

Employment References: Court Refuses To Hold Prior Employer Responsible For Sexual Assault Committed At Nursing Home.

The family of a now-deceased nursing home resident believed she was sexually assaulted by an employee of the nursing home.

Family Sued Previous Employer Over Employment Recommendation

The probate administrator of the deceased resident's estate filed a lawsuit on behalf of the family against the nursing home where the employee had previously worked. The lawsuit alleged the previous nursing facility negligently supplied a favorable employment reference to his next employer which led to his being hired and placed him in a position to assault the resident in question.

The Supreme Court of Indiana ruled there were no legal grounds for the family's lawsuit. In its opinion the court carefully reviewed the delicate situation in which employers can find themselves.

Reports, Rumors Were Investigated, Not Proven

At First Facility

The facility where the man had worked before, which supplied the recommendation upon which he was hired at the facility where he allegedly committed the assault upon the resident, had heard reports and rumors of sexual misconduct involving elderly psychiatric and Alzheimer's patients.

According to the court, the reports were looked into but it could not be substantiated that any misconduct had occurred. No formal investigation was conducted. No written report was prepared or placed in the facility's or the man's personnel file.

Employer's Liability To Employees False Statements In Personnel Files, Employment References

The court pointed out that employers face legal liability to their employees and former employees for false statements in personnel files and employment references.

Nursing home management owes a duty to the residents of other nursing facilities not to make intentional misrepresentations in employment references.

That is, if a resident of another facility is harmed by an employee hired at the other facility on the basis of false information deliberately supplied in an employment reference, the resident has the right to sue the employee's former employer who supplied the false information to the latter employer.

On the other hand, an employer has no duty, and in fairness to the employee cannot repeat rumors and innuendo regarding an employee.

Employers face legal liability to their current and former employees for statements in employment references which cannot be substantiated and which damage the current or former employee's employment prospects.

In this case there was no proof of any conscious, deliberate misrepresentation by the former employer.

SUPREME COURT OF INDIANA
June 29, 2004

The law gives employers a qualified legal privilege against lawsuits by their employees for information contained in personnel files and job references, but only to the extent that there is reasonable grounds to believe it is true.

Job references cannot be based upon rumors and innuendo which have not been substantiated as factual, the court pointed out.

The former supervisor, whose facility was now a defendant in this lawsuit, had checked off on a pre-printed reference form that the man fulfilled his job responsibilities adequately and would be eligible for re-hire.

Given that the rumors and innuendo of sexual misconduct were not and could not be substantiated, the court ruled the first facility fulfilled all its legal obligations to its former employee as well as the residents of nursing facilities where he would later work. Those residents had no right to sue.

Deliberate Misrepresentation In Job Reference Could Be Grounds For Legal Liability

If the family could prove the first facility made a conscious, deliberate misrepresentation of proven facts, there would be grounds for legal liability.

If someone makes a false statement knowing it is false and that another person will rely upon the statement in taking action, the person making the false statement is legally liable to those harmed by the action taken in reliance upon the truth of the statement.

Applying the general common-law principles to this situation, the court ruled there would be legal liability if a current or former employer were deliberately to cover up proven facts which would be significant to a later employer in making a hiring decision, the person is hired and an innocent person is harmed as a result of the facts having been covered up. ***Passmore v. Multi-Management Services, Inc.***, 810 N.E. 2d 1002, (Ind., June 29, 2004).