

# Accurate and complimentary – difficult standard for recommendation letters

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Under Austrian law, a recommendation letter must be truthful and cannot contain language that would aggravate the professional advancement of the employee.

When truthfulness would result in less than lavish praise, employers must resort to a short-form recommendation letter, devoid of any information beyond the type of work performed and the duration of employment. This alternative, although accurate in its lack of praise, can aggravate an employee's career prospects.

### Legal framework

On termination of their employment, Austrian employees can request a basic recommendation letter, containing information on the duration of the employment relationship and the type of work performed. Unlike in Switzerland or Germany, the employer has no obligation to issue a qualified recommendation letter, which includes an assessment of the employee's performance and conduct. However, if the employer provides a qualified recommendation letter, the information contained therein must be accurate and complete. After all, such recommendation letter is meant to show future employers the level of experience and professionalism that the potential employee has gained over prior periods of employment. Recommendation letters must therefore render a truthful account of previous employment relationships.

However, accuracy and completeness find their limits in the overriding principle of benevolence: the recommendation letter must not in any way aggravate the professional advancement of the employee. Employers must therefore refrain from adding language that either directly or indirectly states or alludes to conduct or performance that a future employer might construe negatively.

With this in mind, it seems obvious that any hints about an employee's union activities, works council membership, low return on performance or illness record are prohibited. That said, the Supreme Court's prohibition of the wording 'to our full satisfaction' in connection with an employee's performance level is less clear. According to the court, although grammatically incorrect, unconditional satisfaction with performance would usually read 'fullest satisfaction' so that the rating 'full satisfaction' designates a lesser degree of satisfaction.

Truthfulness is therefore only second best when it comes to recommendation letters. Much more important is the fact that recommendation letters are meant to serve as a means to obtain new gainful employment. Attempts by creative human resources (HR) managers to circumnavigate the strict case law and use coded language to describe performance and conduct have also failed and been quickly exposed by the courts.

As a consequence, employees receive either a recommendation letter full of hyperbolic praise or a

AUTHOR

[Jakob Widner](#)



two-line statement setting out the duration of employment and a description of the personal services performed. Austrian courts have clarified that an employer that does not wish to heap exorbitant praise on an employee can choose to scale back the wording of the recommendation letter to the statutory minimum – length of service plus type of work performed. This, of course, has the opposite effect of what was intended. Confronted with a basic recommendation letter, a potential future employer can and will conclude that the previous employment relationship was unsatisfactory. By banning language other than hyperbolic language from recommendation letters, the principle of benevolence has been turned on its head.

In practice, recommendation letters that almost lavishly praise former employees are still widely used, even in cases where the employee's performance was less than exceptional. It appears that despite case law prohibiting the practice, employers still wish to support their former staff in their professional advancements to the fullest extent, even though their conduct and performance might have warranted less than full praise. However, that practice has not escaped future employers (which use the same practice with their former staff), resulting in complimentary recommendation letters of doubtful significance and little informative value.

### **Way out**

Looking across the border, it appears that Germany (for instance) has a model that better suits both employers' and employees' needs. Employees can request a qualified recommendation letter, and in assessing their employees' performance, the courts allow employers to use a grading system similar to the 1-4 marking scale used by schools, describing performance levels from:

- 'always to our fullest satisfaction';
- 'always to our full satisfaction';
- 'to our full satisfaction'; and
- 'to satisfaction'.

Likewise, an employee's conduct may range from 'always exemplary' to 'exemplary' and 'unobjectionable', down to the lowest grade of 'without rebuke'. The required level of benevolence appears thus more in line with reality.

What would amount to prohibited HR jargon in Austria is therefore a common grading system abroad, allowing for a model of performance and conduct assessment worthy of that notion.

*For further information on this topic please contact [Jakob Widner](#) at Graf & Pitkowitz Rechtsanwälte GmbH by telephone (+431 401 17 0) or email ([widner@gpp.at](mailto:widner@gpp.at)). The Graf & Pitkowitz website can be accessed at [www.gpp.at](http://www.gpp.at).*

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