

JOB DESCRIPTIONS:

Maximizing Compliance and Effectiveness





PART ONE: Introduction and Legal Issues

Job descriptions can be very useful to employers, employees and job applicants when carefully written and kept up-to-date. Job descriptions outline the responsibilities for an employee's work. They also serve as a tool to help employers gauge employee performance and for recruiting/selecting candidates. This presentation will address the importance of having up to date job descriptions, what to include and tips for writing job descriptions.



I. What is a job description?

- A. Typically includes essential job functions, qualifications including education, knowledge, skills and abilities required, physical and other demands.
- B. Also includes job duties, reporting structure and Job Family and Pay Zone.
- C. Job descriptions are not required by law, but are highly recommended and a common practice for legal risk protection.



- II. Why should organizations have job descriptions?
 - A. The employer can focus on what is really needed in recruiting for an open position and identify qualified applicants.
 - B. Assists in determination of compliance with Americans with Disabilities Act (ADA).
 - C. Helps in classification of employee as exempt or non-exempt from overtime laws.
 - D. Essential tool for conducting job interviews, performance reviews, coaching and employee development, disciplinary procedures and terminations.



III. Summary of Americans with Disabilities Act (ADA and ADAAA)

- A. The ADA prohibits discrimination against “qualified individuals” (applicants or employees) with disabilities.
- B. Practices and activities covered include hiring, firing, advancement, compensation, training, and other terms, conditions, and privileges of employment.
- C. A person is considered disabled if he or she has a physical or mental impairment that substantially limits one or more major life activities.
- D. “Major life activities” include seeing, hearing, speaking, walking, breathing, performing manual tasks, learning, caring for oneself, and working.



- E. “Qualified Individual” is a person who meets legitimate skill, experience, education, or other requirements of an employment position that he or she holds or seeks, and who can perform the essential functions of the position with or without reasonable accommodation.
- F. Reasonable accommodations include modifying work schedules; acquiring or modifying equipment or facilities.
- G. An employer is not required to reallocate essential functions of a job as a reasonable accommodation.



IV. Exempt versus Non-Exempt

- A. Job descriptions include duties that clarify whether the position is exempt from overtime laws.
- B. Under federal law (Fair Labor Standards Act), most employees in the United States must be paid overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.
- C. There are five categories of exempt employees: administrative, executive, professional, outside salespersons and certain computer workers.



- D. Job titles do not determine exempt status; and grants do not determine exempt status. An employee's specific job duties and salary must meet all the requirements of the Department of Labor regulations under the Fair Labor Standards Act (FLSA) for a position to qualify for exempt status.

To qualify for exempt status, in addition to meeting certain tests regarding job duties, the employee must be paid on a salaried basis at not less than \$455 per week (\$1971.66 per month). *This salary threshold cannot be prorated for positions less than 1.0 FTE.*

Note: See "Teacher Exception" information on next slide.



Statute defining “Teacher” exception to FLSA in the DOL Regs under Professional Exemption:

- The term “teacher” as defined in 29 C.F.R. §541.303(a) means **“any employee with a primary duty of teaching, tutoring, instructing or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment by which the employee is employed.”** Section 541.204(b) defines an educational establishment as including an institution of higher education.
- In compliance with the information above, a position that meets the definition of “teacher” may be paid less than the \$455 per week (\$1971.66 per month) minimum threshold.



E. Administrative exemption:

1. *The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and*
2. *The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.*



F. Executive exemption:

1. *The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;*
2. *The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and*
3. *The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees must be given particular weight.*



G. Professional exemption:

1. *The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;*
2. *The advanced knowledge must be in a field of science or learning; and*
3. *The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.*



- H. Creative professional: the employee's primary duty must be the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.
- I. Computer employee: The employee must be compensated either on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week or, if compensated on an hourly basis, at a rate not less than \$27.63 an hour; and the employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing certain duties.



J. Outside Salesperson:

1. *The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and*
2. *The employee must be customarily and regularly engaged away from the employer's place or places of business.*



PART TWO: Anatomy of a Job Description

I. Purpose of the position

- A. What are the reasons for the position's existence?
- B. Where does this job fit into the NU Values Compensation Program of Job Families and Job Zones?
- C. Periodic functions, which may include job duties that are not essential, but are part of the job description.
- D. Required behaviors: dependable, tolerance for multiple demands, administrative recall of procedures, attention to detail, ability to learn. These are particularly important for performance reviews.



E. Include minimum qualifications for job, such as education, licenses required, and/or experience.

Work experience:

- *Years in field required.*
- *Include information if years of experience in other industries will be considered.*

Education:

- *High School Diploma or equivalent, BA/BS, MBA, PhD, etc.*
- *Include information if equivalent combination of education and/or work experience (as opposed to education only) will be considered.*



Certifications:

- *Examples: PHR/SPHR/GPHR, Certified Nursing Assistant, Certified Public Accountant, Certified Compensation Professional, Certified Financial Planner, Certified National Real Estate Agent, Electrician, etc.*

Licenses:

- *Example: Doctors, Nurses, Dietician/Nutritionist, etc.*
- *Desired work traits (ability to work independently, etc)*
- *Computer skills*
- *Communication/Interpersonal skills*



Special considerations (working conditions):

- *Physical requirements*
- *Travel (Percentage of time)*
- *Work hours (on-call, overtime consideration, etc)*



II. Essential Functions

- A. Ask why the position exists. For instance, if the job is for answering telephones, then the ability to speak clearly and politely to callers is an essential function.
- B. What tasks are critical to the position?
- C. Organize essential functions sequentially, by listing most essential functions first.
- D. Even tasks done infrequently may be essential, particularly if persons are needed to fill in for others.



- E. Describe the standards for the functions:
 - 1. *Time standard (does the job require a certain output or pace, e.g., typing 75 words per minute).*
 - 2. *Quality standard.*
- F. Include physical demands, such as sitting, seeing, speaking, twisting, lifting, etc.
- G. Include whether ability to use tools is essential.



H. Here are a few pointers:

A function may be essential in one setting, but nonessential in another. For example, if a staff member spends 90 percent of his time answering phone calls and fielding those calls, that's an essential function of his job. But how about for the person who fills in on phone duty during the regular operator's lunch hour? That might be essential if:

- *The incoming phone calls must be answered and routed, even during lunch and break periods, and*
- *There's no one else who can be trained to fulfill that duty.*



- However, if the office has 30 people who are trained to operate the phone system, the task of running it over the lunch hour (back duty only) wouldn't be essential.
- *The point? It's not necessarily the percentage of time a person spends on the task that makes it essential. The setting and situation have to be taken into account as well.*



- I. Describe an essential function more as an outcome than a method.

For example:

1. *Not "uses hand truck to move heavy boxes," but "moves heavy boxes."*
2. *Not "walks from station to station," but "moves from station to station."*

- J. **Do it now, not after the fact.**

If you try to craft your essential functions list after someone raises a complaint, it won't be credible.



K. How to Determine 'Essential'

Here are some questions you can use to determine whether a job function is essential:

1. *Does the position exist to perform this job function? (That would make it essential.)*
2. *What is the employer's judgment regarding which functions or job requirements are essential? (The employer's view will be given due weight, but won't be determinative on its own.)*



3. *Would the position be fundamentally altered if this function or job responsibility were altered? (That suggests that it's essential.)*
4. *Is the number of employees to whom this function or job requirement could be given limited? (If yes, that makes it harder to pass off this function.)*
5. *Is this a highly specialized function or job requirement? (Again, that makes it harder to cross-train someone else to do it.)*



6. *What would be the consequences if this function or job requirement were not included? (If there are no consequences, it's likely not essential.)*
7. *Does the current or past incumbent perform this function or job requirement? (If not, it's probably not essential.)*
8. *Are the essential functions of this job linked to a specific location? (This could make it more difficult for others to take on this responsibility.)*



- L. In addition to making your essential/nonessential determination, it's helpful to pin duties down with a clear description of requirements and conditions.

Information to include:

1. *Supervision (how much, how often)*
2. *Physical requirements (e.g., sitting, standing, grasping). For lifting or carrying, also specify pounds (e.g., able to lift 50 pound several times each day).*
3. *Mental requirements (e.g., thinking analytically), discriminating colors, making decisions, remembering names)*



4. *Performance requirements (e.g., staying organized, meeting deadlines, attending meetings)*
5. *Environmental factors (e.g., inside/outside, hot/cold, dusty, odors, fumes)*
6. *Tools and equipment (e.g., computer, forklift, respirator)*
7. *Other requirements (e.g., certificate, license, education)*

Note: While it is important to be detailed and precise, be sure that all the elements you list are true. If several of the things listed are not true, that inaccuracy will shadow everything you claim. (For example, if you say "lifts 50 pounds daily" but the person in the job never actually does that, your essential functions won't mean much.)



III. HR Classification process at UNO

- A. What is the Job Title; what is the Department?
- B. Who does the position report to; who reports to the position?
- C. What are the essential functions and primary duties of the position? What is the FTE (Full-time equivalency) of the position?
- D. Under the Fair Labor Standards Act (FLSA) does the position qualify as exempt or non-exempt from overtime pay?
- E. What is the Job Family and Job Zone (pay range) under NU Values?
- F. What are similar positions at UNO paid?
- G. Assign Job Code for position.



- IV. Working conditions such as physical plant, office, and any environmental issues should be included.
- V. Supervision—whether and how the job is supervised, whether the employee is expected to work independently.
- VI. Miscellaneous:
 - A. “Other duties as assigned”— UNO Job Description Template includes this statement as a default item.
 - B. Career path; promotional opportunities.



Recap – Importance of a well-written and up-to-date Job Description:

1. *Establishes responsibilities.*
2. *Establishes performance guidelines.*
3. *Limits legal exposure to issues such as equal opportunity and discrimination laws.*
4. *Aids in the establishment of the Fair Labor Standards Act (FLSA) classification (exempt vs. nonexempt).*
5. *Helps to establish pay levels.*
6. *Helps to manage employee expectations.*
7. *Serves as tool for recruitment and employee selection.*
8. *Assists in determinations of American with Disabilities Act (ADA) reasonable accommodation.*
9. *Assists with employee career development.*
10. *Supports the succession planning process.*



QUESTIONS ?

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