

Handling References and Referrals While Safeguarding Your Business

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Sarah Sawyer: Welcome to this week's OK at Work with myself, Sarah Sawyer, my colleague Russell Berger, both attorneys with Offit Kurman. And today we are talking about references and referrals related to employees. Sometimes employees may leave under varying different circumstances. Might terminate them, they might leave voluntarily. There might be some type of transition plan out. We've talked about a lot of those different circumstances on OK at Work. But often when they're leaving, they either might ask for a reference, ask for the company to say something specific as it relates to them, to their potential next employer.

Or you might get an inquiry from a new employer or someone who is looking to potentially hire someone and need to respond to that. So what are some things that companies should be keeping in mind when they either get those requests from the employee or [00:01:00] from other companies, or recruiters or other sources, Russell?

Russell Berger: Yeah, I think a couple things. One, you want to have a centralized location for responding to those requests. You don't want every manager, every supervisor in your organization being authorized to respond. Because you'll get a whole wide range of different responses and different types of responses and levels of candor and detail that maybe you don't want to get into.

Having it all funneled to one place is really important. And secondly, having a policy in place for how you're going to handle them. A lot of employers, and this is frankly where I come out too, have very basic standard policies of neutral references. That's the things like dates of employment, job title, maybe salary verification things of that nature that are very objective, not subject to any dispute between the former employee and the company over, well, you're good at this job. You weren't good at this job. Because, when you start getting into the weeds of it, you have the issue of a former employee could say, well, you're [00:02:00] committing defamation.

You're defaming them by talking about their poor performance. Or a new employer could say, well, you committed fraud because you didn't share this information, or you misled me as to this person's skill set because you wanted them out of your business. You could run into all different types of problems.

For that reason, I prefer centralized single person, limited amount of information.

Sarah Sawyer: Yeah, it's hard sometimes because there can be a desire, especially if things have gone poorly with an employee to want to say things and prevent a future issue for someone who might be hiring that employee.

And there's often a lot of emotions involved based on that knowledge. Sometimes there's also emotions involved in the other direction where you can get yourself in trouble in the opposite direction, from perspective of emphatically recommending someone and then that not going well. And that's a little bit less of a legal risk around defamation or some of these other issues to recommend someone, but from a practical standpoint, that can have its own issues as well as if you're saying, Hey, this person was [00:03:00] amazing, and then it doesn't go well. I think there's a good saying sometimes that I've heard that's don't thank me but also don't blame me.

There's a good balance to be as neutral as possible for other just practical reasons as well. Because people are people, and you don't always have all the facts. You might think you have a good handle on a recommendation that you're making in one direction or another, positive or negatively, but not really have the full picture.

Russell Berger: And one other thing to consider with this is oftentimes you see this in severance agreements where one of the negotiated terms might be a neutral reference or might even be an agreed upon reference letter, which at least in that case, if you're getting into a little bit more substance you're doing it as part of kind of this back and forth.

It's a negotiated thing. It's not a normal everyday process. And you're doing it with review of council, so you're making sure you're saying something that obviously the former employee is not gonna be objecting to because they want it as part of the settlement. But you're able to carefully craft in a way that isn't going to get you into any trouble anywhere along the way.

Because ultimately, once the person's out, you may wish them well and sincerely mean that, [00:04:00] but you don't have a business interest in that person one way or the other thereafter. Trying to keep that in mind as you go through the process is important.

Sarah Sawyer: All great points. Well, thanks Russell and see you next time.

Russell Berger: Thanks, Sarah.