

TAKING A CRITICAL LOOK AT YOUR JOB DESCRIPTIONS

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Recent statutory changes have emphasized the need for school districts to audit and update teacher and ESP job descriptions. With Performance Evaluation Reform Act (PERA) and SB 7 along with amendments to the Americans with Disabilities Act (ADA) it is more important than ever to ensure that job descriptions reflect actual duties performed and accurately identify qualifications. In many cases, job descriptions are too general and outdated. Many times, there are no job descriptions for certain positions. Indeed, SB 7 makes it imperative that school districts review and update their teacher job descriptions. SB 7's reduction in force ("RIF") provisions specifically reference job descriptions for purposes of creating the sequence of dismissal ("SOD") list. Without updated and accurate job descriptions, Districts will be at a substantial disadvantage when implementing a reduction in force.

I. SB 7 IMPLICATIONS ON CERTIFIED STAFF JOB DESCRIPTIONS

A. Background

Under SB 7's amended RIF provisions, Districts must now first consider qualifications and certification areas prior to considering seniority and tenure status. These qualifications include all qualifications imposed as a matter of law, plus additional qualifications set forth in the school district's job descriptions, established on or before May 10 of the previous year. Districts therefore have until May 10, 2012 to review and revise their job descriptions in order to be considered for purposes of RIFs during the 2012-2013 school year.

The process for determining the order of dismissal involves categorizing employees in one or more position lists by certification and qualifications. Employees on each position list are then placed in one of the four SOD groups based on their performance evaluations.

B. Effective Date

SB 7's RIF provisions become effective for RIFs issued at the end of the 2011-2012 school term and thereafter. All collective bargaining agreements entered into on or before January 1, 2011 requiring RIFs to be conducted by seniority order will remain in effect until the expiration of the agreement or June 30, 2013, whichever is earlier.

C. Job Descriptions and the RIF Process

As a result of SB 7's changes to the RIF process, maintaining accurate and updated job descriptions is now more important than ever. SB 7 expressly affords Districts the right to include additional qualifications beyond certification in their job descriptions. SB 7 does not require

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Districts to have job descriptions for every position. However, if a District does not have a job description for a position, then certification and legal qualifications will be the only basis for including or excluding a teacher from the position list. Thus, a teacher who is legally qualified for a position would need to be included on a position list, even if the teacher had not taught in that position or substantive area for several years. Accordingly, Districts who create job descriptions will successfully be able to limit the number of qualified employees for a given position.

D. ISBE Guidance on “Other Qualifications”

In recently issued guidance, the ISBE provided two examples of “other qualifications.”

- A District may decide that content teachers (e.g., science, math, social studies) need to be CRISS-trained. CRISS is a set of strategies to teach reading and literacy skills through the curriculum.
- Similarly, a District may decide that a middle school math endorsement would be required for anyone teaching math to students in particular grades. With the inclusion of these or similar requirements in job descriptions, Districts will thus be able to more narrowly tailor the qualifications for particular positions.

We recommend that Districts consider adding a requirement in all job descriptions that the teacher have past experience teaching in the substantive area at a minimum. Districts may wish to go further by requiring that:

- The teacher must have past experience teaching the specific class, e.g. experience teaching 7th grade math and not just math generally; and/or
- The teacher must have past experience within a specific time period, e.g. experience teaching math within the past 5 years. These additional experience qualifications will enable Districts to keep teachers in positions for which they are most qualified.

Moreover, these experience qualifications will allow Districts to avoid the potential situation in which a teacher is RIFed, yet is able to bump a teacher from another substantive area in which the teacher has never taught or has not taught in a number of years. Without such additional qualifications in job descriptions, the RIFed teacher would be entitled to bumping rights in other substantive areas merely by virtue of holding the appropriate certificate.

E. Bargaining Obligations

Districts who elect to update their job descriptions or create new descriptions from scratch must first consider bargaining obligations.

- Under the Illinois Educational Labor Relations Act, Districts have an obligation to bargain any changes which affect the terms and conditions of employment.
- While generally it is an inherent managerial right to set the qualifications for a particular position, any changes to the description that could exclude a current teacher from qualification for a position would require the district to bargain the impact of such changes.
- Some bargaining agreements may even define the job duties of certain positions which would impose an even greater bargaining obligation.
- To the extent possible, seek to change the job description from the perspective of making it match the duties and requirements that are already in existence through practice. In other words, present the changes as an update to the descriptions to reflect the reality of what is already in practice as opposed to creating new duties and requirements.
- With the May 10, 2012 deadline (for use in next year's sequence of dismissal lists), districts should begin the review process immediately to allow sufficient time for making any desired changes and bargaining such changes.
- The union may also buy into the need to update the job description, particularly with respect to limiting a teacher's qualification if they never taught in a particular position previously.

II. JOB DESCRIPTION BEST PRACTICES

Every position within your District should have a job description that is updated on a regular basis and stored in the employee's personnel file. An accurate and legally defensible job description identifies the essential functions of the position and helps a decision-maker focus on whether an individual or applicant can perform a particular job.

Effective job descriptions should be:

A. Easy to understand:

1. Structure your job description to list the major tasks followed by the less important tasks.
2. Avoid vague terms like “designs,” “handles,” “operates” because they do not describe what the employee does. Instead, use terms like “cuts,” “lifts” or “sweeps.”

B. Properly detailed but not excessively detailed:

1. Lengthy job descriptions can become confusing and complicated. Creating a concise list of tasks will keep your employees directed and will alleviate future disputes.

C. Specific:

1. Break down complex operations into component tasks.
2. Identify the weight of the heavy items in pounds.
3. State how many hours per week the employee will be performing the heavy lifting.

D. Consistent:

1. Review all job descriptions to ensure that tasks are properly delegated to the employees that are actually performing the work.
2. A job description for a supervisor should specify which employees they supervise. A job description for a subordinate should specify which supervisor the employee reports to.
3. The form and format of the job description should remain the same for all employees within the District.

E. Accurate:

1. Descriptions should be reviewed on a regular basis to ensure accuracy. Conduct regular evaluations and reviews of each position to determine the work that your employees are actually performing. Many times job functions and needs change and the job descriptions should be updated to reflect any change.

F. Properly Stored:

1. Job descriptions should be placed in an employee's personnel file. Each time a description is updated, make a notation on the form, i.e. "updated on September 25, 2010."

Accurate and legally defensible job descriptions should:

A. Identify basic information about the position.

1. Job Title
2. Classification
3. Exempt / non-exempt status
4. Department / division
5. Licenses / certificates required

B. Identify the purpose of the job.

C. Identify the actual duties to be performed by the employee and basic responsibilities of the employee.

1. Physical requirements.
2. Mental requirements.
3. Time restraints.
4. Frequency of the task performed.
5. Supervisory responsibilities.
6. Training requirements.
7. Confidential responsibilities.

D. Identify the tools, materials, machines and equipment to be used.

E. Identify the working conditions.

1. Environment of the job (classroom, laboratory, District office, garage)
2. Hazardous materials

F. Establish criteria defining effective performance standards and production requirements.

G. Establish criteria for evaluation of the employee's performance.

With the passage of PERA, teacher performance is now the most critical factor for purposes of tenure acquisition and RIFs. To properly assess a

teacher's performance, evaluators must have established criteria to rely upon in addition to pedagogical strengths and weaknesses.

H. Contain a disclaimer.

"This job description is intended to describe the general nature and level of the work being performed by employees assigned to this position and is not an exhaustive list of all duties and responsibilities. The District reserves the right to amend and change responsibilities to meet business and organizational needs as necessary."

III. ADDITIONAL STATUTORY CONSIDERATIONS

Job descriptions are often used as evidence in various administrative and judicial proceedings. This is because employees and employers are often required to demonstrate through documentary evidence an employee's duties to either prove or deny liability.

A. Americans with Disabilities Act

The Americans with Disabilities Act (ADA) protects any "qualified individual with a disability." To be considered "qualified," an individual must be able to perform the "essential functions" of the job in question, either with or without reasonable accommodations.

When making the determination as to whether an individual is "qualified to perform the essential functions of the job", Courts will frequently look at an employer's job description.

1. Accurate Job Descriptions List the Essential Functions of a Job:

- Section 1630.2(n) of the EEOC Regulations provides that the term "essential functions" refers to the "fundamental job duties" of the position in question.
- An employer's position as to what is an "essential function" of the job will be given consideration by the courts. If an employer has prepared a written job description before the employee is hired, the job description will be considered as evidence of the essential function of the job. 42 U.S.C. § 12111(8).
- The frequency with which a job function is performed may bear on whether the function is considered essential.
- An employer is not required to reallocate essential functions as an accommodation.

- An employer may have to restructure a job as a reasonable accommodation if it means reallocating or redistributing non-essential functions.

2. Inaccurate Job Descriptions May Lead to Increased Liability

Just as an accurate job description can guide the Court's determination of an essential element of the job, an inaccurate job description can hurt the employer when it attempts to argue that something is an essential function of the job.

B. Illinois Educational Labor Relations Act (“IELRA”)

1. Supervisory Status

The IELRA exempts "supervisors" and "managerial employees" from the Act's coverage.

a. A "supervisor" is defined as:

Any individual having authority in the interests of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, reward or discipline other employees within the appropriate bargaining unit and adjust their grievances, or to effectively recommend such action if the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

b. A "managerial employee" is defined as:

"Managerial employee" means an individual who is engaged predominantly in executive and management functions and is charged with the responsibility of directing the effectuation of such management policies and practices.

As previously stated, if an employee's position is managerial or supervisory in nature, the job description should detail those tasks. If an employee is not a supervisor or manager, the job description should be void of terms that would implicate supervisory or managerial status. This is because job descriptions can be used as evidence to demonstrate that an individual is or is not a supervisor or manager under the Act.

2. Confidential Employee Status

Section 2(n) of the Act states that:

Confidential employee means an employee, who (i) in the regular course of his or her duties, assists and acts in a confidential capacity to persons who formulate, determine and effectuate management policies with regard to labor relations or who (ii) in the regular course of his or her duties has access to information relating to the effectuation or review of the employer's collective bargaining policies. 115 ILCS 5/2(n)(i) and (ii).

For confidential employees, job descriptions should specifically state the confidential duties.

“Assists the Superintendent in preparing District's notes for collective bargaining.”

“Assists the Superintendent in the grievance and arbitration administration.

C. Fair Labor Standards Act (“FLSA”)

Every employer subject to the equal pay provisions of the FLSA must maintain and preserve any records which he/she makes in the regular course of his business operation which relate to the payment of wages, wage rates, job evaluations, job descriptions, merit systems, seniority systems, collective bargaining agreements, description of practices or other matters which describe or explain the basis for payment of any wage differential to employees of the opposite sex in the same establishment, and which may be pertinent to a determination whether such differential is based on a factor other than sex. 29 CFR 1620.32(b).

D. Illinois Equal Pay Act

The Illinois Equal Pay Act prohibits employers from paying unequal wages to men and women for doing the same or substantially similar work, requiring equal skill, effort, and responsibility, under similar working conditions for the same employer in the same county, except if the wage difference is based upon a seniority system, a merit system, a system measuring earnings by quantity or quality of production, or factors other than gender.

E. Workers' Compensation Act

To be compensable under the Workers' Compensation Act, an employee's injury must “arise[s] out of and in the course of the employment.” 820 ILCS 305/2. An injury will “arise out of” employment if there is a causal connection between the employment and the accidental injury.

When an accident occurs at the workplace, the employer is not automatically liable. Rather, the employee has the burden to demonstrate that the injury was the result. An employer can use the employee's job description as evidence that the work the employee was performing when he/she was injured did not "arise out of" their employment because it was outside the realm of their job responsibilities.

IV. HYPOTHETICALS

- A. John Doe is a maintenance worker for the School District. His job description states that he is required to "operate lawnmowers" as part of his responsibilities.**

Jane Doe is also an employee in the District's maintenance department and has similar job requirements. One day she was out cutting the grass of the high school's football field. John was also at the field cleaning up garbage after the most recent game. When she was done cutting the grass, she offers John a ride on the back of the lawnmower as she heads back to the garage. On their way back to the garage, John fell off the lawnmower and broke his arm and hurt his back.

John has now applied for workers' compensation, did the injury "arise out of his employment?"

- B. John Doe's arm has healed from his injuries and he is ready to return to work. However, he still has chronic back pain from his fall and the doctor has informed the District that John is unable to lift more than 10 lbs. John Doe's job description states that he is required to lift boxes of 20 lbs for approximately two hours each day.**

1. Is John qualified to perform the essential functions of his job?
2. What accommodations is John entitled to, if any?
3. What if the job description for maintenance employees said "required to lift boxes?" Would John be qualified to perform the essential functions of the job?
4. What would happen if a janitor volunteers to do the heavy lifting for John, but the janitor's job description does not state that the janitor is required to "lift boxes," and the janitor hurts his back while lifting the boxes?

- C. Jane has been employed as a Secretary in the District's main office for five (5) years. The new Superintendent wants to evaluate Jane's typing and recordkeeping to see if Jane is properly performing her job and meeting certain output requirements. However, Jane's job description does not list "recordkeeping" as one of her duties.**

1. Can the Superintendent evaluate Jane on her recordkeeping skills?
2. Can the Superintendent change the job description if Jane is a member of a bargaining unit?
3. After conducting the evaluation, the Superintendent realizes that Jane is performing confidential functions that are not listed in her job description. What should she do?