

Reference letters – employer obligation?



As an employment lawyer I am often asked, by both employers and employees, whether an employer is legally obligated to provide a dismissed or resigning employee a letter of reference. The short, simple answer is that in British Columbia, our courts have confirmed that an employer is not required to provide a reference letter. However, the answer is not always that simple. The following are a few considerations when it comes to assessing whether an employee should be provided with a letter of reference.

An employer that has a company policy of providing reference letters or has established a general practice of providing reference letters to departing employees, may inadvertently commit itself to providing a reference letter to employees who leave. If these are the circumstances of an employer, then the decision not to provide a reference letter to a particular employee may raise red flags and increase the chances that an employer will be required to pay compensation to an employee for bad faith conduct during the dismissal process (assuming a lawsuit has been commenced by an employee for wrongful dismissal, etc.).

If an employer decides not to provide a reference letter, they should be prepared to provide a reasonable explanation to the employee (and potentially a court) to justify its decision. Otherwise, the employer may be seen to be acting in bad faith, thus increasing exposure to liability to an employee.

Furthermore, an employer should be careful if attempting to make the availability of a severance letter conditional on the employee accepting a particular offer of severance. Even though a reference letter is not technically an obligation of the employer, making a reference letter available as a tool to coax an employee into accepting a particular severance offer may be looked upon unfavourably by a court.

Providing a reference letter to an employee can increase the likelihood that the employment relationship will end on a positive note. This in turn may decrease the possibility of a dispute arising between the parties down the road, something that neither party ultimately wants to happen.

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