How To Write Job Descriptions That Are Complete, Accurate, And Legally Sound

Besides their obvious purpose of identifying work to be performed, well-written job descriptions are integral in recruiting and interviewing prospective employees, rating job performance, classifying employees as exempt or non-exempt under the Fair Labor Standards Act (FLSA), meting out discipline, and making promotion and compensation decisions.

Plus, in light of recent changes to the Americans with Disabilities Act (ADA) and the Family and Medical Leave Act (FMLA), accurate job descriptions are more important than ever.

**Added Importance Because Of The ADA Amendments Act Of 2008**

The ADA Amendments Act of 2008 (ADAAA) restored the protections of the original ADA that had been eroded by various U.S. Supreme Court decisions. As a result, employers are going to have to explore more accommodations for more impairments than ever before.

The duty to accommodate, however, is contingent upon the accommodation being reasonable. An accommodation is reasonable if it doesn't create an undue hardship on the organization, doesn't cause the employee pose a health or safety threat, or helps the employee to successfully perform their essential job functions at the same level as employees without disabilities.

Job descriptions are the ideal starting point for performing an individualized assessment of an individual's ability to perform essential functions, with or without accommodation. Absent a firm grasp of the essential job duties, it's impossible to engage in an effective interactive accommodation dialogue with the employee.

**Added Importance Because Of Final FMLA Regulations**

Under the final regs, if an employer will require that fitness-for-duty certification address an employee's ability to perform essential job functions, the employer must indicate this in the designation notice and must include with the notice a list of the essential job functions.
If the employer's fitness-for-duty certification form does not provide information on the employee's essential job functions, then the health care provider is allowed to assess the employee's ability to perform their job based on the employee's own description of their job functions. Since employees' perceptions of what duties are essential might not match reality, having health care providers take employees at their word could prove problematic.

**Heads up:** Any changes made to a job description while an employee is out on FMLA leave should be minimal. Otherwise, you could violate the law's requirement to reinstate the employee to the same or an equivalent position. (Csicsmann v. Sallada, 4th Cir., No. 05-2087, 2006)

**A Step-By-Step Breakdown Of The Basics**

The number of ways in which to craft job descriptions are as varied as the positions for which they're written. There are, however, a series of universal steps every employer can take to write a solid job description.

**Step #1: Identify A Title And Purpose**

Start by selecting a job title that is self-evident, reflective of rank or worth, free of technical jargon, and, as a rule, simple and recognizable. Then, succinctly state the aim of the position. What are the particular contributions of the job toward the accomplishment of the company's overall objectives?

**Step #2: Collaborate With Managers And Employees**

The best sources of information for writing an accurate job description are those who perform the jobs and those who manage them. Writing job descriptions is a collaborative effort — employees and managers should be included in the process, but they should not be left to do it on their own. Use task-centered questionnaires and checklists to find out what skills, physical and mental abilities, level of education, etc., are necessary for performing the job.

You can also verify vital job skills by observing employees at work. Observation works especially well for jobs that involve manual labor.
Step #3: Detail Qualifications

- List only those skills that are actually used on the job; including a laundry list of nice-to-have (as compared to need-to-have) skills may lead to discrimination woes if a lack of these skills takes a minority job applicant out of the running, for example.

- Identify how much experience is essential, and be prepared to back up your assertion. Keep in mind that experience can be gained in a number of different ways.

- Name must-have degrees and/or licenses.

- Be specific. For example, instead of using "computer literate" as a necessary job qualification, name the computer applications the individual needs to know: "must be proficient with Microsoft Word and Excel; some familiarity with Microsoft Access is preferred."

Step #4: Describe The Setting

Identify the physical conditions of the work environment (e.g., hot, cold, noisy), as well as the social conditions of the job (e.g., work alone or with the public). Also, note if the use of specific equipment is required.

Step #5: Name Essential Duties

Organization and word choice are key when it comes to writing the essential functions section of a job description, so be sure to:

- arrange duties and responsibilities sequentially by listing the more predominant duties before those of lesser importance;

- differentiate between essential and non-essential duties, especially in light of the ADA;

- provide detailed explanations for words with multiple meanings;

- avoid abbreviations, technical terms, and company-specific jargon;

- use the present tense and begin each statement with an action verb; and
• use quantitative terms (e.g., "daily," "weekly," "monthly") where possible.

Here are some specific items you may wish to address in this section.

1. **Demands of the job.** Include physical demands, levels of responsibility, and interpersonal skill levels.

   **Heads up #1:** Be careful not to specify a specific method for performing duties. A job description should be an accurate reflection of what must be performed, as opposed to how it should be performed. Being too specific on how to perform an essential task can lead to problems with ADA accommodation requests, for example, if an employee is able to accomplish a task but just not in the manner specified.

   **Heads up #2:** A common assumption is that if the job doesn't involve heavy lifting or other strenuous activity, physical requirements are always non-essential. The reality, however, is that plenty of sedentary jobs demand employees possess certain physical capabilities, such as the ability to work in confined spaces, in excessively noisy environments, in extreme temperatures, etc.

2. **Frequency of job tasks.** Consider the time spent performing each task. For tasks performed infrequently, determine their importance. There are plenty of essential functions that are performed on an infrequent basis or that don't consume large chunks of work hours.

   **Case in point:** A corrections officer had a stroke. Upon reading the officer's job description, her doctor concluded she was unable to return to those duties. Because of this, the Hawaii Department of Public Safety fired her. She filed a discrimination lawsuit, claiming the real reason she was let go was because she was in her 60s, an African American, and had a disability. To support her claim, the officer argued that her actual job didn't require her to perform all, or even most, of the physical requirements included in her job description. Her employer, however, convinced the court that in an emergency it would be essential for all employees to be able to perform those physical requirements, and safety would be compromised if a single employee couldn't perform the tasks. (Suzuki v. State of Hawaii, HI App. Ct., No. 27180, 2008)
3. **Scheduling particulars.** Note the hours, shift, and other scheduling details of the job.

4. **Exclusivity of job tasks.** How many other employees are able to perform the function? Can the function be distributed among other employees?

5. **Reporting relationships.** Indicate to whom the employee must report and who reports to the employee.

**Step #6: Outline Performance Expectations**

Identify the qualitative and quantitative expectations of each function. *Added bonus:* These expectations will come in handy when it's time to review an employee's performance.

**Step #7: Determine Exempt Or Non-Exempt Status**

To qualify for exemption from minimum wage and overtime pay under the FLSA, employees must meet certain tests regarding their job duties and be paid on a salary basis at not less than $455 per week. *Important:* Job titles do not determine exempt status. In order for a executive, administrative, professional, computer employee, or outside sales exemption to apply, an employee’s specific job duties and salary must meet certain test requirements as laid out by [U.S. Department of Labor regulations](https://www.dol.gov).  

**Heads up:** FLSA exemptions only apply to "white collar" employees who meet applicable salary and duties tests. Exemptions do not apply to manual laborers or other "blue collar" workers who perform work involving repetitive operations with their hands, physical skill, and energy. FLSA-covered, non-management employees in production, maintenance, construction, and similar occupations, such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers, and laborers, are not exempt under the FLSA regulations no matter how highly paid they might be.

AHI's [Job Descriptions & Interview Questions Sourcebook](https://www.ahidescriptions.com) guides you in making the correct decision about whether each of the 200+ positions included are exempt or non-exempt.
**Step #8: Keep It Open-Ended**

Contrary to what employees may think, there is nothing illegal about assigning them tasks that are not listed in their job descriptions. To prevent your managers from ever having to hear a chorus of "it's not my job," communicate to employees that the list of duties in the job description is not exhaustive.

You can keep it short and sweet and include a phrase like: "other duties assigned."

Or you can go a step further and state: "This job description in no way implies that the duties listed here are the only ones the employee can be required to perform. The employee is expected to perform other tasks as dictated by their manager or supervisor."

**Step #9: Keep It Current**

Review job descriptions annually to ensure they reflect any changes in the position, department, or company as a whole.