



Policy for Professional Employment References¹

(07-2014)

The following policy applies only to professional employment reference requests. Only authorized* managers can provide these references. All other references are given at the discretion and risk of the provider; and Goshen College is not responsible for the contents of the reference. In fact, any unauthorized employee providing a reference on behalf of Goshen College is subject to disciplinary action, up to and including termination.

1. General employment reference requests directed to Goshen College shall be referred to the Vice President for Academic Affairs for teaching faculty, or the Director of Human Resources for all other employees.
2. Specific requests for employment references are handled as follows:
 - a. Department chairs and supervisors ***with performance appraisal responsibility for employee are authorized** to provide a professional employment reference with permission from the employee.
 - b. Non-authorized employees are not permitted to give references on behalf of Goshen College.
3. Goshen College's authorized managers will release references of job performance for current/ former employees or student employees only with written or electronic mail permission by the employee for whom the reference is requested. The manager will keep a copy on file.
4. If no permission has been given, the information released will be limited to dates of employment and position held communicated by HR. Human Resources may also provide a prospective employer with information regarding the amount of salary or wage last earned if the employee provides written authorization.
5. Goshen College reserves the right, in its discretion, not to respond to a request for additional information.

Note: Employers should also note that, although there is no legal obligation to provide a reference for an employee, most Indiana employers are obligated to provide an employee, upon written request, a termination letter setting forth the nature and character of services rendered, the duration of the employment and for "what cause, if any, such employee has quit or been discharged." (See Ind. Code 22-6-3-1.)

¹ "Professional Employment Reference" is defined as current or previously regular or student employees seeking a reference **from his/her direct supervisor** while employed at Goshen College.

Guidelines and Legal Information For Professional Employment References

Reference Check Guidelines

Review these guidelines before responding to a request for an employment reference for current or former staff members. The same principles apply when providing either oral or written references.

When contacted to provide a reference, first consider these primary points:

- Obtain a written authorization from the applicant acknowledging there will be employment reference checks and releasing all parties from liability
- Don't give a reference if you're not prepared -- tell a requester that you need to review your records and will call back.
- Clarify the nature of your relationship with the applicant and the basis upon which you're assessing his/her performance (i.e., if you are/were not the immediate supervisor).
- References should be balanced, truthful, free of subjective impressions that lack objective support, and should be given in good faith without malice.

When should you give a reference?

- The College does not have an obligation to provide references on former and current employees but, under ordinary circumstances, it is our practice to respond to requests from prospective employers.
- If another Goshen College employee calls for a reference for an internal position, there is a community interest which gives rise to a greater obligation to respond. If an employee calls for a reference on someone currently working for you, give a reference just as you would for any former employee.

When should you not give a reference?

- If you feel that you **cannot give an objective reference** for any reason, you should decline and refer the requester to Human Resources for verification of employment.
 - Verification of employment is limited to:
 - Start and end date of employment
 - Job title
 - Salary at time of separation (if the employee provides written authorization)
- 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 her/him to Human Resources for verification of employment.
- If you have concerns about the applicant's past performance but **feel that you could not back up your statements with objective evidence if challenged**, or if there is something about the individual's employment history with you that makes you hesitant to provide information to any external

employer, call Human Resources for advice. Alternately, refer the requester to Human Resources for verification of employment.

- You should **never** seek out a prospective employer to give an **unsolicited reference**. If challenged in court, there is more protection if the reference giver provided information in good faith upon the request of the job seeker or prospective employer.

What information may be given in a reference?

- You may always verify dates of employment, job titles, descriptions of duties, and salary. You may also discuss the person's performance, attendance, conduct, and reason for termination of employment (e.g., release during probation, dismissal, or layoff, if applicable).
- If you give any information about an employee's job performance, you have an obligation to give a balanced picture. 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. Review the file, 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.
- An applicant may have rights of access to information provided in a reference. You, as the reference provider, should be able to back up your statements -- preferably with performance evaluations and other written documentation.
- It is not advisable to give negative information of which the employee is unaware. If, in order to give a full and fair evaluation, you need to include such negative information, and if the information is true, factual, and objectively supportable, mention that you had never discussed it with the employee.
- Criminal convictions are matters of public record and you can inform the requestor accordingly.
- **Do not** give any information about administrative grievances, settlement agreements, a Worker's Compensation claim, 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.
- Title VII of the Civil Rights Act of 1964 provides protection from discrimination on the basis of race, color, religion, national origin, or sex. Section 704(a) of Title VII makes it unlawful "for an employer to discriminate against any of his employees or applicants for employment" who have availed themselves of Title VII's protection. Former employees can sue former employers for retaliation if their Title VII rights have been violated.

Can prospective employers request documents related to a current or former employee?

- You may not release any documents -- whether from the department, Human Resources or Career Center personnel file -- to an external employer without a written release from the employee.

Legal Information re Professional Reference Requests

Employers should be cautious when making references to prospective employers of their current or former employees. Employers and their agents who knowingly provide inaccurate or misleading information about an employee or former employee may render the College liable for defamation or other causes of action.

While it is clearly safest from a legal standpoint to limit references to an employee's vital statistics (i.e., position and dates of employment), this approach may not be desirable at a practical level. Fortunately, Indiana employers are legally protected, provided that they disclose only truthful, job-related information concerning an employee. (See Ind. Code 22-5-3-1.)

To the extent an employer wants even more protection, it is advisable to obtain a written authorization from the applicant acknowledging there will be employment reference checks and releasing all parties from liability. A prospective employer also may find it easier to obtain information from a prior employer after explaining the protections offered by the Indiana statute discussed earlier in this section.

An employer should never give job reference information that is of a negative character without having first investigated and documented it, and given the employee the opportunity to respond. Otherwise, a court may find the employer lacked good faith in believing the reported conduct occurred.

It is lawful for a former employer to provide the following information:

- Dates of employment
- Attendance history (not including FMLA absences)
- Quality of work performance
- Eligibility for re-hire
- Circumstances under which the individual left employment
- Quantity of work

A former employer should not provide (nor should a prospective employer inquire about) information that would form an unlawful basis to refuse hire. This includes the following:

- Employee's "attitude"
- Worker's compensation history
- Union activity
- Disability
- FMLA absences
- Genetic information
- Legal claims made against the company
- Absences for reasons authorized by law

In summary, Indiana employers are legally protected, provided that they disclose only truthful, job-related information concerning an employee. (See Ind. Code 22-5-3-1.) The disclosed information must relate to:

1. An employee's ability to perform his or her job;
2. The diligence, skill, or reliability with which an employee performs or performed his or her job; or,
3. Any illegal or wrongful act an employee committed in relation to his or her job duties.

The presumption of good faith can only be effectively challenged if a current or former employee can show by clear and convincing evidence that information the employer disclosed was knowingly false, deliberately misleading, or made with reckless disregard for the truth.