

REFERENCE CHECKING: A DOUBLE-EDGED SWORD?

An interesting paradox exists with regard to employers' attitudes toward reference checking. Employers want to receive complete, accurate information about a prospective employee, but are themselves generally unwilling to provide more than a "name, rank, and serial number" reference. Often frustrated by futile efforts to obtain meaningful reference information, many employers elect not to conduct reference checks on prospective employees; they have deemed it a waste of time because they are unable to turn up any useful information since many employers have adopted this "no comment" policy. Let's face it, the employment selection process is not generally conducted at a leisurely pace. We are all overburdened with competing demands on our time and pressured to hire someone yesterday, all of which increases the temptation to skip this potentially valuable part of the selection process. The fact of the matter is, however, past performance in areas such as dependability, attitude, and attendance is the single best predictor of how an employee will perform in future jobs. Employers are better off investing time checking references to prevent hiring employees that will become problems and take up even more time later.

In addition, there are potential legal consequences for not checking references. With the emergence of liability for "negligent hiring", employers are now imposed with a duty to carefully check references, or risk liability for lack of exercising reasonable care when selecting new employees. This type of charge is particularly prevalent in situations where the employee conducts some unlawful act through the course of his or her employment and the aggrieved party is looking for someone to sue.

When gathered properly and skillfully, reference information can be the most valuable information in making a hiring decision. A few key points for conducting an effective reference check:

Obtain waivers. Every candidate should sign a waiver which grants permission to the employer to contact references.

Do not check personal references. Instead, contact individuals who can comment on past job performance, ideally supervisors, although peers and subordinates can be good references as well. Avoid talking with the Human Resources office, as they are most likely to give you no useful information.

Conduct reference checks by telephone, not by letter. Talking to references allows for follow-up questions and for interpreting the meaning of voice tone and other communication subtleties.

Use qualified individuals to check references. Excellent interviewing skills are critical to meaningful references. Although the same basic information should be sought for each candidate, the interview shouldn't be too scripted. Asking open-ended questions about job performance and learning to detect underlying meanings are critical in obtaining meaningful references. Ask only questions related to job performance. NEVER ask about a candidate's race, religion, national origin, or sex.

Always check at least three references. Gathering information from several individuals allows employers to look for consistency and to get a glimpse of the candidate from several perspectives.

Verify degrees, licenses, and certifications. Of all pre-employment information they provide, candidates are most likely to be untruthful about their educational background because they assume it won't be checked out.

If you contact a reference who refuses to provide information, either ask the candidate to persuade that individual to talk or ask the candidate to provide another reference.

Now let's turn the tables and discuss the issues involved with **providing** reference information. Many employers release little or no information, believing this reduces the likelihood that they'll be sued for defamation. In fact, employers may have more protection when providing reference information than they realize; twenty-six states (including Indiana and Illinois) have enacted laws to shield employers from liability when they release truthful information about current or former employees. A further challenge to "the less said, the better" approach occurred in a recent Florida case in which the court ruled that an employer could be sued for punitive damages for concealing a former employee's violent nature. The message in that case clearly was - don't tell, get sued!

It is advisable, however, for employers to have terminating employees sign a waiver authorizing the release of information to prospective employers. It is also a good practice to make sure you know to whom who are providing the information. Employers may want to write down the individual's name title, address, and telephone number and return the call so they can verify the identity of the potential employer. As a general rule, as long as the former employer has a signed waiver from the employee, providing a good faith

reference that contains documented **facts**, not simply opinions, is perfectly safe and may place an employer on firmer legal ground than releasing nothing. Honesty really is the best policy.