

THE ALL-IMPORTANT HPAC/ACVL WAIVER - Mark G. Damm, J.D., HPAC/ACVL General Counsel

Recent developments including threatened lawsuits against HPAC/ACVL, and recent changes to our insurance policy have required that HPAC/ACVL re-examine basic procedures surrounding the execution of Waivers for students and tandem passengers. Here is a quick summary of the “dos and don’ts” when having your students, tandem passengers and/or customers execute a waiver or informed consent document.

DO	DON'T
Give participants advance notice, preferably in the week before, or at the very least, the day before the event, be it the commencement of a course, a tandem flight, or upon the purchase of equipment	Administer on the way up to launch or on launch
Give participants ample opportunity to read the HPAC/ACVL waiver in advance and ask any questions; supply any additional waiver documents required by the instructor/tandem pilot or landowner; verify the participant fills out the waiver with their legal name and current address; verify the participant’s ID if there is any doubt	Alter the HPAC waiver provided on the HPAC website
Enforce a “no signature, no play” policy, <u>without exception</u>	Administer a waiver to someone under the influence of alcohol, drugs or any other condition that may affect their ability to execute and understand the waiver ie. at a social gathering or meeting before the flying-specific event
Have another HPAC member witness the signature, whenever possible	Allow participants to cross out or delete sections of the waiver
Follow a consistent administrative procedure to make sure waivers are fully completed and retained on file	Allow minors to participate except with the signature of their parent/guardian on the waiver
Print the waiver	Collect more personal information than is necessary
Have <u>all</u> customers, whether they are your students or not, who purchase significant equipment, including a wing or harness, execute the standard form Waiver, which now includes a provision providing protection for advice or representations pertaining to, the provision of and/or actual sale of equipment	Fail to have your customers execute the standard form of HPAC/ACVL Waiver when purchasing and/or renting “significant” equipment, including wings, harnesses and reserves
School Waivers should address the issue of equipment being used or rented “as is”	Make any representations or warranties beyond the equipment being inspected and maintained on an annual basis
Verify that ALL class participants fill out the waiver using their correct legal name and current address	Allow anyone to participate in a class without completing the waiver
Verify the participant’s ID	Allow anyone to participate in a class without confirming their ID
Have participants confirm whether they have any pre-existing medical conditions which may impair their ability to participate safely	Allow participation in a class by individuals with a pre-existing medical condition that may impair their or other participants safety

It is important to remember that Waivers are not the “be all and end all”! They are simply another tool, albeit an important one, in protecting HPAC/ACVL, ourselves as members, our schools and our instructors from the potential of a lawsuit and the catastrophic consequences that may flow from the successful prosecution of a lawsuit by an injured plaintiff.

A Waiver does not prevent a lawsuit from being commenced by an injured plaintiff, but it is a significant piece of evidence that must be taken into consideration by a Judge and/or jury in making a decision in a lawsuit.

Please also note the specific recommendations in requiring customers to now execute the standard HPAC/ACVL Waiver when making a significant purchase of equipment, such as wings or harnesses, as the standard form of Waiver now provides wording to protect advice or representations made in relation to, or pertaining to, the provision of and/or actual sale of equipment. The HPAC/ACVL insurance policy on its face protects us for representations or advice made in relation to the sale of equipment, but it does NOT cover us for the provision of, and/or sale of such equipment. If you are the owner/operator of a school, or in the business of selling equipment, note that the HPAC/ACVL insurance policy does NOT provide any degree of protection to you as a commercial operation, and it is imperative that you purchase your own commercial insurance to cover such scenario.

A Waiver is an attempt to provide us with an additional level of protection not provided by our insurance policy, and is nothing more, as it is sometimes said that a waiver is not worth the paper that it is written on. If you have a “sympathetic plaintiff”, that is one who a judge and/or jury will look at in the most positive light, the courts will sometimes go out of their way to work around a Waiver, no matter how well it is written. In a nutshell, do not rely solely upon a waiver to protect yourself and/or your business!

Should you have any questions or concerns regarding the HPAC/ACVL standard form of Waiver, please do not hesitate to contact HPAC/ACVL at lawyer@hpac.ca.

* Do’s and Don’ts table adopted and modified from a publication issued by the University of Alberta, with thanks.

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