

LI BUSINESS

Handling references for past employees

SMALL BUSINESS

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The old adage “If you can’t say something nice, don’t say anything at all” may be the best advice for employers who are called on for references about past employees.

In fact, many legal experts advise only giving out basic information like dates of employment when a prospective new employer calls.

Bottom line: Giving out too much information on a past employee could land you in hot water, particularly if it somehow results in his or her not getting the job.

“Employers do need to tread carefully when providing employment references that go beyond dates of employment and positions held,” says Kimberly Malerba, chair of employment law at Ruskin Moscou Faltischek in Uniondale.

Although there’s no law limiting what an employer can or cannot say regarding a former employee as long as it’s truthful, giving out too much information can put an employer at risk, she says.

For example, if the former employee doesn’t get the job, he or she may claim the prior employer interfered with a new business opportunity.

“There’s really no benefit to the former employer opening themselves up to that kind of exposure,” says Malerba. She suggests employers adopt a “neutral reference policy” that limits the information given out to positions held and dates of employment.

David Mahoney, a partner and member of the labor and employment law group of Jericho-based SilvermanAcampora concurs: “In the end, there’s limited upside to an employer providing additional information.”

With that said, companies should have



KIMBERLY MALERBA, CHAIR OF RUSKIN MOSCOU FALTISCHEK EMPLOYMENT LAW DEPARTMENT.

72%

PERCENTAGE OF ORGANIZATIONS that called on previous employers or references as part of their screening process

SOURCE: HireRight 2017 Employment Screening Benchmark Report

an employment reference policy so everyone within the company is clear on what kind of information can be shared. Firms should designate a point person, trained on how to respond, to field these calls, he says.

Be consistent. For example, don’t give one prior employee a positive review and only provide limited information for another, because that could be interpreted as a negative reference, particularly if you’re

being called by the same prospective employer, says Mahoney.

It can be hard to enforce this at times, especially if the candidate’s ability to get the new job is dependent upon the reference, say some experts.

“When you tell a previous employer you cannot move forward in the selection process if you can’t get a reference, that’s highly motivating to them,” says Christine Ippolito, principal at Compass Workforce Solutions, a Deer Park human resources consulting firm, who calls references on behalf of clients regularly.

She gets permission in writing from the applicant to contact their previous employer and generally reaches out to their direct supervisors, because she’s learned that if she speaks to an HR person, she’ll get limited information.

She’ll ask for the person’s strengths, and where the former boss thinks the person needs some development.

For the most part, she says, they answer her questions, but she’s found in general that larger companies tend to provide less information than smaller firms.

Whatever information you choose to provide, it’s best to avoid discussion of any topics that could be considered discriminatory, including “protected class data” or disability, says Dawn Hirsch, chief human resources officer at HireRight, an employment background screening provider in Irvine, California, who is often called on as a reference for former employees.

When acting as a reference, it’s important to limit discussions to job-related activities, and only areas of the employee’s performance that you’re confident you have a full picture of, she says.

“It’s not helpful to the future employer or the former employee to receive speculative comments from a reference,” says Hirsch.