

The reference letter

1. Constant companion in employment law practice

For many employers, drafting a reference letter is a rather annoying task, which they cannot avoid, however, if the employee asserts their right under Section 109 of the Trade, Commerce and Industry Regulation Act (*Gewerbeordnung – GewO*). Simple reference letters, which only contain information on the type and duration of the activity, are of little importance in German day-to-day practice. More often, employees demand a qualified reference letter that contains information about performance and conduct in the employment relationship. If there is an objective reason, e.g. a change of supervisor, the employee may even be entitled to an interim reference letter. A certain amount of care and effort in issuing a reference letter is essential and can prevent legal disputes. Practical experience shows that employees take even supposed trivialities as an occasion to subject the reference letter to judicial examination. Anyone who has ever dealt with the myth of reference letters is usually afraid of the so-called “secret language” in reference letters and the pitfalls of the details. However, the creation of a reference letter is not difficult at all if the following principles are observed.

2. Principles for the wording of the reference letter

In the qualified reference letter, the employer must assess the employee’s tasks, work performance and conduct in addition to the minimum information on the type and duration of the employee’s work. In addition, the qualified reference letter must always include a summarizing assessment, which is usually expressed in a final grade (very good to poor).

In principle, the reference letter must be favorably worded and must not unjustifiably impede the employee’s career advancement.

However, the performance assessment must be truthful and may only contain facts that are relevant to the overall assessment. Therefore, off-duty behavior cannot be taken into account in the assessment.

A negative assessment is only permissible if it was characteristic for the entire duration of the employment relationship. All wording must be clear and comprehensible, and hidden wording that is intended to put the employee in a worse light than the actual wording must be avoided. For example, a sad smiley is an illegal secret symbol, but not a missing space.

Case law is divided on whether the reference letter also has to contain a concluding phrase of thanks and good wishes for the employee’s future. Therefore, we always recommend to at least use a phrase similar to the following one:

“To our regret, Mrs. X is leaving our company. We thank her for her co-operation and wish her all the best for the future.”



3. Correct structure and form of a reference letter

When drafting a reference letter, there are some formal requirements which the employer is obliged to observe:

- The reference letter must be in written form. This also includes the signature of a person authorized to represent the company.
- Indication of the date of issue.
- Indication of the employee’s surname, first name and date of birth.
- The employer must be recognizable as the issuer in legal transactions. A brief description of the employer’s industry or business subject is recommended.
- The certificate must be clean, tidy and legible. Erasures, strikethroughs and handwritten amendments are not permitted, nor are creases or dog-ears.
- Spelling errors should be avoided.
- Secret symbols are not allowed.
- For example, a signature in children’s handwriting or a diagonal signature if the signatory usually signs differently are also formally flawed.

4. The performance assessment in detail

The performance assessment is divided into the following categories: Work ability, expertise, working methods, willingness to work and success in work. Each category is to be assessed individually with the marks “very good, good, satisfactory, sufficient or poor”. It is important to bear in mind that certain standard phrases have already been developed for grading the individual categories and should be used in every reference letter.

Example for “very good” expertise:

“Mr. X has very extensive and considerable professional experience. He always mastered his responsibilities to the fullest, with confidence and to the letter.”

Example for “satisfactory” willingness to work:

“Ms. X was a motivated employee who achieved the goals set for her.”

Example for “poor” work success:

“Workload and pace generally met expectations.”

5. The summary grade in the reference letter

The summary assessment in a job reference is usually expressed in the form of a final grade. Here too, the school grades “very good” to “poor” are used.

A “good” overall work performance can be formulated in the sense that the employee “always performed the work assigned to him/her to full satisfaction”. Using “fullest” would even upgrade the work performance to “very good”. It corresponds to a “satisfactory” overall grade if the employee’s work performance “has always fully met the requirements”.

Poor or inadequate services should generally be presented with caution. Usually a poor performance is described with the formulation “His work has generally met our requirements”.

The employee is not entitled to the assessment of the work performance with at least “good”. The employer should evaluate the employee according to his actual work performance and is therefore not obliged to give at least a “good” evaluation. The starting point for the evaluation is basically an average, i.e. “satisfactory” work performance. If the employee evaluates their performance as above average (i.e. “good” or “very good”), they bear the burden of argument and proof in case of dispute.

6. Sources of errors and legal consequences

If the employer does not or insufficiently fulfil their obligation to issue a reference letter, both formally and materially, the employee may first demand fulfilment or correction. In addition, claims for damages against the employer are possible. In this regard, the employee has a comprehensive burden of proof, but this does not in fact exclude claims for damages.

Due to the particularly high susceptibility to errors of oral information on the contents of the reference letter, it is not advisable to provide such information, as it can also trigger claims for damages in the event of deviations. In addition, it should be determined internally that only certain persons (HR!) are authorized to provide information in order to avoid legal issues and possible financial exposure.