



Labor & Employment Client Advisory

N.J. COURTS GIVE EMPLOYERS ONE MORE REASON TO AVOID EMPLOYMENT REFERENCES

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Many employers have a policy whereby they do not provide references for former employees beyond confirmation of dates of employment and, sometimes, salary, fearing exposure if negative information is released which impacts the former employee's ability to obtain employment.

Yesterday, the Appellate Division of the Superior Court released an opinion which will probably motivate more employers to adopt the same restrictive approach. In *Singer v. Beach Trading Company, Inc.*, A-1617-04T5, the court held that an employer can be liable to a former employee for negligently providing false information to a subsequent employer which causes that employer to terminate the former employee's new position.

Singer was an appeal of a trial court grant of summary judgment to the employer, so the court's focus was on whether there was a legal basis for the claim and whether the facts were sufficiently in dispute to require a jury trial to determine liability. The court sided with the plaintiff, reversed the summary judgment, and sent the matter back for further proceedings.

The Appellate Division stopped short of imposing a duty on employers to provide a reference for former employees, but, in a case of first impression in New Jersey, held that where an employer voluntarily provides a reference (in this case, a verbal one) to a subsequent employer, communicates inaccurate information on which the subsequent employer relies, and the former employee suffers an economic loss as a result, the employer can be liable to the employee for negligent misrepresentation.

Singer presented a peculiar fact pattern, in that the plaintiff had already been employed by the subsequent employer. The subsequent employer was having performance issues and began to doubt the veracity of the employee's claims as to prior experience. The subsequent employer spoke to more than one individual at the former employer's office, and was told, erroneously, that the employee did not hold a certain job title with the former employer. This inaccurate information was then allegedly used by the subsequent employer to fire the employee. In our view, the reasoning of the Appellate Division will apply equally to situations where there is an initial refusal to hire based on the inaccurate information supplied by the former employer.

There were other issues in *Singer* that warrant comment. One of the factual disputes was whether the individuals who gave the inaccurate information were authorized to speak for the company. The court's discussion of this issue counsels that employers who choose to give voluntary references should have a tight rein on who is authorized to provide information and this policy should be publicized and well known in the organization.

It is also important that whoever is designated as the corporate representative be mindful of who is requesting the information and the purpose of the request. In *Singer* the subsequent employer did not honestly identify himself to the former employee's staff, and one of the persons who supplied the inaccurate information thought he was dealing with a customer who was calling to praise the former employee's work.

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The Appellate Division affirmed dismissal of both defamation and wrongful interference claims made by the plaintiff, finding that providing wrong information on an employee's job title and duties was not "defamatory" (in contrast to false information regarding an employee's competency or involvement in criminal or other conduct which undermine the employee's veracity or trustworthiness). As to wrongful interference, the court felt that there was no evidence that the inaccurate information had been intentionally, as opposed to carelessly, provided.

Employers can expect that *Singer* will create heightened interest by the plaintiffs' bar in bringing claims for improper references. Not taking on the responsibility of providing a reference in the first place is the safest course.

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