

From the webpage of University of Oregon, Human Resources - <https://hr.uoregon.edu/recruit/recruitment-and-selection/guidelines-recruitment-and-selection>

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### **Reference Checks**

Completing reference checks is a critical part of the selection process. Information you have received in an interview is biased and typically includes only what the applicant wishes you to know. A thorough reference check may produce additional information to help insure that the most suitable candidate is hired. It is a way to clarify, verify and add data to what has been learned in the interview and from other portions of the selection process. Never reveal the information received from a previous employer to the candidate. This information should be kept confidential or your sources for references will dry up quickly.

#### *Legality of Reference Checks*

In Oregon, in most instances employers who provide employment reference information about current or former employees are protected from liability for their comments. Employers are protected if the information they provide is offered in response to a request by the former employee or a prospective employer and is not knowingly false or misleading and is not biased by prohibited discrimination, including prohibited retaliation.

It is legal and important for a prospective supervisor to consider job-related information learned from a reference check. However, as in all employment decisions, information related to race, marital status, age, disability, religion, color, national origin, veteran status, citizenship, sexual orientation and sex may not be considered and should not be requested. Also, federal law establishes requirements for employers using outside parties to conduct reference checks on their behalf. If you are considering using an outside entity to conduct reference checks, you will need to comply with those laws.

#### *Type of References*

Your best source of information on any candidate is a former employer. On-the-job performance is the most useful predictor of future success. Personal references (relatives, teachers, and clergy) generally have limited value. Information available from a human resource office is usually limited to dates of employment and reason for leaving. HR people generally do not have enough day-to-day contact with employees to rate their on-the-job performance and ability. The supervisor can specify the quality and quantity of work, reliability, potential problem areas and job behaviors. Do not rely on written references presented to you by candidates. Many are written at the time of termination and some employers may over-inflate the applicant's qualifications.

When reference checking, the primary reference may extol the virtues of the employee. There is a chance that you will become so satisfied with the positive comments that you may decide not to explore the person's background any further.

Think again.

The primary reference may have felt sorry for the well-liked, but inept, former employee and might be willing to do anything to help that person land a good job. Realizing that, it pays to be prudent and exercise some caution.

Don't be overly anxious to hire. Sometimes there is a tremendous anxiety to fill a job and prospective employers may disregard anything negative said by the interviewee. Sometimes references may be checked using questions that are unconsciously created to encourage the kind of answer the manager wants to hear. For example: "Do you think he could handle the job"; or, "Is she a hard worker, loyal and honest?" The way these questions are worded encourages only "yes" answers. It is to your advantage to avoid putting words in the mouth of a reference.

It is recommended that you check with at least two past employers to find consistent trends in the applicant's past performance. Do not limit yourself to references listed by the applicant; make sure you talk with the most recent supervisor or those who employed the person in a position most clearly related to your own. Calling several employers will also help balance the information you receive and may guard against making a decision based on an unfounded reference. For instance, current supervisors may mislead you because they want the applicant to get another job. Sometimes applicants request that their current employer not be contacted for a reference. It is recommended that you honor this request **until such time as the candidate is a finalist for the position**. There

is cause for concern if an applicant does not want a current employer or supervisor to be contacted when they are a finalist.

If you are unable to contact a former or current supervisor, consider getting a reference from other managers, supervisors or personnel in the organization who may be in a position to evaluate and comment on an applicant's experience and qualifications. In some instances you may not be able to get a reference from any source. You must rely on information you learned in the other parts of the selection process in making your hiring decision.

#### *Planning: a Key Part of Reference Checking*

As with other stages of the selection process, it is important that the solicited information relates directly to the applicant's ability to carry out the responsibilities of the position. If you check the reference of more than one finalist, it is important to plan the general questions you will ask of the references of each applicant; however, you should also include specific questions that will help clarify possible problems you perceive with each of the different candidates.

To facilitate a uniform, structured approach and create an easy means of record keeping, it is a good idea to develop a reference form. It should include: your name; date; name of applicant; position applied for; name, title, and company of the reference; basic questions you will ask about each applicant. This form should have plenty of room for noting responses to your questions and space for additional comments.

#### *Questioning Techniques*

To begin a reference check, identify yourself and the applicant and briefly describe the position. Assure the reference that the information they provide you will be held in confidence. Ask the reference if he or she is willing to talk with you and if this is a good time. Use good questioning techniques to make sure you are getting complete and accurate information. A key to good reference checking is the ability to identify and utilize any verbal cues during the conversation. The tone of voice and delivery (pauses or hesitancy) may indicate that additional questioning is necessary. Your objective is to obtain more than superficial opinions.

Ask questions as you would in an employment interview. Identify key responsibilities of the position and ask questions related to the applicant's ability and/or experience in that area. Ask about their scope of responsibility, quality of performance, general output, and their ability to get along with supervisors, subordinates, and coworkers. Keep in mind that the purpose is to elicit information from the past employer about the applicant's ability to perform the essential functions of the job. Non-directive questioning should encourage this type of information. Use directive questions to follow up, especially if the response is vague. Often a former employer will not disclose negative information unless asked directly. **Make sure you have a clear picture of the applicant's strengths and weaknesses before you end the reference call.**

As a standard practice, the following areas should be explored:

- confirmation of employment dates (month and year);
- job titles (formal and informal);
- dependability and follow through on assignments;
- reason for termination;
- possibility for rehire (A former employer's reluctance to rehire should be cause for concern, however, some firms have a general policy prohibiting rehires. If this is the case it should be noted.);
- performance problems.

#### *Tough Questions*

To find the truth, you have to ask probing questions:

- How does the candidate compare to the person who is doing the job now? Or, what characteristics will you look for in the candidate's replacement?
- When there was a particularly urgent assignment, what steps did the candidate take to get it done on time?
- Since none of us is perfect at everything we do, please describe some of his or her shortcomings.
- Have you seen the candidate's current resume? Let me read you the part that describes his or her job with your organization (stop at each significant part, and ask the reference for a comment)
- Not all employees like everyone with whom they work. What kind of people did the candidate have problems with?

- Did you ever have to talk with the candidate about performance problems? If so, please indicate what the issues were. Was the employee ever disciplined?

#### *How to Evaluate References Effectively*

Whether the initial reference is favorable or unfavorable, always get a second opinion.

Be objective. Neither longevity on the job, nor promotions and raises, are necessarily proof that an employee was much more than adequate. Sometimes incompetent people who were very well-liked have been known to not only survive on the job, but also to advance.

#### *Conclusion*

Take the time to check references. It's worth it. Checking references can be a time consuming task and some managers have abandoned the idea of doing little more than a cursory verification of a few facts. Because the cost to an organization of a hiring mistake is high, it is preferable to take the time to make the correct selection decision in the first place.

## References for employment

### *Key points*

Employers do not have to give a reference but if they do it should be fair and accurate, some employers may only give a factual reference stating dates of employment, job title and salary.

- There is generally no legal obligation to give a reference, if one is given it should be a fair reflection and accurate.
- Prospective employers must only approach a job applicant's current employer with the candidate's permission.
- Job offers can be made subject to satisfactory references being received.
- Job applications should say at what stage of the recruitment process references will be sought.
- Employers should have a policy of what will happen when a referee fails to reply to a request for a reference.

Employers may ask for two types of references. Job applicants could be asked to provide the contact details for a professional reference from a previous employers or manager who could recommend them for the role they have applied for, or for a character reference from a person who knows them, for example a teacher.

However, in seeking a reference an employer should not ask for personal information or conjecture about the applicant. The reference should be about the candidate's abilities and aptitude for the job.

A prospective employer must only approach the candidate's current employer with their permission. Any request should include relevant questions regarding the candidate's ability to carry out the role applied for and it may be a good idea to enclose a job description for the referee. A simple form asking for confirmation of dates of employment, duties and any particular skills may be adequate.

Job offers can sometimes be conditional and may depend on satisfactory references being received. Prospective employers should remember a referee may simply fail to provide a reference or may wrongly indicate the applicant is unsuitable. Employers may agree to a probationary period in these cases.

Employees can ask for a copy of any reference sent to a new employer, the request should be in writing. The employer will need to consider if any exemptions apply before they can release the information. If a worker thinks a bad reference has been given they may be able to claim damages in a court, but the worker must be able to show that the information was misleading or inaccurate and that they have suffered a loss such as withdrawal of a job offer.

From the website: <http://www.nolo.com/legal-encyclopedia/giving-references-former-employees-29969.html>

## **Giving References for Former Employees**

Learn what to tell prospective employers about a former employee.

Whenever one of your employees leaves, you will have to decide what to say to other employers who call for a reference. The decision is pretty straightforward if the employee left on good terms: You and your former employee can come up with a mutually agreeable statement to explain the departure. Or, you can simply tell the whole glowing truth to any prospective employer who calls for a reference. But if the employee was fired, you face a more difficult task.

### *Defamation Lawsuits: The Fired Employee's Revenge*

If you are not careful in your statements about former employees, you might find yourself facing a defamation lawsuit. To prove defamation, a former employee typically must show that you intentionally damaged his or her reputation by making harmful statements about the employee that you knew to be false.

At first glance, it might seem like only the most spiteful employer would get caught in this trap. But, if you make an unflattering statement that you don't absolutely know to be true, it could happen to you. Let's face it: Most reasons for firing make the employee look bad. And an employer often cannot prove what he or she strongly believes to be true -- that an employee is stealing from the company, is incompetent, or lied about job qualifications, for example. An employer who makes such statements about a former employee could get into trouble. Your best policy is to say as little as possible and stick to facts you can prove.

### *What To Tell Other Workers*

It can be challenging to figure out what to tell the rest of your workforce when an employee leaves on less-than-positive terms. Our advice: Don't go into detail. Shortly after an employee is fired, make a brief statement to your other workers, saying that the employee is no longer with the company. Tell them who will handle the tasks that person was responsible for, and ask them to direct any questions to you.

### *What to Tell Potential Employers*

When a potential employer calls for a reference, you may feel trapped between wanting to tell the truth and fearing a lawsuit if you say anything unflattering. Unfortunately, this fear is not unfounded. Plenty of defamation lawsuits have been filed over negative references. And, even if your former employee can't successfully prove that you defamed him or her, you will have to spend precious time and money fighting the allegation.

Here are some tips to help you avoid problems:

- **Warn a difficult employee that your reference won't be good.** Yes, the employee should know this already. But you can avoid problems at the outset by stating the obvious: "I cannot provide a positive reference for you."
- **Keep it brief.** Some employers adopt a policy of giving out only dates of employment, job title, and final salary to prospective employers. If you choose to tell more, keep it to a minimum.
- **Stick to the facts.** Now is not the time to speculate about your former employee's bad qualities, or to opine on the reasons for his or her failure to perform. Limit your comments to accurate, easily documented information.
- **Don't be spiteful.** Many states offer some protection for former employers called upon to provide a reference. These laws generally provide that you will be shielded from defamation lawsuits as long as you provide information in good faith. This is a fairly nebulous legal standard, but it surely does not cover nasty or mean-spirited gripes.
- **Don't give false flattery.** If you had to fire a really bad egg (for example, a worker who was violent in the workplace or threatened coworkers), don't lie about it. You may choose to give only name, rank, and serial number, but, if you give a more expansive reference, don't hide the bad news. You may find yourself in legal trouble for failing to warn the new employer if these serious problems resurface in the employee's next job.
- **Designate one person to give references.** Choose one trusted person in your company to be responsible for all references, and tell all of your employees to direct inquiries to that person. Make sure that a record is kept of every request for a reference and every response, in case of later trouble. And you may want to adopt a policy of providing references only in writing, so you'll have proof of exactly what was said.
- **Insist on a written release.** If you want to make absolutely sure that you're protected against lawsuits, require former employees to sign a release -- an agreement that gives you permission to provide information to prospective employers (and promises not to sue over the information you provide).

<http://smallbusiness.findlaw.com/employment-law-and-human-resources/employment-references-how-to-avoid-getting-sued.html>

## **Employment References - How to Avoid Getting Sued**

Providing references for former employees is easy if you parted on good terms. If you had to fire an employee, however, it can be a difficult decision about how honest you should be with the former employee's potential new employer. If you tell that potential employer anything about the former employee that you can't verify as factually accurate, you may be facing a lawsuit.

### *Defamation Lawsuits*

To prove a defamation case, a former employee must show that you intentionally damaged his or her reputation by making harmful statements that you knew weren't true. Pretty much any negative comment you make can qualify as a harmful statement that intentionally damaged the employee's reputation. If you had to fire someone, the reasons behind it almost assuredly damage the employee's reputation and by communicating those reasons to a new employer, it becomes intentional.

Defamation isn't just limited to factually untrue statements about a former employee. If you tell the potential employer things that you suspect or strongly think are true, but can't actually prove, then that may qualify as a statement that you "didn't know was true". Keep unflattering comments to yourself, and really just stick to the verifiable facts.

### *What to Do When Firing an Employee*

First, when you fire an employee, tell them up front that you won't be able to provide positive references. This alone can avoid a bad situation, since only a really daft employee would request references from you after being told that you would give him or her negative references. If it comes down to a lawsuit later on, it will be helpful to show that you in fact told the employee that you would not give them a positive reference, so make sure you tell the employee in writing and keep a copy.

Second, tell other employees that you simply had to "let the employee go" and don't go into any detail. If you need to make a statement, make it brief, neutral in tone and let the existing employees know who will be taking over the former employee's duties.

Finally, consider having the employee sign a release to protect yourself against lawsuits. Include a clause where the employee grants you permission to provide information to prospective employers and promises not to sue you for providing such information.

### *What to Say to Potential Employers*

If a potential employer calls asking for a reference, do your best to stick to the facts and avoid making unflattering comments that make come back to haunt you. Here are some simple guidelines to remember:

- **Be Brief:** the best tactic when giving a reference for a former employee that may be questionable is to simply keep it short. Give out their dates of employment, job title, final salary and leave it at that.
- **Be Factual:** don't speculate or hint at any potential wrong doing that you may honestly believe happened but can't prove.
- **Don't Be Unnecessarily Negative:** don't start ranting or inflating any misconduct, just offer the information you can in good faith. Providing the information in good faith is a shield to a defamation lawsuit in many states.
- **Don't Cover-up:** while you shouldn't start speculating and bad mouthing the prior employee, at the same time you shouldn't cover-up for him or her. If you outright lie and cover-up for a former employee, you can actually get sued by the new employer for failing to warn you about serious employee misconduct.

<http://gbr.pepperdine.edu/2010/08/defamation-vs-negligent-referral/>

### *Defamation Vs. Negligent Referral*

**A policy of giving only basic employee references may lead to liability.**

**By LINNEA B. MCCORD, JD, MBA,**

*Make managers in your organization aware of the risks of giving negligent references.*

In 1977, a prospective employer had little difficulty obtaining references for a job applicant from former employers. By 1987 it was another story. Most employers had adopted the policy of providing only the basics: dates of employment, salary, and title. They feared that revealing more information about former employees could expose them to defamation suits by disgruntled former employees unable to find new employment. By 1997, new theories of liability emerged that made a blanket policy of simply giving "name, rank and serial number" of former employees a more dangerous practice. This is especially true when an employer is aware of a former employee's tendency toward, or history of, violence or sexual misconduct.

Reference-checking has taken on new importance with the dramatic increase in workplace violence. Former employers can be sued for negligent misrepresentation or negligent referral if the employee is involved in some incident at the new workplace that might have been predicted based on prior behavior. Negligent referral or misrepresentation includes the failure to disclose complete and accurate information about former employees. On the other hand, current employers increasingly face the possibility of being sued for negligent hiring if they fail to adequately check the backgrounds of their employees and an employee behaves in some inappropriate manner.

Society at large has an interest in safe workplaces. To help achieve this, 32 states so far have passed laws providing varying degrees of immunity to former employers who provide honest references about their former employees. However, it is too early to tell whether the immunity given to employers under these state laws is sufficient protection for them to feel comfortable giving truthful and accurate references about their former employees to prospective employers.

#### *Post-Employment References and Defamation*

Defamation is currently the most common cause of action used by former employees to challenge a reference given by a former employer. A growing trend is the practice of alleging defamation in wrongful-termination lawsuits, a practice virtually unheard of prior to the 1990s.

#### *Defamation: The Prima Facie Case*

State defamation laws vary slightly. However, generally defamation is defined as "an unprivileged publication of false statements to third parties that tends to harm the reputation of the plaintiff in the community." Courts have interpreted defamation broadly in recent employee reference cases.

#### *Defamation: Defenses*

Three significant defenses exist for defamation claims and these also apply in the employee-reference context. First, truth is an absolute defense. A claim for defamation cannot be maintained if the truth of the matter is established. Another possible defense is that of consent. If an individual knowingly and voluntarily signed a release authorizing the former employer to provide references, that could constitute a defense against defamation.

However, the most common defense is that of a qualified privilege. Qualified privilege means (a) the employer believed in good faith that the information was true when uttered, (b) the information served a legitimate business purpose, and (c) it was provided only to an appropriate person who had a legitimate business interest in receiving the information. This privilege has generally been extended to post-employment references.

However, a qualified privilege is subject to being "abused." It is not available as a defense if an employer knows that the information he or she is giving to a new employer is false or probably false, if it is shared with persons who do not have a "need to know," or if malice can be established.

#### *Defamation: Compelled Self-Publication*

The Minnesota Supreme Court created an expanded definition of defamation called "compelled self-publication" in 1986 in the case of *Lewis v. Equitable Life Assurance Co. Soc. of U.S.* Prior to this, a successful defamation claim had required that the defendant (e.g., the former employer) be the one to make the defamatory statements to a third party. In the Lewis case, four employees refused the company's request to change their expense account records after they had been submitted in order to conform to a new company policy. They argued that the reports were accurate as submitted and that they had followed the initial instructions they had been given. The employees were terminated for "gross insubordination." When the four former employees were seeking new employment, they had to explain to prospective employers why they had been fired. The Court ruled the need for them to make these explanations should have been anticipated and was grounds for defamation, even though the former employer was

not the one who said it. Most courts still view this doctrine with suspicion, although courts in Texas, California and New York have accepted it.

#### *Defamation Lawsuits: Impact on Employers*

Only a small number of defamation suits are brought against employers each year. Fewer still are successful. However, the fear of litigation is often sufficient to keep information about former employees from being provided. These charges can be very expensive to defend against even if they have no merit.

#### *Employment References and Negligence*

Defamation claims are not the only types of lawsuits employers must consider. Employers may find themselves liable under other legal theories.

#### *Negligent Referral — Giving a bad reference*

In *Robinson v. Shell Oil*, Robinson, a former employee of Shell Oil, filed a complaint with the EEOC charging Shell with racial discrimination after Shell had terminated him. Shell gave him an unfavorable reference when he applied for another job after filing the initial complaint. He then filed a second complaint with the EEOC alleging that the poor reference was in retaliation for filing the racial discrimination charge.

This case raised the question of whether former employees, as well as current employees, are covered under Title VII of the 1964 Civil Rights Act. The court ruled that they are. They are therefore protected from retaliation by employers for seeking to enforce the protections provided. The Court found that not including former employees in the definition of “employee” under this title would be contrary to the primary purpose of the legislation. This broad interpretation opens the door for the anti-retaliation argument to be used with other laws as well, for example, those pertaining to age discrimination or disability. It may even be used by “whistleblowers” who publicize legal violations by their companies. An employee could potentially assert a claim of retaliation against an employer who provides a truthful, but negative, reference, and thus create a new set of employer problems.

Employers cannot protect themselves from such claims by giving little or no information if normal policy is to give considerably more information for former employees. The employer could possibly be subjected to a disparate treatment claim in that situation. Actions that normally protect firms from defamation claims may subject them to employment discrimination claims.

#### *Negligent Referral — Giving a Good Reference*

The California Supreme Court in 1997 permitted a student who alleged sexual molestation by a teacher to sue that teacher’s previous employer which had provided that student’s school with a favorable reference. The former employer failed to mention in the reference that the school had received complaints of sexual harassment and improper touching by that teacher. The letter of recommendation for the employee in this case praised his skills and unconditionally recommended him for an administrative position. He was hired by another school district where he allegedly sexually assaulted a 13 year old student. The court did not say that a former employer had an affirmative duty to a prospective employer to provide references; the decision was based on the fact that the employer provided a positive reference that omitted key pertinent facts.

The California Supreme Court decided that the positive recommendation given by the former employer amounted to “misleading half-truths” for purposes of negligent misrepresentation. Further, the Court reasoned that “liability may be imposed if the recommendation letter amounts to an affirmative misrepresentation presenting a foreseeable and substantial risk of harm to a third person.” Finally, the Court held that the defendants owed a duty to the plaintiff not to misrepresent facts in describing “the qualifications and character” of the former employee, when the misrepresentations presented “a substantial and foreseeable risk of physical injury” to the plaintiff. It went on to add that “in the absence of resulting physical injury, or some special relationship between the parties, the writer of the letter of recommendation should have no duty of care extending to third persons for misrepresentations concerning former employees.”

A problem with the court’s analysis is that none of the prior complaints about the former employee had been confirmed through any form of evidentiary hearing in which the employee was accorded due process. This creates a major problem for employers. If they disclose unverified allegations, they risk being guilty of defamation. If the allegations are actually false, they risk ruining the life of an innocent person. Yet this decision suggests that allegations may have to be disclosed if they relate to behaviors that may cause a substantial and foreseeable risk of harm to someone else.

### *Negligent Referral — Giving a Neutral Reference*

*Jerner v. Allstate Insurance Co.* involves an employee who was fired and then given a neutral reference by the former employer. When he was later fired by his new employer, he then returned to the second employer's place of business and shot five people, killing three of them. The gunman, Paul Calden, worked for Allstate Insurance Company for only nine months. He exhibited some bizarre behavior during that time. He refused to have his photograph taken, asserting that his image couldn't be captured on film; he claimed that he was from another planet; and he compiled a list of co-workers and wrote the word "blood" next to their names. In fact, Calden's behavior at Allstate was so extreme that his supervisor called the sheriff's department and the FBI to find out if they were investigating him. He was finally terminated when he was found carrying a gun in his briefcase.

Allstate had a policy of not giving any recommendation letters for former employees to subsequent employers. Nevertheless, they gave Calden a letter of recommendation in spite of his behaviors. The letter stated that he had voluntarily resigned because his position had been eliminated in restructuring. Allstate apparently provided the letter because the company did not want him to get angry over his firing. Calden was later hired by Fireman's Fund based on the recommendation. When Fireman's Fund later fired him, he went to the company cafeteria and shot five supervisors involved in his firing, killing three of them. Their families sued Allstate for failing to disclose his true work history. Allstate eventually settled for an undisclosed sum.

### *Negligent Hiring*

Negligent hiring is a relatively new tort theory. It is being used by third parties who are injured by an employee to obtain recovery against the employer who hired that employee without an adequate background check. It is based on the common law concept that an employer has a general duty to protect its employees, customers and visitors from injury caused by an employee that the employer knows, or should have known, poses a risk of harm to third parties. An employer's implicit duty is to protect third parties from injury or harm by exercising reasonable care in the hiring process according to this argument. The problem employers face is being forced to hire individuals without a key piece of information — an honest and complete job reference from a former employer.

### *Conclusion*

Employers today face a much more complex set of rules about providing references for former employees than was true only a decade ago. The "cut and dried" rule of issuing only the bare minimum of information possible is no longer reasonable and safe. Following such a course of action may help insulate an employer from liability under defamation claims. However, the "cut and dried" approach may open up the possibility of liability under the theory of negligent misrepresentation or negligent referral. Each employee reference must be evaluated in light of overall company policy. It must also take into account the facts in each individual case.

Managers should continue to exercise extreme caution in giving references for former employees, even in states with laws granting immunity to employers for giving such references. It is too early to tell whether these laws will provide adequate protection for employers because very few court cases have interpreted these statutes. However, a blanket policy of providing only cursory information to avoid defamation claims may result in a company failing to disclose certain information about some former employees that could lead to equally expensive liability for the company on other grounds. The best advice for employers is to say as little as possible except in those situations where the employee's behaviors could endanger others in the new workplace. Not revealing information in that case is legally risky for an employer. In addition, employers have an ethical responsibility to those who may become unsuspecting victims of former employees if the company refuses to share important information.

### *Some Tips about Giving References*

- Develop a written policy that states exactly what the policy is regarding giving references. It should state what information will be given and how it will be given – by whom, to whom, and in what format. However, make it flexible enough that you can evaluate individual cases that may raise particular issues.
- Review and update the policy on a regular basis.
- Consider establishing the rule as part of your policy that you will only respond to written requests for references and responses will only be in writing. It is preferable that someone in human resources be the designated person to provide references. Information provided should be based on documented information in the employee's file.
- Good employment practice suggests that the employer discuss the employee's performance with him or her on a regular basis, carefully document the facts about the employee's performance, and share information in that

employee's personnel file with the employee. Access to this information should be limited only to those who have a clear and critical need to know. Employees should understand that any references will be based on what is in the file.

- If an inquiry is made by phone, and you do choose to give verbal information, get the name, title, and phone number of the person requesting the information, verify that the number is indeed that of the company, and then call back to verify the caller's identity.
- Consider only verifying information provided by employers requesting references rather than volunteering information.
- Whenever possible, obtain a written release from the former employee that authorizes providing references before doing so. Employees could sign such a release when hired. This will not give complete protection, but it may help the former employer argue that the employee consented to having the information released.
- Record all information about a reference at the time it is given: date and time; name, title and company of the person requesting the information; name and title of the person responding; a statement of the information provided, and the form in which it is provided. A standard form is helpful for this. Attach copies of any letters written.
- The best advice for employers is still to say as little as possible or just verify employment dates and title except in those situations where the employee's behavior could endanger the well-being of others in the workplace.

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