Providing References

Colorado law protects employers who provide information about a current or former employee's job history or job performance. Nevertheless, giving references can expose an employer to costly risks if done improperly or carelessly.

Colorado State Law Regarding References

Colorado's Anti-Blacklisting Statute states the following:

1. Any employer who provides information about a current or former employee's job history or job performance to a prospective employer upon request is immune from civil liability for the disclosure or any consequences of the disclosure. "Job performance" means:

    a. The suitability of the employee for reemployment.
    b. The employee's work-related skills, abilities, and habits as they may relate to suitability for future employment.
    c. In the case of a former employee, the reason for the employee's separation.

2. This immunity does not apply when an employee can show both of the following:

    a. The information disclosed by the current or former employer was false.
    b. The employer providing the information knew or should have known that the information was false.

Tips for Giving Employment References

1. **Warn a difficult employee that your reference won't be good.** Yes, the employee should know this already. But you can avoid problems at the outset by stating the obvious: "I cannot provide a positive reference for you."
2. **It's OK not to provide a reference.**
    a. If you do not have sufficient knowledge about an employee's job performance, i.e., if you did not supervise or work closely with the person, tell the requester the nature of your relationship, that you do not have sufficient knowledge to give a meaningful reference, and refer him/her to Human Resources for verification of employment.
    b. If there is something about the individual's employment history with you that makes you hesitate to provide information to an external employer refer him/her to Human Resources for verification of employment.
3. **Keep it brief.** Don't give a reference if you're not prepared – tell the requester that you need to review your records and will call back. When ready, you may choose to only give out dates of employment, job title, descriptions of duties, and final salary to prospective employers.
4. **Stick to the facts.** Report only what is objective, accurate, and supported by documentation in your personnel files. Use objective responses, like "often late for work," rather than subjective comments like "lazy" or "has a bad attitude." You may also discuss the person's performance, attendance, conduct, and reason for separation of employment (e.g., release during probation, non-renewed, dismissal, and reduction in force, if applicable).

5. **Provide a balanced picture on job performance.** References should be truthful, free of subjective impressions that lack objective support, and should be given in good faith without malice. Omitting negative information that is relevant to a person's suitability for employment may be cause for court action. Stick to aspects of the person's performance that you know, and don't respond to questions about areas you don't know. Do not repeat rumors.
6. **Rights of access to information.** If possible, require a request for a reference in writing. Carefully consider whether you will respond in writing to the reference. In Colorado, an employer that gives written information about a current or a former employee must, if requested by the employee, send a copy of the reference to the employee's last known address. If you choose to give a written reference, make sure it is marked "confidential" and is addressed to and delivered only to the individual authorized to receive the information.
7. **Don't disclose personal information.** Do not disclose personal information regarding the employee's lifestyle choices such as living arrangements, marital status, or sexual orientation. Limit your references and your reference inquiries to job-related information.
8. **Don't disclose confidential information.** Do not give any information about administrative grievances, settlement agreements, Worker's Compensation claims, an employee's medical record, or disabilities – these are examples of confidential information. The presumption that a reference was provided in "good faith" may be lost if confidential information is disclosed.
9. **Designate who can give references.** Each building and/or department should identify a limited number of individuals to provide references. Make sure your staff knows that only authorized individuals can give references.
10. **Insist on a written release.** If you want to make absolutely sure that you're protected against lawsuits, require former employees to sign a release -- an agreement that gives you permission to provide information to prospective employers (and promises not to sue over the information you provide).