



Guide to Reference Checking

Resource Information for Classified
Supervisors and Managers

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Introduction

Research indicates that as many as one third of all job applications contain facts that are less than truthful. This makes the task of verifying the information provided by potential employees on applications, in resumes, and during interviews a critical element of all hiring decisions. This Reference Checking Guide has been prepared by the Personnel Commission to assist hiring authorities in making sound and responsible hiring decisions. The 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, you should contact Academic Selection, Division of Human Resources 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.

- Personnel Commission (213) 891-2333
- Employer-Employee Relations (213) 891-2442
- 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 will 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.
- **“900” Numbers** - Many large firms have installed “900” telephone numbers that will provide computerized voice response to employment reference and verification inquiries.

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 suits 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** – is 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 the person was not suitable for the position and subsequently places a dangerous or unqualified individual in a position where he or she 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 didn’t 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.** However, 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 he or she has 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 possibly 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 spouses, etc., were present who did not have a business need 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.
- **The 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.

Reference Checking Fundamentals

✓ Reference checking is not optional.

It is critical to make every attempt to contact at least three 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 injury, 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

Although most employers acknowledge the value of seeking references, many do not follow through with conducting reference checks. Therefore, candidates may not anticipate the need to address this question when interviewing. 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, and telephone number of the references. Those candidates who appear to be finalists should be verbally advised at the interview that references will be checked.

✓ Get a waiver signed

It is recommended that in addition to verbal notification of your intent to check references, you have candidates complete a “Waiver for the Release of Information” form as a protection for you and the District. A sample form is provided in the appendix. At a minimum you should verbally get a candidate’s permission to contact references. If the candidate does not want you to contact a certain employer, you need to explore their reasons thoroughly. Many applicants do not wish to have their current employer contacted unless they are considered a finalist in the process for fear of retaliation by the employer. The combination of requesting a reference list from the candidate, advising them of your intent to contact references during the interview, and a signed waiver establishes a strong foundation for the process.

✓ 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 excellent references but should be considered secondary. In the event an applicant wishes to provide only personal references, as the potential employer you have the right to insist on the type of references you want. If the references you contact will not respond to your questions, the candidate bears the burden of providing the names of people who will talk or to convince reluctant references to do so.

✓ Check references by phone, not by mail

Some organizations and people are reluctant about putting comments related to current and former employees and their performance on paper. Once again this is related to concerns about legal liability. This should not be of concern to you. There are distinct advantages to a phone conversation. For example, the tone of voice, a period of silence, or guarded response can change the meaning of a response dramatically. The direct contact also allows you to ask pertinent follow-up questions.

In a limited number of situations, when conditions permit, it may be advisable to make an appointment with a reference and ask your questions face to face. The use of this approach is typically limited to manager level positions or in situations where the information you are seeking is sensitive.

Don't leave a call-back number if the person you are trying to reach is not available. If the reference returns the call when you are not available to conduct the interview, an irritating phone tag situation is created. Additionally, since your call is a confidential business inquiry, you don't want to leave a message with a secretary or co-worker who should not have that information.

✓ What to ask

Focus reference check questions on knowledge, skills, abilities, and behaviors required for your specific vacancy and office. As in many other employment situations, questions about age, race, sex, religion, marital status or national origin should not be asked. These are all federally protected categories and don't have anything to do with past or future job performance. Additional information on how to interview a reference and sample questions related to specific areas of inquiry are included in the section titled "The Reference Checking Interview."

✓ Be consistent

In conducting the reference check you should be careful 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

Immediately 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 he/she doubts the legitimacy of your call. If the nature of the reference you are seeking goes beyond factual information into evaluative information, be prepared to provide the person giving the reference with a copy of the written release you have obtained from the candidate.

✓ Establish a rapport

Try 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.

✓ Let them talk

An experienced manager or supervisor will keep their comments brief and to the point during a reference check. However, if the contact goes on a bit, let them talk freely for as long as he/she wishes without interruption. A question from you at the wrong time could shut off valuable information.

✓ 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.

Additionally, now may be the time to use some of the professional contacts you have made through networking. You may know someone who can independently obtain information for you about an applicant. In using this approach, however, it is essential that you have full faith and confidence in the judgment and professionalism of the colleague you entrust with inquiring on your behalf.

✓ **Document**

Who was called, for what purpose, the questions asked and what information was provided should all be documented. This documentation may be important if there is a need to investigate a complaint regarding the process or your ultimate hiring decision. It is advisable that you keep such records for a period of three years.

✓ **In closing**

It's common sense, but be sure to thank the contact for his/her time and assistance. If you are making contacts with persons in your occupational or professional realm, your paths may cross again. It may happen in the context of another employment reference, but could just as easily happen at a professional conference or event. It helps to create a positive image for you and the District.

Questions for the Reference Check Interview

This section contains “typical” questions used in conducting a reference check. They are suggestions only. Not all questions need to be asked. You may wish to substitute questions based on the position being filled and responses you received 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.

● 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?
- Do you recall whom they worked for prior to joining your organization?
- Can you tell me what prompted the candidate to leave your company?

● SKILLS AND ABILITIES

- How would you rate the applicant'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. The official Personnel Commission job description for the position is an excellent source of information in this regard.
- How would you describe the applicant's level of computer skills?
 - Word processing
 - Spreadsheet
 - Data base
 - Are there any other applications the employee has used?
- What areas of improvement or development could the candidate focus on?
- How would you compare them to others doing the same work?

● QUALITY OF WORK

- Can you rely on the candidate's work to be complete and accurate?
- Is the candidate organized and consistent in the way he/she completes work assignments?

● DEPENDABILITY

- On average, how many times a month was he/she absent?
- How often does he/she come in late or leave early?
- Has the candidate been off the job for any prolonged period of time during their period of employment with you?

- Are assignments completed in a timely manner?

- **INTERPERSONAL SKILLS**

- How does the candidate get along with peers? clients? supervisors?
- In difficult/stressful situations, describe how the candidate reacts.
- What did the candidate do to “fit in” with his/her peers? the organization?
- What suggestions would you make to help improve his/her ability to get along with others?
- How effective is he/she in influencing others, especially those over whom he/she does not have control? Describe a situation where he/she demonstrated this skill.

- **FLEXIBILITY**

- How does the candidate react to change in assignments? in the organization?
- How adaptive is the candidate to new or changing working conditions?
- Describe how the candidate adapts to the different styles of your management team?

- **INITIATIVE**

- Does the candidate make suggestions for improvements? Give an example.
- How would you describe the level of attention that the candidate requires from his/her supervisors?
- Does the candidate require his/her supervisor to regularly assign tasks or does he/she seek out work on their own?

- **CLOSING QUESTIONS**

- Is this candidate eligible for re-hire with your organization? Why or why not?
- Is there anything else you can add that would help me learn more about (candidate's name)?
- Ask for names of other possible references.

Reference Checks for Promotional and Transfer Candidates

The guidelines presented thus far apply to promotional and transfer candidates as well as candidates from outside the District. You should not consider a reference check as optional just because the candidate already works for the District. You should exercise the same care in hiring from within as you would with hiring a candidate from the outside.

The following are answers to common questions related to reference checking on internal candidates.

- *Can I contact the candidate's present supervisor?*

Yes. As a courtesy, you should inform the candidate that he/she is being seriously considered and that you will be contacting their current supervisor.

- *What if the candidate objects to you contacting their supervisor?*

You should explain to the candidate that your purpose is to seek information regarding specific job knowledge, skills, motivation, and behavior that are necessary for successful performance in the position you are filling and that the supervisor's responses are only one factor you will consider in making your decision.

- *Can I view a candidate's personnel file?*

Yes. It is strongly recommended that you review the employee's current personnel file that contains information such as previous applications, performance appraisals, notices of outstanding job performance, notices of unsatisfactory service and disciplinary actions such as suspensions, and dismissals.

- *Can I review the candidate's performance on the civil service examination?*

Yes. You can make an appointment to review the candidate's results in the examination process by contacting the Selection Unit of the Personnel Commission at (213) 891-2126.

APPENDIX A

LOS ANGELES COMMUNITY COLLEGE DISTRICT

Your signature on this document acknowledges that you have applied for employment with the Los Angeles Community College District and authorizes the Los Angeles Community College District to contact prior employers, other references that you have provided, and references developed as part of the selection process.

Consent and Authorization to Release Information

I have applied for employment with the Los Angeles Community College District. My signature below authorizes you to release the contents of my employment record with your organization, whether negative or positive.

I further consent to allow the Los Angeles Community College District to obtain any and all information concerning my former/current employment with your organization. This includes my job performance appraisals/evaluations, wage history, disciplinary action(s) if any, and all other matters pertaining to my employment with your organization required in connection with my application for employment with the Los Angeles Community College District.

This form may be photocopied or reproduced as a facsimile, and these copies will be as effective a release or consent as the original which I signed.

Signature of Applicant

Date

Print Name of Applicant

Signature of Witness

Title

Date