

ONBOARDING, JOB DESCRIPTIONS & PERFORMANCE REVIEWS

James F. Devine
Cipriani & Werner
March 4th, 2020



BENEFITS OF A WELL-WRITTEN JOB DESCRIPTION



- Clarity of Job Duties and Responsibilities
- Recruiting and Hiring
- Setting and Reviewing Compensation
- Managing Performance
- Wage and Hour
- Medical Leave

CLARITY OF JOB DUTIES AND RESPONSIBILITIES

- By specifying the duties and responsibilities of each position, job descriptions help clarify:
 - The nature, type, and classification of each job.
 - The qualifications, knowledge, and skills required for a particular job.
 - The employer's expectations about the work performed by employees in specific positions.
 - Reporting relationships.
- Accurate job descriptions also provide clarity for employers and employees because they communicate to all parties what a particular job requires.

RECRUITING AND HIRING

- A written job description is useful in preparing an accurate job posting. By specifying the required skills and qualifications, human resources personnel can accurately describe an available position and identify qualified candidates. Job seekers are also better able to determine if they qualify for a posted position.

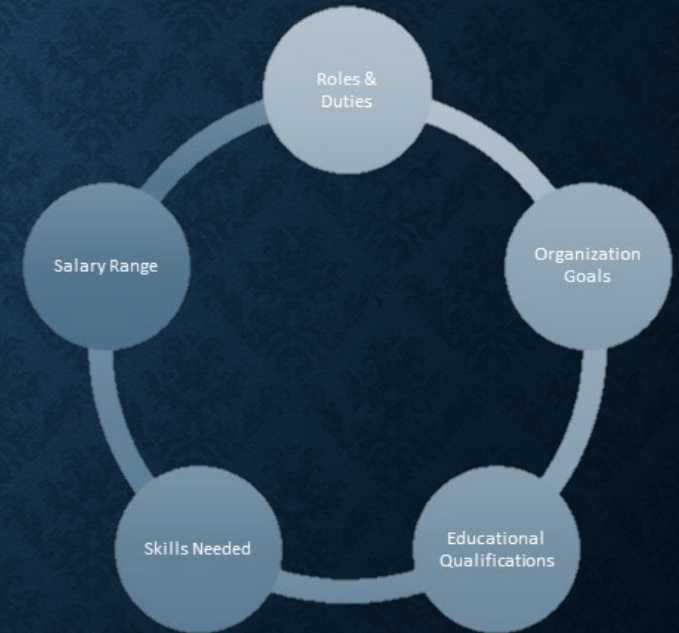


SETTING AND REVIEWING COMPENSATION

- Identifying job titles and position levels and describing the corresponding duties, responsibilities, and qualifications help employers evaluate compensation levels and ensure that compensation is:
 - Comparable to similar positions in the industry.
 - Consistent across various positions within the company.
 - Adjusted appropriately if the scope of duties and responsibilities for a particular position changes.
- A regular review of written job descriptions not only ensures that job duties and responsibilities are accurately described but also that associated compensation remains competitive as the nature of the position changes.

MANAGING PERFORMANCE

- Written job descriptions communicate to employees what their duties and responsibilities are, providing the basis for **employee performance reviews, goal setting, development plans, bonuses, and salary increases**. If an employee is not meeting the requirements of the job, the written job description can provide the standard for measuring performance and provide support for a decision to discipline or terminate an employee for non-performance.

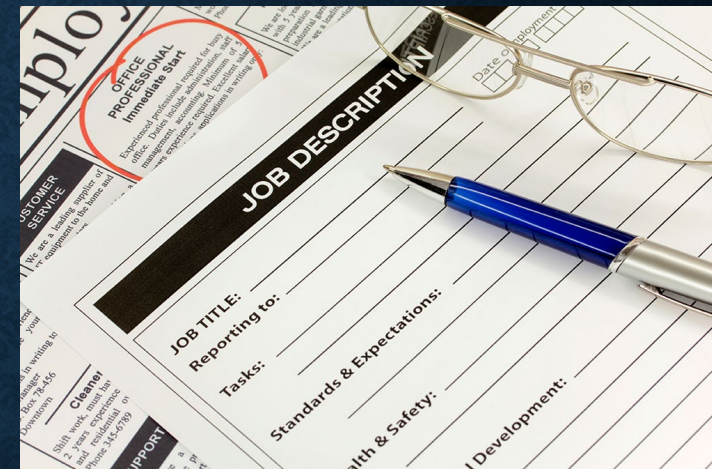


ADDRESS OF MEDICAL LEAVE

- Job descriptions may also assist employers requesting fitness-for-duty certifications in connection with employees returning from medical leave.
- For example, under the **Family and Medical Leave Act** (FMLA), employers that will require a fitness-for-duty certification addressing the employee's fitness to perform the essential functions of the job when they return to work must provide the employee with a list of the essential functions in advance, with the notice designating the leave as FMLA leave (29 C.F.R. § 825.300(d)). The employee then provides the list of essential functions to the physician responsible for completing the fitness-for-duty certification.
- A carefully drafted and current job description ensures that the certifying physician has an accurate understanding of the job's essential functions. Job descriptions also avoid having to generate a list of essential functions for each fitness-for-duty certification request and the potential inconsistency associated with describing the same position on multiple separate occasions.

ELEMENTS OF A JOB DESCRIPTION

- Job descriptions typically include the following elements:
 - **Job title.** The document may also specify a job code applicable to the employer's internal operations, the pay grade, and to whom the position reports.
 - **Job classification.** A job description often specifies whether a job is:
 - exempt or nonexempt from minimum wage and overtime pay requirements under federal and applicable state or local laws;
 - full- or part-time; or
 - a temporary, seasonal, contract, or regular position.
 - **Duties.** A job description should describe the duties and responsibilities of the position.



ESSENTIAL FUNCTIONS OF THE JOB AND ACCOMMODATION ISSUES

- The essential functions of a job are the "**fundamental job duties of the employment position the individual with a disability holds or desires**" (29 C.F.R. § 1630.2(n)(1)). Marginal duties are not considered essential functions. A job function may be considered essential for many reasons, including:
 - The reason the position exists is to perform that function.
 - The number of other employees available to perform the function or among whom the performance of the function can be shared.
 - The function may be highly specialized so that the individual is hired for their expertise or ability to perform the particular function.

ESSENTIAL FUNCTIONS OF THE JOB AND ACCOMMODATION ISSUES

- Employers should note, however, that while consideration is given to the employer's judgment on what job functions are essential, the "deference is not absolute" (*E.E.O.C. v. LHC Grp., Inc.*, 773 F.3d 688, 697-98 (5th Cir. 2014)). In *LHC Group*, the job descriptions for both field nurse and team leader stated that "more than 50% of daily assignments" required traveling by car or public transportation to visit patients. Addressing claims of disability discrimination and failure to accommodate, the court concluded that driving was an essential function of the field nurse job. The court found that a genuine dispute of material fact existed, however, regarding whether driving was an essential function of the team leader position because the evidence suggested that team leaders drove far less frequently than what was stated the job description. (773 F.3d at 697-699; see also *Samson v. Fed. Exp. Corp.*, 746 F.3d 1196, 1201 (11th Cir. 2014)).

ESSENTIAL FUNCTIONS OF THE JOB AND ACCOMMODATION ISSUES



- Additionally, if an employer prepares a written description **before** advertising or interviewing applicants for the job, the job description is considered evidence of the essential functions of the job (42 U.S.C. § 12111(8))

ELEMENTS OF A JOB DESCRIPTION

- **Qualifications.** A job description should also include the required qualifications, for example:
 - education level;
 - any professional or other required licenses or certifications;
 - prior work experience in a particular field or type of position;
 - skills, such as proficiency in computer software or word processing systems; or
 - traits, such as attention to detail or the ability to manage deadlines

ELEMENTS OF A JOB DESCRIPTION

- **Physical requirements.** The job description can specify the physical requirements of the job, such as standing, sitting, or lifting requirements, and the physical work environment, such as a workplace with dust or fumes.
- **Additional information.** The job description can include other information, such as location, travel requirements, and working hours



WORKERS' COMPENSATION AND RETURN TO WORK

- Best Method to avoid cost of injury – Safety: Avoid the Injury
- Second Best – Get the employee Back To Work
 - Time of injury position with or without accommodation
 - Job Description
 - Modified Position
 - Alternate Job Description
 - Labor Market Survey
 - New Job Description



WORKERS' COMPENSATION AND RETURN TO WORK

- Job Description
 - Requirements Include
 - Shift
 - Rate
 - Supervisor
 - Date
 - Description*
 - Questions
 - Medical Release
- Notice of Ability to Return to Work
- Interim Documentation
 - Notification of Modification
 - Supplemental Agreement
 - Agreement by the Parties

ESSENTIAL FUNCTIONS OF THE JOB AND ACCOMMODATION ISSUES



- The **Americans with Disabilities Act** (ADA) requires covered employers to provide qualified individuals with a **disability** with a **reasonable accommodation** unless doing so poses an **undue hardship** (42 U.S.C. §§ 12101 to 12213).
- To be a qualified individual under the ADA, an employee or applicant must:
 - Possess the skills, experience, education, and other job-related requirements necessary for the position.
 - Be able to perform the essential functions of the job with or without a reasonable accommodation.
 - (29 C.F.R. § 1630.2(m).)

ESSENTIAL FUNCTIONS OF THE JOB AND ACCOMMODATION ISSUES

- The ADA does not require employers to maintain written job descriptions, but having job descriptions that identify the essential functions for each position can be a significant benefit to employers. For example, a written job description that includes the position's essential functions can help employers:
 - Identify whether an applicant can perform the essential functions of a position.
 - Engage in the interactive process to determine if a reasonable accommodation is possible.
 - Defend against a disability discrimination claim.



ADA AND ACCOMMODATION CONCERNS

- Employer does not have to create a New Position
- Qualifications
- Past Precedent
- Documentation
- Always Remember the ADA!

FMLA AND JOB REFURBISHMENT

- Document from the Beginning
 - Policy
 - Letters
 - Expiration/Exhaustion
- Job Description is imperative for appropriate medical/professional review
- Competing Medical
 - Must bring them back and use ADA for evaluation
- Health Benefits

TERMINATION DETERMINATION



BEST PRACTICES

- **Analyze the job.** Gather information about the exact duties and responsibilities performed by employees in each position. This can be accomplished by, for example:
 - observing employees as they perform their jobs; or
 - interviewing employees and their supervisors.

BEST PRACTICES

- **Describe the job, including essential functions of the job and other relevant details.**
- the job title and whether the position is exempt or nonexempt as well as the salary grade or pay level;
- the type of position, such as full- or part-time, temporary, or remote;
- the reporting structure;
- a summary of the position, such as its key or primary objective;
- the job duties and responsibilities, including essential functions;
- preferred and required competencies, knowledge, and skills, including any job-related licenses or certifications;
- preferred and required education and experience;
- whether the job requires travel, and if so, where and how much;
- physical demands of the job, including bending, lifting, and standing requirements;
- the work environment, such as a warehouse setting or a workplace with dust or fumes; and
- the date when the job description was drafted or last revised

BEST PRACTICES

- **Choose appropriate words and phrases.**
- Job Descriptions must be accurate.
 - Describe duties and responsibilities using the essential functions of the position and any applicable exemption as a guide.
 - Use active words and phrases, such as "evaluate" or "analyze" instead of simply "review."
 - Avoid language that is vague or that diminishes the importance of the role.



QUESTIONS??

James F. Devine, Esquire

Cipriani & Werner, P.C.

45 East Orange Street

Lancaster, PA 17602

Email: JFDevine@c-wlaw.com

Main Office: (717) 390-3020

Direct Dial: (717) 735-0325