



## Getting Beyond “Name, Rank, and Serial Number”— Nebraska Passes Job Reference Immunity Law

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Add Nebraska to the growing number of states that have granted civil immunity to employers that provide job references to prospective employers of their current or former employees. Approved by Nebraska Governor Dave Heineman on April 10, 2012, the law, LB 959, will take effect on July 18, 2012.

Somewhat unique in its approach, the new law authorizes employers in Nebraska to disclose, with the employee’s written consent, the following information about the current or former employee’s employment history:

- (1) Dates and duration of employment;
- (2) Final pay rate and wage history;
- (3) Job description and duties;
- (4) The most recent performance evaluation provided to the employee during his or her employment;
- (5) Attendance information;
- (6) Drug and alcohol testing results within one year prior to the date of the reference request;
- (7) Threats of violence, harassing acts, or threatening behavior related to the workplace;
- (8) Whether the employee was voluntarily or involuntarily separated from employment, and the reasons for the separation; and
- (9) Whether the employee is eligible for rehire.

LB 959 creates a rebuttable presumption that an employer providing the information has acted in good faith and is immune from civil liability for disclosing information, unless the current or former employee can show both that the information provided was false and that the current or former employer had knowledge of its falsity or acted in reckless disregard of the truth.

Prospective employers wishing to take advantage of the new law will need to revise their application forms. The written consent must either be on a form separate from the application form, or, if included in the application form, must be in bold letters and in larger typeface than the largest typeface in the text of the application form. To be valid, the consent must be signed and dated by the applicant (the consent is only valid for six months from the date of signature), and contain the following statement:

I, [applicant], hereby give consent to any and all prior employers of mine to provide information with regard to my employment with prior employers to [prospective employer].

Immunity will not apply where it can be shown that the employer has discriminated or retaliated against the current or former employee “because the employee has exercised or is believed to have exercised any federal or state statutory right or undertaken any action encouraged by the public policy of [Nebraska].” Given the potential breadth of this exclusion, employers should be cautious to ensure that information provided as a reference does not appear to be motivated by discrimination or retaliation against an employee who has exercised his or her state or federal statutory rights.

One area of obvious concern relates to employers who provide “attendance information” on current or former employees. Since disclosing attendance information may identify employees who have “disabilities” under the Americans with Disabilities Act or “serious health conditions” under the Family and Medical Leave Act, employers must exercise extreme caution when disclosing attendance information that is attributable to a current or former employee’s medical condition.

This is a general summary of the new law. Given the complexities involved in this area, employers would be well-served to address specific scenarios with the assistance of counsel.

## practices

Management Education, including e-Based Training

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## contact

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