



## Do Your Job Descriptions Still Fit?

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Almost everyone has clothes in their closet that no longer fit. Admit it; things change, whether it's the fashion or you. In fact, some of those clothes probably never really fit, despite your alterations and efforts. Maybe you thought you would "grow" into them. Or maybe you thought you looked good enough. No problem.

Now picture your company's job descriptions. Do they still fit today? Did they ever really fit? Maybe the company got them off the rack and added an employee's name without regard to whether the job description actually "described" the job expected to be performed. Or maybe the job description was accurate when created but, as the job changed, the written description of the job did not. No matter how it happened, a bad fit is a bad fit. In the case of job descriptions, a bad fit is probably more serious than a fashion mistake.

### **Is It Even Needed?**

Why have job descriptions in the first place? What is their purpose? Generally, a job description sets forth the job duties in a general way and serves as the company's "official" job requirements. It is a menu of sorts. The problem is that many job descriptions don't describe the job presently being performed by an employee (if they ever did). Regardless of how the actual job duties and the job description parted ways, whenever a controversy arises the job duties performed will control. A job description rarely helps in a controversy and can often make matters worse.

So, why is it important that the description and the job match? Consider the Americans with Disabilities Act (ADA). The ADA protects employees and applicants who can perform *essential job functions* with or without a reasonable accommodation. Often, the issue in an ADA case is determining what job duties are "essential." Employers who use job descriptions have the opportunity to set forth those essential job functions in writing before a controversy arises, and most job descriptions purport to do so. But for the job description to be of value it must accurately describe or list those essential job functions. Often they do not.

Let's say that Maria applies for a position that has a lifting restriction of 20 lbs. The job she seeks has a written description which clearly states that the ability to lift 25 lbs is an essential job function. Under these circumstances, the employer can safely deny the applicant the position, right? Not necessarily. What if the lifting restriction was left over from the Middle Ages and today no one in that position actually is required to lift 25 lbs due to new equipment? What if all those persons in the job would testify that they never lift more than 10 lbs? Based on these facts, could you lawfully deny employment to Maria on this basis without violating the ADA?

Conversely, what if the job as it currently exists has a 25 lb lifting requirement but your written job description makes no mention of that requirement? Should you deny Maria employment based on her inability to lift 25 lbs under these facts? Maybe you can, with the knowledge you have to prove later that the requirement really existed and that your job description simply was outdated. In both scenarios, the job description potentially can hurt the employer.

The same concern exists under wage and hour law (the Fair Labor Standards Act, or FLSA). Many employers determine exempt versus non-exempt status based on a job description. The danger in doing this is that, much like essential job functions, the primary job duty described in the job description may not be the job actually being performed by the person in the job position. If faced with a challenge as to exempt status, the job description likely will be irrelevant if the employee shows that his or her primary job duties are not as stated on the job description and those actually performed do not allow the employer to lawfully classify the position as exempt. Remember, when claiming an exemption under the FLSA (and typically under many state wage and hour laws), the employer has the burden of establishing exempt status. Exempt status is not determined by job descriptions any more than it is determined by job title.

### **Our Advice**

What should you do? Review your job descriptions. Do they still fit? Do they actually and accurately describe the job performed? To make this determination, solicit input from the supervisors, and the employees themselves, to ensure that the job description captures the actual job duties performed. If not, change the job duties or the job description. If the job description changes again, modify the job description along with it.

At a minimum, consider reviewing job descriptions on a regular basis to ensure the right fit.

Additionally, ensure that the job description actually includes all essential job functions, including the often overlooked "mental" requirements. If your company considers attendance an essential job function, which should be obvious but is not to some, include that in the job description. Likewise, if the ability to understand and follow instructions and the ability to concentrate are considered essential to job performance, those traits should be included. And if the ability to get along with others or to be part of a team is considered essential, list those qualifications as well.

While the value of job descriptions may be debated, there is no debate that a bad job description likely has negative value. So, go through your "closet" and look for those job descriptions that no longer "fit." With a few alterations, you should be looking good.

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