



Human Resources

by Jay P. Krupin and Elisabeth Moriarty-Ambrozaitis

Employee references: The danger in providing inaccurate information

*Another great article from The Rooms Chronicle, the #1 journal for hotel rooms management! ***Important notice: This article may not be reproduced without permission of the publisher or the author.*** College of Hospitality and Tourism Management, Niagara University, P.O. Box 2036, Niagara University, NY 14109-2036. Phone: 866-Read TRC. E-mail: editor@roomschronicle.com*

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A recent case reminds employers of the consequences of providing false references about former employees.

In today's labor market, employees change jobs more frequently than in prior decades. This rise in employee mobility has increased opportunities for employers to provide references for former employees. As a recent legal case demonstrates, employers may confront not only claims of tortious interference and defamation for providing negative or false references to a prospective employer, but also potential negligent misrepresentation claims.

Case in point

In the aforementioned case, the employee was hired into an unspecified management position for her former employer. Shortly thereafter, her former employer sent a company-wide e-mail introducing her as the Vice President of Daily Operations. After working for this employer for over a year, a new company hired the employee as a customer service manager.

The employee initially received positive re-views at her new company. However, the company's owner soon became dissatisfied with the employee's performance and decided to verify the employee's work experience with her former employer. When the owner called the employee's former employer, he did not request to speak with the Human Resources Department or a corporate officer. Instead, he called the customer service department directly and did so on more than one occasion.

Each time the owner called, he asked what the employee's role was at her prior company. Every person the owner spoke with, including the customer service manager, stated that the employee was a customer service representative and had not been a supervisor or a vice president. Consequently, the owner fired the employee for misrepresenting her work experience. The employee then sued her former employer for negligent misrepresentation, defamation, and tortious interference.

Negligent misrepresentation

Although the lower court dismissed the employee's claims, on appeal, the appellate court found that the employee had presented sufficient evidence to proceed on her claim of negligent misrepresentation.

Negligent misrepresentation occurs when a party negligently provides false information, causing economic loss to an individual. The employee claimed that her former employer negligently represented her position with the company, resulting in her termination from her new company.

The appellate court found that the employee was entitled to receive a determination as to whether her former employer and co-workers knew, or should have known, her correct title. The court further noted that an employer that voluntarily responds to a request for a reference may be held liable for negligent misrepresentation if the employer provides misleading or incomplete information.

Lesson learned

This case illustrates a very important lesson for hoteliers – know who will provide references and what information that individual will relay to the employee's prospective, or current, employer. Management should develop a policy for handling requests for references. While employers may wish to provide detailed references for former employees, they should adopt the policy of providing neutral references for former employees that reveal only titles and rates of pay.

Responding to reference requests

Employers should also ensure that the individuals responding to reference requests are prepared to accurately handle such requests. Every employer should designate one official or department, such as the Director of Human Resources, to provide references. All calls for references should be directed to this designated reference provider. For example, the customer service department in this case should have directed the owner's calls to the Human Resources Department. The Human Resources Department then would have retained total control over what information was released to the owner. This centralized system would have drastically reduced the risk of releasing false or misleading information in response to the owner's reference requests.

Finally, employers should effectively communicate their reference policies to all employees. A strong, well-known reference policy will best shield owners and management from potential legal liability for providing references. ✧

(Krupin O'Brien LLC's national practice exclusively represents employers and management, including hoteliers, in the fields of labor relations, employment law, business immigration and related litigation.

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