

Seeking to avoid liability

Businesses ask customers to sign away right to sue

BY CAROL POLSKY
carol.polsky@newsday.com

Customers desperate for color and a haircut have a new check-in routine at some of the salons reopening in the shadow of the COVID-19 pandemic.

Before heading to their stylists' chair, they must submit to a temperature check, answer a questionnaire on symptoms or exposure and sign a liability waiver.

The waiver, which owners have created on their own off online templates, says the customer will assume the risks of infection and give up any claims against the business should infection occur. Few, if any, customers resist, salon owners say.

"They're dying to get in here, they'll do what they have to do to get in here," said Lisa Ferry, a salon coordinator at NuBest in Manhasset. Salons are operating with half their staff at any one time, seats separated by 6 feet of distancing or partitions, and mandatory masks for employees and clients.

No one has resisted signing at Richard Salon in Smithtown, said its owner, Richard Daly. "It's just part of a standard policy and they need a haircut," he said.

The liability waiver, a standard at risky ventures like ski slopes and sky diving operations, also can be a precondition of obtaining services such as fitness training or physical therapy. It says a client understands the risks they are taking and agrees not to sue the establishment offering a service.

As businesses reopen after the shelter-in-place orders imposed this past spring to limit the spread of the coronavirus, many seek to limit exposure not just to the virus but to potential lawsuits.

Such waivers have cropped up everywhere from summer camps, dentists and gyms to the New York Stock Exchange. President Donald Trump's campaign required attendees at its recent Tulsa rally to sign a waiver assuming the risk of COVID-19 infection.

Whether a waiver stands up in court, however, depends on

the facts of a case, attorneys say.

Richard Jaffe, a plaintiffs' attorney in personal injury and malpractice claims and a partner at Cohen and Jaffe in New Hyde Park, said that while some waivers may be enforceable in court, none exempt a business from a suit alleging gross negligence.

"You could still sue the store if the store knows they have someone with COVID working in the store and they don't tell the customer," he said. "That customer doesn't know someone in the store has COVID-19, and therefore didn't knowingly assume the risk."

In the past, the U.S. Supreme Court has upheld waivers that limit rather than eradicate the right to sue, he said, such as the cruise line waivers that shorten the statute of limitations on suits or require suits be filed in a particular jurisdiction.

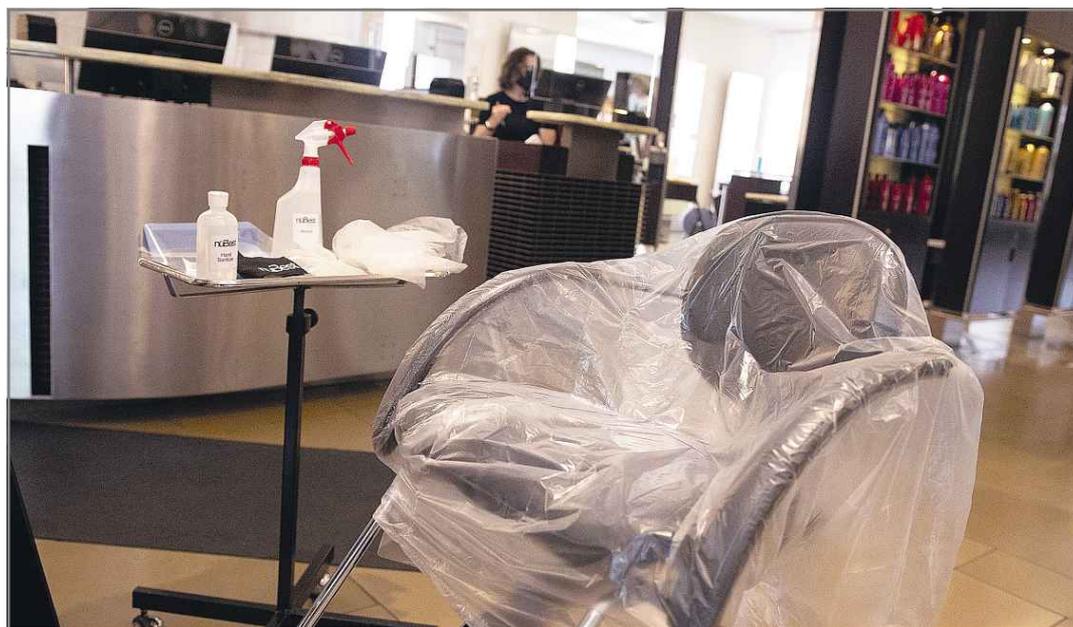
On the other hand, he said, a customer might find it difficult to prove that a particular business location was responsible for a COVID-19 infection.

According to a National Law Review blog, waivers that protect against liability arising from a COVID-19 infection have yet to be tested in court.

In general, the laws on waivers vary by state — a handful do not permit them, while the majority of states have held that personal injury waivers signed by parents on behalf of minor children are unenforceable. But courts have upheld those that are clearly written, honestly negotiated and do not cover criminal conduct or conduct that implicates public policies to protect the public.

Business groups such as the U.S. Chamber of Commerce and, on Long Island, a coalition of groups representing businesses, builders, real estate, industry and the tourism and hospitality industry are lobbying for a uniform temporary liability waiver for businesses that comply with federal and state guidelines on protecting workers and customers from the coronavirus infection, but might face suits arising from infections.

The coalition, which includes



KENDALL RODRIGUEZ

Lisa Ferry of NuBest, above, in Manhasset, said, "They'll do what they have to do to get in here."

executives of the Association for a Better Long Island, Long Island Association, Long Island Builders Institute, and six other industry groups, wrote a letter to congressional leaders in support of the federal liability waiver protecting businesses. The letter warned: "Regardless of how stringent a business follows CDC disinfecting protocols, tests its employees, and monitors those who enter and exit its premises, it will be impossible to completely eliminate the threat of infection. Therefore, unless Congress acts, business owners will be liable from employee, visitor and/or customer lawsuits."

Unions and groups representing workers have objected to such a waiver, arguing it could force workers to risk their health even if protections are inadequate, without recourse to unemployment insurance if they were to quit, or access to courts to improve their conditions.

New York State Trial Lawyers Association president Edward Steinberg said in a statement: "Legal loopholes to avoid accountability have never been the answer and, in fact, they are invariably a step in the wrong direction. Rather, we should focus on reasonable precautions to keep all businesses safe for both consumers and workers."

SPLASH INTO SUMMER CASH!

HOME EQUITY LINE OF CREDIT

As low as

1.99%¹ APR*

• Fixed First 12 Months • No closing costs²

To learn more and apply go to
islandfcu.com/heloc

ISLAND FEDERAL
Catch the Wave to Better Banking™

*APR=Annual Percentage Rate. Rate accurate as of 6/24/2020; subject to change. ¹Rate featured is the lowest for the product. Variable rate; maximum rate of 16%. May be offered credit at a higher rate and other terms; subject to credit approval. After introductory rate, APR varies based on prime rate plus a margin; margin disclosed at account opening. Current prime rate 3.25%. Hazard insurance required on all loans. ²Must maintain minimum balance requirements for first 12 months for introductory rate and 36 months to avoid payment of closing costs. No closing costs option only available for limits up to \$500,000 for a primary residence located in Nassau or Suffolk County. Other terms and conditions apply. Membership eligibility applies.

