

Commonly Asked Questions About Reference Letters

by Elizabeth Forster

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Clients often ask us about reference letters and their legal obligations with respect to them. The following is a list of some of the most frequent questions we are asked:

Do I have to give an employee a reference letter?

Answer: Technically, no. However, there may be good reasons to do so as described below.

If I don't have to give an employee a reference letter, why would I?

Answer: There are a number of reasons to give an employee a reference letter.

Most employees are terminated without just cause. In these cases employees are entitled to reasonable notice, or pay in lieu of reasonable notice. Frequently, there are negotiations between the employer and the employee as to what constitutes reasonable notice. In some cases, the employee sues for damages for wrongful dismissal. The measure of damages is the lost remuneration during the reasonable notice period, less what the employee earns through alternative employment.

The faster an employee gets a job, the less damages they will recover. Therefore, it is in the employer's best interest to assist an employee in finding alternative employment as quickly as possible.

Can an employer be sued if an employee is hired based on its letter of reference?

Answer: This would only happen in the rarest of cases based upon negligent misrepresentation. If a prospective employer relies upon a favourable letter of reference that was inaccurate and negligently made, the prospective employer may recover its damages arising out of the misrepresentation. However, provided the letter of reference is accurate, an employer would not be liable in damages

Employers should not provide a reference letter to an employee who has been terminated for just cause.

Can an employee sue his former employer based on his reference letter?

Answer: If the employer deliberately and knowingly makes false comments about an employee which affect the employee's reputation or ability to find a job, the employer could be liable to the employee for damages for defamation.

In addition, an employee suing for wrongful dismissal may be awarded damages for a longer notice period if he is unable to find employment because of the lack of a reference letter.

However, if the employer is honest in drafting the reference letter and does not act with malice or with the intent of interfering with the employee's ability to find a job, the employer will be protected from a damages claim. ■