

Documenting Job Descriptions & Essential Functions

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Top 10 Job Description Mistakes

1. Assuming written job descriptions are “more trouble than they are worth”
2. Not including “all the right stuff”
3. Taking short cuts in the process
4. The most “essential” mistake – not including Essential Job Functions
5. Painting a vague picture – the pitfalls of ambiguity and embellishing

Top 10 Job Description Mistakes

6. Confusing physical demands with Essential Functions
7. Starting with the Qualifications
8. Not using the job descriptions in the “Interactive Process”
9. Relying on the job descriptions ONLY in the “Interactive Process”
10. Not keeping them current

#1: Not having them

Assuming that having and maintaining written job descriptions is more trouble than it is worth



Why bother?

- Time consuming
- Ongoing
- Collective bargaining issues



Pro's outweigh Con's

■ Uses:

- ☑ Recruiting / hiring
- ☑ Training
- ☑ Performance critique
- ☑ Compensation
- ☑ Job accommodations
- ☑ Exempt / Non-exempt classification

Legal issues



- EEOC strategic plan for 2012 – 2016
 - Nationwide priority to eliminate barriers in recruiting and hiring
 - Clear message: Make sure your policies, practices and TOOLS used in recruitment and hiring are in compliance
 - Job description's role: "Can you perform the essential job functions with or without reasonable accommodations?"

EEOC's position

- From informal discussion letter:

“Job descriptions *properly prepared* can support the goal eradicating unlawful employment discrimination”



California & Federal Disability Law

- Employers must consider reasonable accommodations to enable otherwise qualified individuals with disabilities to perform the ***essential job functions***.
- Not required to remove essential job functions as an accommodation.
- Must be ***qualified*** individual...

EEOC v. Woodward Governor

- Consent decree settling 2 class action suits
- Mandated that employer hire a consultant to perform an *analysis* of jobs at issue and develop written job descriptions based on that analysis

EEOC's position

- “The job analysis...should position (the employer) to make future job assignment and compensation decisions based on job-related, non-discriminatory criteria and go a long way in assuring a discrimination-free environment”

EEOC v. SuperValu

- Consent decree required the employer to hire a consultant to ensure job descriptions were put in place that ***accurately described*** demands and requirements of the positions.

#2: Not including all the “right stuff”

To serve all of the purposes effectively,
the descriptions must include the proper
categories and content.



What to include?

- Job title
- General job summary
- Job characteristics
- Organizational relationships
- Essential Functions
- Job Qualifications
- Job demands



#3: Short-cuts in the process

If you want to rely on the job descriptions to help you through employment actions, then you need to have a detailed, analytical process to back up the documentation.

The Keys:

Process & Precision

■ PROCESS

- ANALYTICAL
- Thorough and accurate
- Defendable
- Cannot be “words on paper” – must conduct the analysis to support the documentation



Who is writing them?

■ Your role

- NOT a note-taker
- Reporter – do your research, find the best sources
- Analyst – understand the information fully
- Interpreter – convey that in a meaningful way



The Process

■ Homework

- What do you already have?
 - Existing descriptions
 - Postings
 - Evaluations

■ Research

- Other organizations
- O*Net (www.ONETonline.org)
- Industry groups



The Process

- Prepare for interviews
 - The start of the analytical piece
 - What seems unclear?
 - What is not consistent?
 - Where are the gaps?
- Checklists
 - Essential functions



Interviews – the employer

- The employer has a right to establish the Essential Job Functions
 - Why does this job exist in our organization?
 - What operation / business needs are met?
- Supervisor or someone FAMILIAR with the job

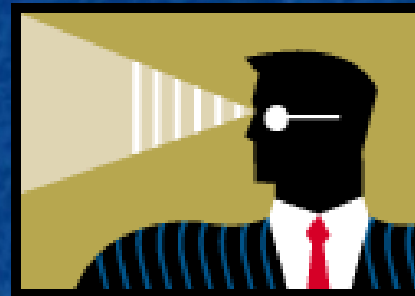


Interviews – the incumbent

- ** Focus on the JOB not the individual
- Incumbent = reality check (and defensible process)
- Incumbent – most qualified, most experienced, except....
- Multiple sources when possible
- Questionnaires and job logs

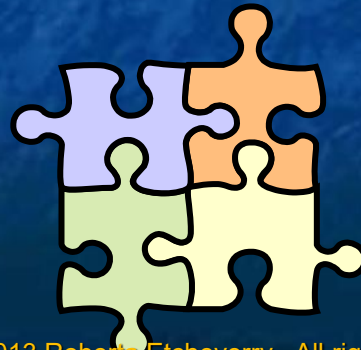
Observations

- More analytical work
 - Does what you see match what you have been told?
 - Variations in the job
 - Anything missed?
- Record the job demands – how is the job customarily performed?



Pulling it all together

- Look for any unresolved issues
- Can you fully explain what the document describes?
- Review by employer, incumbent
- Schedule for distribution and review



#4: The most “Essential” mistake

The “Essential Functions” of the job are the “backbone” of the document. You must be clear on how to know what is/is not essential when developing them and when considering accommodations.

Essential Functions

- How to determine?
 - Reason job exists
 - Removing would fundamentally change job
 - Limited number performing this function
 - Specific expertise
 - Time spent / consequences of not performing
 - Business / operational / organizational needs

#5: Painting a vague picture

The job description document should paint the clearest picture possible of the work being performed.

Beware the pitfalls of ambiguity and embellishing !!



The Keys:

Process & Precision

- Precision in language used
 - Essential functions, qualifications and job demands all link to
 - Operational needs
 - Job related and consistent with business necessity
 - Do not overstate the work being performed
 - Be specific and clear in your language

“Plain English”

- “Perform protein assays and SDS-PAGE electrophoresis.”



OR

- “Conducts research to develop new and improved chemical manufacturing processes.”

Be the interpreter

- If the language in existing descriptions or in your interviews is not clear to you – question further
- Should make sense to those OUTSIDE your organization as well



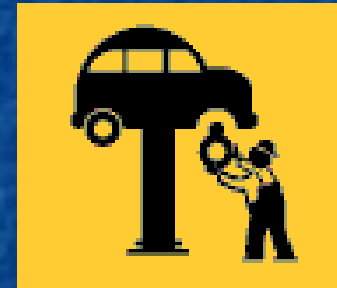
#6: Confusing Physical Demands with Essential Functions

It is important to be clear on the separation of “what is being accomplished” vs. “HOW that is being accomplished”



Job Demands

- How are the essential functions customarily performed?
 - What physical demands?
 - What mental demands?
 - What job environment?



Non-discriminatory language

- Describes WHAT being performed, not HOW it is performed
 - Ex: “Must lift 50 pounds” vs. “Moves boxes of training materials from storage room to training center to prepare for trainings”
- ACTION – ITEM – OUTCOME format

#7: Starting with the Qualifications

Always start with the Essential Functions of the job description and build all other information around that.



Job Qualifications

- Function-by-function critique:
 - What capabilities or knowledge does one need to possess to perform THIS function?
 - Build a comprehensive list from there
- See O*NET (www.ONETonline.org)
- Job-related and consistent with business necessity

#8: Not using job descriptions in the “Interactive Process”

The Interactive Process starts with a comparison of the employee's limitations and the essential job functions.



Reasonable Accommodations

- Requirement for “Interactive Process”
- Can the employee perform the essential functions of the job with or without reasonable accommodation?
- No need to remove essential functions
- Compare job demands and limitations
- Is the employee qualified to perform essential functions?

#9: Relying on job descriptions EXCLUSIVELY in the Interactive Process

BUT, the interactive is also a case-by-case analysis of the individual circumstances. Do not forget a “reality check” in the process.

Review of the description at the start of the process

- Be sure to RESEARCH and DOCUMENT any claims that the description is not accurate for this individual
- Make your decisions based on REALITY
- Reality always “trumps” words on paper

#10: Not keeping them current

The descriptions will only assist with employment actions over time if you commit to keeping them current.



Keeping them Current

- Organizational changes
- Downsize / growth
- Change in location
- Regularly to keep them accurate and useful
 - Performance evaluation ideal

Questions?

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