

THE C & D NEWSLETTER



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EMPLOYMENT REFERENCES

A common question faced by employers is whether to give a former employee a favorable letter of reference to assist the former employee in obtaining a new position. This issue is particularly difficult when the employee was not an outstanding employee or if the employee was terminated for cause.

The recent case of *Randi W. v. Muroc Joint Unified School District* illustrates the dangers of providing a favorable letter of reference. In this case, the former employer provided a positive, unqualified letter of reference indicating that the former employee was able to work well in a school environment, and that the former employee was an "upbeat, enthusiastic administrator who relates well to the students." The letter of reference failed to mention that the former employee had been disciplined for sexual misconduct with female students, which led to his forced resignation. After being hired by another school, the employee molested another child. The Court held that the former employer had a duty to prospective employers and to third parties to provide a complete and accurate job reference when (a) the employer chooses to provide a substantive job reference and (b) there is a substantial and foreseeable risk that a person could be exposed to physical injury because of incomplete or misleading information in the reference. Thus, a letter of reference describing a former employee's strengths but failing to disclose any negative qualities may subject the former employer to liability for fraud and negligent misrepresentation.

The safest course of conduct for an employer is to have a "no reference" policy, and to limit information given to a prospective employer to dates of employment, job title and, if specifically requested, the former employee's compensation. If the employer desires to provide a positive reference, the employer must be careful to provide only factual, truthful information, and to include unfavorable facts, if any, about the former employee. All facts concerning the employee should be based upon underlying information in the employee's personnel file. When an employee leaves the Company, the employer should conduct an exit interview in which the employer informs the former employee of the facts which will be given in any future letter of reference. In order to reduce the risk of contradictory references, and to ensure that the job reference policy is followed, the employer should designate a limited number of employees to provide job references. Finally, the employer should request that all employers requesting a reference about a former employee are to submit their request in writing. This will prevent the former employer from inadvertently making inaccurate or incomplete statements about the former employee.

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.