

## References

Some people have concerns about references from previous employers. The notes on this Information Sheet provide some details about this important topic

### Does my employer have to give me a reference?

Usually, you don't have a legal right to a reference from your current or a previous employer. But your employer does have to give you a reference in some situations, for example:

- if your contract says they have to give you a reference
- where the reference is needed by a regulatory body. This might be a body like the Financial Services Authority so they can make sure people employed to give financial advice are qualified to do this.

There are different reasons why your employer might refuse to give you a reference. If you think your employer won't give you a reference for a reason related to your race, disability, sexual orientation, age, religion or belief or gender reassignment this might be discrimination. You should get advice from an experienced adviser, for example at a Citizens Advice Bureau.

### Do I have a right to see a reference written about me?

Your previous or current employer doesn't have to show you a reference they've written about you. If you want to see a reference that's been written about you, you should make a request to the employer the reference was sent to. You should make this request under the Data Protection Act 1998. The employer will then work out whether they can show you the reference, in line with the Act, and they are entitled to take steps to protect the identity of the author of the reference.

You can find out more about making a request to see a reference on the Information Commissioner's website at: [www.ico.gov.uk](http://www.ico.gov.uk). Or you can call their helpline on 0303 123 1113. The helpline is open Monday to Friday, 9am to 5pm.

### Can my employer write a bad reference about me?

Your employer has a duty to write an accurate reference about you and shouldn't mislead the employer asking for the reference. Some information shouldn't be included in a reference, unless you agree to it. This is information like your medical records, or information about spent criminal convictions.

Your employer also mustn't give information in a reference which is inaccurate, or which is deliberately wrong or misleading. If this has happened, you may be able to take legal action against your employer.

If you're in this situation, you should get advice from an experienced adviser, for example at a Citizens Advice Bureau.

### Does it have to be a reference from my employer or is a personal one OK?

It depends on what the prospective employer wants – many will ask for references from your previous employer and a personal (or 'character') reference. The provision of a reference generally involves the disclosure of personal data. The Employment Practices Data Protection Code (which is linked to the Data Protection Act) distinguishes between a reference given in a **personal capacity** and one given in a **corporate capacity**:

- **A corporate reference** is one given on behalf of the employer by one of its staff. Many employers have rules about who can give such a reference and what it can include. The employer remains legally responsible for compliance with the Data Protection Act.
- **A personal reference** is one given by a member of staff in an individual capacity (perhaps a colleague of yours). It may refer to work done but it is not given on behalf of the employer. References that are given in a personal capacity do not, at least in data protection terms, incur a liability for the employer.

**What about job offers which are made 'subject to references'?**

It is often the case that references are taken up at shortlist or offer stage, and the candidate may be asked to bring documentary evidence of qualifications to the interview. Job offers are sometimes made 'subject to satisfactory references being received', but government guidance to employers say this is not advisable because the referee may simply fail to provide any kind of reference and there is no legal requirement to do so. A referee may wrongly indicate the applicant is unsuitable, in which case if the offer is withdrawn on those grounds, the organisation could face legal action by the applicant.

*This information sheet is not a statement of the law but does include guidance and information provided by ACAS, the Citizens Advice Bureau & the Information Commissioner's Office and is, to the best of our knowledge, accurate as at 17 February 2014 (to be updated Sept 2014).*