

Model Farm Volunteer Waiver and Guide

Drafted By: A. Bryan Endres,^{*} Megan Galey,^{**} and Rachel Armstrong^{***}

Table of Contents

The Guide	1
Why ask your volunteers to sign a liability waiver?	3
Don't I carry insurance for this?	4
What will happen if my farm does not use a volunteer waiver?	4
Practical Tips for Using a Waiver	4
Understanding and Adapting the Form	5
The Form Waiver	7

This document presents a model waiver suitable for farms that accept volunteer assistance. To guide farmers in implementing the waiver on their own farm, we have written a brief explanation of when and how to use this waiver. In addition, the guide highlights the protections this waiver cannot provide.

Bringing people out to the farm to experience food production firsthand is an important mission for many farms. We value that mission, and we value the contribution volunteers make to the farm enterprise. Because of the significant risk of injury on any working farm however, both farmer and volunteer benefit when the responsibilities of the volunteer relationship are outlined beforehand. Our intent in writing and encouraging use of this waiver is to protect both farm owners and farm volunteers.

The laws involved in waivers of liability are highly state specific. We have written a model volunteer waiver that attempts to incorporate specifics from many state laws. We cannot guarantee that this waiver satisfies your state's particular requirements or addresses your specific volunteer situation. It is important to consult an attorney licensed in your state for further assistance in implementing this waiver. This publication does not provide legal advice or establish an attorney client relationship between author and reader.

For questions or feedback on this Model Volunteer Waiver, please contact Rachel Armstrong, Executive Director of Farm Commons, at rachel@farmcommons.org or 608 616 5319 or A. Bryan Endres at bendres@illinois.edu.

^{*} Associate Professor of Agricultural Law, University of Illinois, Department of Agricultural and Consumer Economics.

^{**} Legal Research Associate, University of Illinois, Department of Agricultural and Consumer Economics

^{***} Legal Research Associate, University of Illinois, Department of Agricultural and Consumer Economics; Executive Director, Farm Commons, Inc.

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The Guide

Why ask your volunteers to sign a liability waiver?

Because your farm is at risk:

For many people, asking volunteers to sign a liability waiver can appear overly litigious and unwelcoming. Although we understand that concern, the risks to a farm that does not secure a waiver are high. If someone is injured on your farm, your farm may be responsible for millions of dollars in medical bills or compensation to the volunteer's family. Depending on how you've structured your business, you may lose your farm's assets and even all of your personal assets to pay off those bills.

Because when insurance companies are involved, a lawsuit won't be your volunteer's decision to make:

Many farmers do not ask for a waiver because they only work with volunteers whom they trust not to bring a lawsuit. Unfortunately, the injured volunteer is probably not the person to decide whether a lawsuit is filed. If an injured volunteer uses their own health insurance for an injury they suffered on your farm, their health insurance company will make the decision about whether to sue your farm for compensation. Generally, those of us who have personal health insurance have given the insurance company the right to file lawsuits as they see fit. The insurance company will decide if your farm is sued, and they generally have the right to demand cooperation from your volunteer as the lawsuit proceeds.

Because it creates a positive volunteer experience:

The waiver is also an important opportunity to communicate with potential volunteers about the realities and responsibilities of their task. Those of us familiar with farm life have absorbed many lessons about farm safety without thinking about them. Those who haven't spent much time on a farm may not have what we think of as "common sense." Although scaring volunteers is not the goal, an awareness of risks is healthy. When volunteers enter your farm knowing that the risks are unknown and potentially high, they may listen closer to your instructions. Volunteers may be honestly mistaken in believing you have insurance for their injuries, which you may not. In the end, this waiver may help your volunteers have a happier, more informed, and more productive experience.

Don't I carry insurance for this?

A commercial general liability policy or farm insurance may cover you for injuries sustained by others. But, insurance is rarely straightforward after an injury occurs. Your insurance company may take issue with your volunteer's employment status or the cause of their injury. For example, if you didn't realize you should have carried workers' compensation coverage for volunteers, your insurance company may refuse to pay. If the volunteer was injured because an employee was negligent, your policy may specifically exclude coverage for negligence. Unless you've discussed in detail your volunteer program with your insurance agent, you may not have the coverage you may need. It's also possible your insurer will reduce your premium if you use a waiver.

What will happen if my farm does not use a volunteer waiver?

We don't know what will happen without a waiver. A lawsuit might be filed, it might go to court, and you might be put out of business. The problem is that we don't know. A waiver allows you some control over the situation. With this waiver, you've done your best to determine what should happen if an injury occurs.

When should I use this waiver?

Use this waiver for all uncompensated volunteers.

This waiver is designed for volunteers that do not receive any compensation for their work. If your volunteers receive compensation such as a CSA share, a small stipend, mileage reimbursement or other cash or products in return for their work, please use our Model Worker Share Agreement instead. The worker share agreement addresses very important employment law issues that this waiver does not handle.

Ask for a signed waiver before your volunteers begin work.

It's easy to forget the paperwork once your volunteers arrive. There are several ways you can make the paperwork process easier on yourself. You might send out the waiver beforehand and ask folks to bring a signed copy (while having forms on hand for those who forget). Alternatively, you may include the text of the waiver in an email and ask each volunteer to respond with a sentence stating that they have read and understood the waiver with their full name typed below the statement. Although it's not recommended, it's even possible to read the waiver aloud and ask each person to tell you that they heard, understood, and agree to it. We

don't recommend doing a waiver aloud because you have no written evidence and some states may reject the idea of a verbal waiver. However, it's better than nothing.

Understanding and Adapting the Form

Introduction:

Because we understand that volunteer waivers can leave a bad impression, we have added an introductory paragraph that thanks the volunteer and explains the form. We encourage you to personalize this section. Also, this section is a great place to outline rules or expectations. For example, you may request volunteers to leave all pets at home; wear appropriate clothing, sunscreen, and work gloves; stay hydrated; and inform you if they can't show up for their shift.

Section 1. Volunteer Status

This section is on the waiver to ensure your volunteers know that they are not considered employees of the farm. A volunteer could potentially make a minimum wage claim or seek workers' compensation coverage for an injury. This waiver will not guarantee that the claim will not be successful; it depends on your state's laws. A court may look beyond this part of the waiver to make a decision about whether you should have paid minimum wage or provided workers' compensation. This section is important, regardless, because it shows that the volunteer knew he or she was not considered an employee when the work began.

If you do carry workers compensation insurance on volunteers you may wish to state that here. For more information on how workers' compensation can be valuable for a farm even when it's not required, go to www.farmcommons.org/employees

Section 2. Risks of Volunteering

This section is essential for this waiver to be legally binding. In particular, it is essential that the list of potential risks be "for example, but not limited to," and "not all-inclusive." It is also essential that you specify serious injury, death, or damage to property as a result of the risks. If you want this waiver to be effective against the "negligence" (which is an elaborately-defined legal term of art that we do not have the space to discuss here) of you or your employees, some states require that you specifically include the word in the list of risks.

We intentionally wrote this section to be as broad as possible. If a farmer re-wrote this section to be highly specific: "Volunteers will weed and wash vegetables. This involves a risk of hand injuries or of slipping and falling in the packing shed," then that farmer may be responsible for injuries that occur while feeding chickens or driving a vehicle. On the other hand, a list that is

worded generally is likely to be read as a general waiver of all potential risks of farm volunteering.

Section 3. Release of Claims and Assumption of Risk

Where section 2 explains the risks, section 3 releases the farmer from liability for those risks. Although you may be tempted to delete the long-winded phrases, “and my family, heirs, and personal representatives,” or, “the Farm and its officers, owners, employees and agents,” they are important because they are precise. Unfortunately, the law doesn’t always appreciate simplicity or brevity.

Section 4. Medical Care Authorized

This section is important for two reasons. First, it’s legally important to release the farmer from liability if anything goes wrong while he or she makes an effort to treat an injured volunteer. Second, it’s important to remind volunteers that things could go wrong and the farmer will have to make decisions about medical care. Hopefully, this section will encourage volunteers to inform you of any medial conditions that could affect emergency medical treatment. With this waiver as written, you wouldn’t be liable if you couldn’t meet those special conditions, however.

Signature Section

As explained above, a written signature may not be absolutely necessary for this waiver to be effective. But it certainly is the gold standard for proving that the volunteer agreed. Wherever possible, get a written signature.

The Form Waiver

Volunteer Assumption of Risk and Release of All Claims

Thank you for volunteering at our farm! We appreciate that you have chosen to spend time with us. Before you begin, we need you to know that volunteering on our farm can expose you to personal injury or damage to your property. This waiver outlines our respective rights and responsibilities relating to that risk. Please read this waiver carefully and let us know if you have any questions.

1. Volunteer Status.

I would like to volunteer in activities at [Name of Farm] (the "Farm"). I understand that as a volunteer I will not be paid for my efforts and I will not be covered under workers compensation insurance. I am at least 18 years of age and I will get the consent of the Farm to bring anyone younger than 18 to the Farm.

2. Risks of Volunteering

I understand that the activities at the Farm involve serious risks. I may be exposed to, for example, but not limited to: insects; wildlife; farm animals; inclement weather; extreme temperatures; heavy machinery; tools; the actions and negligence of employees, volunteers, and other people present on the farm; and dangerous conditions on the land such as holes in the ground or barbed wire. I understand that these examples are not all-inclusive and there may be additional risks, all of which may involve serious personal injury, death, or damage to my property.

3. Release of Claims and Assumption of Risk

In exchange for the opportunity to participate in activities on the Farm, I (and my family, heirs, and personal representatives) willingly and knowingly release the Farm and its officers, owners, employees and agents from any and all liability for any personal injury or damage relating to my participation. I (and my family, heirs, and personal representatives) agree to assume all of the risks and responsibilities of my participation. I understand that I am solely responsible for any hospital or other costs arising out of any personal injury or property damage relating to my participation on the Farm.

4. Medical Care Authorized

I am physically fit to participate in activities at the Farm. I understand that there are no medical services available on site or otherwise, and I give permission to the Farm to authorize emergency medical treatment for me. I release the Farm and its officers, owners, employees and agents, from liability for any injury or damage that might extend from such emergency medical treatment.

I further agree that this waiver should be interpreted as broadly and inclusively as state law permits.

Printed Name of Volunteer

Signature of Volunteer

Date