Job descriptions are works in progress ... Stay on top of them!

by Meghann Kantke, Esq.

There's a good chance that what your employees actually *do* every day has little in common with what's written in their job descriptions. That's a problem. Inaccurate or incomplete job descriptions can cause legal liability for - employers, especially if the EEOC or the Department of Labor comes calling.

Make it a practice to routinely review your job descriptions. It's a good legal defense, and it will also help you recruit the right employees and manage their performance.

Cover the basics

A job description should contain the title of the position, the title of the person to whom the position reports, an overview of what the work entails and a description of duties and responsibilities. They often include qualifications for the position, as well as any necessary physical requirements.

That sounds simple enough, but problems usually arise in the execution.

Titles can be misleading. Duties can be so vague that they don't adequately communicate to an applicant what the job really involves. As time goes by, too many tasks fall under "other duties as assigned" and bear little resemblance to the itemized responsibilities.

And as helpful as it can be to include qualifications and physical requirements for a position, overstating them can open the door to discrimination claims.

So what's an employer to do? Ask questions, draft carefully and revise regularly.

Ask questions

Job descriptions are the first step in effectively managing employee performance. Consider what success in a position looks like. What skills are necessary? The best way to figure it out is by asking questions.

If your company is creating a new position, investigate the real nature of your needs. For example, an employer was looking for a staff person to tutor inner-city youths. Anticipated qualifications included experience as a

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tutor, experience working with kids in an urban setting, as well as skills needed to engage kids and make them want to show up for tutoring sessions.

But as the HR manager asked higher-ups how they would judge long-term success for someone in the position, she quickly realized that what they actually wanted was someone to build a new tutoring program from scratch. That requires skills and qualifications far different than what would be needed to work directly with kids. A program builder would need high-level administrative and organizational skills, not to mention skills to recruit and coordinate volunteers—skills that had not, to that point, been considered or discussed.

Armed with that knowledge, the employer made a critical course correction—and avoided the expensive mistake of hiring an unqualified candidate because it advertised the wrong job.

Asking questions is no less important when filling an existing position. Find out how the people in that position really spend their time. Get specifics. Find out what good performers do and what skills they bring to the table.

You may find that the job description emphasizes duties that are less important, while critical tasks barely receive a mention.

Draft carefully

Once you have done your homework, you can draft a job description that accurately reflects reality. Ideally, you will have identified the right responsibilities, enabling you to hire for the right skills.

But in addition to avoiding performance problems, an accurate job description can help you navigate other, sometimes dangerous, waters.

One example is heading off trouble with disability discrimination claims. By clearly and accurately defining the essential functions of a position, and reflecting these functions in the job description, you are in a better position to assert that certain disability accommodations are not reasonable because they adversely affect an employee’s ability to perform an essential job function.

Note that the EEOC recently issued an informal opinion letter stating that requiring a high school diploma could be discriminatory if the requirement is not job-related and consistent with business necessity. Basically, that means that if you could do the job without a high school diploma, requiring one could bring on a disability discrimination claim.

One other trouble area is misclassifying employees as exempt from wage-and-hour laws. If you treat an employee as exempt, the job duties must meet a test for exemption. Misstating the job duties won’t protect you from liability for noncompliance.

Better to have a clear and accurate sense of what employees do, reflect it in the job description, and classify from there.

Revise regularly

The process of analyzing job descriptions is as important as the end product itself. It offers the opportunity to make sure you’re finding the right people for the right jobs, and to correct when you get off track. It’s also a self-check that can head off discrimination claims and wage-and-hour problems.

Engage in the process routinely and treat job descriptions as works in progress.

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Meghann Kantke is an associate at Gray Plant Mooty and is a member of the Employment and Labor Law practice group. Contact: meghann.kantke@gpmlaw.com

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