

Dear HR Knowledge, Can I give a bad reference about a former employee?

When you get a reference call about a not-so-great former employee, what do you say? That they were a poor performer, always late, or had multiple write-ups for not following directions? Or, do you just say the employee was fine – and bypass all the negative performance issues – to avoid the hassle or even a lawsuit?

There are no federal laws that address whether an employer should provide a reference or even what an employer can or can't say about a former employee. Some states, however, may have specific laws surrounding reference checks. Regardless of the type of reference given – good or bad – it must be honest. Providing false information can lead to legal action from the former employee.

To avoid situations that leave room for misinterpretation, we recommend that employers put procedures in place that limit who is authorized to provide references and what information can be shared. As a best practice, we suggest that employers provide a limited, factual response to a reference or verification call, by only providing dates of employment and job title. Salary or other information should only be disclosed if you receive written authorization or permission from the employee and employers should be aware of the salary history ban laws that may exist in their state to ensure they stay in compliance.

Most importantly, organizations should follow the same procedure for *all* reference requests. It is beneficial to have a clear, written policy about employment references and verifications. The policy should specify to whom all requests shall be directed, for example, Human Resources; that the only information provided will be dates of employment and title of position; and that any other information will not be released unless written notice is provided by the employee. Keep in mind, however, that employers should comply with any requests made by bona fide legal authorities.

About HR Knowledge

Founded in 2001, HR Knowledge, Inc. provides integrated outsourced HR services tailored to our clients' needs. Our full array of offerings includes managed payroll, employee benefits administration, and HR consulting and support services, such as training, compliance, and Hiring Process Management™, our comprehensive recruitment service that takes you from finding to onboarding new talent. Our major markets are fast-growing small- and medium-sized businesses, many of which are venture-capital-backed; foreign companies expanding into the states; and charter schools. Partnering with HR Knowledge can reduce your administrative costs, minimize your legal risk, help you find and develop talent, and alleviate the HR burden so that you can focus on your core business.

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