



Reference Checking Guide

Resource Information for
Classified Supervisors and Managers

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Introduction

This Reference Checking Guide has been prepared by the Personnel Commission to assist hiring authorities in making sound and responsible hiring decisions. This guide provides:

- Answers to frequently asked questions regarding reference checking
- Basic information on the legal aspects of reference checking
- Best practices to follow in conducting and responding to reference checks
- Sample questions to use when conducting a reference check

This guide is intended for managers and supervisors who are hiring classified personnel. For information on hiring for faculty positions, please contact Academic Selection, Human Resources Division at (213) 891-2308.

If you have questions or need assistance with conducting or responding to a reference check, staff in the following offices can serve as resources:

- Human Resources (213) 891-2080
- General Counsel (213) 891-2188

Legal Aspects of Employment Reference Checking

One of the first things you will discover about employment reference checking is that it is more easily said than done. Employers who will freely provide information in response to a reference check are the exception. Based on the advice of legal counsel, many employers have adopted policies to protect themselves from costly litigation from former employees. In the course of conducting reference checks, you may encounter policies such as:

No Comment

These employers will not provide any information about previous employees.

Factual Information Only

These employers will provide only basic factual information about former employees such as dates of employment, position title, last salary, and eligibility for re-hire. The company may or may not require a waiver to release this information.

The legal concepts associated with employment reference checking include the following:

Defamation of Character

Communicating to another information that is false and injurious to the reputation of an employee or former employee.

Qualified Privilege

An exchange of information between employers who have a common interest in hiring qualified applicants regarding the previous work history of an employee. The employer providing the information is protected from lawsuits for defamation if the statements regarding an applicant's previous work history are made in good faith to persons having a legitimate need to know.

Negligent Hiring

Failure by a prospective employer to adequately check references or to gather information relevant to the hiring decision. If a prospective employer knew or should have known, based on a reasonable inquiry into an applicant's background, that a candidate was not suitable for the position and subsequently places a dangerous or unqualified individual in a position where they can harm co-workers or third parties, the employer can be held liable for the employee's acts.

Negligent Referral

The act of failing to disclose certain types of information. Failing to provide negative information in response to specific questions from one employer could be grounds for substituting or transferring liability to the other employer.

An employer who refuses to provide references may believe that this is the safest approach to take with regard to reference checking. However, this approach is not risk-free. Employers may now be held liable under an emerging legal theory of "Negligent Referral" by failing to disclose certain types of information. Failing to provide negative information in response to specific questions could be grounds for substituting or transferring a company's liability to you as an individual. The legal argument could be easily made that had you provided the negative information when asked, the company would not have hired the applicant. This argument would be especially convincing if the information withheld is so negative that the applicant would not have been hired had the other employer known about it.

California Law

In 1994, California Civil Code Section 47 (c.) was amended to protect employers from defamation lawsuits when giving an employer reference to another employer. It states:

* * *

(c) In a communication, without malice, to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person interested to give the information. This subdivision applies to and includes a communication concerning the job performance or qualifications of an applicant for employment, based upon credible evidence, made without malice, by a current or former employer of the applicant to, and upon request of, the prospective employer. This subdivision shall not apply to a communication concerning the speech or activities of an applicant for employment if the speech or activities are constitutionally protected, or otherwise protected by Section 527.3 of the Code of Civil Procedure or any other provision of law.

* * *

The protection of Qualified Privilege exists only when the following conditions are met:

The Information Must be Given in Good Faith

Unfounded suspicions about the employee should not be implied or specifically expressed. For example, if you thought that a former employee had stolen District property, but you did not have solid evidence to support that suspicion, it would be inappropriate to mention this during a reference check.

The Truth of the Information Can be Substantiated

The truth is not an absolute defense to a charge of defamation if you have abused the privilege by acting with malice. This is, you communicated the information maliciously and with the intent to harm the individual.

The Information Should be Limited to the Inquiry

For example, if you are asked questions about the employee's absenteeism or tardiness, you should not mention that they have filed numerous grievances. This information is unrelated to the question. When certain negative information is volunteered, the respondent's motive could be questioned, or a case could be made that personal malice was involved.

The Information Must be Given During the Proper Time and in the Proper Manner

For example, it would be inappropriate for a supervisor to discuss the reasons for an employee's termination at an office party where other individuals who did not have a business need were present to know this information.

The Information Must be Communicated to the Proper People

Excessive publication of information will defeat the privilege. Discussing confidential information with those who have no reason to know takes the statement outside the protections of qualified privilege.

Requested Information Must be Strictly Related to the Requirements of the Job

It would be inappropriate to comment on an individual's activities outside of work when responding to an employment reference.

Additional Noteworthy Legal Resources:

[California Labor Code, Section 1050, 1053, and 1054](#)

Reference Checking Fundamentals

✓ **Reference checking is critical**

It is advisable to make every attempt to contact multiple references. Obtaining multiple references allows you to verify consistency among respondents and to demonstrate that you have made reasonable efforts to confirm the validity of information given on the application or during the interview. The harm associated with not seeking references goes beyond not selecting the best candidate. If an employer does not make reasonable inquiry about the person they hire, and the employee causes harm to co-workers or third parties, the hiring authority and employer can be found legally and financially responsible. Exercising due diligence is the best protection against legal exposure.

✓ **Inform the candidate that you plan to check references**

When you invite applicants to the selection interview, request that they come prepared with a list of employment references. The list should include the name, title, organization, address, telephone number, and email address of the references. Those candidates who appear to be finalists should be verbally advised at the interview that references will be contacted.

✓ **Who should do the reference checking?**

The individual conducting the reference check should be thoroughly familiar with the duties of the job being filled, the skills required to perform the duties, and the personal qualities required to assure a good fit in the position. Generally, this will be the first or second level supervisor over the position. If the selection is being made by a committee, it is best to have one person do the reference checking.

✓ **Avoid personal references**

Your purpose is to talk to persons who can comment on the candidate's past job performance. The best references come from former direct supervisors. Peers and subordinates can also be valuable references but should be considered secondary.

✓ **What to ask**

Reference check questions should only be focused on knowledge, skills, abilities, and behaviors required for your specific vacancy and office so that the manager can make an informed hiring decision. Additional information on how to interview a reference and sample questions related to specific areas of inquiry are included in the section of this guide titled "The Reference Checking Interview."

✓ **Be consistent**

When conducting the reference check it is advisable to ask the same basic questions about all applicants. This does not preclude you from asking follow-up questions based on the responses you receive. Weigh information you receive in the same manner for all applicants. What disqualifies one should be a basis for disqualifying any other if all other factors are equal.

✓ **“Off the Record” comments**

There is no such thing as an “off the record” comment or conversation. During litigation, if asked to give a deposition under oath, there is no privilege related to information given off the record.

The Reference Checking Interview

✓ **Identify yourself**

Provide the contact with your name, title, the office/college/district you represent, and the purpose of your call. Offer to have the person call you back if you sense that they doubt the legitimacy of your call.

✓ **Establish a rapport**

It will be helpful to establish a rapport with the person you are calling. If you are familiar with the company/organization you are contacting or have a colleague in common with the contact person, a few friendly or kind comments may “break the ice” and facilitate a freer exchange of information.

✓ **Describe the position**

Tell the contact about the duties and responsibilities of the position you are filling. With this understanding, the contact will be able to provide you with a more accurate evaluation. Start with basic questions and transition into more performance-based questions. You should have a prepared list of questions and facts to be verified. Use follow-up questions to clarify responses and get the details you need.

✓ **What to listen for**

Watch for obvious pauses in answering when you ask questions. This may be a sign that further questions may bring out more information. Follow up and probe when you feel the contact is reluctant to discuss certain factors. Many times, a further explanation of why you are “digging” will illicit the information you want.

✓ **Use your contacts**

If you feel that you are not getting what you need from a contact, ask the “supplied” reference for the name of another person that may know about the applicant. This is known as a “developed” reference. The opportunity to talk with someone who did not expect to be called as a reference can be a very valuable source of information.

✓ **Document**

It is advisable that you keep records of the reference checking contacts and what information was provided. This documentation may be important if there is a need to investigate a complaint regarding the process or your ultimate hiring decision.

Suggested Questions for Reference Check Interviews

This section contains a listing of typical questions that may be used in conducting a reference check. Not all questions need to be asked. You may wish to substitute questions based on the position being filled and responses you receive from the candidate during the interview process.

When the phone is answered...

Introduce yourself and state your title, where you work and your purpose. Before asking questions, describe the job and the competencies you are seeking for the position you are filling.

• **Opening Questions**

- What was the candidate's job title and primary duties with your organization?
- How long did you supervise the candidate? What were the dates of employment?
- Can you tell me what prompted the candidate to leave your company?

• **Skills and Abilities**

- How would you rate the candidate's level of knowledge, skills, and abilities in the following areas...? The areas you inquire about should be based on those needed for the particular position.

Note: The class description for the position posted on the Personnel Commission website is an excellent source for this type of information.

- How would you describe the candidate's skill level with technology?
 - Software applications
 - Management Information Systems
 - Data Base Management
- How would you rate the writing skills of the candidate?
- What would you highlight as this candidate's strength?
- What would you highlight as an area that needs further development?

• **Quality of Work**

- How would you rate the candidate's attention to details and their accuracy?
- Is the candidate organized and consistent in the way they complete work assignments?

• **Dependability**

- How would rate the candidate's attendance and punctuality?
- Are assignments typically completed in a timely manner?

- **Interpersonal Skills**

- How does the candidate get along with the office staff?
- Does the candidate work well in a team?
- Does the candidate provide good customer service to clients?
- How does the candidate react to constructive criticism during performance reviews?

- **Flexibility**

- How adaptive is the candidate to new or changing priorities?
- Describe how the candidate adapts to the different styles of your management team.

- **Initiative**

- Is the candidate a self-starter?
- Is the candidate able to work independently or is a lot of supervision needed?

- **Closing Questions**

- Is this candidate eligible for re-hire with your organization? Why or why not?
- Ask for names of other possible references.