
How Should an Employer Handle Personal References?

Personal references should be treated in much the same manner as professional references. Employers may choose to communicate with their employees that only designated personnel can provide professional references on behalf of the company; and stress that if any other employees provide a reference, they must distinguish it as a personal reference.

“One of the most critical factors to a company’s success is effective management of the hiring process. Hiring decisions impact such critical business concerns as quality, safety, and customer satisfaction. I believe that employers have a responsibility to their customers, shareholders, and current employees to ensure a qualified workforce. Reference checking is a vital part of the selection of quality staff.”

- Bonnie Dahl, CDHRA Past President

Where Can Employers Obtain Sample Questions & Waivers?

Copies of sample reference forms and employee waiver forms can be obtained from the North Dakota Department of Labor.

Address and telephone numbers can be found on the back of this brochure; or check out the Department of Labor’s web site at discovernd.com/labor or discovernd.com/humanrights

Have Additional Questions?
Need assistance with this information?
Contact us at:

North Dakota Department of Labor
600 East Boulevard Ave, Dept. 406
Bismarck, ND 58505-0340
Phone - (701)328-2660 or 1-800-582-8032
TTY (Relay ND) - 1-800-366-6888 or -6889
Fax - (701)328-2031
E-Mail - labor@state.nd.us
or humanrights@state.nd.us
Web site - discovernd.com/labor
or discovernd.com/humanrights

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CENTRAL DAKOTA

HUMAN RESOURCE ASSOCIATION
P.O. BOX 743
BISMARCK, ND 58502

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Employment References in North Dakota

Important Information
for Employers & Employees



John Hoeven
Governor

Leann K. Bertsch
Commissioner of Labor

Truthful References Law

The 1997 North Dakota Legislature enacted law which grants immunity from civil lawsuits to employers who provide truthful employment references.

Found in North Dakota Century Code (NDCC) 34-02-18, the truthful references law reads:

- 1 - An employer who truthfully discloses date of employment, pay level, job description and duties, and wage history about a current or former employee to a prospective employer of the employee is immune from civil liability for the disclosure and its consequences.
- 2 - An employer who discloses information about a current or former employee's job performance to a prospective employer of the employee is presumed to be acting in good faith. Unless lack of good faith is shown, the employer is immune from civil liability for the disclosure and its consequences.
The presumption of good faith may be rebutted by a preponderance of the evidence that the information disclosed was:
 - a. Knowingly false;
 - b. Disclosed with reckless disregard for the truth;
 - c. Deliberately misleading; or
 - d. Rendered with malicious purpose.

Employers often rely on references as a key part of their hiring process. The vast majority of ND employees benefit from honest references. The truthful references law directly addresses the recent trend among employers to provide only basic reference information to decrease the risk of a lawsuit.

- 3 - The immunity provided by subsection two (2) does not apply if the information provided is in violation of a nondisclosure agreement, or was otherwise confidential according to applicable law.

Providing Employment References

Employers providing employment references should consider the following guidelines:

- Establish a consistent, systematic process for providing references.
- Ensure that only a supervisor or human resource professional with direct knowledge of the employee's performance provides the reference (as opposed to a co-worker, etc.).
- Ask if the prospective employer has obtained a signed document releasing former employers from liability for providing employment references.
- Disclose only verifiable facts.
- Refrain from discussing a former employee's general character, personality, attitudinal traits (e.g. "lazy," "uncooperative," "unreliable," "disloyal," etc.), or private life.
- Document all statements and information given to the prospective employer.

Obtaining Employment References

Employers seeking information on potential employees should consider the following guidelines:

- Ask job applicants to sign a document releasing former employers from liability for providing information as part of an employment reference.
- Contact all references provided.
- Seek reference information from individuals with personal knowledge of the applicant's work performance and behavior (the applicant's former immediate supervisor).
- Use a pre-set list of questions or a reference form.
- As always, avoid questions which could be discriminatory such as marital status, medical conditions, etc.

Are Employers Required to Give References?

No, there is no law compelling an employer to provide a reference. Each employer has the right to decide whether or not to give a reference.

Additionally, each employer can decide whether they will provide the reference verbally or in writing.