

North Carolina law allows honest answers to reference requests

Employers often worry when they respond to requests for an employee reference. They assume if they aren't upbeat and positive, they may end up liable if the employee doesn't get the job. Fortunately, that's seldom a worry if you are honest, aren't out to "get" the employee and never volunteer any information without first being asked.

Consider, for example, the North Carolina law that "prohibits a former employer from "prevent or attempt to prevent, by word or writing of any kind, discharged employee from obtaining employment with any other person, company or corporation." (N.C. Gen. Stat. §14-355) Employers that violate the statute are guilty of a misdemeanor and "liable in penal damages" in a civil action.

That certainly sounds scary and might be enough to dissuade some employers from providing any reference, much less a negative one.

Don't worry. The law does not prohibit employers from providing "a truthful statement of the reason for such discharge" if that request comes from "any person, company, or corporation with whom the former employee has applied for employment."

In other words, the only way you will be held liable for a bad reference is if you go out of your way to provide one unsolicited. You can't aggressively blacklist a former worker, but you can respond honestly to a prospective employer's inquiry.

Recent case: Stephen was fired from his job as a truck driver. He claimed the reason was that he had frequently complained about unsafe working conditions, harassing phone calls and other alleged workplace wrongs.

He sent out over 100 résumés seeking a new job.

When he got no responses, he sued his former employer. He claimed he had been blacklisted, and someone had provided negative references in violation of North Carolina law.

The former employer told the court that the only references it provided to anyone were in response to specific requests. It denied ever providing information to any employer without first being asked.

The court said that because Stephen couldn't point to a single unsolicited negative comment, he didn't have a case. The former employer could hardly be blamed for a lack of response to Stephen's résumés. (*Bailiff v. Dav-enport Transportation*, No. 3:13-CV-308, WD NC, 2013)

Final note: References and gossip aren't the same. Warn supervisors against idle chat about former employees. Social conversations that put a former employee in a negative light might run afoul of the law.

Tell them that they can't accept oral reference requests. They should send all written reference requests to HR.

Designate someone to handle all requests. Limit responses to positions held and dates of employment unless the request includes a release from the former employee that allows you to provide additional information like reason for termination. The former employee should sign the release.

Some supervisors may be tempted to provide a subordinate leaving on good terms with a positive letter of reference. Instruct them that they still need to send a copy to HR for review. Then keep a copy in the employee's file.