

Developing Job Descriptions Under the Americans with Disabilities Act of 1990 (ADA)

Note: *The information herein was provided by the law firm of Jackson, Lewis, Schnitzler, & Krupman.*

Preliminary Comments

With respect to applicants and employees with disabilities, the ADA requires that employment decisions be based on the ability to perform the essential functions of a job, with or without reasonable accommodation. To accomplish this, employers must identify essential functions. The identification process is commonly referred to as "job analysis."

Section I sets forth the "fundamental" elements of any job analysis under the ADA. We use the word "fundamental" because the degree of analysis engaged in by a company will depend on, among other things, the financial and/or human resources available to perform the analysis, the number of positions to be analyzed, and the nature and complexity of the positions.

At the very least, however, the guidelines in Section I should be followed. Since the analysis of existing positions may take some time, we recommend that companies start with those jobs which are of concern based upon workers' compensation experience, medical tests, and other issues involving threat to health and safety.

Sections II outlines areas to be addressed in job descriptions under the ADA. The ADA does not require employers to develop job descriptions. However, job descriptions, accurately prepared and periodically revised, will be an invaluable tool to supervisors and managers who must assess the "abilities" of applicants and employees on a daily basis.

In addition, the ADA states that if written job descriptions are prepared before advertising or interviewing applicants, they will be considered evidence of the essential functions of the job. Accordingly, the use of such job descriptions will place employers in a favorable posture to defend most ADA claims.

I. The Fundamental Elements of Job Analysis Under the ADA

1. List and briefly describe the education, training, experience, licenses, and skills required for each position. Obtain input from supervisor, employees, and other individuals as appropriate.
2. Assess whether each of the above requirements is job related and consistent with business necessity (i.e., concerns an essential function and bears a demonstrable relationship to successful performance of the job.)
3. List and briefly describe the functions/duties for each position. Obtain input from supervisors, employees, and other individuals as appropriate.
4. Identify essential functions by answering the questions that follow for each function of the position. Obtain input from supervisors, employees, and others as appropriate.
 1. Are all employees in the position actually required to perform this function?
 2. Did previous employees perform this function?
 3. Does the position exist to perform this function?
 4. Would the demands of your business prevent other employees from performing this function if the incumbent could not?
 5. Does performance of this function require a special expertise or skill?
 6. Would removing this function from the list of duties required to be performed fundamentally alter the position?
 7. Would failure to perform this function have significant consequences?

8. Does the incumbent spend a significant portion of his/her work day (week) performing this function?
9. Do current or past job descriptions list the function as a requirement of the positions?
5. In consultation with counsel (when possible), review your answers to the questions plus any other relevant evidence and determine whether each function is essential or nonessential. As a general matter, affirmative answers to the questions in the previous section tend to show that a function is essential.
6. Document your efforts, noting specifically the date you analyzed the position.

II. An Outline for Job Descriptions Under the ADA

1. Position name/title
2. Salary
3. Qualifications necessary to perform essential job functions:
 1. Education
 2. Experience
 3. Skills
 4. Licenses
 5. Training
 6. Regular attendance
 7. Performance of essential function without posing a "direct threat"
 8. Other
4. Equipment used to perform essential functions
5. Essential job functions (When describing a function, focus on its purpose rather than the traditional method by which it has been accomplished.
[e.g., "transport" rather than "carry"])
6. Nonessential job functions