers specifically (or those departments or units evaluating activities within their respective areas) to determine when to use some level of informative communication/warning, acknowledgement, or waiver related to their planned events or activities. This document is also intended to provide assistance as to the content of such documents.

Levels of Messages/warnings/agreements (“Warning Level”):

The following levels of warnings have been identified that would be appropriate for different campus units and event/activity organizers to use in appropriate circumstances:

1. Disclaimer or Subject Warning (D) –

What: This would be a general statement articulating identifiable risks and advising the participant that the risks are there and that the participant may choose to proceed. Effectively, a warning about current or anticipated conditions, often combined with a repudiation of responsibility for the participant’s choice.

How: passive delivery - via signage or documentation

2. Acknowledging risk in the environment (“assumption of risk”; “acknowledgement of risk”) (AR) –

What: This is a more specific statement, usually one that explicitly states or otherwise affirms that a participant has been put on notice of risk and has, with that knowledge, chosen to proceed. Effectively, a stronger version of a warning but sharing many of the same qualities. Many such documents share features of ‘informed consent.’

How: either placed into documentation (passive) or signed off (minimal action required)

3. Release/Waiver/Indemnification (RW) –

What: Each of these is some formalized version of a participant’s relinquishment of a claim. Such an act should be in writing and signed by the participant; the document should include language that puts the participant on notice that rights or claims are being relinquished and should articulate in concise terms the nature of the rights or claims being relinquished.

How: active delivery with participant response - agreement and sign off required – departments and event organizers are invited to seek assistance from Office of the General Counsel to help prepare this type of document but may repurpose documents previously approved for use

Identifying an Appropriate Warning Level

Different types of activities and spaces were identified where an attendee/user/participant (individually and collectively referred to throughout this document as “participant”) can or should be warned or required to acknowledge risk or waive rights. For example:

- (i) events/activities that are **non-academic and voluntary** which involve close contact (e.g., intramural sports, adventure trips offered by RWC) and/or involve readily identifiable risk (e.g., Rec & Wellness, staff gym, certain volunteer activities, challenge course);
- (ii) events/activities that are **academic and voluntary** but which involve identifiable risk (e.g., field training in healthcare setting where alternate assignment is available; field trips; other field/service learning experiences);
- (iii) events/activities that are **academic and mandatory** (e.g., mandatory field training such as clinical training assignments in healthcare setting); and
- (iv) services that the University **provides to community** (e.g., Creative School, camps).

The chart below offers examples of some events and activities that occur at UCF and for which some warning seems reasonable. If there are questions about a specific type of place/event/activity that is not on the chart, please reach out to the Office of the General Counsel for assistance with creating a document that will be appropriate.

Guidance on Disclaimer, Waiver, Release Determination		
Categories	Actions Necessary	Examples
Non-academic & Voluntary	RW	Recreation & Wellness Center
		Intramural sports
		Adventure Outings, Alternative Spring Break
Academic & Voluntary	AR	Non-required Internships
	RW	Study Abroad
Academic & Mandatory	D	Required internships, including clinical field experiences
University Services offered to community	AR or RW*	Creative School
		Summer camps
		Rental/license of university space for third party use
KEY: D – Disclaimer; AR – Assumption of Risk; RW – Release/Waiver		
Note: When a type of event or activity falls in to more than one category above, it is often advisable use the higher level protection.		

This document serves as a guiding framework. The final determination of warning level may deviate from guidelines above based on additional factors of events or activities that increase or decrease risk (i.e. physical interaction, population involved).

*Where two different warning levels are identified, event/activity organizer should use the level of warning that is most appropriate to the specifics of the event/activity.

Drafting an Appropriate Warning at Each Warning Levels

Disclaimer/Subject Warning:

A disclaimer serves to put the participant on notice of a condition or risk, and passively permits the participant to continue with knowledge of that condition or risk. Many disclaimers will also express that the property owner or the event/activity organizer is not responsible for anything that may happen to the participant or the participant's property as a result of the condition or risk for which the participant is now on notice. If you have ever left your car with valet, you may have noticed a disclaimer on your valet stub. Disclaimers/subject warnings are often quite specific and concise:

Assumption of Risk

An assumption of risk is a disclaimer in the sense that it serves to put the participant on notice of a condition or risk – generally by providing some concise information about the activity/event and the risk involved. As a legal matter, assumption of risk is based on the idea that a person who proceeds into a risk area or activity knowingly assumes the risk of that area or activity if the risk is open and obvious or the person has been put on notice of the risk. An assumption of risk may but does not have to specifically state that the participant, with knowledge of that condition or risk, is actively deciding to proceed regardless of the risk. An assumption of risk sends a more powerful message when actively acknowledged (such by click through, RSVP, or signature).

An effective assumption of risk can be concise but will usually be more involved than a disclaimer.

A formal assumption of risk may include a detailed provision like this one:

I am fully aware that there are inherent risks involved with the use of **UCF RWC/participation in UCF RWC Activities**, including but not limited to possible physical injury (including, but not limited to, broken bones, strains, sprains, bruises, concussions, heart attack, heat exhaustion, and all injuries resulting from falling off the climbing tower and impacting against the tower or floor, injuries resulting from being dropped to the floor during lowering on rope, belaying and rope handling techniques and/or failure of ropes, slings, climbing hardware, climbing harnesses, anchor points or any part of the climbing tower surface or structure) and loss of life (including but not limited to all injuries resulting from water complications and/or the misuse of aquatic equipment) **and illness** (including but not limited to infectious disease such as a coronavirus) while using the UCF RWC and/or participating in UCF RWC Activities, and I choose to voluntarily use the UCF RWC and/or participate in UCF RWC Activities with full knowledge that such use and/or participation may be hazardous to me/my health and/or my property. **I VOLUNTARILY ASSUME FULL RESPONSIBILITY FOR ANY RISKS OF LOSS, PROPERTY DAMAGE OR PERSONAL INJURY, ILLNESS, INCLUDING DEATH**, that may be sustained by me as a result of using the UCF RWC and/or participating in UCF RWC Activities, whether supervised or unsupervised. I further agree to indemnify and hold harmless the RELEASEES for any loss, liability, judgment, settlement, damage or costs, including court costs and attorney's fees for both the trial and appellate levels that may occur as a result of or in any way related to my use of and/or use

of the UCF RWC and/or participation in any UCF RWC Activities, whether caused by RELEASEES' negligence or otherwise.

Release/Waiver/Indemnification

Please review the following information related to waiver/release/indemnification agreements. If you believe that an activity or event you are planning requires such a document, please consider what elements you wish it to contain and how you will explain your activity/event and the risks entailed and then contact the Office of the General Counsel (gcounsel@ucf.edu) to finalize a document for your activity/event.

Release/waiver/indemnification agreements are generally more comprehensive than either of the other two warning level documents. A waiver/release/indemnification will identify the parties, identify the activity/event, identify against whom claims are being released ('the releasees') and typically include strong language about both the risk and the knowing relinquishment of potential legal claims arising out of injury/damage alleged to be due to that risk. A release/waiver document often includes assumption of risk language along with waiver language. Such documents should be signed/e-signed by the participant. Where an event is using an online ticketing/RSVP system, a click-through form of assent is acceptable.

A key component of a release/waiver is a release of liability statement, which is a statement that the participant is releasing legal claims against identified persons/entities. For example: "In consideration of being permitted to participate in internship/clinical placement at the Site (the "Event"), I do hereby release, waive and discharge the Site, the University of Central Florida Board of Trustees, Florida Board of Governors, their respective representatives, trustees, officers, employees, agents, contractors and advisors ("Released Parties") from any and all actions, damages, claims or demands which I, my heirs, personal representatives, executors, administrators, or assigns may have against any and all of the aforementioned for any and all personal injuries, accidents or illnesses (including death), known or unknown, which I have or may incur by participation in the above stated Event and for all damages and loss to my property."

Often, a release/waiver document will include an explicit covenant not to sue as part of the release of liability: "In consideration for receiving permission for use of the following facilities and/or for participation in the following activities and/or programs, including but not limited to **UCF Recreation and Wellness Center (UCF RWC), William E and Mary Jo Davis Recreation Area at Lake Claire, Recreation and Wellness Center Park, the UCF Recreation and Wellness Center Leisure Pool and/or Lap Pool, UCF Climbing Tower, Recreation and Wellness Center Equipment Rentals, RWC Personal Training Program, UCF RWC Outdoor Adventure Center Program and Trips, and RWC Challenge Course** (hereinafter collectively or respectively referred to as "UCF RWC /UCF RWC Activities"), I hereby **RELEASE, WAIVE, DISCHARGE, AND COVENANT NOT TO SUE, AND AGREE TO INDEMNIFY AND HOLD HARMLESS** for any and all purposes UCF RWC, THE UNIVERSITY OF CENTRAL FLORIDA, THE UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEES, the STATE OF FLORIDA and the FLORIDA BOARD OF GOVERNORS and their respective officers, servants, agents, volunteers, or employees (herein collectively referred to as RELEASEES) **FROM ANY AND ALL LIABILITIES, RESPONSIBILITIES, CLAIMS, DEMANDS, CAUSES OF ACTION OR INJURY, INCLUDING DEATH**, that may be sustained by me while using the UCF RWC in any way and/or while participating in UCF RWC Activities, whether caused by RELEASEES' negligence or otherwise, or while on the premises owned or leased by RELEASEES. I acknowledge there may be physically strenuous activities. I know of no medical reason why I should not participate.

While a release/waiver/indemnification agreement is more comprehensive than an assumption of risk, and therefore sometimes more complicated, that does not mean that the language can be hard to understand – all warning level documents should be drafted to be clear, using language that can be plainly understood.