
435 – Employee Reference Protection

1.0 Purpose

Washington's state law (RCW 4.24.730) provides protection for an employer who responds to a prospective employer's request for reference information about a current or former employee. The law states that the employer providing the reference is presumed to be acting in good faith and is immune from civil and criminal liability so long as the disclosed information relates to:

- 1 An employee's ability to perform his or her job;
- 2 The diligence, skill, or reliability with which an employee performs or performed his or her job; or,
- 3 Any illegal or wrongful act an employee committed in relation to his or her job duties.

The presumption of good faith can only be effectively challenged if a current or former employee can show by clear and convincing evidence that information the employer disclosed was knowingly false, deliberately misleading, or made with reckless disregard for the truth.

An employing official may decline to respond to a work reference request for a current or former employee. However, if reference information is provided, the law states that a supervisor or manager who provides it should retain a written record in the employee's personnel file of the identity of the person or entity to which reference information is disclosed for a minimum of two years from the date of disclosure. An employee or former employee has a right to inspect the written record upon request.

2.0 Guidelines and Process for Providing Work References

- 1 Only provide a work reference if you have direct knowledge of an employees. Generally, only a supervisor or manager should speak on behalf of the University as an employer. (e.g. "Would you rehire this person?" could only be accurately answered by the person that would have rehire authority.)
- 2 Restrict your comments to those aspects of the employee's job performance about which you have specific knowledge. Do not guess or rely on hearsay to respond to reference questions.
- 3 Generally, you should avoid providing negative information about an employee's job performance if you did not make the employee aware of the performance problem or behavioral concern. There are possible exceptions, e.g. you only learn about a problem after the employee has left employment but have documentation that the problem did exist.
- 4 You must not disclose medical information even if an employee voluntarily disclosed it to you.
- 5 You should not provide information about an employee that is not directly work related.

After responding to a reference inquiry, prepare an entry into the employee's personnel file that includes:

- Date of reference
- Name and contact information of person requesting the reference
- Summary of reference
- Name of manager or supervisor giving reference