Name, Rank and Serial Number: What You Should And Should Not Disclose When Providing References

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True or false: When asked to give a reference for a terminated employee, you should provide only the person's name, dates of employment and, if asked, salary level? True. Furnish just about any other information and – assuming it's negative – the former employee could sue your company for, among other things, defamation.

To file a defamation lawsuit, the ex-employee first would have to obtain the information you supplied and also prove it was untrue. The possibility is slim that the inquiring employer would share your reference with a prospective employee, but it could happen.

What can ex-employers do to protect themselves from legal action? Enforce a name-rank-and-serial-number only policy when giving references for terminated employees? Here are two basic rules for giving and getting references involving terminated employees:

1. If you are the former employer, say as little as possible.
2. If you are the prospective employer, collect as much information as you can.

That advice normally generates a lot of "what ifs:"

What if the prospective employer asks if the terminated employee is eligible for rehire? If you are the ex-employer being asked this question, it is best to simply state that your company does not provide that information. If you are the prospective employer seeking the reference, always ask this question. Former employers will often respond, and a "no" response speaks volumes.

What if the terminated employee was talented, but just wasn't right for the job? It is okay to give a positive reference, but beware of the pitfall. The prospective employer will inevitably ask about the employee's shortcomings. If you discuss weaknesses, you've put your company at risk for a lawsuit. To avoid a misstep, if you choose to give a good recommendation, put it in writing and let it speak for itself.

What if you can't give a good reference? Is there a way to safely tip off the prospective employer that you wouldn't recommend the former employee? Again, the safest approach to protect your company is to provide just "name, rank and serial number." If you feel compelled to provide more, the safest

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way to send the message that the prospective employer should look elsewhere is to simply state: "Do you have any other candidates you're considering?"

What if the terminated employee committed a crime, such as embezzlement, at your firm, then commits the same crime with the new employer? Can the new employer sue you for withholding information? Yes, there have been cases where the new employer sued the former employer for not disclosing negative information. But despite that, we think sticking to a policy of providing only name, employment dates and salary for all former employees is still the best approach.

What if you're hiring, and the previous employer discloses only the basics? How can you get enough information on which to base a hiring decision? Rather than going through their human resources department, try contacting the prospective employee's former supervisor, who may be more likely to give you information. Of course, it's wise for a company to require that all reference inquiries be directed to one source, typically the HR department, but not every company has such a policy.

If you expect your company could be asked to provide a reference for a terminated employee, establish a strict "name, rank and serial number" policy now. While you may wish to subtly warn the pursuing employer about a risk, it's best to remain tight-lipped. This is one time when saying very little should say a lot.

For more information, contact the author at JHolland@fisherphillips.com or 816.842.8770.

Related People

James R. Holland, II
Regional Managing Partner
816.842.8770
Email

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