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laws or regulations require employers to have written job descriptions.

Richard D. Alaniz • May. 18, 2021



Unlike common workplace policies such as time and a half pay for overtime or mandatory family and medical leave, which are legally mandated, no federal or state laws or regulations require employers to have written job descriptions. As a result, some employers have never taken the time to create job descriptions. Choosing not to develop job descriptions fails to recognize how critical they can be to numerous operational and legal workplace issues. Job descriptions can prove invaluable in a wide range of circumstances.

Accurate and up-to-date job descriptions are implicated even before the employment relationship begins, at the hiring stage. A well-written job description should guide

the employer in crafting effective interview questions designed to determine who

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functions” when no reasonable accommodation is available, as that applicant is not qualified for the job under the ADA. Likewise, an employer is not required to employ a current employee in job that the employee cannot fulfill the essential functions.

Job descriptions supply the list of objective criteria for a wide variety of decisions that must be made in the workplace. Job descriptions should provide the basis for employee performance evaluations. Performance evaluations should measure how effectively an employee completes the duties outlined in the job description and in particular, the essential duties. The pay rates applicable to a given job are normally based upon the skills and knowledge called for in the job description. The descriptions of these skills and knowledge should also play a central role in decisions to promote employees to more skilled and higher paying positions.

The typical job description has four primary areas of focus: (1) A brief description or overview of the job; (2) A list of the job requirements such as skills needed, level of experience, educational requirements, and similar information; (3) A list of the essential functions or core duties of the position; and (4) Job-related information such as hours of work required, physical requirements, and general working conditions (such as hot/cold work environment and indoors/outdoors or required travel). Thorough job descriptions also include “nonessential functions.”

These include any peripheral duties or functions, that if removed, would not fundamentally prevent the job from getting accomplished. For example, a peripheral duty or function could realistically be assigned to another employee without undercutting the core purpose for which the job exists to fulfill. Similarly, a peripheral function could be completely eliminated without substantially impacting the performance of the job.

In addition to the critical role that a well-written job description fulfills in hiring, promotions, performance evaluations, as well as compliance with the ADA, they also

serve as the primary justification an employer can rely on when classifying an

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two employees. In the case of the “administrative” exemption, the primary duties must involve the exercise of independent judgment with respect to significant business matters.

The primary duties of the “professional” must be work requiring advanced knowledge in a specialized field of science or learning or work involving invention, imagination, originality or talent in a recognized field of artistic or creative endeavor. “Computer professionals” must have as their primary duties the application of system analysis techniques and/or the design, development or modification of computer systems. “Outside sales” employees must have as their primary duty sales functions away from the employer’s place of business. To ensure that the job description fully supports the exempt status, it should include a range of the required job duties to demonstrate that the FLSA-imposed duties criteria are met by the position. Additionally, exempt status also requires that the person be paid a specified minimum salary.

The “essential functions” element of any job description sets out the core of the job at issue. In the case of an issue involving the propriety of an essential function, an employer’s determination of what is essential is given substantial deference. Sometimes overlooked in listing the essential functions is the ability to work more than 40 hours per week, even if it only arises occasionally. In addition, most courts have agreed with employers that have included “regular attendance” or some similar requirement in the essential functions of the job. However, it should be noted that the Equal Opportunity Commission, tasked with enforcing the ADA, takes the opposite position on regular attendance as an essential function.

One further factor to consider for inclusion in the essential functions is a brief description of the safety requirements applicable to the job in question. For example, circumstances can arise where an employee’s disability prevents him or her from

safely performing his or her job duties. In one recent case, the federal Fourth Circuit

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