



CLIENT INFORMATION GUIDE

Section: Employment Practices

Topic: References for Former Employees

Providing references for former employees is a complex issue where employers should exercise caution. In certain situations, legal liability may arise from...

1. Providing too glowing of a recommendation for an employee you terminated. (He or she may argue that, if they were such a good employee, your termination of them was unfair.)
2. Providing a negative statement to a prospective employer which is designed to harm the former employee. (They can claim defamation.)
3. Providing a positive statement to a prospective employer which overlooks serious problems known to you. (In some cases, the new employer has successfully sued the previous employer for failing to disclose information that, if known, would have kept them from making a decision that caused them harm.)

Weighing all possible liabilities, the most prudent general policy to follow is to not discuss former employees if you have nothing positive to say. You may simply state that it is not your policy to comment on former workers. Where the worker's record is mixed, it is usually possible to emphasize the positive while stating the negative aspects in a less negative fashion. Stick to known, provable issues and do not include speculation or rumors.

Most states provide limited protection to an employer from liability in making negative statements about a former employee. But to receive that protection it is important that you make your statement in good faith, stick to the facts as you know them and avoid involving your personal feelings in the statement.

While most defamation cases have revolved around the former employer providing negative information to a prospective employer, it should also be noted that you should not provide negative information about a former employee to other employees within your company. There have been successful defamation claims made because employers have spoken negatively about a former employee to people who do not have a need to know, or where the statements have been obviously untrue or intended to harm the employee.