

## Member's Quarterly

Fall 2021 Edition

## Feature

## Reference Checks: The Smarter Approach Part 2

"Just the facts"— Stick only to the facts

We invite you to circle back into the world of reference checks. In the second of this 2-part series, we discuss in further detail the concerns about conducting reference checks as well as turning the tables for when you are on the receiving end of the reference check phone call.

As we discussed in Part 1 of the series, 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.

What exactly is the difference between "opinion" and "factual information"? Sharing facts about a previous employee must be verifiable and concrete. For example, you could share that the person in question was written up regarding his attendance 3 times in their last year of employment with your company. You could also share that he had been the subject of 3 separate workplace investigations relating to harassment complaints and had been reprimanded as a result. What you should avoid communicating is "Joe doesn't get along well with others and never showed up to work". As you can see, there is a legitimate difference between the two statements. One, you are sharing facts that have data and if required, can be proven. The second is merely your opinion, very vague and possibly even misleading. Before revealing any information of this type regarding a previous employee however, you will want to ensure that you confirm your facts. This could mean telling the person requesting the information that you will need to review the employee file and get back to them later. Do not just attempt to remember and provide information that may not be 100% accurate. If by chance the employee was terminated for just cause, you could share that information. However, you would be ill-advised to the share details regarding the termination.

A further step that some potential employers take is to request a consumer report for an individual. As mentioned in Part I, the *Consumer Reporting Act* 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 included in this act and although they are available, there are guidelines by which who can access them and for what purpose.

First and foremost, a potential employee must provide consent to the consumer report being produced and shared. Each of us has several rights as well those that are outlined in the *Consumer Reporting Act*, some of which are that credit reporting agencies collect, maintain and report your credit and personal information in a responsible manner; your right to know what is being reported about you and to whom; and your right to correct information about yourself that is inaccurate.

For the purposes of employment, it needs to be understood that a potential employer needs to have good reason to request such a report. For example, if the position requires the employee to have access and control of large sums of money, then it would be prudent to know the history and status of the potential employee. If the position does not involve access or risk, then there is really no good reason to



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request such a report and by doing so, the employer could potentially be limiting themselves in the labour pool. For most positions, a regular background/reference check (including a possible social media search) should supply adequate information on the potential candidate.

It is also important to acknowledge that consumer reports are not always 100% accurate. There is a reason that they include the "right to correct information" in the *Act*.

As you can see, the background check or data verification topic can be very complex. Deciding what to search, when to search and why is dependent on many factors. Choosing to outsource this process to a professional may be a prudent decision that will protect employers in the end.

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