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Letters of Wreck(commendation)

I recently received a suggestion from one of our long time clients and members of [The Employers' Council](#) to write about letters of recommendation. You can probably tell from the title, my opinion is that they are "wrecks" waiting to happen.

The problem with letters of recommendation is you cannot please all of the people all of the time, but you can be sued by them. Unfortunately in today's society, letters of recommendation are rare and should be non-existent. As an attorney representing employers, I strongly advise my clients NOT to give letters of recommendation to anyone, because the sad truth is you will get sued.

If you agree to write a letter of recommendation for a good employee, but the next employee leaving was not so hot and you refuse to write one for them, and the second employee is a member of any minority status, they can sue you by claiming discrimination. On the other hand if you write a truthful letter regarding the not so hot employee, they will sue you for defamation and perhaps even a violation of California statutes against "blackballing."

At one point in my career I had a client tell me that they would simply write everyone a good letter of recommendation regardless of how



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bad the employee had been. I promptly informed them that would result in them being sued for negligent referral when the new employer found out that the letter of recommendation was a lie.

While it is true that California has a "full and fair comment rule" the problem with the law is that it says you will not be "liable" for any truthful comments made. However, it does not say how you will pay the lawyers to defend you in the lawsuit by the former employee or new employer.

There is, unfortunately, no way to win this battle and the only thing I can tell you is that you can provide prospective employers with dates of employment and position held and with a signed release from the former employee, you can discuss how much money you paid them. You should not answer any questions about rehire because once you open this can of worms you cannot close it again.

The one "Daveism" that I can give to you is that if any employee leaves your employ and goes to a vendor, client and/or some business with which you must conduct business or otherwise have a business relationship and they call about your former lemon; you can tell them "On the advice of my attorney I cannot discuss that employee." This is both truthful, protected by attorney-client privilege, and tells your business contact everything they need to know about that employee (e.g. run, run fast, and don't look back). I do not recommend that you use this all of the time, but only selectively when you have a bad employee who is seeking work from one of your business contacts where you must preserve the working relationship.

Remember, it is not our goal to black-ball individual people from future employment and although they may have been a complete disaster in your workplace, they might be perfect somewhere else.

If you have questions about this, comments about the blog and/or want to suggest a topic that you would like me to drone on

about...please e-mail by clicking the Quick Link above or contact me at the number listed.

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