

Checklist For Requesting And Giving References

CHECKLIST FOR REQUESTING AND GIVING REFERENCES

A. Requesting References

1. It has become common practice for an employer to give a reference in respect of an employee or former employee almost as a matter of course, unless there are good reasons for not doing so.
2. Check whether the references are required before employment commences — if so, any offer letter should contain a statement that the offer is conditional upon and subject to receipt of satisfactory references. The statement must be made to the employee before he accepts the employment, so that it becomes a term of the contract. If the employment is started before those references are received, the employment contract should provide that, if unsatisfactory references are received, the employer has the right to dismiss without notice.
3. Specify the level of detail required: the reference might just state the employee's job description, length of service and reason for leaving, or might give an assessment of the employee's performance, abilities, disciplinary record and character. As a minimum, any reference should state the dates of the employment and the employee's job title(s) or duties.

B. Providing References

- Check whether references are generally to be given in respect of former employees
- Check whether there are any regulations particular to the area of business affecting the giving of references
- Check who has authority to give references about existing or former employees on behalf of the employer, so that any potential liability can be controlled. For example, in small organisations this might just be directors; or in larger organisations it might be line managers, subject to prior clearance by the personnel department.

- Check who has authority to give oral references.
- Check how they are to be given and noted.
- Check what level of detail about the employee is permitted. For example, the reference might just state the employee's job description, length of service and reason for leaving, or might give an assessment of the employee's performance, abilities, disciplinary record and character. As a minimum, any reference should state the dates of the employment and the employee's job title(s) or duties.
- Check any sector-specific regulatory rules about references.
- Check the accuracy of facts and that any opinions offered are based on accurate facts: an honest belief in the truth of a statement is a defence to a defamation action. Although the reference need not present a complete picture of the employee, the overall impression must not be misleading or unfair.
- All employees must be treated equally, regardless of whether they have made complaints against the employer, especially as regards statutory discrimination.
- Avoid including any information about the employee's performance, of which the employee is not aware.
- Address the reference, where possible, to a named person, and marked 'Confidential' or 'Addressee Only'. The defence of qualified privilege does not apply if the reference goes on to someone else.
- Avoid addressing the reference 'to whom it may concern'.
- Check whether there is a need for a specific disclaimer against liability arising from the reader's reliance on the content of the reference. One option would be for the employer to agree, at the time the employee requests the reference, to provide the reference for the employee only if the employee accepted a disclaimer of liability. The disclaimer could relate both to the employee and the recipient of the reference.