

Avoid glowing references and advocate restraint: Lawyer

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Employers should resist giving departing workers references in favour of a simple "statement of service", says workplace relations practice manager Brad Swebeck. Even if an employee's performance warrants a "glowing reference", Swebeck urges caution. A subjective, qualitative reference has the potential to misrepresent them and damage your company's reputation, he says. Swebeck advises employers who have not already done so to adopt a policy where references are replaced by simple and restrained "statements of service".

What to say, what *not* to say...

When it comes to writing a statement of service, it is important to remember you are talking about a *potential applicant*, Swebeck says.

If a future employer has two applicants of equal standing, and chooses one over the other because of a glowing reference from their ex-CEO, the employer will be extremely annoyed if they later feel they were misinformed, he explains. For this reason, words such as "outstanding", "brilliant", "great" and "exceptional", which "only serve to heighten expectations", should be avoided. "As long as you remain objective and don't let your personal feelings get involved then it should be OK, but they do have to be drafted carefully."

After detailing the length of the worker's employment, it is acceptable to use phrases such as "we've certainly found him/her competent in the role" or "peers thought highly of her/him" says Swebeck. "You can list in the statement of service some of the qualities in the employee you have found have contributed to the company's success... but be very objective about it." As for mentioning their shortcomings: "You would highlight their strong points and I wouldn't discuss the weak points, because that's up to the existing employer to work out," he says.

Finally, there's never a problem with saying we wish them well for the future or that it is disappointing to see them go, he says. A focus on the details of a person's duties, "without going into the quality", will guard against anything that can be regarded as misleading or a form of misrepresentation, says Swebeck.

When asked whether a more candid discussion could be conducted over the phone, Swebeck is reluctant to make concessions. "We live in a very litigious society now, so to me, if there's the potential for some sort of problem occurring down the track then I think I'd want to make sure everything was documented. "But that's just the lawyer talking," he concedes. "The reality is, they probably discuss their employees over the phone all the time; they probably do give glowing references and they're subjective rather than objective. But what they need to think about as they're putting pen to paper is 'OK, I just need to word this carefully and try and remain as objective as I can!'"

Forced departures

When an employee is dismissed for misconduct or a performance related issue, "then of course your statement of service is going to be a bit shorter," says Swebeck.

"I think you'd just say the employee was employed on this date as 'X' and when the employment ended, and then the next sentence is 'the company has a policy about not making any statements about ex-employees'," he says. "I don't think it's necessary to say on any statement of service that the employment was terminated for misconduct. That's all you need to say." Any employer worth their "grain of salt" will follow up and discover something is wrong, and if the applicant misleads them, it is the applicant who risks facing legal action, he says.

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