

An Introduction to Writing Reference Letters

The employment reference, or recommendation, has traditionally been considered an important part of the college recruiting process. Career services directors encourage, and in many cases require, that graduating students include reference letters in their credential/employment files as further documentation of their credentials, motivation, and overall employment skills. Employers, on the other hand, often review reference letters and conduct reference checks to verify a graduate's background and qualifications.

Until the early 1980s, employment references served their purpose relatively well. They tended to be candid and were sometimes painfully honest. However, in recent years, faculty, administrators, and employers have grown reluctant to provide frank information about their former students and employees, either verbally or in writing.

This reluctance stems from an increase in the number of lawsuits charging reference givers with slander and libel—even where accurate information was released to prospective employers. To combat the issue, many states passed "reference immunity laws" which protect prior employers when they provide "good faith" references to prospective employers. Unfortunately, these laws do not necessarily cover references from faculty or administrators unless they can be considered "prior" employers to the students for whom the references are given. These reference providers must rely on the defenses available to them under the common law.

At the same time, another trend has emerged. There has been a noticeable rise in the number of lawsuits against employers and referral agencies for hiring and referring candidates who were unfit for their jobs and who also harmed innocent third parties. Often, the basis of these negligent hiring and referral lawsuits is that the employer or agency failed to conduct a complete reference check on the candidate or misrepresented the qualifications and characteristics of the candidate. To complicate the issue further, this "negligence" results, in part, from fear of being sued by the job candidate or former employee on the grounds of invasion of privacy.

These two trends created a dilemma in employment law. Simply stated, how can employers conduct a thorough reference check when reference givers are increasingly apprehensive about providing candid reference information? This brief, [Writing a Reference Letter](#), outlines the law regarding references, gives tips on preparing references, and provides samples of reference letters and the types of information that may properly be released during a reference check.

In the final analysis, providing a reference requires a careful balancing act between giving and gathering useful reference information and protecting oneself from litigation.

Suggested Guidelines for Reference Givers

Written References

1. Provide a written reference only if a student has given your name as a reference.
2. When you prepare reference letters, be factual; do not editorialize. Avoid vague statements.
3. Respond to the specific inquiry about the student or job applicant. Direct the response to the particular person who requested the information.
4. If a "to whom it may concern" reference letter is requested, document that this is the type of reference requested and that the student or job applicant takes responsibility for disseminating the letter to the proper persons.
5. Relate references to the specific position for which the person applied and the work that the applicant will perform.
6. A good practice is to avoid giving personal opinions or feelings. However, if you make subjective statements or give opinions because they are requested, clearly identify them as opinions and not as fact.
7. If you give an opinion, explain the incident or circumstances upon which you base the opinion.
8. Be able to document all information you release.
9. State in the reference letter, "This information is confidential, should be treated as such, and is provided at the request of [name of student or applicant], who has asked me to serve as a reference." Statements

such as this give justification for the communication and leave no doubt that the information was not given to hurt a person's reputation.

10. Do not include information that might indicate the individual's race, color, religion, national origin, age, disability, citizenship status, sex (unless by the individual's name it is obvious), or marital status.
11. Before disclosing educational information covered by FERPA (e.g. student's transcripts, GPA, grades, social security number, etc.), you must obtain the written consent of the student. Failure to obtain such consent may constitute a violation of FERPA.

Verbal References

1. Do not disclose information regarding a student's education record without the written consent of the student.
2. Informal "lunch" discussions or "off the record" telephone conversations with prospective employers regarding a student's performance should be avoided unless the student is aware of the discussions and has given approval for such conversation.
3. Information given should be factual, based upon personal knowledge/observation of the student through direct contact with the student.
4. If any employer contacts faculty and advises the faculty that a student has given permission for the faculty member(s) to give a verbal reference, verification of this permission should be obtained from the student before giving any information to the employer. Such verification can include a copy of the student's signed employment application listing the faculty as a reference, or a verbal confirmation by the student, followed by written confirmation.

Legal Principles Involved With Reference Letters

1. Right to Privacy

- A. State constitutional or statutory protection
- B. Unwanted intrusion or disclosure of personal facts to the public or a third party
- C. No compelling reason to do so
- D. Prohibited from disclosure are specific areas, such as medical information, age, race, national origin, marital status, sex, religion, and disability.

Defamation

1. Common Law principle

2. Definition - verbal or written communication that:

1. impugns reputation, ability, or character of another;
2. is received by a third party;
3. is untrue, substantially untrue, or communicated without regard to the truth or falsity of the matter;
4. causes damage to a person.

3. Qualified Privilege - negative employment references may not be legally actionable if:

1. the communication is based upon an evaluation of the person's work and ability.
2. made by someone who has knowledge of the person's work and ability.
3. the communication is limited to information which is job-specific.
4. the communication is disclosed to prospective employers to satisfy legitimate business needs.
5. the communication is not done out of malice or with intentional harm.
6. the accuracy of the information provided is verified prior to its disclosure.

4. Self-Publication Defamation

1. disclosure of reason for termination by applicant
2. reasonable expectation that disclosure will occur as part of normal hiring process
3. defense - sufficient documentation of termination decision

5. Family Education Rights and Privacy Act (FERPA)

1. Federal law
2. Right to consent to disclosure prior to disclosure of any part of educational record by educational institution or one of its employees
3. Student's right to inspect educational record
4. Right to waive inspection of educational record, including references, if:
 1. waiver is in writing and signed by student;

2. waiver is voluntary;
3. waiver is not required for receipt of or participation in any programs or services of educational institution.

6. **Release/Waivers**

1. Required in some states
2. Permission to provide information regarding applicant's previous employment
3. No defense to defamation

7. **Discrimination**

1. Refusal to provide a reference on the basis of race, color, sex, national origin, age, disability, religion, marital status, parental status
2. The specific characteristics listed at I. D. also could result in discrimination charges if disclosed

8. **Negligent Hiring/Negligent Referral**

1. Negligent Hiring

1. Definition:

- duty to exercise reasonable care to select employees who are competent and fit for work
- breach of that duty
- harm caused by employee to another person

2. Factors to consider:

- was the employee's conduct in furtherance of the employer's business or for personal reasons?
- was the conduct foreseeable by the employer?
- where/when did the conduct occur?

2. Negligent Referral

1. Definition:

- duty to exercise reasonable care when reviewing individual's background prior to referring for employment
- breach of that duty
- harm caused by employee to the employer or another person

2. Factors to consider:

- reasonable expectation that credentials would be checked by referral entity
- did the referral entity do any type of background check?
- was the harmful conduct a foreseeable result of the inaccurate credentials?

9. **State Reference Immunity Laws**

1. States with immunity laws: Alabama, Connecticut, District of Columbia, Massachusetts, Mississippi, Nebraska, New Hampshire, New Jersey, New York, Vermont, Washington, West Virginia, and Puerto Rico
2. Each state provides different protection using different standards
3. In general state laws provide for "qualified or conditional immunity" when providing a reference if the employer:
 1. Acts in good faith;
 2. Acts without malice or reckless disregard for the truth or falsity of the information;
 3. Discloses accurate, job-related information for a legitimate purpose; and
 4. Handles the information in a controlled and proper manner.
4. Provides no protection to other non-employer reference givers such as faculty, school administrators, clergy, and friends.
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