



# Back to the Ballpark Recommendations

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## Introduction

In these unprecedented times, USA Softball strives to protect the integrity of the game while also providing a safe environment for all involved. We will continue our mission to develop, administer and promote the sport of softball to provide opportunities for participation and the best possible experience for those involved.

The current coronavirus (also known as “COVID-19”) pandemic has changed how industries across the United States and the world are conducting business. It has cast uncertainty and apprehension into even the most routine commercial interactions. Despite these circumstances, many industries continue to provide their customers with services necessary for continued economic stability and public safety. On one hand, continuing operations means businesses are supplying integral services and helping prop up the American economy during a time of economic downturn. On the other hand, these businesses are operating in uncharted territory, which carries costs and risks of its own.

In the ever-changing landscape of this pandemic, businesses continuing operations should be proactive in trying to limit these risks. They should monitor and comply with government rules and guidelines. Also, participants must recognize and acknowledge that, while participating in a sport, there are inherent risks to certain activities and, in many situations, social distancing of 6 feet per person among fellow participants or others is not always possible. As a sound recognition of these facts, businesses — particularly those in the services industries whose very nature requires physical interaction among persons — should also consider taking steps to protect against possible future liability for coronavirus exposure claims (*i.e.*, claims that a person contracted coronavirus while on their premises or while participating in a particular activity). Even in uncertain times like these, sound risk management principles can provide guidance to businesses and industries committed to continuing operations.

In addition to taking reasonable protective measures to limit risks, a liability waiver is another simple, familiar, and cost-effective step that businesses can take to protect against potential liability for exposure claims. Most individuals are familiar with liability waivers, and you probably signed one prior to opening a gym membership or going skiing, sending your kids on a school fieldtrip, or after calling the plumber to fix a broken pipe at home. A waiver is simply a voluntary relinquishment or abandonment of a legal right. *Waiver*, Black’s Law Dictionary (11th ed. 2019). A liability waiver — sometimes also called an exculpatory agreement — is a written contract between two or more parties in which one party (generally the customer) acknowledges the risks of participating in an activity or of accepting the services of another party (generally the provider). Most importantly, the customer also agrees to prospectively waive the right to sue the provider for injuries or damages arising out of the activity or services. The

waiver may be as simple as a clause in a services contract or a separate form of its own, and the parties will typically execute it prior to or immediately following performance of the subject services.

Even though liability waivers are routine and well-known, it is unclear whether a COVID-19 waiver relieving a service provider of liability for exposure claims would be enforceable. This is due, in part, to the practical reality that no court in the country has yet analyzed such waiver in this context. But basic legal principles should guide any such analysis, and those seeking to execute liability waivers should consider the following general principles.

**The items listed in this document are suggestions of recommended practices for restarting USA Softball events. State/Metro associations, Recreational Leagues, Tournament Hosts, Staff, Athletes, Coaches, Parents, and Spectators should continue to follow CDC, Federal, State and Local governmental guidelines.**

**Feel free to make your guidelines more stringent if you deem necessary.**

**Remember that information and recommendations during the pandemic are very fluid and are subject to change.**