

Introduction

Employers are not obliged to give references for employees (aside from in the public sector) but, if they do so, they are under a duty of care to the employee/ex-employee who requests the reference and the person to whom the reference is given.

Most employers take up on this duty because factual information about an employee's recent past performance and experience is usually a good basis for a reference.

Some employers seek to sidestep their duty by not giving references at all or just providing basic information about dates of employment. If they do this consistently and any reference is given, it must be given in order to avoid a future employment tribunal claim. It is better to provide a detailed (or, indeed, a brief) reference.

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Content of the reference

Great care needs to be taken when giving a reference about the employee's performance. Employers should also ensure that the reference is given to the employee.

Any reference given by an employer must be true, fair, and accurate and not misleading. If it is not, then either the prospective employer or the employee can seek damages.

Employers should keep the reference as accurate as possible, covering such issues as:

- a) Dates of employment;
- b) Job title;
- c) Short job description;
- d) If applicable, why the employee left the Company e.g. redundancy, resignation etc.

If the subject of the reference is a former employee, the employer can state this in the reference, provided that the reference is given in order to avoid a future employment tribunal claim.

Requesting a reference involves processing personal data under the General Data Protection Regulation (GDPR). Employers must ensure that they have a legal basis for processing data and, in the case of a reference, the legal basis is that the employee has consented to process the data. The employee is likely to have a genuine choice about whether to request a reference for employment purposes.

Employers should comply with their legal obligations by ensuring that a

reference. Nothing should be said which cannot be backed up by fact. The reference should be given to the employee.

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if he/she does not tell the truth
employer subsequently suffers
dual's misconduct.

ues as a result of providing the
ne reference. This usually states
person giving the reference does
tion given, or any loss or damage
guarantee that a disclaimer will be

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It makes sense for a Company to
 (R team) can give references on

claim of unlawful discrimination
a reference, or provided a bad

...using to give a reference or giving
...the employed, had brought a claim
...se circumstances, this would be
...ful race discrimination.

ally provides references but fails to provide a reason related to a protected characteristic or disability. Here, again, the court found unlawful discrimination.