

in this issue:

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New Jersey employers may be held liable for “negligent misrepresentation” by providing inaccurate employment references.

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Beware of What You Say! New Jersey Employers May Be Held Liable For “Negligent Misrepresentation” By Providing Inaccurate Employment References

By Bryan M. Churgin

In *Singer v. Beach Trading Co., Inc. et al.*, No. A-1617-04T5 (N.J. App. Div., July 19, 2005), the New Jersey Appellate Division, in a case of first impression, defined the circumstances under which an employer may be held liable for damages as a result of providing an inaccurate and/or false employment reference for a former employee.

The Appellate Division ruled that an employer may be held liable for negligent misrepresentation of a former employee’s work history if: (1) the inquiring party clearly identifies the nature of the inquiry; (2) the employer voluntarily decides to respond to the inquiry, and thereafter unreasonably provides false or inaccurate information; (3) the person providing the inaccurate information is acting within the scope of his/her employment; (4) the recipient of the incorrect information relies on its accuracy to support an adverse employment action against the plaintiff; and (5) plaintiff suffers quantifiable damages proximately caused by the negligent misrepresentation.

Factual Background

Marsha Singer (“Singer”) commenced employment with Beach Trading a/k/a Beach Camera (“Beach”) in an “unspecified management position,” but was introduced by Beach management in a company-wide email as its Vice President of Daily Operations. Shortly thereafter, Beach management asked Singer to temporarily oversee the company’s customer service department, though her salary and title did not change during this temporary assign-

ment.

While working for Beach, Singer responded to a job posting for a customer service representative position at HRK Industries, Inc. (“HRK”). Henry Kasindorf (“Kasindorf”), HRK’s owner, interviewed Beach and, believing she was overqualified for that position, offered her a job as HRK’s customer service manager. Kasindorf hired Singer based solely upon the work experience she listed in her resume. At Singer’s request, he did not contact Beach to verify her employment history.

After Singer commenced employment at HRK, and after Kasindorf became concerned with her job performance, he phoned Beach and spoke with several of Singer’s former colleagues about her employment with Beach and role at that company. Kasindorf misstated his identity and the nature of his calls. Each Beach representative with whom Kasindorf spoke indicated that Singer worked for Beach as a customer service representative. Two Beach managers also represented to Kasindorf that Singer was a customer service representative and not a vice president. Kasindorf thereafter terminated Singer’s employment because she had “been hired under fraudulent terms and... misrepresented her previous position on her resume.”

The Court’s Ruling

The Appellate Division concluded that Singer could assert a negligent misrepresentation claim on the basis of the foregoing facts, since

she fell “within the class of people injured by the dissemination of the false statement.” Borrowing from the “negligent misrepresentation” analysis that the New Jersey Supreme Court utilized in *Peterillo v. Bachenberg*, 139 N.J. 472, 479 (1995) (in the context of an attorney’s duty to non-clients), the Appellate Division explained that liability for negligent misrepresentation derives from the principle of fairness “to both the party making the representation and to the party aggrieved by its dissemination.”

While acknowledging that New Jersey, like many states, has not determined whether an employer has an affirmative duty to respond to a reference inquiry, the court held that employers who voluntarily choose to do so may be held liable for negligent misrepresentation based on misleading or incomplete statements made in employment references. According to the court, “if a jury determines that Kasindorf told defendants that he was calling to verify plaintiff’s employment, defendants, by voluntarily responding to the inquiry, undertook the duty to ‘exercise reasonable care or competence’ in its response to Kasindorf.” And, it is for the jury to decide “whether defendants’ actions here were reasonable, or amounted to negligent dissemination of false information.”

Minimizing Liability Exposure in Light of *Singer*

Singer is noteworthy for defining the circumstances under which companies can be held liable for disseminating false and/or misleading communications about a current or former employee’s work history. To minimize the potential for legal exposure in this situation, we recommend that employers adhere to the following procedures when providing employment references:

1. Any employment verification requests should be directed to, and answered by, only pre-designated, authorized company representatives. Others within the organization should be directed to forward any such requests they may receive to these authorized representatives for a response.
2. Inquiring parties should be asked to submit a written request for employment verification information as well as a

written authorization, executed by the subject employee, authorizing the release of the employment history information.

3. Telephone inquiries for employment references should be recorded in an “employment reference” log, setting forth the nature of the request, the date of and parties to the call, and the information provided to the caller.
4. Every effort should be made to ensure that information provided in response to a reference inquiry is accurate in all respects. The safest course may be to implement a policy limiting employment verification responses to dates of employment and positions held.

The foregoing steps will permit your organization to (1) monitor what information it disseminates about current or former employees, (2) minimize the risk of legal exposure for providing employment verifications, and (3) preserve, in the event of litigation, what specific “employment verification information” was sought and provided, when it was sought and provided, and by whom the inquiry was made.

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