



## **JOB DESCRIPTIONS – GETTING DOWN TO THE ESSENTIALS**

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**Secretary (aka “Gal Friday”):** Primarily responsible for answering the switchboard, typing on an electric typewriter, and making coffee.

**Personnel Manager:** Responsible for ordering office supplies, scheduling office parties, and distributing paychecks.

These are a sample of the job titles and general descriptions staring at you on your first day as a “Personnel” Manager. Your new employer has very few job descriptions and those that do exist have not been revised in more than a decade. Not only are the job titles wrong, but the descriptions contain almost no information relevant to the jobs as they exist today. Your mission: Revise the job descriptions so that they accurately describe the jobs without exposing your employer to legal risks.

Writing job descriptions can be a daunting task and not one that many people look forward to doing. Like vegetables, we know that they are “good for us,” but they are not always our first choice. Comprehensive up-to-date job descriptions, however, provide healthy support to any business.

### **The Business Case for Job Descriptions**

Job descriptions serve a variety of purposes and touch every aspect of the employment relationship.

**Recruiting:** Having a document that specifically sets forth the minimum job requirements helps ensure that everyone involved in the hiring process is on the same page. Identifying the minimum qualifications for a job provides the basis for creating an advertisement to fill the job. The minimum requirements facilitate managers in the selection process, setting forth the initial criteria for weeding out candidates. Job descriptions similarly assist the applicant. By reviewing an accurate job description, a job applicant gains a feel and understanding for the more critical responsibilities of the job and how those responsibilities fit within the organizational structure of the organization.

**Employment:** Once an employee is on board, a job description provides a supervisor and employee mutual understanding of the job expectations. Used as a reference for training initiatives and as a basis for performance appraisal standards, job descriptions are important tools in developing the employee/employer relationship. Job descriptions are also an essential ingredient of a comprehensive compensation program. A job description provides a basis for job comparison to market data collected



for that job. It also is a helpful tool in developing a job worth hierarchy. It typically reflects the value of the job and the relationship of the jobs in the organization to each other.

### **The Legal Support for Job Descriptions**

With one minor exception,[1] job descriptions are not required by law. Nevertheless, a well-written job description can provide a basis for a legal defense for cases involving the ADA, as well as the FLSA, and potentially other laws.

According to the EEOC, while the ADA does not require an employer to develop or maintain job descriptions, a written job description that is prepared before advertising or interviewing applicants for a job will be considered as evidence in determining essential functions (along with other relevant factors). [2] Therefore, an employer with a well-written job description that is consistent with its hiring decision will have a more substantial defense than an employer who does not have a job description, has a poorly worded job description or has one that is inconsistent with the actions of the employer.

Similarly, a job description may be reviewed by the U.S. Department of Labor in determining whether a job is exempt under the Fair Labor Standards Act.[3] The DOL will carefully consider the specific job responsibilities, as delineated in the job description and as carried out by the incumbent employees.

### **Writing a Job Description –The Critical Elements**

While the style and format of job descriptions may vary from employer to employer, one consistent truth remains: do not bog down job descriptions in details. A job description is not a procedure manual. If you start enumerating tasks, you have taken it one step too far. Too many details render it much harder for the reader to identify important information and much more difficult for the employer to maintain the job description with current information. Too many details also lead to the trap of too narrowly defining positions rather than jobs and ultimately creating a huge administrative burden of maintaining unnecessary descriptions. Always conduct a sanity check on the descriptions and make sure there are enough significant differences between the jobs to substantiate having different descriptions. Remember, erring on the side of too generic is often a better business decision.

Regardless of the style and format, there are a number of critical elements to include in every job description.

#### **1. FLSA Status**

The FLSA status indicates whether the job is considered to be exempt or not exempt from the requirements of the Fair Labor Standards Act. The specific duties of the job, not the job title, are



determinative of the status. A smart employer is familiar with the FLSA regulations, takes the time to carefully review all of the jobs within the organization, and ensures that they are classified appropriately.

## 2. General Summary

The General Summary is a brief description of the general nature and purpose of the job. Draft the General Summary to remain consistent with the rest of the job description. For example, a General Summary of an HRIS Analyst position might read, “Responsible for the administration, liaison and coordination of human resources system projects in meeting all professional standards for human resources and systems development and implementation.” The specific duties in the job description should explain how these responsibilities are carried out.

## 3. Essential Functions and Responsibilities

It is imperative that only those functions that are *fundamental* to the position are listed under the Essential Functions and Responsibilities section. This information is critical as it could be the key to an employer’s defense to a lawsuit under the Americans With Disabilities Act.[4]

The EEOC Technical Assistance Manual lists several reasons why a function could be considered essential:

- *The position exists to perform that function.* For example, an employer advertises a position for a “floating” supervisor to substitute when regular supervisors on the day, night, and graveyard shifts are absent. The only reason this position exists is to have someone who can cover for an absent supervisor on any of the three shifts. Consequently, the ability to work any time of day is an essential function of the job.
- *There are a limited number of other employees available to perform the function or among whom the function can be distributed.* For example, a file clerk who works in a very busy office of three may have an essential function to answer a telephone if all three employees are required to perform many different tasks.
- *The function is highly specialized and the person in the position is hired for special expertise or ability to perform it.* For example, a company that wishes to expand its business in the Japanese market may hire a new sales representative who can communicate fluently in Japanese. Japanese fluency is an essential function of the job.[5]

The first step in identifying the essential functions of the position is to identify the primary purpose of the job. Once that is done, determine the importance of each function in achieving this purpose. Consider several factors:



- The frequency with which the function is performed;
- The amount of time spent on the function;
- The consequences if the function is not performed.[6]

The actual verbiage for the essential functions of the job requires care and thought, following the guidelines listed below:

- Use action verbs (e.g., evaluates, collects, prepares, moves, communicates, etc.); do not use “assists” or “is responsible for”
- Specify work objectives/outputs.
- Reduce hyperbole and try to use sentences that answer “what” and “why” questions rather than “how.”

As long as essential functions are specific enough to identify, an organization may word them in a very detailed or more general manner. Essential functions should never include the following language, “Performs other duties as assigned.” If it is an essential function, it needs to be described.

To avoid exposure under the ADA, it is critical that the job description language focuses on the results and not the methods. While performing essential functions is fundamental, one particular manner of performance is often unnecessary, unless doing otherwise would create an undue hardship. It is often possible for employees to perform the same functions in different ways. For example, it is superfluous to include “answers the telephone *in a pleasant and friendly manner*”; “answers the telephone and directs callers to the appropriate party” is to the point. It is safely assumed that no organization wants to deter potential callers with an unpleasant demeanor.

Do not include language that is biased toward employees with disabilities. Some examples of unbiased language are as follows:

- “Communicates” rather than “talks” or “hears”
- “Moves” or “transports” rather than “carries”
- “Determines” or “identifies” rather than “sees”
- “Operates” rather than “feels”

#### **4. Non-Essential Duties**

Non-essential duties are somewhat significant duties that are performed occasionally. They do not affect the essence of the position. In many instances, a job may not have any non-essential duties.



## 5. Minimum Qualifications

Every job description should include the minimum qualifications for the job. List knowledge, skills and abilities (KSA's). In addition, education and experience are important to note. List any required or preferred certifications or professional designations.

It is imperative that the minimum qualifications support the essential requirements. Avoid inflated or arbitrary qualifications; rather, adhere to a listing of realistic and specific qualifications that are required of *all* employees in that position. Organizations may include preferences and substitutions (e.g., 4 years of professional experience or a bachelor's degree) in addition to requirements.

## 6. Working Conditions

Another essential element is a description of the physical environment in which the work is performed. This includes anything from a typical office environment to a warehouse with cement floors to an outdoor landscaping environment. Include any unusual conditions, such as hazards, loud noises, or extreme temperature.

## 7. Physical Demands

Include physical demands in the job description only if they are required of the essential functions. Again, use unbiased language as much as possible. Some tasks, however, require specific physical movement. If this is the case, note the frequency, intensity and/or duration of the movements to help establish the level of the work demand. It is also helpful to indicate the operational link to establish the importance to the job.

A physical demands description could read as follows: "Frequently moves and positions objects weighing up to 50 pounds when stocking warehouse."

## Additional Elements to Include in a Job Description

There are a number of other less critical elements that may be incorporated into a job description.

### 1. Reporting Relationships

This indicates the positions that report to this job and the position to which this job reports. This helps the reader see where the job fits within the organizational structure. It also helps employees identify a career ladder.



## 2. Disclaimer

A disclaimer is typically used to point out that the job description does not include every duty or responsibility that the employee may be asked to perform at some point in time. Some typical disclaimers are as follows:

- The information contained herein is not intended to be an all-inclusive list of the duties and responsibilities of the job, nor are they intended to be an all-inclusive list of the skills and abilities required to do the job.
- Management may, at its discretion, assign or reassign duties and responsibilities to this job at any time.”
- “The duties and responsibilities in this job description may be subject to change at any time due to reasonable accommodation or other reasons.”

## 3. Dates and Approvals

It is often helpful to include the date the job description was written/revised and who approved it. This helps insure that the most current description is in use, that line management approval was obtained, and Human Resources was included in the approval process.

### **Keep Your Job Descriptions Current**

Once the job description is written, approved, and put into use as appropriate, it is imperative to update the description regularly as it can serve an important role in employee lawsuits, charges or complaints. To ensure this happens, an employer is well advised to appoint one employee in charge of maintaining the job descriptions, to review them on a periodic basis, and update them as necessary. Ideally, review the descriptions on a bi-annual basis and update job descriptions whenever the responsibilities and activities of an existing position substantially change. More frequently review descriptions where job functions are constantly changing (e.g., due to technological or organization reasons).

### **In Summary**

An employer who allots the appropriate time, care, and resources to drafting and maintaining clear, thorough, well-written job descriptions will benefit substantially from both a business and legal perspective. Employers should not miss out on taking advantage of this simple, yet important, opportunity.



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[1] Environmental Protection Agency Regulations require job descriptions for jobs where employees handle or dispose of hazardous waster such as oil, antifreeze, transmission, fluid, auto parts clearer, paint thinner, etc. 40 CFR sec. 264.16.

[2] EEOC Technical Assistance Manual S 2.3(a)

[3] 29 U.S.C. 201 et seq.

[4] 42 U.S.C. §§ 12101 et seq.

[5] EEOC Technical Assistance Manual S 2.3(a)

[6] Id.