

Summer Camp Risk Management: Topics To Consider In General And In The COVID-19 Climate

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Agenda

- Operating Summer Programs
- Foundational Documents And Best Practices
 - Counselors
 - Participants
 - Online Camps
 - Third Parties On Campus
- Action Items



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The Big Picture

- Understand Most Updated Federal, State, And Local Guidelines And Obligations
- Communicate Early And Often
 - Board
 - Employees
 - Families
 - Vendors
- Prepare For Safe Experience For Participants And Staff
 - COVID-19 Mitigation Strategies
- Negotiate With Vendors And Others

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**Legal Framework:
Federal Regulations**

- FLSA (But Some Exemptions)
- ADA
- Title VII
- OSHA
- CDC
- Federal Transportation Safety
- Federal Financial Assistance?
 - Title IX, Title VI, Age Discrimination, Section 504

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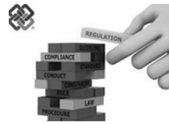
**Legal Framework:
State & Local Regulations**

- Applicable State And Local/Municipal Laws May Depend On:
 - Local DPH Requirements
 - Types Of Camp Activities
 - Whether Camp Is Affiliated With A School
 - Whether Camps Is Affiliated With A Religious Organization
 - Duration Of Camp/Time Of Year
 - Whether You Call Your Camp A “Camp”

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Potential Areas Of State/Local Regulation

- Licensing/Inspections
- Qualifications Of Camp Director
- Nurses And Medical Staff
- Minimum Age For Counselors/Junior Counselors
- Staff-To-Participant Ratios
- Background Check Requirements
- Staff And Participant Immunization Requirements
- Maintenance Of Records
- Supervision Of “High Risk Activities”
- COVID-19 Guidance
 - Vaccine Requirements?
 - Mask Mandates?



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COVID-19 Guidance And Best Practices

- Guidance Largely Forthcoming
 - CDC
 - State/Local Guidance
- Best Practices Evolving
 - Vaccination/Booster Requirements (Employees, Students)?
 - Masking Requirements
 - Social Distancing
 - Personal Hygiene
 - Cleaning And Sanitation

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Summer Employees

- Contracts/Offer Letters
- Vaccinations
- Counselor Handbook



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Summer Employee Contracts/Offer Letters

- Threshold Question: Nature Of Seasonal Employment (At-Will vs. Term)
- Exempt vs. Non-Exempt
- Discretion To Change Duties And Responsibilities
- Virtual/Hybrid Teaching
- Professional Expectations (Including Compliance With Pandemic Policies)
- Work Hours, Salary, And Benefits
- Force Majeure?
- Conditions Of Employment
 - Background Checks; Enrollment; Work Authorization; etc.
- Waiver/Release/Assumption Of Risk?
- COVID-19 Testing? Vaccine?



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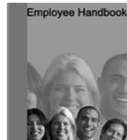
COVID-19 Vaccine Employee Protocols

- December 2020 EEOC Guidance
 - COVID-19 Vaccine Not A “Medical Examination” (ADA)
 - However, Pre-Vaccine Inquiries Could Be Considered “Disability-Related Inquiries”
 - Asking An Employee To Produce Proof Of Immunization Is Not A “Disability-Related Inquiry”
 - Mandatory Immunization Permissible Subject To Medical And Religious Exemptions
 - ADA: Reasonable Accommodations For Disability
 - Title VII: Reasonable Accommodations For Religion
 - Consider Additional State Law Exemptions (Philosophical, Testing-Option, Pregnancy, etc.)

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Counselor/Staff Handbook

- Reinforce The Camp’s Culture And Values
- Communicate Policies And Procedures To Employees
- Establish Consistent Expectations Regarding Employee Conduct And Work Performance
- Compliance With Applicable Laws
- “Exhibit A” In Employment-Related Lawsuit



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Counselor Handbook: Key Policies

- Disclaimer
- Nature Of Employment
- Harassment
- Non-Discrimination Policy
- Communicable Illnesses
- Accommodations
- Health And Safety
- Boundaries With Campers
- Mandated Reporting
- Counselor Responsibilities
- Code Of Conduct & Discipline Policy
- Compensation, Benefits, Time Off
- Termination
- Acknowledgment

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Communicable Illness Policy

- Communicate Camp’s Right To Prohibit Any Employee From Campus Who Has:
 - A Communicable Illness;
 - Been Exposed To Someone With A Communicable Illness; Or
 - Traveled To An Area Affected By A Communicable Illness
- Camp’s Decision Based On Medical Judgments And Guidance From Public Health Agencies/Experts
- Protects Health And Safety Of Camp Community



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Summer Camp Participants

- Enrollment/Registration Agreement
- Permission And Authorization Form
- COVID-19 Considerations
- Participant Handbook



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The Enrollment/Registration Agreement

- Establishes Terms Of Relationship Between Family And School/Camp
- Should Be Substantially Similar To Enrollment Agreement Used During The School Year, But Adapted For Summer Camp
- Covers All Key Areas Of Relationship



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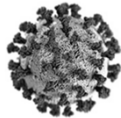
Enrollment/Registration Agreement Goals

- Create Legally Enforceable Contract
- Allow Camp To Collect Tuition/Fees In Cases Of Non-Payment
- Permit Camp To Alter Program If Desired (e.g., COVID-19 And Remote Learning)
- Establish And Enforce Conduct Expectations For Participants, Families, And Other Persons Associated With Participant
- Consider Appropriate Authorizations
- If Applicable, Consider Any Residential-Specific Issues (Right To Search Rooms, Local Guardian Requirement, etc.)
- Establish Forum And Choice Of Law In Case Of A Dispute
- Liability Release?

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Force Majeure: Suspend/Modify Camp Operations

- Due To:
 - “Act Of God”
 - Government Action
 - Terrorism
 - Epidemic/Pandemic (COVID-19)
- Family’s Obligations Unconditional
- Tuition Refund?
- Modify Curriculum, Schedule, Programming



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Educational Outcomes

- Camp Makes No:
 - Representations As To Kind, Quality, Or Appropriateness Of Experience/Education For A Particular Participant
 - Guarantees As To Educational Outcome
- Camp Can Alter Programming As Circumstances May Warrant
 - Camp Offerings, Activities, Schedules, Camp Publications, And Personnel
 - Policies, Procedures, Practices
- Essential For Any “Remote Camp” Transitions During COVID-19



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Summer Camp Authorization And Release

- Parental Consent To Participate
- Parent Duty To Disclose
- Health Information
- Authorization To Treat
- Emergency Contact
- Pickup Authorization
- Limitations Of Liability



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Parental Consent To Participate And Duty To Disclose

- Permission To Participate In All Camp Activities
- Permission Based Upon Belief That Child Does Not Have Any Physical, Mental Health, Or Other Condition That Could Affect Ability To Safely Participate
 - Be Specific About The Nature Of Risks
- Parents Required To Bring Any Concerns To Camp's Attention Prior To Child Participates
 - Reduce Likelihood Of ADA Claims?



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Health Information

- Collect Insurance Information, Proof Of Immunization, Information About Health Issues
- Determine Participants' Medication Needs
 - Will Medication Be Administered By The Nurse? Camp Director? Self-Administration?
 - Different Guidelines For Prescription vs. Over-The-Counter Medications?
 - Obtain Authorization To Administer Medication
 - **Rules Vary Widely By State**
- Forms Must Be Accessible At All Camp Locations



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COVID-19 Considerations For Participants

- Proof Of Immunization Requirement?
 - Could Be Camp Requirement Or Requirement For Destinations Participants Will Visit
- If Require Immunization, Consider What Exemptions You Will Recognize And Process For Evaluating Requests
 - Medical, Religious, Philosophical, Testing Option, etc.
- Proof Of Negative Test Prior To Arrival?
- Obligation For Parents/Local Guardian To Come To Campus And Care For Participant In Event Participant Tests Positive?

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Authorization For Treatment

- Grants Camp Permission To
 - Administer First Aid
 - Transport Participant To Hospital
 - Authorize X-rays, Other Tests, And Procedures When Parents Are Unavailable
- Symptomatic And Surveillance Testing?
- Parents Agree To Accept Determination of Treating Physician That Care Was Medically Necessary
- Parents Agree To Bear Associated Costs



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Limitations Of Liability

- State Specific
- Release Of Claims
 - Camp's/School's Negligence (Carve Out Gross Negligence?)
- Assumption Of Risk
 - Parents Assume Risks (Known And Unknown)
 - COVID-19 And Other Communicable Illnesses
- Indemnification
 - Covers Camp/School From Claims Others May Have Against Participant Based On Participant's Acts And Omissions
- Covenant Not To Sue The Camp/School

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Common Authorization And Release Traps

- Fail To Spell Out Specific Known And Foreseeable Risks Of Camp Activities
- Not Requiring Signatures Of All Parent/Guardians, Participants 18 And Over
- Fail To Collect All Relevant Medical Information
- State Law Compliance Regarding Medication Administration



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Participant Handbook

- Incorporate Camp/School Mission
- Clarify Camp Procedures
- Clarify The Camp's Expectations Of Participants And Their Families
- Reflect Consistency Among Camp's Various Summer Programs
- Include All Legally Required Policies



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Key Policies For Participant Handbooks

- Disclaimer
- Non-Discrimination Policy
- Communicable Illnesses
- Accommodations
- Logistical Issues (Camp Hours, Drop-Off And Pick Up Procedures, Weather-Related Issues, etc.)
- Interpersonal Misconduct And Anti-Bullying Policy
- Parental Compartment
- Any Policies Required Under State Or Local Summer Camp Laws
- Acknowledgement

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Online Camp Considerations

- Which Programs Are Suitable?
- Employee/Participant Online Conduct (E-Safety Policy)
 - Cyberbullying And Harassment
 - One-On-One Interactions
 - Dress Code
- Appropriate Technology And Consent
 - COPPA
 - Zoom Privacy Issues
 - Accommodations
 - Remote Learning And Social Media
 - Recording



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Online Camp: Recording

- Impact Of State Recording Laws
 - Both Single And Dual Consent States
 - Note Camp Location And Participant Location
- Getting Consent
 - Registration/Enrollment Agreement? Separate Form? Community Message? Notify Immediately Prior To Recording?
 - 18+ Participants
- Anticipate Recording Issues
 - Parent/Participant Requests For Recordings
 - Staff Desire To Record For Their Protection



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Third Parties On Campus

- Examples: Service Providers (Food, Transportation, Security, Custodial), Outside Organizations/Campers, Parents, etc.
- Vendor/Facilities Use Agreements
 - If Applicable, Employment Status (Independent Contractor vs. Joint Employer)
 - Timing/Mechanism Of Payments
 - Cancellation Provisions
 - *Force Majeure* (Make Sure It Helps You Too!)
 - Compliance With Pandemic Policies
 - Cleaning Obligations
 - COVID-19 Testing And Vaccination Requirements?
 - Remedies (Governing Law, Exclusive Jurisdiction)

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**Action Items:
Operating Summer Camps**

- Inspections By DPH
- Determine Status
 - Open On Campus
 - Virtual
 - Cancel Altogether
- Refunds?
- Paying Staff?
- On-Site Health Services
- Understand FFA Obligations



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**Action Items:
Summer Employee Updates**

- Update Contracts/Offer Letters
 - At-Will
 - Contingencies
 - Remote Learning
- Counselor Handbook
 - Acknowledgement
 - Applicable State/Local Laws
 - Communicable Illnesses
 - Remote Learning



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**Action Items:
Participant Updates**

- Update Enrollment / Registration Agreement
 - Add Missing Provisions
 - Remove Problematic Provisions
 - Sync With Participant Handbook
- Authorizations / Release
 - Medical/Health Information And Authorizations
 - Recording
 - COPPA
 - Consider State Laws
- Participant Handbook
 - Communicable Illnesses
 - Remote Learning



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Action Items: Online Camp

- Web-Based Applications
 - COPPA
 - Recording Consent
 - Camp Location
 - Participant Locations
- Remote Learning/Teaching Policies
 - E-Safety Policies
 - One-On-One Protocols
 - Counselor Consent



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Questions And Answers



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