



EMPLOYMENT REFERENCES

- I. **PURPOSE:** To establish uniform guidelines for verifying employment information and obtaining reference information on individuals being considered for permanent employment and responding to reference information inquiries regarding current or former employees.

- II. **POLICY:**
 - A. An appointing authority may not employ or offer employment to any applicant until the appointing authority has verified the applicant's relevant past employment and has obtained references indicative of the applicant's skills, abilities and performance which can be used in the overall evaluation of the applicant's fitness for employment.
 - B. Appointing authorities must comply with applicable federal, State and local laws when responding to requests for employment verifications and employment references.

- III. **PROCEDURES**
 - A. Requesting Employment Verification and Reference Information
 1. Employment verification consists of confirming all previous relevant employment to confirm dates of employment, position, rate of pay and reason for leaving. Relevant employment includes any employment during which the applicant performed the same or similar duties as those required for the vacant position or otherwise gained abilities, skills, or knowledge used to perform the duties of the vacant position. Reference checking consists of verifying job-related information provided by the applicant on his or her application and during the interview and obtaining an assessment of the applicant's skills, abilities, and performance. Applicant-supplied reference documentation is not acceptable for the purposes of this policy unless it is verified with the referenced entity.
 2. For the purposes of this policy, "job-related information" means information concerning an applicant's education, training, experience, qualifications, conduct, job performance, skills and abilities, which is gathered for the purpose of providing one criteria, among others, to evaluate the applicant's suitability for employment.
 3. Each appointing authority is responsible for verifying relevant past employment and obtaining other job-related information useful for the evaluation of each applicant for employment according to the following.
 - a. Request from each prospective employee the name, address, and telephone number of all previous employers.
 - 1) In situations where the applicant has no relevant employment history, other employment should be verified. Academic or volunteer references may be considered only if such references supply relevant job-related information. Use of personal references such as friends or relatives is discouraged.



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- 2) The number of inquiries to be made will vary due to each applicant's work history. Relevant previous employment should be verified. If employment verification or other reference information cannot be obtained, the reason should be noted on the reference form.
 - 3) It is highly recommended an appointing authority, at his or her discretion, obtain employment reference information from other agencies concerning individuals being considered for inter-agency transfer or reinstatement as defined in the West Virginia Division of Personnel *Administrative Rule*, W. VA. CODE R. §143-1-1 *et seq.*
- b. Obtain each applicant's written consent prior to initiating any employment verification/reference process (an approved release form is provided as Attachment A).
 - c. Notify the applicant prior to making contact with his or her current employer. If an applicant requests that an employment verification and/or reference inquiry not be sent to his or her current employer, the applicant must specify the reason.
 - d. Tailor inquiries to the specific job for which the applicant has applied (an approved reference request form is provided as Attachment B). If an agency chooses to use an agency-specific form, the form must include all information contained in the provided approved form; any additional information requested must be job related. For example, certain positions such as house parent, security guard, or nurse are positions for which employers have a responsibility to obtain more thorough background information from previous employers and other sources, such as driving record and central abuse registry inquiries.

References may also be obtained by telephone, facsimile, or e-mail. The provided approved reference request form must be used to document oral and written employment verifications and references. If the employer responding to an oral inquiry offers an "off the record" comment, the person conducting the inquiry must inform the respondent that all comments will become part of the record. Reference information should only be obtained from the applicant's former supervisor or human resources representative.

- e. Treat employment verification and reference information with the same confidentiality standard as applicant and employee employment history information and retain the employment and verification and reference information for no less than two (2) years after termination of employment or two (2) years after the suitability determination is rendered for applicants not selected.
- f. Ensure inquiries are **NOT** made about the following topics, unless job-relatedness can be clearly established and defended or a Bona Fide Occupational Qualification (BFOQ) has been established:
 - 1) Age
 - 2) Ancestry
 - 3) Arrest Records
 - 4) Color
 - 5) Credit References



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- 6) Disability (May ask if applicant can perform essential functions of the position with or without reasonable accommodation)
- 7) Family status (e.g., marital status, child care issues and arrangements, plans to have children, unwed parenthood, etc.)
- 8) Garnishment Records
- 9) Gender
- 10) Height and Weight
- 11) Military Status
- 12) National Origin
- 13) Political Affiliation
- 14) Pregnancy
- 15) Race
- 16) Religion
- 17) Tobacco Use
- 18) Transportation Availability **
- 19) Union or Organization Memberships/Affiliations
- 20) Workers' Compensation Status
- 21) Physical Characteristics
- 22) Health and attendance history
- 23) Culture and cultural affiliations

** It is permissible to inquire about transportation if the employee will be required to provide their own transportation to perform the work for which they are being considered. It is not permissible to inquire as to how the applicant will get to work.

It may be necessary and is permitted for the appointing authority to request information regarding age, ancestry, arrest records, credit references, gender, height, weight, national origin and race as needed to secure required background investigation records *but only after a conditional offer of employment has been made.*

- g. Ensure that the internet is **NOT** used to gather information on applicants through a general search or review of social networking sites. Information obtained through internet searches may not be reliable and making an employment decision based upon such information is not advisable.
- h. Immediately notify the Director, West Virginia Division of Personnel, in writing if the information received from employment verifications or references does not agree with the information provided on the Division of Personnel application. Include all pertinent facts. If it is determined that an applicant has falsified his or her application, it could result in the applicant not being hired and also having his or her name removed from future registers. If the applicant has already been hired, he or she could be dismissed from employment and his or her name could be removed from registers.



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- i. Report in writing to the Director, Division of Personnel, the refusal of any applicant to authorize any employment verifications and/or reference inquiries, and remove the applicant from consideration for employment.

B. Responding to Requests for Employment Verification and Reference Information

1. The appointing authority and his or her designees are permitted to verify employment and provide reference information. All references provided by an appointing authority or his or her designees must be provided in accordance with this policy and W. VA. CODE §55-7-18A. Unauthorized persons providing references are subject to disciplinary action.
2. When responding to employment verifications and reference inquiries, appointing authorities should be aware that inaccurate or improper statements regarding former employees may be considered defamation for which the appointing authority could be held liable in a court of law if the appointing authority providing the information does not have reasonable grounds or probable cause to believe that the information being given is true.
3. Qualified immunity will apply to all State agencies as public employers if the employer furnishes the information to the inquiring party in a proper manner, during a suitable occasion, to the proper party, and limits the information to the inquiries that are job-related. While a qualified privilege immunity is in place when employers seek job-related information from previous employers, the qualified privilege is generally lost and defamation can be found to exist if a previous employer:
 - a. Furnished information for other than a business purpose;
 - b. Did not believe the truth of the information shared or believed the information to be true but had no reasonable grounds for its belief;
 - c. Provided the information out of malice rather than for a legitimate purpose; or,
 - d. Supplied information to a third party that had no legitimate need to know.
4. As provided in West Virginia Code 55-7-18A, any employer or his or her designated agent who discloses job-related information that may be reasonably considered adverse about a former or current employee to a prospective employer of the former or current employee is presumed to be acting in good faith and is immune from civil liability for the disclosure or its consequences. The disclosure of such information must be in writing and a copy of any such disclosure must be provided to the former or current employee at the time of the disclosure.

The presumption of good faith is rebutted upon a showing, by a preponderance of the evidence, that the information disclosed was:

- a. Knowingly false;
- b. Disclosed with reckless disregard for the truth;
- c. Deliberately misleading;



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- d. Rendered with malicious purpose toward the former or current employee; or,
- e. Disclosed in violation of a nondisclosure agreement or applicable law.

If the employer disclosed job-related information to a prospective employer of a former or current employee that was false or misleading, and if the current or former employee requests, then the employer must give corrected information to every person or entity that is in the employer's records as having received the original information, with a copy thereof to the former or current employee.

- 5. It is the responsibility of the appointing authority to:
 - a. Respond truthfully to inquiries from other West Virginia State agencies in compliance with this policy, as the State is considered to be one employer for the purposes of this policy. All agencies must cooperate in providing employment verifications and references when requested by other agencies.
 - b. Provide relevant documented information to prospective employers in response to written reference requests for job-related information for current or former employees who have demonstrated violent and/or threatening behavior. An appointing authority may be held liable if the potentially violent current or former employee is hired by another employer based upon a "clean reference" and the employee becomes violent in the course of performance of work.
 - c. Respond only to written reference inquiries for which a signed release to obtain employment verifications and/or reference information has been provided. Such release must include the applicant's home address, signature, authorization to provide information, and waiver of liability for release of information. Such response must be in writing and marked "confidential" or "personal" when supplying a response to an inquiry from a prospective employer. Responses to reference inquiries must state that the information provided is "clearly factual" or the "result of an investigation."
 - d. Appointing authorities may provide to an employee an original, employee-specific letter that truthfully reflects and describes the employee's service.
 - e. Persons authorized by the appointing authority to provide employment verifications and references may give a telephone response provided:
 - 1) He or she obtains a copy of an appropriate release signed by the employee on whom the information is sought prior to responding (a faxed copy is acceptable);
 - 2) No information beyond that prescribed in the State reference form attached to this policy is provided; and,
 - 3) A document memorializing the conversation is placed in the employee's agency personnel file.



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IV. REFERENCES:

- A. W. VA. CODE §29-6-7(b)(5)
- B. W. VA. CODE §55-7-18A

V. **EFFECTIVE DATE:** February 1, 1994.

VI. **REVISED:** March 1, 2011.

VII. **POLICY NUMBER:** DOP-P9.

Approved and Issued By:

A handwritten signature in blue ink that reads "Sara P. Walker".

Sara P. Walker, Director of Personnel

Date: March 1, 2011.



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Reference Request for Employment with the State of West Virginia

To: _____ Date: _____

_____ Telephone: _____

Attention: _____

Agency Requesting Reference: _____

Contact Name: _____

Contact Title: _____ Telephone: _____

Reference Request For: _____ Position Sought: _____

The applicant named above has provided your name as a reference; a signed release is provided below. We would appreciate it if you would verify the information provided by the applicant on the attached form and answer the additional questions. A return envelope is provided for your convenience. If any applicant-provided information is incorrect, simply strike through it, write in the correct information, and initial. If you have any questions, please contact the requesting agency listed above.

Release of Liability

I am being considered for employment with the State of West Virginia, and have willingly consented to having my references contacted for information regarding my employment, volunteer, or other activities. Accordingly, I authorize all current and former employers, educational institutions, governmental entities, organizations or individuals to truthfully respond to the enclosed reference request and to provide all the information requested.

On behalf of my heirs, assigns, successor interests, and me I hereby forever release and hold harmless any and all persons, who request and/or furnish any information, from any liability or damage whatsoever, under any and all possible causes of legal action, which may result because of truthful responses to this request for information. I also hereby knowingly and permanently waive any rights I may have to examine or discover the contents of the provided reference.

A facsimile or photocopy of this authorization is as effective and valid as the original. If I am hired, your response will remain on file at the referenced agency. Please provide the requested information within ten (10) days of the date of this release so that I may receive further consideration for employment.

Applicant Signature: _____ Date _____



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Reference Request for Employment with the State of West Virginia

APPLICANT-PROVIDED INFORMATION:

Applicant Name: _____

Previous/Other Name if Used for This Position: _____

Please Check One: Employee Volunteer Contractor
 Other - (Please Explain): _____

Position Held: _____ From: _____
_____ To: _____

Reason for Leaving: _____

Description of Duties:

I believe this employer (*check one*) would would not reemploy me in the same or similar position.

My supervisor would say that my work was (*state how your supervisor would rate your work performance*)

Rate of pay at time employment ended:
\$ _____ per Hour Week Other _____



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REFERENCE-PROVIDED INFORMATION: Please circle the appropriate number, with a 5 meaning a strong yes, 3 meaning met expectations, and 1 meaning a strong no.

	No				Yes
Applicant exhibited a good work ethic.	1	2	3	4	5
Applicant demonstrated appropriate interpersonal skills with his/her peers.	1	2	3	4	5
Attendance was satisfactory.	1	2	3	4	5
Applicant was responsible and showed initiative.	1	2	3	4	5
Applicant's skills were satisfactory and he/she generally completed his/her work without errors.	1	2	3	4	5
The applicant was committed to good performance and meeting his/her goals.	1	2	3	4	5
The applicant was able to understand and follow instructions.	1	2	3	4	5

Please add any appropriate job-related comments about the applicant, particularly regarding any rating of "1" above:

How were you associated with the applicant?

- Coworker
 Supervisor
 Representative
 Other: _____

Reference provided by:

Name: _____

Title: _____

Signature: _____ Date: _____

FOR AGENCY USE ONLY: If the reference is completed via telephone:

- 1) Complete the name and title [above] of the person providing the reference.
- 2) Advise that the responses are being recorded on this form.
- 3) Advise the reference provider that a copy will be sent to him/her in the mail.

Name of person documenting telephone reference: _____

Title of person documenting telephone reference: _____

Date: _____