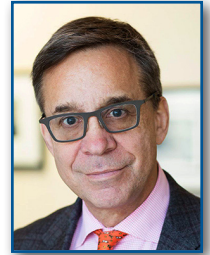


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Ask The Expert

Worst Mistakes in Providing References



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Q What are the worst mistakes employers make in providing references?

A **1) Refusing to provide one**
References are one of the best motivational tool employers have. After all, if an employee knows that, however hard or however lazily they worked, the reference would be the same, why bother?

Canadian employers do that out of fear of being sued for defamation. As I will discuss, that is entirely unfounded. Even if you say something terrible and are wrong in what you say, as long as you had an honest belief and were not entirely negligent, the employee has no recourse even if they can prove that your false reference cost her or him a job.

Also, employees have obtained additional money in wrongful dismissal claims because of the employer's refusal to provide a deserved reference.

2) Not proving a reference when you are sued for wrongful dismissal

Not only will this potentially result in a larger award to the employee, but a reference can help the employee find other work and reduce your damages.

3) Providing a reference with a gaping hole.

If an employee actually stole from you, there is nothing legally improper in saying that in a reference. If instead you provide a nice reference extolling, for example, their work ethic or punctuality but leave out the fact that they stole, and then an employer relies on that reference and hires that employee. If the new employer is stolen from and learns that the employee had stolen from you as well, that employer can sue you for negligent non-disclosure. Therefore, if you are going to provide a reference, you can't leave out the glaringly bad.

4) Providing a reference to an employee who then sues you.

Too many cases of discharge for incompetence are lost because a compassionate employer provides a nice reference. The employee sues, you raise their incompetence and the employee's lawyer responds with your reference saying precisely the reverse. If you might be sued, do not say anything in a reference that might destroy your defence.

5) Providing a bad reference if you wish to preserve goodwill.

If word gets out that you provide superficial references, it might be extremely demotivating to your workers. As well, providing a terrible one rather than none at all will create an enemy for life in that employee. Is it really worth it?

References are strategic and should not be awarded without consideration of all the implications.

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