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BEING A REFEREE: What are your Obligations?

Do you remember the last employment reference you gave? Do you remember what you claimed to be true about that individual? Were your statements accurate? Now, the crucial question: have you ever considered that you can be liable for the contents of your reference?

When giving a reference, being a referee or providing testimonial as an employer, colleague, academic, friend or the like, you should be aware of your obligations in providing a reference for an individual. Under common law, a referee owes a duty of care to an individual to ensure that the reference they provide is fair, accurate and true.

In the situation where a new employer has hired a person based on a reference that misrepresents the capabilities and qualities of the person, it is possible for the new employer to bring a claim against the referee for damages as a result of misrepresentation. However, it is difficult to determine the extent of the referee's liability as the case law in this area is fairly undecided.

Notwithstanding the hurdles of bringing a claim, one should always be vigilant about any statements they make in the capacity of referee. Here is a checklist of things to be aware of when writing a reference:

Know your subject

- Ensure that you are the right person to give the reference. Ask yourself whether you have full knowledge of the individual's employment skills.

Do not exaggerate skill or experience

- Avoid exaggerating the individual's level of competence in any particular field. Be honest and realistic about their capabilities.

Do not make false statements

- Be wary not to make statements or assessments about the individual that are false or cannot be substantiated. Ensure your statements are true and accurate.



Do not defame

- Avoid making defamatory comments about the individual. A simple way to avoid this is to respect the confidentiality of the individual and not to make any derogatory statements, particularly if they have left the organisation on bad terms.

Do not cut and paste

- Avoid relying solely on the individual's personnel file without making sure you understand the contents of that file.

Do not assign the task to a third person

- As you are the person providing the reference, the reference should come from your knowledge and belief of the individual's capabilities and not from anyone else.

Use official stationery when writing in an official capacity

- Only provide a reference on official stationery of a company or organisation you are employed with if you are providing your reference in an official capacity with that company or organisation.

Be wary of verbal references & emails

- Be mindful that the above points apply to a verbal reference or a reference given in an email. A file note can be made of a telephone conversation where your views are recorded and emails can be saved and retrieved with ease.

When next providing a reference, it is paramount to ensure that what you write (or convey verbally) fairly reflects the individual's capabilities, is a fair assessment of their skills and is an honest account of them as a prospective employee. This way you will be sure to avoid any liability that may arise against you. When in doubt, it is better to decline to provide a reference.

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