

# EMPLOYMENT REFERENCES UNDER MINNESOTA LAW

## General Rules Relating to Private Employers

1980	<p>The Minnesota Supreme Court held that Minnesota employers are protected from disclosure of truthful information by a "Qualified Privilege". This means that an employer may give a factually accurate assessment of an employee to a prospective employer. Also, the former employer may express an opinion to the prospective employer in good faith and for the legitimate purpose of providing useful information.</p> <p>This rule still applies.</p>
1987	<p>Minnesota Statutes section 181.933 became effective. This section provides additional protection for employers. It states that an employee may require a former employer to provide in writing the truthful reason for the termination of employment. Once provided, that communication from the employer may not be used in a defamation claim against the employer.</p> <p>This statute is still in effect.</p>
2004	<p>The Minnesota legislature passed Minnesota Statutes section 181.967. This section deals in detail with employment references and provides generally that:</p> <ol style="list-style-type: none"><li>1. Private employers are protected from litigation resulting from employment references, when the reference information is supplied exactly as the statute requires.</li><li>2. <u>Without authorization</u> from a current or former employee, an employer may supply basic information relating to employment history; <u>and</u></li></ol> <p>An employer may also supply information relating to acts of violence, theft, harassment and illegal conduct, which is documented in the personnel record and resulted on disciplinary action or the employee's resignation, <u>as long as</u></p> <p>The information is provided in writing and a copy is sent to the employee at the same time.</p> <ol style="list-style-type: none"><li>3. <u>With written authorization</u> from a current or former employee, an employer may also provide written performance evaluations, written disciplinary warnings and the written reasons for separation from employment, <u>as long as</u> the same information is mailed to the employee at the same time, together with the name of the person to whom it was disclosed.</li></ol>

## GUIDELINES FOR EMPLOYERS

1. Establish controls over a) who is authorized to provide employment references; and b) what information can be supplied as a matter of general policy.
2. Determine a procedure to be used in the event that management decides to supply detailed reference information. Provide that Human Resources or more than one manager must be included in the decision.
3. If you decide to take advantage of the protections contained in Section 181.967, ensure that the statute is followed exactly. In deciding whether to use Section 181.967, consider the following:
  - Sensitive information may only be supplied in writing. This means carefully creating the response.
  - Any written response must also go to the employee. The employee will probably react badly to it. This may mean that, even if no defamation claim may stem from the reference response, the employee may seek other retribution against you. For example, the employee may call the U.S. Department of Labor to complain about how he was paid, look for a way to disparage you with employees, customers or others etc.
4. Seek legal advice as necessary if you decide to take advantage of Section 181.967.