

A Newsletter by Budd Larner, P.C.

New Jersey Court Holds That Employers Can Be Held Liable For Negligent Misrepresentation In Giving Job References

By Mitchell Rait, Esq.

New Jersey employers should exercise caution when providing employment references following a recent New Jersey court case.

On July 19, 2005, the New Jersey Appellate Division held that an employer that gives incorrect information to a prospective employer about a former employee's job history can be held liable for "negligent misrepresentation". *Singer v. Beach Trading Co.*, (Docket No. A-1617-04T5). This ruling is significant for New Jersey employers because it exposes them to liability even in situations where the person responding to the inquiry did not intend to misrepresent the former employee's job history.



The Court held that an employer can be held liable for the negligent misrepresentation of a former employee's work history if: (1) the inquiring party clearly identifies the nature of the inquiry; (2) the employer voluntarily decides to respond to the inquiry, and thereafter "unreasonably provides false or inaccurate information"; (3) the person providing the inaccurate information is "acting within the scope of employment"; (4) the recipient of the incorrect information relies on its accuracy to support an adverse employment action against the plaintiff; and (5) plaintiff suffers quantifiable damages proximately caused by the negligent misrepresentation.

If an employer chooses to respond to job reference inquiries, it is now under a duty to provide "accurate" information, and can be held liable for "unreasonably" providing false or inaccurate information. This means that if an employer responds to the inquiry without first obtaining reasonable input from the former employee's supervisors about the reason for

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the termination, the company can be held liable for negligent misrepresentation if it inaccurately states the employee's job history. Even if the employer does solicit input from the supervisors, if those supervisors either intentionally or unintentionally provide the company with inaccurate information regarding the reasons for termination, and the company then conveys that inaccurate information to the inquiring party, the company can be held liable for negligent misrepresentation.

We recommend establishing a company policy that the company will only respond in writing to written job reference inquiries (since telephone

responses are always more risky); and that the information that will be provided will be limited to name, title, dates of employment service, and, if authorized by the employee, final salary or wage rate. As part of this policy, it is recommended that staff employees and supervisors be prohibited from responding to any job reference inquiries; all such inquiries should be directed to Human Resources. If company policy prohibits employees and supervisors from responding, but they nonetheless provide an inaccurate response, the company can defend the case by arguing that the person was not "acting within the scope of employment" when he or she provided the information. ■



The Court defined the circumstances under which an employer may be held liable for damages as a result of providing an inaccurate and/or false employment reference for a former employee.

Budd Lerner, P.C.

150 John F. Kennedy Parkway
Short Hills, NJ 07078-2703
tele 973.379.4800
fax 973.379.7734
e-mail: info@budd-lerner.com

Visit us on the Web:

www.buddlerner.com

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