

As an Employer, Good Job Descriptions Are Your First Line of Defense

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More and more liability cases are concerned with employment practices.

One reason is that there are so many laws that can be used as bases for an employment-practice liability claim. Some of those laws include the Civil Rights Act of 1964, the Fair Labor Standards Act, the Americans with Disabilities Act, the Family Medical Leave Act, the U.S. Equal Employment Opportunity Commission (EEOC) Rules and the Age Discrimination in Employment Act. There may be additional sections contained in your public entity's incorporating documents, in state laws and within workers' compensation statutes.

According to the EEOC, the mean direct payout from an entity for an EEOC claim is \$60,000 and, including indirect costs of the claim, can average out to \$100,000.

Good documentation of employment practices and actions have been known to reduce or eliminate liability exposure. One of the first forms of documentation, which needs to be accurate, periodically reviewed and updated, is a job description for every position.



A good job description assists with making job interview questions legal and helps find the right applicant for the position. The job description will help the interviewer and applicants truly understand the position and determine whether there is a good match of traits and qualities.

During evaluation and promotion time, good job descriptions make sure evaluations and promotions can stand on their own merit without including emotions or favoritism. They make evaluations less subjective and generate more accountability.

Job changes, layoffs and firings are other processes that benefit from job descriptions. Having good job descriptions will assist in the process by making the decisions clear-cut and evenhanded, and will help make sure that documented justification for any decision is available.

Good job descriptions also help with getting an injured employee back to work after a workers' compensation claim. When an employee is injured, all efforts should be made to get that individual back to work. Doctors will review job descriptions to see if the position's functions match with the injured employee's limitations. If not, the job description will help in determining what modifications can be made so that the employee can still fulfill the major functions of his or her position. If the employee's limitations are too great for his or her regular position, the decision to move the employee into a transitional duty position is now easily made because of the job description, taking emotion out of play. Here is an outline of headings or areas that all job descriptions should contain:

1. Purpose and Description

Explains why the job exists and briefly describes what the work entails.

2. Major/Essential Functions

These are the duties a person must be able to do in order to hold the position. (Example: If the person must drive in order to perform the job, he or she must be able to drive a vehicle legally.)

3. Minor/Other Functions

a. These are other duties that the position in the past has completed and are likely to be assigned again but are not the major or essential functions of the job. (Example: Driving of vehicles could be part of the position, but if the person cannot drive, accommodations can be made so that the person can still hold the position.)

b. This section also should list wording such as "and other duties as assigned." Once these "other duties" become common to the position, they should be listed in the major or minor duties.

4. Days, Hours and Environment Exposure of the Position

a. This should also include shift work, possible changes of regular hours or days, overtime and frequency and likelihood of and type of travel

b. Environment exposed could include items such as heat, cold, noise, outside, inside, office or vehicle.

5. Bona Fide Occupational Qualifications

a. Gender. (Example: A job description for a restroom attendant may need to be specific toward type of restroom.)

b. Age. (Example: Lifeguards may have to be 16 or older.)

c. Licenses. (Example: A delivery driver could be required to have a Commercial Drivers License.) You can also state that the person in the position has a certain timeframe to obtain the license.

d. Education. (Example: A law enforcement officer could be required to have a high school diploma.) You can also state that the person in the position has a certain timeframe to obtain the education.

e. Clearances. (Example: An electrical worker could need a security clearance to enter the power plant.) You can also state that the person in the position has a certain timeframe to obtain the clearance.

f. Certifications. (Example: The safety officer could be required to be a Certified Safety Professional.) You can also state that the person in the position has a certain timeframe to obtain the certification.

6. Background Check or Credit Check If Required

These should follow the public entity's policies and procedures and be reviewed by the public entity's legal counsel to confirm that they follow current laws.

7. Physical Requirements

a. The position should be reviewed to ensure that all likely physical requirements are listed. This can include visual acuity, or being able to hear at a certain level or lift a certain weight. Point out that reasonable accommodation can be made if they are known. (Example: A delivery driver may be required to sit for extended periods.)

b. Speak, read, write and comprehend (language) if it is required for the position.

8. Standard Goals for Position

These are the requirements for the position that are generally accepted. (Example: A driver could be required to drive 275 miles in five hours.)

9. Following Safety Program, Policies and Procedures. Which Should Also Be Noted in the Employee Handbook

Should list the potential hazards of the position. (Example: A cleaning person could be exposed to chemicals.)

The job descriptions should clearly note that the description can be changed at any time and that it does not constitute an employment contract. The job descriptions should be reviewed at least annual, or whenever any of the sections discussed above change relating to the position.

When there is a new hire and that person signs off on the job description, he or she should be asked if there are any Americans with Disabilities Act accommodations that the employee will need in order to fulfill the position as outlined in the job description.

Job descriptions are the keystone to other documentation, which helps make employment practices easier and keeps them in compliance with federal, state and local laws. From job descriptions come employee handbooks, job-safety, health analyses, manpower reports, evaluations and many more. Review your own job description; see if it includes all of the items listed above. If not, you have your starting point and the first job description to update.