

CLIENT ALERT

September 27, 2007

CONNECTICUT SUPREME COURT CLEARS WAY FOR TRUTHFUL REFERENCES

Employers have long been reticent in responding to requests for references about current or former employees. The fear of defamation claims led to a self-imposed wall of silence and employment lawyers routinely advised that responses to requests for references be limited to verifying dates of employment, position held and last salary. This has restricted the information a prospective employer could obtain about an applicant.

The Connecticut Supreme Court has now provided limited protection for those who speak honestly about a current or former employee when that employee has consented to disclosure of information. The Court has held that such disclosures have a qualified privilege. That means that an employer will not be liable for defamation so long as the employer speaks truthfully and without malice.

In Miron v. University of New Haven Police Department, Miron expressly agreed on her employment application to have former employers contacted regarding her qualifications and work performance. When she did not get a job, she claimed that her former employer, the University of New Haven, defamed her because her former supervisors discussed her shortcomings on the job and expressed the opinion that she was not qualified for the position she was seeking. At trial, the judge instructed the jury that such employment references were protected by a qualified privilege. The jury found in favor of the University of New Haven and Miron appealed. In ruling on the appeal, the Connecticut Supreme Court upheld the application of a qualified privilege to



statements made responding to a request for an employment reference. The Court reasoned that the integrity of employment references is essential for both prospective employers and employees. The Court worried about “chilling communications” and a “culture of silence” if it did not protect employer representatives who gave truthful employment references in good faith, without improper motive.

While the Court's decision provides some comfort for employers, the potential for lawsuits may not yet be a thing of the past. Employers will have to comply with the conditions set down by the Court for application of the qualified privilege and the scope of the privilege will require further development. For now, it is important to note that:

- The qualified privilege only applies to employment references given by current or former employers when the references are solicited with the employee's consent. What constitutes consent is not clear. For example, it is unclear whether listing someone as a reference or suggesting to a prospective employer that they speak with a former supervisor would be sufficient. As a precaution against a possible challenge, it is important to obtain a signed release before providing information.
- The Court specifically found that the scope of an employee's consent to an employment reference is not limited by the Connecticut Personnel Files Act. That Act, applicable to private sector employers, allows an employer to give only verification of dates of employment, position or title, and wage or salary, unless the employee has authorized further disclosures. While the Personnel Files Act does not apply to governmental employers, they also have had concerns about what could be said about a former employee, and the Miron decision provides guidance for them as well.
- The qualified privilege only applies when the employer can prove that the reference given was truthful and provided in good faith. Therefore, it is prudent to have all requests for references referred to and screened by the personnel or human resources department. Supervisors should be cautioned to provide only truthful comments, and a record should be made of what is said in response to a request for an employment reference.

QUESTIONS OR ASSISTANCE?

If you have any questions concerning **Connecticut Supreme Court Clears Way For Truthful References**, please contact Gary S. Starr at (860) 251-5501, Shari M. Goodstein at (203) 324-8161 or Gabriel J. Jiran at (860) 251-5520.

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