

**Goals: This session should help the participant:**

- Identify legal issues associated with employment references.
- Understand the requirements of company reference policy and procedures.
- Follow established guidelines for handling reference requests appropriately.

**1. Be Aware of Legal Issues Associated with Providing Employment References**

- There are legal risks associated with providing references as well as risks for withholding information about a worker's employment with your organization.
 - That means when you provide a reference, you have to be careful about what you say.
- Negative references could lead to lawsuits if the employee believes they are based on discriminatory actions or attitudes.
- Positive but untrue references could be considered fraudulent misrepresentation.
- References considered defamatory (untrue information that damages a person's reputation) or violations of an employee's privacy could lead to legal liability as well.
- On the other hand, failure to provide information about serious problems such as violent behavior on the job or theft of company assets could lead to a negligent referral lawsuit.
 - Former employers who fail to disclose known instances of misconduct risk being held legally responsible if the employee later causes similar trouble in a subsequent employer's workplace.

2. Follow Established Policies and Procedures for Reference Requests

- Because of potential legal liabilities, references must be handled consistently and appropriately.
- To ensure uniformity and avoid lawsuits, many organizations now require all reference requests to be referred to or approved by the HR department.
- If you are authorized to respond to reference requests, be sure to follow established guidelines concerning the information you provide.
- Double check the employee's personnel file to make sure information you give is accurate.
- If you have any questions about what information to include, be sure to check with your manager or HR before giving a reference.
 - Always check with HR when there have been performance or behavior problems.

3. Require a Release Before Providing Reference Information

- Have employees who leave the organization sign a release form authorizing you to give employment references.
 - Tell departing employees that if they do not sign a release form, you will provide only the bare minimum of information, confirming dates of employment, job title, and salary.
 - If they do sign a release, tell them what you are willing to say about their job performance.



- Also require current employees who ask for a reference to sign a release.
 - Current employees may want an employment reference, a credit reference, or a reference for some other reason that could generate a reference check.
- Always check to make sure there is a release on file before providing a reference.
- If you receive a reference request and there is no release on file, ask the person requesting the reference to obtain a signed release from the former employee and mail or fax it to you before you provide the reference.

4. Require All Reference Requests to Be in Writing and Respond in Writing

- Insist on a signed letter from the person making a reference request, and provide your information in a signed letter as well—don't use e-mail.
- If you receive a telephone request, tell the person to put it in writing.
- Verify the identity of the person requesting the reference, and make sure this person has a legitimate business reason for the request.
- Mark envelopes containing references “Confidential” so that letters are opened by the person who requested the reference and so the information will be circulated on a need-to-know basis.
- Keep copies of both reference requests and responses on file.

5. Provide Only Objective, Job-Related Information in a Reference

- Release only information permitted by your organization's reference policy.
- Disclose no information legally protected from disclosure, such as medical information.
- Focus on performance; don't make subjective comments about an employee.
- Discuss only past performance; don't make predictions about future success.
- Don't refer to an employee's personal life or other non-work-related issues.
- Respond only to specific questions about specific information.
 - Don't volunteer information or provide additional commentary.
- Don't exaggerate; be positive, but tell the truth.
- Don't provide negative information unless omitting it could cause serious trouble—for example, threatening or violent behavior.

Applicable Regulations: Age Discrimination in Employment Act; Americans with Disabilities Act; Civil Rights Act of 1964 (Title VII); Civil Rights Act of 1991; and Family and Medical Leave Act

Training Tips:

- Review your policies and procedures for handling reference requests, including releases forms.
- Have each participant write a reference letter and discuss the results as a group.

Knowledge Review:

–Distribute copies of the handout and discuss the tips for providing proper references. Then have participants complete the Best Practices for Reference Requests Quiz. It provides a useful review of their understanding of the subject.