

Disclosure of Employment References

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PURPOSE

To establish a consistent policy and procedure for disclosing employment information to prospective employers that is in compliance with Washington state law. This bulletin does not address obtaining references for potential employment by King County.

OVERVIEW

On July 24, 2005, RCW 4.24.730 was enacted, protecting employers from liability for giving good faith job references. Employers that disclose information about former or current employees to prospective employers or employment agencies will be presumed to have acted in good faith and will be immune from liability for such disclosure if certain conditions are met.

Guidance: Conditions for disclosing information about a current or former employee are as follows:

- Good Faith Presumption. An employer will be presumed to have provided a job reference in good faith and shall be entitled to immunity if the following is true:
 - (a) the information is provided at the request of another employer or employment agency (in other words, the information cannot be unsolicited); and
 - (b) the disclosed information relates to:
 - (i) the employee's ability to perform his/her job;
 - (ii) the diligence, skill or reliability with which the employee carried out the duties of his/her job; or
 - (iii) any illegal or wrongful act committed by the employee when related to the duties of his/her job.
- Record Keeping Requirement. The employer must retain a written record (see attached form) of the identity of the person or entity to which information is disclosed for a minimum of **two years** from the date of disclosure. The employee or former employee has a right to **inspect** any such written record upon request and any such written record shall become part of the employee's personnel file, subject to the provisions of chapter 49.12 RCW. In addition, a copy of the record shall be filed alphabetically in a central "References" file maintained by the records custodian of the department or division.
- Rebuttal of Good Faith Presumption. RCW 4.24.730 provides that the presumption of good faith may only be rebutted upon a showing by clear and convincing evidence that the information disclosed by the employer was knowingly false, deliberately misleading, or made with reckless disregard for the truth.

A. General Advice:

- Do not give an unsolicited reference.
- Only disclose job related information.
- When providing reference information in writing, retain a copy of the information provided. When responding to a telephone request, make notes of that which was discussed using the Employment Information Provided form included below. Enter the question that was asked and the answer provided.
- You may request a phone number to call the individual back at a more convenient time for you. You may also request to have questions faxed or emailed in advance as well.
- Do not under any circumstances knowingly give false or deliberately misleading information.

- Do not speculate. If a question is not clear, ask for clarification. If you do not know the answer to any question, say so.
- Do not give personal opinions about personality, character and the like, even if solicited.
- All documents/forms related to employment references must be included in the personnel file and in the central "References" file maintained by the department/division records custodian. These documents/forms must be retained for a minimum of two years.
- Departments are responsible for:
 - Establishing central point(s) for providing employment reference information.
 - Establishing a central "References" file with the records custodian. The file will be maintained in alphabetical order.

B. When Requested by the Employee:

- When an employee or former employee desires a general letter of reference they must submit a written request for the reference. When they have done so, only the following information may be provided:
 - the employee's position and dates of employment
 - factual statements of satisfactory or unsatisfactory performance
 - the degree of willingness to rehire the employee
- A copy of all general letters of reference must be included in the employee's personnel file and the central "References" file maintained by the records custodian of the department or division.

C. When Requested by a Potential Employer or Employment Agency:

- When responding to a request for references, provide only job-related information which relates to:
 - the employee's ability to perform his/her job;
 - the diligence, skill or reliability with which the employee carried out the duties of his/her job; or
 - any illegal or wrongful act committed by the employee when related to the duties of his/her job for which the employee has been disciplined for the illegal or wrongful act.
- When disclosing reference information in writing, retain a copy of the information provided as required by this bulletin. When responding to an oral request by telephone or in person, use the attached form to document the reference discussion. The form is also available on the public folders at HR/Forms/References.

QUESTIONS/COMMENTS

Refer all questions or comments to the HRD Employment Services



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