

FP WEEKLY CHECKLIST: DO YOUR JOB DESCRIPTIONS NEED AN UPDATE FOR 2023?

Insights
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Each week, FP Weekly members receive a practical and cutting-edge checklist of issues to consider, action steps to take, and goals to accomplish to ensure you remain on the top of your game when it comes to workplace relations and employment law compliance. This week we provide you a checklist of items to consider when updating your job descriptions – which can be the cornerstone of an effective compliance program and help you minimize litigation risks. There's no better time to take a fresh look than the start of the new year.

Why Are Up-to-Date Job Descriptions So Important?

Employers may overlook the importance of maintaining accurate and current job descriptions. After all, with so many other organizational goals and objectives, who has time to review potentially dozens of employee records (or even more)? Employees know what their job duties are, right? Maybe.

Job duties change over time or shift from one position to another during both formal and informal reorganizations, and the skills and experience required for positions evolve. For example, many positions that were once performed full-time in an office might now be partially or entirely performed remotely. Additionally, many employers have moved away from the requirement of a college degree for certain positions — so that might need to be updated, too. Do your job descriptions reflect these types of changes?

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Job descriptions can be a cornerstone of performance evaluations and improvement plans. They should reflect the responsibilities, duties, and roles that employees are expected to perform in an organization. It is helpful to be able to point to and rely on the responsibilities and duties identified in a job description when administering performance reviews.

This is also true when an employee's performance falls below the employer's well-stated standards in the job description. A detailed and clearly communicated job description can help eliminate any surprise to an employee at evaluation time – or during disciplinary meetings.

Which Laws Should You Keep in Mind?

Job descriptions can be used for various practical and legal reasons, too. Out-of-date, vague, and inaccurate job descriptions may not only be useless but can also open an employer up to legal liability — which makes it essential that you review your job descriptions with the following laws and internal procedures in mind:

- **Fair Labor Standards Act (FLSA):** Job descriptions can support or contradict an employer's classification of an employee as exempt or nonexempt. Although job descriptions alone cannot prove that an employee was properly classified as exempt, a well-crafted job description can be helpful evidence to demonstrate the exempt nature of a position. For example, to support classification under the FLSA's executive exemption, employers should ensure that the job description accurately lists relevant job duties, such as whether the employee interviews, selects, and train employees; directs the work of employees; disciplines employees; determines techniques to be used; or plans and controls the budget (among other exempt duties).
- **Americans with Disabilities Act (ADA):** Job descriptions that detail the essential functions of a particular job aid an employer's analysis of whether an employee can perform the essential functions of their job with or without a reasonable accommodation. Employers will often include a copy with a medical questionnaire and ask a health care provider to review and consider it in determining what, if any, reasonable accommodation the employee may need. Without an accurate and current job description, a healthcare provider's answers may not be correctly

formulated, and the reasonable accommodation analysis may be faulty – exposing employers to liability.

- **Family Medical Leave Act (FMLA):** In certain circumstances, employers may require a fitness-for-duty certification from an employee's health care provider before they can return to work following a leave of absence. The FMLA requires an employer to include a job description and/or list of essential functions of the employee's position with the certification. Again, inaccurate and out-of-date job descriptions could result in a wrong or faulty conclusion by the healthcare provider and the employer.
- **Title VII of the Civil Rights Act:** Title VII prohibits employers from discriminating against an employee or applicant because of various protected characteristics, such as race, national origin, gender, religion, and sexual orientation. However, it does not require an employer to hire or promote someone who does not meet the qualification standards of the position. Using a job description when making employment decisions can be helpful in defending claims of discrimination and unequal treatment.
- **Equal Pay Laws:** In addition, job descriptions may support an employer's compensation structure. Well-written job descriptions can demonstrate which jobs are similar and therefore are entitled to similar pay. They can also show which jobs require different levels of qualification and responsibility and therefore are supportive of different pay.

Questions to Consider: Your Job Description Checklist

Consider the following questions to ensure your job descriptions are still accurate:

- _____ Do your job titles reflect the actual work being done
- _____ Do your job descriptions discuss an overview of the company and how the position fits into your overall
- _____ Do they provide an overview of the key responsibilities the position entails?

- _____ Do they lay out the required skills and qualification for the position in detail?
- _____ Beyond that, do they include *preferred* skills and qualifications?
- _____ Do your job descriptions include the effective date of the document if you later need to prove the historical content?
- _____ Do your job descriptions state whether the position is exempt or nonexempt?
- _____ If the position is exempt, does the job description include the duties that show the position falls into the applicable exemption?
- _____ Do your job descriptions include the essential functions of the position?
- _____ Does it make sense to identify duties and responsibilities as a percentage of the work to be performed?
- _____ Are you tying job descriptions to employees' performance evaluations and improvement plans?
- _____ When was the last time the job description was reviewed?
- _____ Do you have a system in place to identify when — and how often — job descriptions should be reviewed?
- _____ Are all job descriptions reviewed on a set schedule?
- _____ Do you perform spot audits if you are unable to review all job descriptions on a set schedule?
- _____ Do you review job descriptions when you post an opening?

Conclusion

Vague and inaccurate job descriptions can cause problems for employers, whereas current and accurate descriptions help support hiring, discipline, promotion, compensation, and termination decisions. Additionally, well written job

descriptions can be important evidence of ADA, FMLA, and FLSA compliance.

We will continue to monitor developments in this area and provide updates as warranted, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. For further information, contact the author of this Insight or your Fisher Phillips attorney.