

Hello. It looks like you're using an ad blocker that may prevent our website from working properly. To receive the best experience possible, please make sure any blockers are switched off and refresh the page.

If you have any questions or need help you can email us

or each job can help avoid or at least help successfully defend some legal...

Richard D. Alaniz • Feb. 11, 2019



Is there any aspect of the employment relationship that is more mundane than a job description? There was a day when they were commonplace in virtually every

employment setting. They were used in the ubiquitous “Help Wanted” ads in the

Hello. It looks like you're using an ad blocker that may prevent our website from working properly. To receive the best experience possible, please make sure any blockers are switched off and refresh the page.

If you have any questions or need help you can email us

However, well-written job descriptions that clearly set out the “essential functions” of each job can help avoid or at least help successfully defend some legal claims, as well as contribute to the operational success of the company. They can obviously play a significant role in decisions regarding hiring, promotions, and evaluation of job performance.

Job Descriptions and the Americans with Disabilities Act

A well-written job description provides guidance for the interview questions used in the selection of the best candidate for hiring or promotion. The “essential job functions” serve as objective criteria for arriving at a decision. Job descriptions are used to monitor performance after the person is hired. They also provide the basis for determining whether a person with limitations due to a disability can be reasonably accommodated in that position as required under the Americans with Disabilities Act, as amended (ADAAA). A person who cannot perform the “essential functions” and where no reasonable accommodations is available, can be denied employment as an unqualified individual. Similarly, a well-drafted job description can serve to support employer decisions to not promote or to terminate that are challenged as discriminatory or unfair. Thus, job descriptions can be crucial tools in making decisions from recruiting on and through the many aspects of the employment relationship.

The Basics of Job Descriptions

The typical job description has four areas of primary focus: 1) A brief description or overview of the job; 2) A listing of job requirements such as experience needed, educational requirements and similar information; 3) A list of the “essential functions” or duties of the position, and 4) Job-related information such as hours, physical requirements and general working conditions, such as hot/cold environment. The essential functions are the job duties – the core elements of the job

at issue and by far, the most critical aspect of any job description. These are the

Hello. It looks like you're using an ad blocker that may prevent our website from working properly. To receive the best experience possible, please make sure any blockers are switched off and refresh the page.

If you have any questions or need help you can email us

agreed with employers that regular attendance is also an “essential function” of the job.

Some job descriptions also include nonessential functions. These are peripheral duties or functions that if removed would not change the fundamental aspects of the job. For example, a peripheral duty or function of a job could be assigned to another employee to perform as a reasonable accommodation without affecting how the essential functions of the job are performed. Similarly, a peripheral function could be completely eliminated without impacting the performance of the job.

Job Descriptions and Exemptions from Overtime

In addition to the critical role that the essential functions play in hiring, promotions, performance evaluations, as well as under the ADA, they also serve as the gatekeeper for supporting the “white collar” exemptions under the Fair Labor Standards Act (FLSA). Under the FLSA, executive, administrative, professional, and outside sales positions are exempt from the requirement that working beyond 40 hours in a workweek be paid at the overtime rate of time-and-one-half. In addition to the current requisite salary, \$23,660 per year except for outside sales, the specific job duties are the primary bases upon which the exemption is premised. The job description is the first line of defense when exempt status is challenged.

Those challenges frequently question whether persons classified exempt as “executive” or “administrative” are in fact performing non-exempt duties more often than permitted. While still relevant under some state wage and hour laws, the percentage of time spent on “exempt” and “non-exempt” duties is largely irrelevant. As long as the primary duty of a person exempt as “executive” is management of the employer or a recognized sub-division thereof, he/she may perform some non-exempt work.

There is no limit under federal law, but as noted, some state wage and hour laws

Hello. It looks like you're using an ad blocker that may prevent our website from working properly. To receive the best experience possible, please make sure any blockers are switched off and refresh the page.

If you have any questions or need help you can email us

Taking the time to update your job descriptions, or to create them if you have not already done so, will serve you well in making day-to-day workplace decisions. Equally important, they may be critical in defending a failure to accommodate claim under the ADAAA as well as a challenge to exempt status.

=====

Richard D. Alaniz is a partner at Alaniz Law & Associates, a labor and employment firm based in Houston. He has been at the forefront of labor and employment law for over forty years, including stints with the U.S. Department of Labor and the National Labor Relations Board. Rick is a prolific writer on labor and employment law and conducts frequent seminars to client companies and trade associations across the country. Questions about this article, or requests to subscribe to receive Rick's monthly articles, can be addressed to Rick at (281) 833-2200 or ralaniz@alaniz-law.com.

Payroll

CPA Practice Advisor is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE Sponsors.

© 2024 Firmworks, LLC. All rights reserved