

Member's Quarterly

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Feature

Reference Checks: A Smarter Approach

Practical tips for employers

The "reference check" can be a tricky task for HR professionals across all industries. The specific position you are trying to fill can also increase the importance of conducting a check depending on the seniority, skills and experience required, as well as the responsibilities of the role.

So, what exactly can you legally ask when conducting a reference check?

There are definitely some prohibited topics. The *Canadian Human Rights Act* defines prohibited grounds of discrimination. These grounds are: race, national or ethnic origin, colour, religion, age, sex (which includes pregnancy or childbirth), sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted. Accordingly, reference check questions should avoid these areas directly and indirectly.

Inquiries should be limited to job-related information and should not stray from the business focus. Unrelated topics would include "hobbies, social activities, political beliefs, residence, medical status and any past legal actions including workers' compensation claims and safety complaints.

Can a reference refuse to answer? Yes. The interviewer may encourage their participation and add explanation on what types of questions would be asked. Inform them that the applicant authorized the hiring company to contact them and provided their contact information.

Once you have expressed the importance of the reference check and there is still refusal to continue, thank them for their time. Make note of this in the applicant's file. Inform the person who provided the reference of the situation and perhaps they will provide another contact.

What should an employer do if they receive a negative review on a potential candidate?

References talk to you in confidence. Therefore, you probably shouldn't immediately tell the candidate who provided the bad review. The employer should consider who gave the bad reference. Perhaps there could have been some underlying circumstances causing ill-will. Compare the bad review to the other references' reviews. Perhaps it was a one-time incident or was it a consistent bad trait? If you received multiple bad references, you may want to pass on this applicant. In the end, an employer needs to assess all the reviews and evaluate them weighing the pros and cons.

On the other side of the fence, there are some factors to consider if you find yourself in the former employer's position and have been called upon for a reference of a previous employee. Recent case law indicates that you are in fact able to give a negative review. However, the points communicated must be factual and verified prior to sharing. It simply should not just be an opinion that is communicated to a potential employer. We will explain more in the second part of this series coming soon.

What if an employer needs to dig deeper? Some employers need to fill positions that will have access to large sums of money and will require the employer to put trust in the employee in that position. They have to be sure that the person does not have a criminal record and/or any skeletons in their closet that may cause concern. What is frequently discussed among HR teams is the **Consumer Reporting Act** and how it governs what an employer can access. This act outlines what is accessible to potential employers through a consumer report. Items such as credit reports, criminal records and bankruptcy records are



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included in this act and although they are available, there are guidelines by which who can access and for what purpose. This too will be discussed further in the second part of this series.

You might consider hiring a professional organization to assist you with your background and reference checks. Not only will this improve the quality of the results, it also allows you the employer to ensure the search is non-bias. The specialists can help track information such as bankruptcy records (if they exist), criminal records, social media posts, asset profiles, education verification, existing lawsuits, etc. Conducting this type of search however needs to be done only when it can be justified and is relevant to the position for which the employee is being considered. It should also be done only when the employee has been provided with a job offer that states the offer is conditional on a successful background check.

Is permission required for these types of searches? Yes. The candidate must agree in writing to such a search and be informed as to what records you are going to be looking at. It is also important to note that your background search policies should be consistent, meaning you should not simply choose randomly which candidate requires the background check. A policy should outline the types of searches that will be conducted according to the role or position. This prevents any type of backlash that may occur and speculation of the possibility of discrimination occurring in the hiring process.

Keep in mind that professional organizations with extensive experience in background checks have the abilities and experience of knowing where, how and when to conduct searches and can assist your HR team in all matters relating to the hiring process.

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