



POLITICS

Trump-appointed postmaster general plans to slow mail delivery

NEWSLETTERS

When the U.S.-China fight disrupts U.S.-China financing

ENTERTAINMENT

Beijing partially reopens movie theaters as coronavirus threat recedes

HEALTH • CORONAVIRUS

Some employers have illegally fired workers who refuse to sign COVID liability waivers

BY HARRIS MEYER, CALIFORNIA HEALTHLINE, AND KAISER HEALTH NEWS

July 23, 2020 1:10 PM EDT



Our mission to help you navigate the new normal is fueled by subscribers. To enjoy unlimited access to Fortune's journalism, [subscribe today](#).

After spending a May day preparing her [classroom to reopen](#) for preschoolers, Ana Aguilar was informed that the tots would not have to wear [face masks](#) when they came back. What's more, she had to sign a form agreeing not to sue the school if she caught COVID-19 or suffered any injury from it while working there.

Other teachers signed the form distributed by the Montessori Schools of Irvine, but Aguilar said she felt uncomfortable, although it stipulated that staff members would be masked. At 23, she has a compromised immune system and was also worried that she could pass the coronavirus on to her fiancé and other family members.

Aguilar refused to sign, and a week later she was fired. “They said it was my choice to sign the paper, but it wasn’t really my choice,” said Aguilar, who’s currently jobless and receiving \$276 a week in [unemployment](#) benefits. “I felt so bullied.”

As employers in California and across the country ask employees to [return to the workplace](#), many have considered and some are requiring employees to sign similar waivers, employment lawyers say. And many employees, mostly lower-wage and minority workers in essential jobs, are calling lawyers to complain about the waivers.

“These are illegal agreements that are totally unfair to workers,” said Christian Schreiber, a San Francisco lawyer who represents Aguilar and other employees.

The California State Legislature last year passed a law, [AB-51](#), prohibiting employers from requiring employees or job applicants to sign away their right to pursue legal claims or benefits under state law. The law, which also prohibits firing any employee for refusing to sign, is being challenged in court by business groups.

Only a few employers have forced employees to sign liability waivers, at least partly because these waivers likely would be held unenforceable by courts, lawyers who represent employers say.

“Courts don’t recognize them because of the unequal bargaining power between employers and employees,” said Isaac Mamaysky, a partner at the Potomac Law Group in New York City. “With so many unemployed, people would sign just about anything to get a job.”

Another reason they are considered unenforceable: Workers who get sick or injured on the job generally are compensated through state workers’ compensation systems rather than through the courts, and state laws don’t allow employers to force employees to sign away their right to pursue workers’ comp claims, Mamaysky said.

Companies may have the right to require nonemployees working on their premises to sign COVID waivers. When the New York Stock Exchange reopened in late May, it made floor traders sign a form clearing the exchange of liability if they contracted COVID-19. That was legally permissible because the traders were not exchange employees, an NYSE spokesman said. He declined to say whether any traders have become infected with the virus.

The Las Vegas-based restaurant chain Nacho Daddy, which did require employees to surrender their right to sue over COVID-19, reportedly [fired some](#) who refused. Following [negative media coverage](#), Nacho Daddy removed the language that waived legal rights and instead had employees agree to follow safety rules such as masking and social distancing. The company did not respond to a request for comment.

Having employees agree to comply with safety rules is a more common and legally acceptable approach than waivers.

“I suggest my clients go to this reasonable middle ground: Here’s what we promise to you, here’s what we want you to promise to us,” said David Barron, an employment lawyer with Cozen O’Connor in Houston.

Business groups hope Senate Majority Leader Mitch McConnell will make liability waivers unnecessary. He has [proposed](#) a Senate bill with broad liability protection for employers for five years against a range of coronavirus-related claims, and says he won’t back any COVID relief bill that doesn’t include such protections. President Donald Trump has said he supports the liability protection.

At least 10 states already have enacted laws providing some form of immunity for businesses from lawsuits brought by employees and others who contract COVID-19. Similar bills are pending in about 10 more states, according to the National Employment Law Project. The California Assembly is considering a [liability protection bill](#) for public K-12 schools.

Federal legislation to provide COVID liability relief for employers should protect only those that follow applicable health and safety guidelines, said John Abegg, executive vice president of the U.S. Chamber Institute

“I liked my job and I needed the paycheck,” Aguilar said. “But making you sign these papers is telling you that whatever happens, they really don’t care.”

This story was produced by [KHN](#) (Kaiser Health News), which publishes [California Healthline](#), an editorially independent service of the [California Health Care Foundation](#). KHN is not affiliated with Kaiser Permanente.