

## A REFRESHER ON REFERENCES

In this second installment in our “privacy” series, we will focus on employment references. See how you score on this true/false quiz:

**1. By law, employers giving a reference are only allowed to reveal a former employee’s name, position held, and date the employee left the position.**

False. Because so many employers refuse to say anything beyond this when asked for references, it’s easy to assume that there must be some law forbidding them from disclosing anything more. There is no such law. However, employers are justified in being concerned about legal problems with references, because many ex-employees who received less than favorable references have sued their former employers for defamation.

**2. If you give a negative reference and your ex-employee doesn’t get hired as a result, you have “defamed” that employee.**

False. It is not defamation to say or write something negative about a person. It only becomes defamation when that information is not only unflattering, but untrue. Therefore, if your employee was fired because he was tardy too often, it would not be defamation to state that in a reference. What you must weigh, however, is not only your chances of winning a lawsuit, but the aggravation and expense you might incur in (even successfully) defending one.

**3. Even if what you say about an ex-employee is true, you may still have invaded the employee’s privacy.**

True. An employer does not have the right to share employment-related information about an employee unless the employee consents to such disclosure. That is why employers are well-advised to never provide references without first getting a written authorization from the employee to release the information. The authorization should also state that the employee agrees to hold the employer harmless regarding any information the employer provides.

**4. If an employer just gives references for certain employees and refuses to give them for others, the employer could unwittingly be inviting a civil rights claim.**

True. Any time an employer applies different rules to similarly-situated employees, the employer is risking at least the perception of unfairness. And although “unfairness” is not illegal, it can be an invitation to a discrimination claim. Once again, even though the chances of “winning” such a claim may be good for the employer, there are other practical considerations - such as expense, time and aggravation - that should be considered.

**5. If an employer chooses to give references beyond the “name, rank and serial number” method illustrated above, the employer should only comment on documented and job-related events, and should only discuss them with people who have a business need to know the information. The employer should also verify the identity of the person making the reference request, possibly by asking for a telephone number and/or asking that the request be made on the company letterhead.**

True.

For more information about this and other important information affecting Oregon employers, including seminars conducted by our Technical Assistance Unit, please visit our website at [www.oregon.gov/boli/ta](http://www.oregon.gov/boli/ta). You can also call us at 971-673-0824.