



## **EMPLOYMENT REFERENCES BY A PUBLIC EMPLOYER**

Employers often have concerns about liability for defamation when giving employment references. But, townships enjoy some protections when they provide employee references. Minnesota Statute § 181.967 provides protections for employers. The statute provides that former employees who file suit against their former employer have the burden to show, with clear and convincing evidence, that information disclosed by the employer was false and defamatory, and that the employer knew the information was false but acted with a malicious intent to injure.<sup>1</sup>

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### **I. HOW DOES THE LAW PROTECT PUBLIC EMPLOYERS?**

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Minnesota Statute § 181.967 defines “public employer” as a government entity. For the purpose of this statute, a “government entity” is defined in Minnesota Statute § 13.02 as a state agency, statewide system, or political subdivision. These public employers can disclose “public personnel data” as described in Minnesota Statute § 13.43. Public personnel data includes, but is not limited to:

- Gross salary;
- The value of employer-paid benefits;
- Work history;
- Complaints or charges against the employee;
- Work location;
- Payroll time sheets; and
- The final disposition of any action along with the basis for the action.

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### **II. PUBLIC EMPLOYER’S REQUIREMENTS FOR COMPLIANCE?**

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According to Minnesota Statute § 181.967 subdivision 4, the public employer must obtain written authorization from the employee in order to disclose written evaluations, the employee’s responses, and the written reasons for the employee’s separation.

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<sup>1</sup> Minn. Stat. § 181.967 subd. 2.

Also, a former public employee can review his or her personnel file once annually for as long as the record is maintained. However, “maintained” is not defined in statute within this context.

The law, however, does not provide immunity for lawsuits brought under the common law or an action brought under the Minnesota Human Rights Act or the Minnesota “whistle blower” act. Also, the new law does not supersede collective bargaining agreements.

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### III. TOWN EMPLOYMENT PRACTICE RECOMMENDATIONS

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Although most of the following are not statutorily required, each will aid a Town in dealing with reference requests.

- Designate and train a person to respond to reference requests. The statute only protects the person designated to provide the information on behalf of the employer.<sup>2</sup> Other staff persons should be trained to refer reference calls to the designated staff person.
- Inform departing employees of the employer’s designee for reference requests.
- Do not step beyond the bounds of the law. Do not provide information to third parties without the consent of the employee. The new only applies to prospective employers and employment agencies.
- Create a consent form. Because the new law requires prior written authorization, an employer should create a form for the employee’s signature.
- Alert collective bargaining leaders. The law does not affect these agreements.
- Maintain and retain personnel records. The prudent employer should allow inspection of the employee’s personnel file so long as it is accessible. Moreover, the law has not changed the employer’s responsibility to supply a copy of an employee’s own personnel records upon a written request.
- Ensure communications are entirely accurate and not an opinion.
- Be consistent. All reference requests should be addressed similarly. Developing a process is critical.
- Check employment related claims coverage. Employers should review their applicable coverage before creating an internal process.
- National hiring requires special considerations. This memo only considers Minnesota law. Each state likely addresses this aspect of employment law. Thus, special considerations may apply even when the employee’s former employer is in another state.

Because it is critical to comply immediately, the initial first step is to create a formal process or to seek assistance to create such a process.

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<sup>2</sup> *Id.* at subd. 1 (2).