

From: HRHelp-John Perkins
Subject: HR Alert: Job Descriptions - a primer for employers

Many ask: *Job descriptions are not required by any employment law, federal or state. So, what's the "big deal" about job descriptions?*

Employers over the years have typically not given attention, or time, or effort, or concern to the currency, accuracy, or thoroughness of job descriptions. Preparing and managing job descriptions was time-consuming, boring, challenging, frustrating, etc. – something to be done only when “forced” to act.

However, job descriptions have become one of the most important, or maybe the most important, pieces of DOCUMENTATION that an employer can have with regard to protecting itself from the risk and liability that incur from claims of unlawful or discriminatory employment practices.

This document is a primer regarding job descriptions – it will cover the basics, but is not exhaustive. Guidance is provided, but not detailed information. Several “sample” documents are attached.

If you have questions about or wish to discuss this document or the attachments, or if you wish more information about job descriptions, or if you want assistance with job descriptions, please contact **HRHelp** at: hrhelp@cox.net or 602-464-3553.

Job Descriptions are needed for the following reasons.

✓ **To determine the FLSA status (Exempt or Non-Exempt) of a job.**

If a job meets the FIXED SALARY TEST (Step 1) and the SALARY LEVEL TEST (Step 2) established in the Fair Labor Standards Act (FLSA) to be Exempt, then information in the job description is compared to the JOB DUTIES TESTS (Step 3) (Executive, Administrative, Professional, Outside Sales, or Computer-Related) in the FLSA to determine whether the job is Exempt or Non-Exempt.

✓ **For matching jobs in Salary/Wage Surveys.**

Data from the Salary/Wage Survey is used to establish a salary/wage structure (job grades/levels) and the salary/wage range for each grade/level.

✓ **For recruiting applicants.**

The job description is listed in ads, so that applicants can determine whether they are a match for the job and whether they are interested in the job.

✓ **For interviewing applicants.**

Behavioral-based interview questions, based on the job content, are prepared and used during the interviewing process to assess whether the applicant can perform the job.

✓ **For performance management/evaluation/appraisal.**

The job content and expected outcomes, from the job description, are the basis for evaluating/assessing actual performance, both informally and formally, against the job content and expected outcomes.

✓ **For an employee's health care provider to use when the employee has requested FMLA leave for his/her own serious health condition.**

The employee's health care provider is asked to complete a CERTIFICATION OF HEALTH CARE PROVIDER form (WH-380-E) when the employee requests FMLA leave for his/her serious health condition. A copy of the job description should be provided with the form to assist the health care provider in completing Part B of that form.

✓ **For an employee's health care provider to use BEFORE the employee returns to work from FMLA leave for his/her own serious health condition.**

BEFORE an employee is allowed to return to work, his/her health care provider should be asked to complete a RETURN TO WORK CERTIFICATION form regarding whether the employee can return to

work from FMLA leave and, if so, with or without limitations or restrictions that may require reasonable accommodation; a copy of the job description should be provided with that form.

- ✓ **To identify the ESSENTIAL FUNCTIONS of the job.**
- ✓ **To assess, based on the ESSENTIAL FUNCTIONS of the job, what may or may not be reasonable accommodation when an employee requests accommodation under the ADA or the ADAAA.**
- ✓ **When defending an EEOC Charge of Discrimination based on discrimination in violation of the ADA or ADAAA.**

When an employee who has a disability charges that the employer failed to reasonably accommodate him/her such that he/she could perform the ESSENTIAL FUNCTIONS of the job, the job description will be needed to defend the charge.

- ✓ **To determine whether a job is or is not in a bargaining unit, and therefore eligible or not to vote when a union election is conducted.**

So, you may be thinking: *I don't buy into the statement that job descriptions are one of the most important, or maybe the most important, pieces of documentation my organization can have.*

If so, do nothing.

Or, you may be thinking: *So, what's an organization to do to ensure that its job descriptions are current, accurate, and thorough?*

If so, read on.

The basic steps for creating a job description.

Step 1: conduct a job analysis.

Step 2: prepare a written job description.

Step 3: identify the "essential functions" of the job.

Step 4: periodically review the job description to verify that it is current, accurate, and thorough.

Step 1: conduct a job analysis.

A job analysis process is the gathering of information about a job. The recommended method for conducting a job analysis is to use a *Position Description Questionnaire (PDQ)* plus a *Position Description Questionnaire (PDQ) Supplement*.

A 'sample' of each is attached. These are 'samples' because, to some extent, they can be customized to the employer and the types of jobs the organization has.

Step 2: prepare a written job description.

Data from the *PDQ* and *PDQ Supplement* are used to complete the formal job description. Regardless of who prepares the written job description, it should be reviewed by and discussed with the incumbent employee(s) and his/her/their manager(s) to verify that it is current, accurate, and thorough.

Only when the parties have reached consensus regarding it should the job description be "approved."

A "sample" job description TEMPLATE is attached to show the components of a job description. The TEMPLATE was prepared in one format; a job description may be prepared in a different format, as long as it is current, accurate, and thorough.

Step 3: identify the "essential functions" of the job

The term "essential functions" was created by the Americans With Disabilities Act (ADA). An "essential function" is a job function which the job exists to perform. Per the ADA, an "essential function" is identified based on the answers to the following questions:

- A. Does the position exist to perform the function?
- B. Would removal of the function fundamentally alter the job position?
- C. What is the degree of expertise or skill required to perform the function?
- D. How much of the incumbent employee's time is spent performing the function?
- E. What are the consequences to the organization when the function is not performed?
- F. How many other employees are available among whom this function can be distributed?

So, in theory (ADA theory, at least), to identify an "essential function" one merely answers those six (6) questions and then one will know whether the job function is "essential" or not.

However, as always, reality rears its ugly head and makes the process more difficult because the folks who are tasked with identifying the "essential functions" of a job often focus on the activities to be performed instead of the outcomes to be achieved.

Examples:

- Employee A works in a warehouse. One duty/task/assignment is to get boxes of parts from the Receiving Dept. to the Assembly line. So, the "essential function" is written as: "must lift boxes weighing approx. 35 pounds and carry those boxes to the Assembly line."

"Lifting" boxes, an activity, is not and cannot be an "essential function." So, too, "carrying" is an activity and cannot be an "essential function." The outcome is getting the boxes from point A to point B. Lifting and carrying are certain methods, but not the only methods, to achieve the outcome.

An "essential function" could be: "relocates boxes weighing approx. 35 pounds from the Receiving Dept. to the Assembly line." While this may seem "semantics", it is not. The outcome is "essential"; the method by which the boxes get from point A to point B is not "essential."

Why is this "semantical" issue vital? Because an outcome does not have to be accommodated, in most cases; but a method will have to be accommodated in nearly all cases.

- Employee B is a person who is hired primarily to do word processing. The duties of the job include: "types memos; types letters; types Invoices; types mailing labels"; and "types reports."

How many "essential functions" are there? Clue: NOT five (5). There is only one: "types documents."

Typing is the "essential function."

Thus, a KEY to identifying "essential functions" is revealed.

KEY 1: Always synthesize the duties/tasks into the least common denominator. The least common denominator is "essential", not each of the listed duties/tasks that have a common denominator.

- Employee C works in an Accounting Dept. One portion of the job description reads: "the employee is responsible for and accountable for Cash Disbursements which include inputting cash transactions into accounting software, running journal reports/verification of input, processing checks for payments, filing documentation related to cash disbursements, and researching questions/problems regarding cash disbursements."

So, how many "essential functions" can be identified from that portion of the job description?

And, the answer is ONE – "Processes and records cash disbursements."

Another clue: "essential functions" are those that are critical, integral, indispensable, necessary, crucial, primary, fundamental, or imperative to the job being completed; whereas, non-essential or marginal functions are those that are passable, peripheral, minimal, extra, borderline, or incidental to the job being completed.

The action of synthesizing duties/tasks/responsibilities into "essential functions" is difficult, time-consuming, and imprecise. However, it is critical that the "essential functions" of each job be identified for all of the reasons listed previously.

NOTE: the EEOC and the courts will defer to the "essential functions" identified by the employer **IF** the "essential functions" have been identified and communicated/published **PRIOR TO** the claim that the EEOC or the court is adjudicating.

Five Myths of Essential Functions

Source: <http://compensationdailyadvisor.blr.com/2012/06/the-five-grand-myths-of-essential-functions/#>

Myth #1: Don't bother—the courts don't have to accept your essential function decisions.

Truth: While it is true courts are not legally required to accept your job descriptions' lists of essential functions, the fact is that courts generally do give deference to the employer's decisions regarding essential functions, if the job description was responsibly prepared prior to the situation the court is addressing.

Myth #2. Why do it now—you can just put together a job description when you need it.

Truth: If you create the job description after the fact, a court won't give it much credence. The court will assume that you tailored it to fit your arguments in the case. (An after-the-fact job description "won't pass the smell test," one expert noted.)

Myth #3. Once you decide a task is an essential function, you can assume that the task is an essential function at all your facilities.

Truth: Essentialness often depends on the circumstances. Two employees could have the exact same duty at different departments and for one the duty would be essential and for the other it would not. For example, take the person who has to answer the phone during the receptionist's lunch hour. In an office with 100 administrative employees, that's hardly an essential function, but if there is only one person who can do this, it's essential.

Myth #4. To be an essential function, a task or duty has to take a significant portion of the employee's time.

Truth: The percentage of time is a factor; but an essential function doesn't have to consume a large amount of the employee's time in any given period. If it's an important task that only the person in this job can do, it's essential.

For example, say you have one position that requires an employee to be certified in a certain specialty. If some test has to be performed once per week by a certified specialist, then that testing would be an essential function even if it only takes 15 minutes a week. (Again, if you have a dozen such specialists, the testing would probably not be an essential function—it would not be a hardship to get another certified specialist to handle the 15-minute chore.)

Myth #5. Physical requirements can be ignored for jobs that don't involve heavy lifting.

Truth: Most people do think of physical requirements such as lifting when listing essential functions; but many other physical requirements should be spelled out if they apply. For example:

- Exposure to cold
- Exposure to heat
- Exposure to noise
- Work in confined spaces
- Work in high places
- Visiting customer locations.

KEY 2: jobs should have between 3 – 8 “essential functions” based on the *PDQ*. If you have fewer than 3, better look more closely at the *PDQ*. If you have more than 8, keep synthesizing.

The number of Physical/Mental/Environmental demands that also are “essential functions”, based on the *PDQ SUPPLEMENT*, will vary depending upon the position.

Page 2 of the ‘sample’ job description TEMPLATE shows how “essential functions” should be listed.

Step 4: periodically review the job description to verify that it is current, accurate, and thorough.

Oh, boy, you say . . . another pain-in-the-butt thing to do.

Here is the recommended “best practice” for keeping job descriptions current, accurate, and thorough.

At least once per year, usually in conjunction with the employee's formal performance evaluation/appraisal/review, have the employee and the manager review the job description.

Then, have the manager AND the employee sign an attestation – on a form that is attached to the job description, on a label adhered to the job description, within a section of the performance evaluation/

appraisal/review paperwork, or in some other way – that the job description was reviewed and (a) found to be current, accurate, and thorough or (b) found to need revising/updating. Both persons are now accountable for the job description.

If the job description needs to be revised or updated between evaluation/appraisal/review cycles, that should be done; don't wait, as many would do, for the next scheduled evaluation/appraisal/review date. Waiting is easier, but it's also more risky.

If the job description is revised or updated and an issue with accommodation is presented, you will be better positioned because of the employee's signature that the job description is current, accurate, and thorough.

Finally, a “*sample*” completed job description is attached.

To repeat, this document is a primer regarding job descriptions – it covers the basics, but is not exhaustive.

If you have questions about or wish to discuss this document or the attachments, or if you wish more information about job descriptions, or if you want assistance with job descriptions, please contact **HRHelp** at: hrhelp@cox.net or 602-464-3553.

NOTE: to obtain a copy of all of the documents identified as “attached” in this article, send an email to hrhelp@cox.net; in the **SUBJECT** line, please enter: Attachments for Job Descriptions article.