



## Should You Have Job Descriptions? (Hint: Yes)

Insights

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No state or federal law “requires” job descriptions. But job descriptions can be helpful tools for both practical and legal reasons. Here are some of the most important.

### **As A Useful Communication Tool**

Aside from any *legal* reasons to have job descriptions, practical reasons weigh strongly in favor of having them. For example, job descriptions can be useful communication tools to tell employees exactly what tasks you expect them to perform. Job descriptions may also address quality or quantity of performance standards, or even work rules that apply to a particular job. Without such clear communications, employees may not perform to your expectations.

### **To Help Identify The Right Employees For A Job**

Job descriptions can help identify particular skills or abilities that are necessary for a position or the environmental pressures that apply to the position. A good job description tells the applicant what the position may involve or require. After reading the job description, some applicants may decide that they are not a good fit for the position or are not interested in it. If an applicant withdraws his or her application, then a prospective employer cannot be held liable for any “adverse action” under any applicable laws.

### **Job Descriptions Can Help In The Interactive Process**

Some state or federal laws require reasonable accommodations for qualified individuals with disabilities. Job descriptions can help with the interactive process that such laws require. A job description serves as a starting point for what the employer believes to be the essential job duties. The applicant or employee then must identify which of the listed duties he or she cannot perform.

Once those duties are identified, the employer and individual with a disability can begin an interactive dialogue about what accommodations may help the individual to perform those duties without being an undue hardship on the employer or without creating a direct threat to the individual or others. A job description can also be helpful in soliciting the advice of professionals such as physicians, chiropractors, counselors or rehabilitation therapists about whether the individual can actually perform a particular job.

### **To Describe Legitimate Minimum Qualifications**

If a job requires a particular certification, such as a Commercial Drivers License, a particular

degree, or professional designation, list it in a job description. Similarly, if a negative drug test is required before starting or continuing work, that should be stated in the job description.

Other objective, minimum qualifications can be listed as well, including such basics as the need for good attendance and the ability to work well with others. Then, if a person seeks a position and does not possess the required certification or qualifications, you have a legitimate, nondiscriminatory reason for not placing the person in the job.

### **To Help Justify An Employee's Exempt Status**

Job descriptions will *not*, by themselves, determine whether a person should be exempt or nonexempt under applicable wage and hours laws. A job description must first *accurately* reflect the duties of a particular position. In addition, other elements of the applicable exemptions must also be present with respect to each individual worker to qualify as exempt.

But if you claim a person is exempt from minimum wage, timekeeping, and overtime requirements under the “executive” exemption to the Fair Labor Standards Act, the job description should state that the employee manages a “recognized department or subdivision” of the company and regularly supervises at least two or more full-time equivalent employees every week. Other managerial duties should also be referenced in the job description.

Similarly, for those employees that you are attempting to qualify as exempt under the “administrative” exemption, the job description should state that the employee “regularly exercises independent judgment and discretion about matters of significance” or words to that effect. Again, describing duties that involve such independent judgment and discretion, such as “negotiates” or “decides,” would also be helpful.

### **Conclusion**

This brief article outlines only a few of the legal and practical reasons that employers should have job descriptions. If you do not have accurate and up-to-date job descriptions in place for all of your employees, you should get them as soon as practical.

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