

OFFICE OF CHRISTINE LIZARDI FRAZIER
KERN COUNTY SUPERINTENDENT OF SCHOOLS
Advocates for Children

April 16, 2010

TO: Cabinet
FROM: Christine Frazier
SUBJECT: Request for reference by current or potential employer

This office receives countless requests for professional references from potential employers.

If you receive such a call refer the inquiry to your supervisor or Human Resources.

If you are contacted by the potential employer and know the individual first check with your supervisor or Human Resources to determine what should and should not be communicated.

It is recommended that when you receive such a call or contact, ask for the individual's name and contact number and promise you, your supervisor or Human Resources will get back to them. Using this procedure will 1) verify the legitimacy of the call and 2) provide time to prepare a timely, but legally appropriate response.

CLF:it



Labor & Employment Law Update

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HANDLING REQUESTS FOR EMPLOYEE INFORMATION

A district may be exposed to liability if it provides information about its current or former employees to prospective employers. California Civil Code section 47 allows an employer to answer, when asked, a question about whether the employer would rehire a current or former employee. If an employer answers this question and no other, it will not have exposure to liability. However, this provision is not well suited to school districts and educational agencies for a number of reasons. If a former employee is currently on the rehire list, the employer must truthfully answer that it will comply with the applicable statutory law and rehire the employee if an opening occurs for which the employee is eligible. This truthful answer would not reveal the fact that the employer has serious doubts about this particular employee and, if not compelled to rehire the employee by statute, would certainly not rehire the employee.

Civil Code section 47 is also of limited use to educational employers because of the Court's decision in *Randi W. v. Muroc Jt. Unified School District* (1997) 14 Cal.4th 1066. One of the Court's holdings in *Randi W.* was that if an employer provides a positive reference about an employee, then the employer must also provide any negative information that it has about the employee. Therefore, if the employer accurately states that it would rehire an employee because the employee is currently on the out of work list, the employer will have an additional duty under *Randi W.* to provide any negative information that the employer may have about that employee. This additional negative information will not fall under the protection of Civil Code section 47.

Employers should also use caution when providing any written reference for a former certificated employee. Under the provisions of 5 CCR section 80332, an employer has a duty of professional candor and honesty in letters or memoranda of employment recommendation. Failure to comply with this regulation could result in suspension or loss of a teaching or administrative credential. In addition to the above, employers providing references with certificated or classified employees are cautioned that Labor Code section 1050 makes it a misdemeanor to prevent any former employee from obtaining employment by "any misrepresentation."