

THE C & D NEWSLETTER



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AVOIDING LIBEL & SLANDER IN THE WORKPLACE

A California employer who terminates an employee may face, among other things, a lawsuit from the terminated employee in the form of an action for libel or slander, or for violation of the California Labor Code.

Libel and Slander. In the employment context, "libel" is a false and unprivileged writing which has a tendency to injure the person in his occupation; and "slander" is a false and unprivileged oral statement which imputes a general disqualification of the person's capacity in his office, profession, trade or business.

California Labor Code Section 1050. In addition to libel and slander an employer may be sued for violating California Labor Code Section 1050, which provides that an employer may not, by any misrepresentation, prevent a former employee from obtaining a new job.

Defenses. The employer has several defenses to a lawsuit. Naturally, truth is an absolute defense to any charge, regardless of the existence of malice. If the statement is merely one of opinion, it is also a defense to a charge of libel or slander. However, if the statement implies that there are facts which form the basis of the opinion, the statement will be considered defamatory. Whether the communication is a statement of fact or opinion is a question for the courts to decide, taking into account all of the facts and circumstances.

There are certain types of communications which are privileged, and non actionable, even if the statements are made with malice. Thus, communications made (a) in a judicial proceeding or other official proceeding authorized by law, (b) to the police regarding improprieties by a terminated employee, (c) to the California Highway Patrol in response to a highway background investigation of a former employee, (d) to the Employment Development Department for unemployment insurance purposes regarding the basis for an employee's discharge, and (e) to the California Department of Fair Employment and Housing in the course of an investigation regarding allegations of sexual harassment, are all absolutely privileged.

Suggestions to Avoid Litigation. Employers can take the following steps to protect against allegations of libel and slander by disgruntled employees or former employees. First, make sure that only employees who need to know of the allegations against the employee have access to the information. Second, make sure that any documents containing sensitive information are clearly marked "Confidential" and are kept in a secure place. Next, any written reports concerning an employee should emphasize the writer's belief or opinion based upon facts specified in the investigation. Finally, communications to persons outside the company regarding a former employee should be limited to confirming the former employee's length of service and job title.

This complimentary newsletter is intended to provide general information. Because of the complexities and constant changes in the law, it is important to seek professional advice before acting on any of the matters covered herein.

