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Rhode Island Supreme Court Provides Guidance Regarding an Employer's Right to Provide Negative Employment References

A recurring issue for employers is what can (and cannot) be said when commenting on a former employee's job performance. In a decision issued on January 22, 2007 the Rhode Island Supreme Court reaffirmed that under Rhode Island law an employer has a qualified privilege to provide a negative job reference.

The case, *Kevorkian v. Judith Glass et al.*, __A.2d__ (R.I. 2007) was brought after Ms. Kevorkian's former employer, a nursing home, provided a negative employment reference. The plaintiff, a licensed practical nurse, was suspended by the nursing home for performance lapses and ultimately resigned her employment. In response to an inquiry regarding the plaintiff's job performance, the former employer indicated that it would not be willing to rehire Kevorkian because of "unacceptable work practice habits".

When Ms. Kevorkian was not hired and learned of the comment, she brought suit claiming that the nursing home had defamed her. In dismissing the claim, the Rhode Island Supreme Court did not decide whether the statement was defamatory. Instead, the Court focused

on the defense of qualified immunity. The Court ruled that under Rhode Island law, a former employer's communication to a prospective employer regarding the work habits of a former employee is protected. The protection can be lost if the publication of the information exceeds the scope of the privilege or is induced by spite or ill will. In *Kevorkian*, the Court ruled that the employer had properly voiced its dissatisfaction with the plaintiff's job performance and there was no evidence that the statement had been made in bad faith.

The lesson for employers is that negative references can be provided. When doing so, the employer should be careful to make sure that there is a factual basis for the comment and that the comment is made only to the prospective employer.

This update is a summary for general information and discussion only. It is not a complete analysis and may not be relied upon as legal advice. Please contact William E. O'Gara, Esquire for further consultation at 401-824-5117 or send an email to him at wogara@pldw.com