



Employment References Can Create a Legal Catch-22 We Love to Get Them, but Fear Sharing Them

Most of us know what it's like to finally narrow our hiring process down to the best applicant, and we usually can't wait to check the person's references to see what they are *really* like. We are normally just looking for some honest feedback on the candidate's performance, attendance, attitude, skills and abilities to determine if they are a good fit for our company and the position. Frequently our anticipation is quickly dampened by a series of responses which are confined to "name, rank and serial number." This often leaves us wondering whether the lack of information is simply company policy or is there some unspoken message that we are supposed to get about this candidate?

On the flip side of the coin, in some places the stated policy only provides verification of employment; which typically means dates of employment and last position held. If the recruiter is persistent they may be able to get some "deep background," such as job duties performed and whether the person is eligible for rehire.

Why this desire to get, but fear of giving? The answer is simple. We want as much information as possible in order to make a solid hiring decision. However, we have been told to provide as little information as possible for fear of being sued. This situation has developed because in a few instances candidates have received negative references from their former employer and did not get hired. Further, they discovered that the reason they were not hired was due to the negative reference, and they subsequently sued the former employer for defamation of character or slander. As a result, organizations have decided that it is not worth risking a lawsuit for something they do not have an interest in, e.g., a current or former employee securing a new job with another employer, so they limit the dissemination of employment-related material.

What to do? If you are a *reference seeker*, there are a couple of steps you can take to improve the quantity and quality of work-related data you receive:

- Insure that your employment application includes the candidate's authorization to release information related to current or prior employment.
- Know what information you want. Have a checklist of questions that you want the answers to and document the responses you receive. You can send the form to an employer in the event they only respond to written requests.
- Ask the candidate for the direct contact information of their immediate supervisor at their previous places of employment. When possible, request that the candidate inform the former supervisor of your pending call and ask that they share appropriate job-related information.
- If the former employer is a large company, contact the HR department for employment verification and then contact the supervisor for a performance critique.

If you are a *reference provider*, there are several procedures that will allow you to provide references that balance the protection of the company with assistance to dependable former employees in their career journey. Remember, you will be on the receiving end as often as the giving end of this exchange.

- Develop a policy that outlines who is able to provide information on former employees and what information they are able to give. Be sure it covers both good employee as well as “problem” employee scenarios. NOTE: Failure to disclose serious misconduct issues may subject the reference provider to a lawsuit alleging “negligent referral or misrepresentation,” because the person later harmed coworkers or clients. It’s difficult to completely escape potential liability.
- Ensure that the material shared is work-related, is truthful and at some point has been communicated to the employee.
- Objectively share the assessments of the employee’s duties, skills and performance without making an assertion of whether they should or should not be hired for the new position.
- Document your conversation.

If you would like to receive a customized employment application or reference checklist or want to discuss your company’s policy, please contact Greg Gast, SPHR at 215-654-9140 - ext. 103 or ggast@proxushr.com. Greg is a Principal with PROXUS, President of the Fort Washington Business Alliance and a Board Member of the Institute for Management Consultants - Philadelphia Chapter.

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