

Writing ADA Compliant Job Descriptions

The ADA does not require an employer to develop or maintain job descriptions. But, employers can benefit in at least two ways from having well-written job descriptions that set out the “essential functions” for each employment position.

First, a written job description can help employers identify whether an applicant will be able to perform the essential tasks required of a particular position. During the interview process, employers are *not* allowed to ask whether a person has a disability that would prevent them from performing certain job tasks. But, employers *may ask* applicants whether they are able to perform the “essential functions” of a position, such as the ability to meet attendance or to operate a particular machine. If an applicant notifies the employer that he or she is unable to perform an essential job function because of a disability, the employer must then consider whether it is possible to reasonably accommodate the disability.

Second, a written job description is useful in defending a claim of disability discrimination. When a charge of discrimination is brought under the ADA, an initial issue will be whether the disabled individual could perform the essential functions of the position, with or without reasonable accommodation. Employers will have an effective defense to such a charge if they can readily establish that the disabled individual could not perform one or more of the position’s essential functions, even with reasonable accommodation. A well-written job description that was prepared before advertising or interviewing applicants is evidence of what a position’s essential functions actually are, and thus is helpful in establishing the defense.

The following steps may assist employers in developing and writing ADA-compliant job descriptions.

STEP 1: UNDERSTAND ESSENTIAL JOB FUNCTIONS

The essential functions of a job are not synonymous with *all* the functions of that job. A disabled person’s inability to perform a nonessential function is not a valid basis for disqualifying that person from employment. It is important that essential functions be defined and job descriptions be prepared *before* advertising or interviewing applicants. A description written later will not be considered as evidence of essential functions in the case of a discrimination charge.

Essential functions “are those functions that the individual who holds or desires the position must be able to perform unaided or with the assistance of a reasonable accommodation. A job function may be considered essential if:

1. the position exists for performance of the function;
2. a limited number of employees can perform the function, and it, therefore cannot be reassigned; or
3. the function is specialized and requires certain expertise to perform it.

In determining essential functions, consider whether removal or redistribution of certain tasks is possible. Would removal of the task fundamentally alter the position? What about reassignment of the task? If an employer has a small number of employees, each employee may be required to perform many different tasks that cannot be distributed, and thus would be essential functions. But, with a larger staff where work

can be distributed, some of those same tasks might not be essential. Seasonal and fluctuating work loads might make the same function essential when volume is low and the workforce is low, but nonessential when volume is high and thus the workforce is high.

Time spent performing a function is another consideration. For example, the ability to operate a cash register might be an essential function for a cashier at a supermarket but a non-essential function for an individual working in the bakery.

On the other hand, a function that is not required very often may still be essential depending upon the consequences of failing to perform that function. A firefighter, for instance, may not regularly have to carry an unconscious adult from a burning building, but that function is still essential.

Qualitative and quantitative standards for essential functions are permissible under the ADA, and will not be “second-guessed” as long as they are actually necessary and required for a particular position. If an employer requires a typist to type 75 words per minute, for example, the employer is not required to explain the basis for that requirement. The employer may, however, be required to show that the 75-word-per-minute requirement is not just “on paper,” but is actually imposed on its employees. Further, if it is alleged that an employer intentionally selected a particular level of production to exclude individuals with disabilities, the employer may have to offer a legitimate non-discriminatory reason for its selection.

STEP 2: IDENTIFY JOB REQUIREMENTS

A job descriptions should include the following categories of information:

1. Job Title
2. Job Summary
3. Essential Functions
4. Nonessential Functions
5. Job Specifications, including education, physical and mental demands, and working conditions.

Summary of Position:

A job summary should explain the reason for or the function of the position within the organization. In other words, what purpose does it serve for the organization, what role(s) does it fulfill, how does it fit in with the rest of the operations of the organization? Consider what an employee is paid for achieving in a particular position and/or what would fail to get done if the position did not exist.

Essential Functions:

The essential functions state what is done or required of a particular position. In evaluating whether tasks are essential, employer should ask themselves: (1) Is the task critical to job success? (2) If the task occurs infrequently, is it critical to successful job performance?

As mentioned above, essential functions may include performance standards, which describe how essential functions must be completed. Performance standards may be based on a number of criteria including process, time, quantity, and/or quality.

- Process: Standards based on process include the methods, techniques, procedures, and/or tools that are required to complete a job. For instance, a task defined by a process standard might state that specific physical exertion, such as lifting, standing, bending, or reaching, is required. Remember to consider whether a process is truly an essential part of a task.
- Time: This type of standard states how much time is allowed to perform a function. The standard should identify whether the pace is consistent or fluctuating.
- Quantity: Identifies how often a function is performed and/or is required to be performed.
- Quality: A standard based on quality should identify how success is measured.

Job Specifications:

Most employers list educational criteria and/or necessary certification/licensure requirements, but it is also important to consider other special considerations and prerequisites. For example, what are the working conditions? If there are environmental, psychological, and/or physiological requirements applicants must meet, these should be included in the job description. Other specifications might include necessary specialized knowledge and/or the ability to work without supervision.

STEP 3: WRITE THE JOB DESCRIPTION

Job descriptions should use clear, concise, non-technical language. In defining essential functions, the description should focus on the required outcome rather than process (unless the process itself is truly essential). For example:

- a job that requires objects to be moved from one place to another should be stated as “the ability to lift 25 pound boxes to a height of 3-4 feet and load them into trucks, rather than the ability to *manually* lift and load 25 pound boxes.
- a job that requires mastery of information contained in technical manuals would be stated as the “ability to *learn* technical material,” rather than “the ability to *read* technical manuals.

In writing job descriptions, some words are better than others. Certain words tend to exclude individuals with disabilities (e.g., see or hear). It is better to choose words that convey the actual requirements of the job without limiting the physical demands to certain abilities. The following table contains examples of words that tend to be exclusionary and substitutes for these words.

<u>Physical Demand</u>	<u>ADA-Compliant Words</u>	<u>Job Description Language Example</u>
Stand or Sit	Stationary position	Must be able to remain in a stationary position 50%

		of the time.
Walk	Move, Traverse	The person in this position needs to occasionally move about inside the office to access file cabinets, office machinery, etc.
Use hands/fingers to handle or feel	Operate, Activate, Use, Prepare, Inspect, Place, Detect, Position	Constantly operates a computer and other office productivity machinery, such as a calculator, copy machine, and computer printer.
Climb (stairs/ladders) or balance	Ascend/Descend, Work atop, Traverse	Occasionally ascends/descends a ladder to service the lights and ceiling fans.
Stoop, kneel, crouch, or crawl	Position self (to), Move	Constantly positions self to maintain computers in the lab, including under the desks and in the server closet.
Talk/hear	Communicate, Detect, Converse with, Discern, Convey, Express oneself, Exchange information	The person in this position frequently communicates with students who have inquiries about their tuition bill or financial aid package. Must be able to exchange accurate information in these situations.
See	Detect, Determine, Perceive, Identify, Recognize, Judge, Observe, Inspect, Estimate, Assess	Must be able to detect funnel clouds from long distances.
Taste/Smell	Detect, Distinguish, Determine	Occasionally must be able to distinguish sweet and bitter flavors when creating desserts for Applewood customers.
Carry weight, lift	Move, Transport, Position, Put, Install, Remove	Frequently moves Audio/Visual equipment weighing up to 50 pounds across campus for various classrooms and events needs.
Exposure to work	Exposed, Work around	Constantly works in outdoor weather conditions.

Finally, employers should consider adding disclaimer language to job descriptions to remind employees and applicants that the description is subject to change. Examples include:

- Nothing in this job description restricts management's right to assign or reassign duties and responsibilities to this job at any time;
- This description reflects managements assignment of essential functions, it does not proscribe or restrict the tasks that may be assigned; or

- This job description is subject to change at any time.