

EVERYTHING YOU NEED TO KNOW ABOUT REFERENCES

Should I provide a reference or not?

There is a healthy dose of paranoia surrounding references and many organisations simply refuse to provide them to avoid any risks, but as long as the references provided are accurate, fair and true there is little to concern you, or is there? Most organisations wouldn't want to ruin a job opportunity for an ex-employee on purpose and appreciate that a misleading reference could lead to the ex-employee suing if he/she does not get the job as a result of the reference and if you provide an untrue glowing reference the new employer could sue if the person then goes on to perform poorly. Perhaps the best way forward is to decide upon your organisation's policy.

What are the main types of reference?

1. **The Full Reference:** These will include the basic facts such as position held, salary and benefits, sickness and employment dates but may also include additional information such as key responsibilities, an assessment of the employee's performance, personal qualities, e.g. honesty, timekeeping and the reason the person left.
2. **The Basic Response:** The basic response includes only feedback such as employment dates and position held, although some may also include salary and benefits and sickness records. It is important if you decide to provide only the bare facts that you also respond to the new employer by stating that it is your policy to provide only the basic facts so that they do not read anything into the fact that you have only provided the basic information and assume that there is a problem with the ex-employee.
3. **No Reference:** In law you do not have to provide a reference unless it is stated in the employee's

contract of employment. But this is unusual and so it could be assumed if you do not provide a reference that you had an issue with the employee and so it is important, if you do not intend to give a reference, that you state this is your policy and that it is the same for all ex-employees.

The key is not to provide anything that is mis-leading or could be misinterpreted especially if you choose not to provide a reference where the new employer could potentially assume that there must have been an issue with the ex-employee.

What do I need to provide in a reference?

The above issues can cause anxiety not only to ex-employers but also to those wishing to employ a new person. We all want to be able to trust the information provided in a reference to support a job application. It is important to consider the aspects from the perspective of your policies (if you have them), the ex-employee and the potential new employer. Some key issues to consider are:



- Do not omit information that a new employer would reasonably expect you to disclose and do not fail to respond to a specific question without explaining why.
- If you do not understand the new role being offered to the ex-employee do not state that they are suitable for it without qualifying this by saying it is only your opinion.
- Be careful how you organise your response. Re-read the information that you have provided to ensure that a misleading impression cannot be read into it. The test here is whether a reasonable person could read into your response an inference or suggestion that you may not have intended.
- The reference should be balanced. It is okay to highlight poor performance as long as it was discussed and documented with the employee at the time, preferably through a formal process, but you should also highlight positive points as well. Mentioning poor performance is fine as long as it is not malicious and is true and verifiable. If the poor performance was never raised with the ex-employee or not documented then avoid making reference to it.
- If the reason for the person leaving was dismissal it is important to ensure that the reason for dismissal ties in with the stated reason you provide in the reference. In cases where the ex-employee is making a claim against you, and they are senior enough, you may agree the wording with them in advance as a part of a compromise agreement.

What should be in my reference policy?

As mentioned previously, once you have decided upon what reference you will be giving, it is important to document that policy. It should also identify who may give them and what they should contain, including a reference template if that is the preferred method of response. It is essential that everybody understands the policy to ensure that there are no unintentional issues. For example, if it is the policy that all references will be handled by the Human Resource Department it is important that all managers and supervisors understand this

Can the ex-employee see the reference provided?

References may contain confidential information and so under the Data Protection Act you do not have to reveal the reference to the ex-employee. But the law does not extend to the new employer, who will be required to disclose the reference if you have consented to the disclosure or it is “reasonable” that they should do so. In these circumstances the new employer may be able to omit parts of the reference such as the identity of the referee based upon the common law duty of confidentiality. If you have concerns over the confidentiality, you should make it clear when providing a reference that you do not consent to the disclosure of the reference or confidential parts of the reference to the ex-employee.

Can I use a disclaimer to protect myself?

Under law you can only be excluded from liability about the accuracy of the information if the information provided was reasonable. However, based on the examples above it may be useful to add a disclaimer in your references as a “belt and braces” measure. As an example, a part of the disclaimer could express that the reference is private and confidential and intended only for the new employer and must not be disclosed to any third parties (this could include the ex-employee as mentioned previously).

What are the practical issues when requesting a reference?

There is a range of practical issues such as the referee being on holiday, the request being sent to the wrong person, department or site, a lack of understanding of preferred methods of communication or response times and the fact that the people providing the reference may have other priorities. Some of these issues are considered in more detail.

Make providing the reference as easy as possible

Some organisations receive numerous requests for references and can find them a distraction. Unless



they have a no reference policy, then they will have to respond but providing a huge questionnaire or template of the required information is unlikely to get a positive response. Requiring the collation of detailed information by the ex-employer is likely to cause delays and so firstly ask yourself if you really need everything that you have asked for and reduce the requirements accordingly if you do not and secondly if you have the information from the ex-employee e.g. employment dates, then state them in the reference for the ex-employer to confirm rather than search for themselves.

Understand the policy of the ex-employer with regards to references

Company policies may require a centralised response to a reference in which case the reference may travel through their internal postal system until it lands on the appropriate desk. There may also be company rules such as a reasonable response time. For example, it may state, "we will endeavour to respond within the company policy guideline of 28 working days". This can also cause delays which may impact upon the decision to hire the person or the person accepting another "quicker" job offer. A useful idea is to ask the ex-employee if he/she is aware of the ex-employer's reference policy to ensure that the request is dealt with in the appropriate manner.

Use the appropriate communication channels

Understand the preferred route of contact. The option of e-mail can certainly speed up a response but what if it gets missed in the numerous e-mails the person receives or gets junked or caught in the fire wall because the ex-employers security system doesn't like some of the words you have used or your logo? Whatever method you use whether it is e-mail, post, fax or phone it is important to consider the ex-employer. They are often busy people and making the right approach can be the difference between a quick response or no response at all. In all cases make the response as easy as possible to provide, use a simple table (this could be electronic yes, no or ranking buttons on e-mail). If you post the request provide a stamped return envelope to make it easy to

return. In all cases ensure that the request is professional with the reason for the request clearly identified, your organisation clearly identified and ensure that it is professionally presented, proof read and grammar checked to ensure that the right impression is made.

Getting the right person to provide the response

You need to ensure that the reference is sent to the right person. If in doubt check with the ex-employee and/or get additional or optional references for use should one be on holiday for example. You can also ask the ex-employee if they could find out the best date/time to contact the reference to be more certain of a positive and quick response. In some cases it may be impossible to get the right person. There may be a number of reasons, for example he/she may have also left the ex-employer or in uncertain economic times may have been made redundant or the company may no longer exist. In these circumstances we may have to make a judgement call based upon the availability of all other information and/or accept additional references from alternative sources. Remember also that it may be possible to validate some of the basic information from other documentation such as wage slips, tax statements, job descriptions, copies of appraisals, copies of qualifications etc. and from less formal references from ex-colleagues that worked with the person at the ex-employer.

...and finally

As we have outlined above there are some key issues to consider but providing or obtaining references need not be a major problem. We need to have empathy for the ex-employer and for the ex-employee. If we state what we are going to provide and do so fairly and honestly there is little to worry about. As always though, if you are in any doubt it is useful to seek legal advice.