

Does "MeToo" Compel Job References Saying "Not Him"?

by Scott D. Blake - Wednesday, January 31, 2018



The [#MeToo](#) movement has recently brought to light on the prevalence of sexual assault and harassment, especially in the workplace. Employers must take all reports of misconduct seriously, investigate the matter, and take appropriate disciplinary action.

Employers also may feel the need to communicate their response either internally or to the public, particularly when a high-level executive is being removed or when the employer has come under public scrutiny as a result of the allegations.

But what rules should employers follow in offering this information, particularly when a potential new employer asks for a reference for the recently terminated employee?

New Employer Gets the Green Light on Hiring the Harasser

A recent example of "what not to do" appeared in a recent [report](#) that revealed how the American Red Cross fumbled the discipline of one of its top executives, Gerald Anderson, who was twice accused of sexual assault and harassment and whose employment was terminated in October 2012. This occurred after two female Red Cross employees reported Anderson's misconduct. The first claimed that Anderson sent her inappropriate and disturbing emails where Anderson insisted that they have a romantic relationship. The second woman reported that she had after-work drinks with Anderson and other coworkers, and then woke up naked in Anderson's bed the next morning without knowing how she had gotten there.

The Red Cross conducted an internal investigation and ultimately parted ways with Anderson as a result. However, following his departure, Red Cross senior vice president David Meltzer lauded Anderson internally, including sending a company-wide email announcing that it was Anderson who “decided to make a change,” and that the Red Cross was “grateful” for Anderson’s leadership and “two decades of dedication and hard work in furthering the international mission of [the Red Cross].” Meltzer also allegedly told employees in a staff meeting that he was upset Anderson was leaving and that, if it were up to him, Anderson would continue working at the Red Cross. Just two weeks later, Meltzer was promoted to general counsel for the entire Red Cross, a job that included overseeing the handling of all employee misconduct cases.

Red Cross is Feeling the Blues

According to this report, another organization, Save the Children, hired Anderson in 2013 based on the “very positive references” received from the Red Cross, only to discover the complaints about Anderson’s sexually oriented behavior in the last couple of weeks. While there have been no allegations of misconduct during his tenure there, he has been placed on administrative leave pending further review, and Save the Children now has to deal with the fallout of having hired Anderson’s without learning of his tarnished background.

The Red Cross acknowledges that the “laudatory language used in association with Mr. Anderson’s departure was inappropriate and regrettable, given the circumstances.” They also announced that they are taking “appropriate disciplinary action” regarding the verbal employment reference for Anderson and have apologized to Save the Children. Even so, they will have to endure the fallout from appearing to foster an environment that seemed intent on protecting a wrongdoer and fostering more opportunities for harassment to occur. One interesting bit of fallout is the fact that **Meltzer has now resigned** from the Red Cross, announcing in his resignation notice that he regretted how he handled the matter.

Bottom Line

The Red Cross’s mishandling of this situation is a reminder to all employers of the importance of making sure that management is all on the same page regarding the response to alleged harassment. It is also critical that nobody be allowed to undermine the forcefulness of the company’s response or the credibility of the company’s anti-harassment message. The two employees in this case reported that they felt vulnerable and disillusioned by the fact that their employer seemed more interested in covering their tracks than in protecting their employees.

As for employment references, employers continue to face a very difficult choice. On the one hand, many employers fear liability should the object of a negative reference conclude that the reference is false and defamatory. On the other, employers do not wish to be highlighted and haunted, as was the Red Cross, for practices that enable harassment to continue. In most cases, the best practice remains confirming only dates of employment and positions held. In all cases, avoid giving glowing recommendations for former employees who do not deserve them.

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