

## Guidance on Employment References

ACAS (the Advisory, Conciliation and Arbitration Service) has issued new guidance on employment references.

### The Guidance

The guidance provides advice in relation to the following key questions:

#### Does an employment reference have to be provided?

Contrary to popular belief, an employer can choose whether it provides a reference or not. If they do choose to provide a reference, they can also choose how much information to give. This will normally be confined to confirming basic facts, such as the employee's former job title and dates of employment. Only certain industries such as those regulated by the Financial Conduct Authority are required to give a reference by law.

#### What can a reference include?

As well as confirming basic facts about the employee's previous role, a reference might also answer specific questions that the new employer has asked. Such questions might include information about an employee's sickness record, their character and their stated reason for leaving.

#### Facts or opinions?

A reference must be a true, accurate and fair reflection of the job applicant. When opinions are provided, they should be based on facts. Employers run the potential risk of being sued if they provide a misleading or untrue reference. An employer should also bear in mind, that a former employee can make a request, under data protection legislation, for a copy of any reference that has been provided about them; which would assist any potential claim for damages against the former employer.

### Interaction with Settlement Agreements

A reference gives important information to a potential employer that helps them to decide if a job applicant is suitable. In cases where an employee has been offered a Settlement Agreement (formerly known as a 'Compromise Agreement'), it can be fairly common for the departing employee to try to negotiate a specifically worded reference. This is particularly so where the departing employee is leaving on bad terms.

## Need some advice?

If you have a query relating to an employment reference or perhaps you are offering or have been offered a settlement agreement, please do not hesitate to contact Aaron Heslop in our Employment Team for a free initial discussion.

The full guidance can be accessed via: <http://www.acas.org.uk/index.aspx?articleid=5072>



Aaron Heslop  
Associate  
Dispute Resolution and Employment  
[aheslop@rooksriders.co.uk](mailto:aheslop@rooksriders.co.uk)  
+44 (0)20 7689 7209



Matthew Ball  
Partner  
Head of Dispute Resolution  
[mball@rooksriders.co.uk](mailto:mball@rooksriders.co.uk)  
+44(0)20 7689 7142



Rooks Rider Solicitors LLP  
Challoner House  
19 Clerkenwell Close ■ London ■ EC1R 0RR

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