



# DELAWARE

## EMPLOYMENT LAW LETTER

Part of your Delaware Employment Law Service

William W. Bowser, Editor; Scott A. Holt and Adria B. Martinelli,  
Associate Editor  
Young, Conaway, Stargatt & Taylor, LLP

Vol. 17, No. 9  
September 2012

### **RELEASE OF CLAIMS**

## **Should you have a waiver for the company gym?**

by Molly M. DiBianca

*Health and wellness benefits are all the rage. Some employers offer their employees a discount on gym memberships, while others offer a monthly stipend to be used toward paying health club fees. Some of you have an on-site gym for your employees to use, but do you make them sign a waiver for any injuries they may incur? Should you? A recent decision from the Delaware Superior Court suggests the answer is yes.*

### ***Ouch! I broke my toe!***

Employers that are considering building an on-site fitness center for employees commonly want to know how they can protect themselves against a personal injury lawsuit. For example, what happens when an employee drops a dumbbell on his foot and breaks a toe? What's to stop him from suing the company for his injury? Assuming that lifting weights isn't part of his job, the injury didn't occur in the "course and scope" of his employment and therefore isn't covered by workers' compensation. That means you, the employer, likely will be sued.

### ***No good deed goes unpunished***

Until recently, the standard was that employers were free to require employees to sign a waiver or release as a condition of using a company fitness center. However, the release wasn't worth the paper it was printed on because the law prohibits waivers of claims for future injuries. So despite your waiver and good intentions to help your employees stay healthy, you could face a lawsuit for an employee's injury.

In a 2008 decision, the Delaware Superior Court held that those claims *could* be released but only if "the language makes it crystal clear and unequivocal that the parties specifically contemplated such a release." In that case, the court held that the waiver at issue didn't meet the "crystal clear and unequivocal" standard. As a result, the waiver was ineffective but left open the possibility that a "properly- worded release might effect a waiver of premises liability."

In July, the court had an opportunity to address the issue again, and this time, it found the waiver to be enforceable. In the case, a member of an athletic club signed a comprehensive waiver of liability and release in connection with her membership agreement. The waiver expressly stated that she and all others on her membership assumed the risk of "any injury or damage incurred while engaging in any physical exercise or activity or use of any club facility on the premises," including the use of "any equipment in the facility." The court held the release was sufficient to constitute a waiver in "crystal clear and unequivocal" terms and dismissed the suit. *Hong v. Hockessin Athletic Club*, No. N12C-05-004-PLA (Del. Super., July 18, 2012).

### ***Bottom line***

There are no guarantees in life or in the law, and this situation is no exception. Although the case offers employers some very good news when it comes to avoiding liability for on-site injuries to employees and visitors, it is, of course, not a guarantee. Nevertheless, in light of this case, there seems to be no reason *not* to require a waiver for your on-site fitness center.

Copyright 2012 M. Lee Smith Publishers LLC

**DELAWARE EMPLOYMENT LAW LETTER does not attempt to offer solutions to individual problems but rather to provide information about current developments in Delaware employment law. Questions about individual problems should be addressed to the employment law attorney of your choice.**

[Back to Results](#) [Back to Search](#) [Exit Search](#)