

Guidelines on Employment References

Effective July 1, 1991, Florida Statute 768.095 provides qualified immunity from civil liability for employers who disclose information relating to the job performance of former employees to the former employees' prospective employers. The statute reads in full:

768.095 Employer immunity from liability: disclosure of information regarding former employees.--An employer who discloses information about a former employee's job performance to a prospective employer of the former employee upon request of the prospective employer or of the former employee is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from civil liability for such disclosure or its consequences. For purpose of this section, the presumption of good faith is rebutted upon a showing that the information disclosed by the former employer was knowingly false or deliberately misleading, was rendered with malicious purpose, or violated any civil right of the former employee protected under chapter 760.

Stated differently, an employer is presumptively immune from liability when disclosing information about the job performance of a former employee to the former employee's prospective employer if the information is requested by the former employee or the prospective employer. This good faith presumption of immunity can be rebutted by the former employee by showing that the information disclosed was knowingly false, deliberately misleading, or released with malicious purpose.

The statute is based on the common law of defamation, which includes libel and slander. Libel is the publication of defamatory matter by written or printed words, or by any other form of communication that has potentially harmful qualities characteristic of written or printed words. Slander is the publication of defamatory matter by spoken words, transitory gestures, or by any form other than libel.

Defamatory communications tend to harm someone's reputation so as to lower that person in the estimation of the community or to deter third persons from associating or dealing with that person. Job references, therefore, could possibly be labeled defamatory if these guidelines are not followed. UCF staff members are encouraged to provide complete, accurate information from official records. Questions may be referred to Human Resources or the University's General Counsel.

Some Do's and Don't's

DO Ask for the requester's name, company, and telephone number and return their call. Don't assume all calls are legitimate.

DO Give an evaluation of the former employee's job performance, upon specific request only, to prospective employers.

DO Give prospective employers, upon request, information concerning employment verification or the position the employee held.

DO Give truthful information to prospective employers, whether you view it as positive or negative.

DO Have solid documentation to substantiate information given to prospective employers.

DO Thoroughly investigate the facts underlying the employee's evaluation prior to making comments to prospective employers.

DO Consider establishing a "gate keeping" policy whereby only specific individuals in the work unit are authorized to provide employment references.

DON'T Volunteer job performance evaluations if the prospective employer does not specifically request the information.

DON'T Give information that is knowingly false, deliberately misleading, or rendered with a malicious purpose.

DON'T Give information without reviewing as many pertinent facts as possible concerning the employee's job performance.

DON'T Give information without consulting the author, if available, of the employee's evaluation for specific facts. It is always safe to give out information contained in the official personnel file.

DON'T Give information that has not been documented.

In summary, Florida Statute 768.095 was enacted to better enable employers to receive accurate information concerning prospective employees. Under the statute, former employers are given immunity from defamation suits, qualified by the boundaries discussed above, regarding their evaluations of their former employee's job performance. There is a presumption of good faith on the part of the employer, and the employee is required to prove a case by clear and convincing evidence, a standard of proof higher than in most cases.

If you have any questions concerning what you can and cannot tell a prospective employer, please contact Human Resources at 407-823-2771.