

WRITING ADA COMPLIANT JOB DESCRIPTIONS

The ADA does not require an employer to develop or maintain job descriptions. However, 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 cannot ask whether a person has a disability that would prevent them from performing certain job tasks. However, 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 there is a charge of discrimination 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.

In writing job descriptions, some words are better than others are. 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.

<i>Physical Demand</i>	<i>ADA-Compliant Words</i>	<i>Job Description Language Example</i>
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 files in file cabinets.

Talk/hear	Communicate, Detect, Converse with, Discern, Convey, Express oneself, Exchange information	The ability to communicate information and ideas so others will understand. Must be able to exchange accurate information in these situations.
See	Detect, Determine, Perceive, Identify, Recognize, Judge, Observe, Inspect, Estimate, Assess	The ability to observe details at close range (within a few feet of the observer).
Carry weight, lift	Move, Transport, Position, Put, Install, Remove	Frequently moves boxes weighing up to 20 pounds across office for various needs.
Exposure to work	Exposed, Work around	Constantly works in outdoor weather conditions.

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

I. **SUMMARY OF POSITION**

The job summary should provide a brief narrative that captures the essence of the job and a high-level overview of the most essential of the position's essential job functions. This section gives readers a good idea of what the employee does, without going into significant detail. It also gives an introduction and background framework against which the rest of the job description can be interpreted.

II. **UNDERSTAND ESSENTIAL AND NON ESSENTIAL JOB FUNCTIONS**

A. **ESSENTIAL JOB DUTIES**

Employers must take a careful look at their job descriptions and determine whether all functions identified as "essential" represent essential job duties or are just unexamined lists of what an individual may be called upon to do.

The Equal Employment Opportunity Commission (EEOC) regulations provide information to help employers determine whether a function (job duty) may be considered "essential." This information provides both the reasons why a function (job duty) can be considered "essential" and examples of the type of evidence an employer may use to document that a function (job duty) is an "Essential Function."

The EEOC "Essential Functions" information summarized below can be viewed in its entirety at this web address: http://edocket.access.gpo.gov/cfr_2008/julqtr/pdf/29cfr1630.2.pdf

A job duty is generally considered an essential function if:

- The reason the job exists is to perform that duty.

- A large percentage of work time is spent performing the duty.
- There are no (or a limited number of) other employees available to whom to assign that job duty.
- The work is so highly specialized that the person filling the job is hired for his or her expertise and ability to perform that job duty.
- The employer judges the job duties to be essential to the job.
- Serious consequences would result if the employee were not required to perform the job duty.
- Terms of a collective bargaining agreement require the job duty to be performed.
- Individuals in that job in the past performed the job duty and/or individuals in similar jobs currently perform the job duty.
- The time spent performing the function. 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.

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?

It is critical that the job description language focuses on the results and not the methods. While performing essential functions is fundamental, one particular manner of performance is often unnecessary, unless doing otherwise would create an undue hardship. It is often possible for employees to perform the same functions in different ways. Do not include language that is biased toward employees with disabilities. Some examples of unbiased language are as follows:

- “Communicates” rather than “talks” or “hears”
- “Moves” or “transports” rather than “carries”
- “Determines” or “identifies” rather than “sees”
- “Operates” rather than “feels”

B. NON ESSENTIAL JOB DUTIES/OTHER FUNCTIONS

All remaining duties are considered "nonessential" within the context of the ADA, which means that the function could be reassigned to another employee in order to allow a disabled individual to hold the position. Alternatively, the manager could try to provide a reasonable accommodation so that the disabled individual could perform the function.

III. MINIMUM QUALIFICATIONS

In this section, employers should list all minimum required qualifications (sometimes called “Knowledge, Skills, Abilities”) for the position, including the basic knowledge, skills, abilities, physical abilities, experience, licenses, training, educational requirements, etc. required for the position. Note that “qualifications” are not “functions,” i.e., qualifications are not tasks or actions the employee is required to do or perform. Instead, they are “attributes” that an individual must already possess at the time of hire in order to be qualified for the position. Minimum required qualifications could include, for example, a 4-year college degree, 2 years of experience in a similar position, or the ability to regularly lift 25 lbs. and occasionally lift 50 lbs.

To avoid exposure under the ADA, requirements should focus on what needs to be accomplished and not how it is done. The job may require moving around the office; however, a person in a wheel chair may be able to do the job with certain accommodations. All statements must be specific, realistic, and defensible. From a practical standpoint, if job qualifications are unnecessarily high, they screen out people who are actually qualified to perform the work. From a legal standpoint, inflated requirements may screen out disproportionately more women, minorities, and persons with disabilities, thus exposing the President's Office to legal charges. Think carefully to be sure that your minimum qualifications uniformly apply to all applicants.

IV. PREFERRED QUALIFICATIONS

Preferred qualification are additional measurable and job-related levels of experience, knowledge, and or/skill the ideal employee would have; used to assist the hiring authority to further assess an applicant for vacancy, typically through interviews. Remember to apply these criteria equally to all candidates.

V. WORKING CONDITIONS (Include Physical Demands)

Working conditions include environmental and other conditions, which might affect the desirability of the job. Such things as exposure to hazards, adverse weather conditions, odors and other unpleasant surroundings, frequent overtime, extensive travel, and other related factors should be included in this section.

Also, include in this section any physical demands that relate directly to the essential job duties and responsibilities to be compliant with the Americans with Disabilities Act. Avoid including physical demands that are not essential to the position, as these requirements may unnecessarily or unfairly exclude individuals with disabilities who would otherwise be capable of performing these functions with or without reasonable accommodation. Consider the following:

- Environment, such as office or outdoors.
- Exposures encountered, such as hazardous materials, loud noise, or extreme heat/cold.
- Essential physical requirements, such as climbing, standing, stooping, or typing.
- Physical effort/lifting, such as sedentary - up to 10 pounds; light - up to 20 pounds; medium - up to 50 pounds; heavy - over 50 pounds.
- Indicate if required to work weekends, nights, or be on-call as a regular part of the job.
- Travel requirements.
- Emergency staff designations

VI. DISCLAIMER

Finally, the disclaimer should expressly state that the employee must be able to perform the essential functions of the position satisfactorily and, if requested, reasonable accommodations will be made to enable employees with disabilities to perform the essential functions of their job, absent undue hardship.

Furthermore, job descriptions typically change over time as requirements and employee skill

levels change. Supervisors may revise and/or add duties to reflect these changes. To reflect this, a statement should include the following: "The Employer retains the right to change or assign other duties to this position."