

Between honesty and discretion, what's the best approach to reference requests?

Q. I have a question about providing honest feedback during reference requests. Is it better to defend the fact that I provided a truthful (negative) assessment, rather than trying to explain why I can't give any reference at all? Aren't we protected by negligent-referral and reference-immunity laws?

A. Most employers just confirm neutral information in response to a reference request. That makes it unlikely that you would receive much pushback for not giving a reference.

You are correct that you could be liable for a negligent reference in certain circumstances, such as if you fail to mention that an employee engaged in workplace violence. It is also correct that Pennsylvania law affords some protection for providing truthful references.

However, employees who bring discrimination claims based on termination decisions often claim that the company retaliated against them by giving poor references, resulting in their failure to obtain another job. Pennsylvania law does not rule out that type of retaliation claim.