

**KEY CRITERIA AND COMPONENTS OF EMPLOYEE JOB DESCRIPTIONS:
HOW EFFECTIVE JOB DESCRIPTIONS BENEFIT THE DISTRICT UNDER THE ADA, FLSA,
IELRA AND SCHOOL CODE**

I. INTRODUCTION

A. Job Descriptions: Key Elements

1. Minimum Qualifications
2. Essential Functions
3. Non-Essential Duties
4. Physical Demands

B. Benefits of Effective Job Descriptions

1. Assessing an employee's ADA accommodation requests.
2. Determining a teacher's legal qualifications for placement in RIF categories.
3. Excluding positions from the bargaining unit as supervisory, managerial, or confidential.
4. Documenting a position's FLSA exempt status for overtime purposes.
5. Effectively evaluating an employee's performance according to their essential job duties.

II. ESSENTIAL FUNCTIONS: A CRITICAL COMPONENT

A. The essential functions identify and itemize the key daily responsibilities of the position. Typically, essential job functions are responsibilities that comprise 5% or more of the employee's overall duties.

B. An "essential function" is a fundamental job duty of the position. If a person cannot perform an essential function, then the employee or applicant cannot perform the job.

C. A well-written, detailed list of essential functions is beneficial and can be used directly or indirectly to:

1. Assign work and document work assignments.
2. Clarify and prioritize the position's critical responsibilities.

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3. Establish performance criteria and requirements.

4. Recruit for position vacancies.
5. Assess workplace accommodation requests.
6. Assist in compliance with legal requirements related to equal opportunity, equal pay, overtime eligibility, and other statutory obligations.
7. Make decisions on position restructuring.

D. Essential functions should be updated to reflect the current needs and long-term objectives for the position.

E. Generally, state and federal law do not require employers to identify the essential functions of a position.

1. ADA Implications: Although federal law and the ADA do not require employers to maintain job descriptions, the ADA does require employers to accommodate employees by reassigning non-essential functions if employees with disabilities are unable to perform them. As a result, qualified school districts must be able to accurately identify and document each position's essential functions.

F. Essential functions should be identified for each position and included in each position job description under a heading labeled "essential functions" or "essential job duties".

1. Tips for drafting a list of the essential functions:
 - a. They should be written to be accurate, clear, and useful to the employer.
 - b. They should not be so broad that they confuse or mislead HR, supervisors, or applicants.
 - c. The essential functions listed for a position must reflect the key duties that the individual can and must perform. When listing the essential functions, make sure that a qualified candidate will be able to perform all of the essential functions.
2. Essential functions should specifically describe the employee's actual key job responsibilities.
 - a. Example of a specific and detailed essential function:
 - i. Employee evaluates jobs by assigning official title, occupational code and grade in accordance with the job evaluation system.

ii. Employee collects key job information from various sources, e.g., work interviews and direct observation, analyzes the data to identify job content and critical evaluation issues, then prepares or revises job descriptions.

3. Drafting ADA-compliant essential functions: The ADA requires that job descriptions focus on essential functions in terms of what they actually require, not how they have customarily been performed.

a. Examples of ADA compliant essential functions:

i. Note the frequency, intensity and/or duration (to help establish the level of the work demand).

ii. Describe the expected manner of performance and add the word “typically” if appropriate (to acknowledge the possibility that alternate manners of performance may be reasonable, as determined on a case-by-case basis).

iii. Provide a description referencing other operations to establish importance of the function (performed in a particular way) to the job.

b. List the non-essential functions under a different heading or category.

i. Note: The phrase “performs other duties as assigned” is not sufficient to identify a task as an essential function.

c. If a job function is essential to the position, it must be described in sufficient detail.

d. Examples of ADA compliant essential functions:

i. Frequently lifts, carries or otherwise moves items weighing up to 50 pounds when cleaning and maintaining classrooms and assigned areas.

ii. Regularly communicates with and travels to three school buildings to coordinate work among various computer labs.

iii. Regularly sets up, adjusts, assembles, controls, tests and operates computer equipment to generate input and output and transmit data.

G. Legal Defense: The position job description and list of essential functions may be cited as a key document if an employee challenges their dismissal, RIF layoff, or the district’s denial of their workplace accommodation

request. In a failure to hire, wrongful discharge, or improper RIF layoff claim, the job description and/or the essential functions of the position will be critical to refuting the employee's or applicant's claims of discrimination, lack of "just cause", or violation of The School Code.

H. Compare: Essential functions are not the same as minimum qualifications.

1. An essential function is what the employee in the position will actually do. Qualifications are the skills, attributes, or credentials an employer needs to perform each task. Qualifications and functions are different. Clarify the actual tasks and responsibilities (essential functions) before identifying what special attributes (qualifications) are needed by the individual who will be doing the job.
2. Credentials (such as degrees and licenses) are qualifications, and can be absolute necessities in some jobs. By listing essential functions, the district ensures that whatever credentials are required have a direct relationship to the candidate's ability to perform the job.
3. If a candidate's qualifications do not meet the minimum qualifications, then that candidate is not a viable applicant for the position.
4. Examples of minimum qualifications.
 - a. Education: The degree or certification required for the job.
 - b. Experience: The school district experience or directly related job experience required.
 - c. Supervisory experience: If supervisory experience is required, list how many years are required along with how many employees supervised.
 - d. Technical proficiencies: List the technical or software skills needed to perform the essential functions of the job.
 - e. Communication skills: In most jobs, having good communications skills is essential. Communication skills necessary to perform essential functions may include written communication skills, technical writing, public speaking experience, exceptional oral communications, and negotiation skills. Some positions may require multiple types of communication skills.
 - f. Decision-making examples: ability to work independently, and make decisions.

- g. Other competencies or skills examples: The ability to meet deadlines, work more than 40 hours as needed, and work on teams.

III. ADA IMPLICATIONS: JOB DESCRIPTIONS AND ESSENTIAL FUNCTIONS

A. ADA Requirements: 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, either with or without reasonable accommodations.

B. The ADA applies if the applicant has a disability and is qualified to perform the essential functions of the job with or without an accommodation.

1. A disability may be apparent (the applicant is in a wheelchair or blind), or not apparent until the applicant requests an accommodation.

2. The ADA applies if the qualified applicant or employee requests an accommodation. An employer’s obligations under the ADA may also arise where the applicant or employee appraises the employer of a health condition or that they are having difficulty completing the application or hiring process because of some impairment.

C. When making the determination as to whether an individual is “qualified to perform the essential functions of the job,” the employer’s job description or list of essential functions is very important.

1. The list of essential functions is an important part of establishing an ADA compliant hiring process:

a. 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.

b. An employer’s statement as to what is an “essential function” of the job will be given consideration by the courts.

c. If an employer has prepared a written list of the essential functions of the job (often in a job description) before the employee is hired, that description will be considered evidence of the essential functions of the job. 42 U.S.C. § 12111(8).

d. Under the ADA, the frequency with which a job function is performed may determine whether the function is considered essential.

2. Impact of a district’s inaccurate identification of the essential functions:

- a. This may result in increased liability under the ADA.
 - b. While an accurate job description can guide a court's determination as to an essential element of the position, an inaccurate job description can undermine the district when the district attempts to argue that a particular job responsibility is an essential function of the position.
- D. ADA Limitation on Medical Inquiries: An employer may not make medical inquiries of an applicant beyond asking whether there is any reason why they cannot perform the essential functions of the position.**

E. Exception: If the applicant volunteers information indicating a physical or mental impairment, the interviewer may respond by asking the applicant if they need a reasonable accommodation for the interview or to perform the essential functions of the position.

1. The purpose of such questions is to identify the reasonable accommodation.

2. Recommend: The interview team should notify Human Resources if the applicant requests an accommodation.

F. Permissible inquiries are those that are related to the essential functions of the job, for example:

1. “The job requires working in a fast-paced student service environment and promptly and effectively responding the students’ counseling inquiries for 8 hours per day 5 days a week. Are you able to perform this essential function?”

G. Impermissible interview inquiries under the ADA are those that discriminate against an applicant on the basis of an actual or perceived disability. Examples of unlawful inquiries:

1. Are you disabled or do you have a disability?

2. What is the extent or severity of any disability you may have?

H. Inaccurately identified essential functions can make an otherwise permissible inquiry violate the ADA.

1. An interview question may violate the ADA if it is based on an inaccurate description of the essential functions.

2. An interview question could be impermissible if the purported “essential function” on which the question is based is not a key responsibility of the job.

IV. GENERAL GUIDELINES FOR DRAFTING JOB DESCRIPTIONS

EVERY TIME A POSITION IS VACANT, THE SUPERVISOR SEEKING TO FILL IT SHOULD UPDATE THE LIST OF ESSENTIAL FUNCTIONS WHEN COMPLETING THE HIRING REQUISITION FORM. ACCURATE AND LEGALLY DEFENSIBLE IDENTIFICATION OF THE ESSENTIAL FUNCTIONS OF THE POSITION WILL HELP THE DISTRICT DETERMINE WHETHER AN APPLICANT OR EMPLOYEE CAN PERFORM A PARTICULAR JOB.

EFFECTIVE JOB DESCRIPTIONS AND IDENTIFICATION OF THE ESSENTIAL FUNCTIONS ARE:

- A. Easy to understand:**
1. Structure the list of essential functions to identify the more major tasks followed by the less important tasks.
 2. Avoid vague terms like “designs,” “handles,” or “operates” because they do not describe what the employee does. Instead, use terms like “sweeps”, “analyzes”, or “instructs”.
- B. Not excessively detailed:**
1. Lengthy descriptions can become confusing and complicated.
 2. Creating a concise list of essential functions will keep the hiring committee, HR, and the employee focused on the key elements of the job.
- C. Specific:**
1. Break down complex operations into component tasks.
- D. Consistent:**
1. The essential functions should be identified to ensure that tasks are properly delegated to the employees that are actually performing the work.
- E. Accurate:**
1. Essential functions should accurately reflect what the employee is expected to do.
 2. Avoid: Do not just copy previously used essential functions into a new job requisition without considering whether the list must be updated.
 3. Conduct regular evaluations and reviews of each position to determine the work that your employees are actually performing. Job functions and needs change and the list of essential functions should be updated to reflect any change.
- F. Comprehensive: The job description should include other additional information and job requirements. Other sections of a job description should provide basic information about the position:**
1. Job Title
 2. Classification
 3. Exempt / non-exempt status

4. Department / division
5. Licenses / certificates required
6. Identify the purpose of the job.
7. Identify the actual duties to be performed by the employee and basic responsibilities of the employee.
 - a. Physical requirements.
 - b. Mental requirements.
 - c. Time restraints.
 - d. Frequency of the task performed.
 - e. Supervisory responsibilities.
 - f. Training requirements.
 - g. Confidential responsibilities.
8. Identify the instruments, materials, technology, and equipment to be used.
9. Identify the working conditions.
 - a. Environment of the job (classroom, laboratory, District office, etc.).
 - b. Hazardous materials used on the job.
10. Establish criteria defining effective performance standards and production requirements.
11. Establish criteria for evaluation of the employee's performance.
12. Contain a disclaimer. Example:

“This job description is intended to describe the minimum qualifications and essential job responsibilities 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 the position responsibilities to meet District needs as necessary.”
13. Identify supervisory responsibility. 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.

G. An important part of effective performance evaluation and supervision:

1. Performance evaluation is based upon an assessment of the employee's performance of the essential functions of the position.
2. Recommendations for transfer, assignment of new tasks, reassignment of duties, promotion and other decisions affecting an employee are based upon the essential functions of the position.

H. Properly Stored and Updated:

1. Job descriptions should be properly maintained in the District HR Office.
2. Each time a description is updated, make a notation on the form (e.g., “updated on January 25, 2019”).

V. JOB DESCRIPTIONS AND QUALIFICATIONS FOR TEACHING POSITIONS

A. Job Descriptions and Qualifications Are Essential to The School Code RIF Process

1. Under The School Code RIF provisions, the SOD list categorizes teachers by position(s) which they are qualified to teach. Employees on each position list are then placed in one of the four sequence of dismissal (“SOD”) groups based on their performance evaluations.
2. ISBE has confirmed in its non-regulatory guidance that school districts are responsible for categorizing teachers by position and that the RIF committee has no statutory authority to participate in this process.
3. Pursuant to The School Code, school districts must now first consider a teacher’s qualifications and licensure in order to determine the category of positions in which to place a teacher.
4. Qualifications include all legal qualifications and any other qualifications set forth in the school district’s job description, established on or before May 10 of the previous year.

B. How to Determine Qualifications for Positions

1. Under The School Code, accurate and up-to-date job descriptions are an essential element.
 - a. The School Code does not require school districts to have job descriptions for every position.
 - b. However, if a district does not have a job description for a teaching position, then the teacher’s license and endorsements will be the only basis for including or excluding a teacher from the categories of position.
2. ISBE has issued guidance of “other qualifications” that may be included in a district’s job description.
 - a. To date, ISBE has provided two examples of “other qualifications”:
 - i. 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; and

- ii. A district may decide that a middle school math endorsement is required for anyone teaching math to students in particular grades.
- b. ISBE has also stated that years of experience or years of relevant experience may be used as a job qualification if included in a job description and applied to all teachers in that position.

C. Recommendations

- 1. School districts should consider adding a requirement in job descriptions that the teacher have previous experience teaching in the content area.
- 2. Districts should consider requiring more specific experience requirements such as:
 - a. The teacher must have experience teaching the specific class (e.g., experience teaching 7th grade math and not just math generally) and/or;
 - b. The teacher must have experience within a specific time period (e.g. experience teaching math within the past five years).
- 3. Experience qualifications will allow districts to avoid the potential situation in which a teacher is RIFed, but is able to “bump” a teacher from another content area in which the teacher has never taught or has not taught in a number of years.
- 4. School districts which elect to update their job descriptions or create new descriptions where none existed previously should be aware of bargaining obligations. Specifically, there is an obligation to bargain over the impact or effects of changes to job descriptions.
- 5. School districts should begin the job description review process early in the school year to allow sufficient time for making any desired changes and bargaining the impact of such changes in order to meet the May 10 School Code deadline.
 - a. IELRA Duty to Bargain: 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.

- b. If possible, seek to change the job description to match the job duties and requirements that are already in existence through practice.

VI. LEGAL IMPLICATIONS

THE POSITION'S ESSENTIAL FUNCTIONS ARE OFTEN USED AS EVIDENCE IN ADMINISTRATIVE AND JUDICIAL PROCEEDINGS WHICH ARISE OUT OF THE EMPLOYMENT RELATIONSHIP. THIS IS BECAUSE EMPLOYEES AND EMPLOYERS ARE OFTEN REQUIRED TO DEMONSTRATE THROUGH DOCUMENTARY EVIDENCE AN EMPLOYEE'S REQUIRED JOB DUTIES.

A. Illinois Educational Labor Relations Act

1. Supervisory status: The IELRA exempts "supervisors" and "managerial employees" from the coverage under the IELRA and, therefore excludes such individuals from an employee bargaining unit. The essential functions in the position job description can identify whether a position is a supervisor or a manager.
 - 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.
 - c. The job description should identify and support supervisory or managerial status.
 - i. Recommend: If an employee's position is managerial or supervisory in nature, the job description should detail those supervisory or management responsibilities. If an employee is not a supervisor or manager, the job description should not contain terms that would implicate supervisory or managerial status. Reason: The job description can be used as evidence to demonstrate whether an employee is a supervisor or manager under the IELRA.
2. Confidential employee status: The IELRA exempts "confidential employees" from the Act's coverage. A job description which lists the essential functions can identify whether an employee acts in a confidential capacity.

a. Section 2(n) of the Act provides:

“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).

b. For confidential employees, job descriptions should specifically list the confidential duties. For example:

“Assists the HR Director in preparing cost analyses, scattergrams, comparability assessments, and proposals for collective bargaining.”

B. Fair Labor Standards Act

The FLSA establishes minimum wage, overtime pay, and recordkeeping, standards. Administrative, executive and professional employees are exempt from the FLSA overtime pay requirements. 29 C.F.R. Part 541. A job description which identifies the essential functions can be a critical factor in determining whether an employee is covered by the FLSA and entitled to overtime, or is an administrative, executive or professional employee who is exempt from the FLSA.

C. Americans with Disabilities Act (discussed in Section III above)

D. Cases in which the “Essential Functions” played a key role:

1. *Hatchett v. Philander Smith College, 251 F.3d 670 (8th Cir. 2001)*

Hatchett was the business manager for the College. Hatchett was injured while on College business in Washington, D.C. A skylight at the Sheraton Hotel broke, and Hatchett was struck in the head by falling debris. She was subsequently discharged, and she sued claiming that her discharge violated the ADA.

The job description of Business Manager was very detailed and included holding monthly meetings and attending seminars. Hatchett also said that she was required to confer with parents and students about unpaid tuition and the impact on the student’s ability to sit for finals.

Upon her return to work, Hatchett could “perform routine work tasks such as answering phones, signing checks, and processing mail” but she “could only work on one-on-one projects that involved a focused subject, were goal-oriented, and were relatively conflict-free. . . she became confused and emotionally upset when faced with conflict or multiple input. [Her]

neuropsychologist recommended that she not confer with students or attend staff meetings and other large group meetings.”

The court found that “These are essential aspects of the Business Manager position” and because Hatchett could not perform them, she was not “qualified” and “was not entitled to ADA protection unless she could perform the essential functions with reasonable accommodation [which she could not do].” As a result, the court determined that Hatchett’s discharge did not violate the ADA.

2.

Cleveland v. Prairie State College, 208 F. Supp.2d 967 (N.D. Ill. 2002)

Former adjunct professor Iris Cleveland sued Prairie State College for violating the ADA by (1) failing to make reasonable accommodations for her disability, and (2) not re-hiring her for another semester.

As a result of a stroke, Cleveland has limited range of motion in her limbs and minimal use of her right hand which prevents her from using that hand to hold a pen or pencil. Cleveland uses a wheelchair or quad cane to get around.

After being hired by the College to teach remedial English, Cleveland requested a number of accommodations, including an assistant, having someone pick up her mail, and rearrangement of the furniture in her classroom.

The duties of a remedial English instructor include teaching grammar, sentence structure and paragraphs to aide students in becoming fully literate and teaching students to write simple, well-structured, coherent papers. The College also had a policy which required that, “faculty members had to personally deliver [student] grades to the registrar and hand it to the registrar [so] there would be no one in between.” As a result of her disabilities, Cleveland could not record grades by hand or personally deliver them to the registrar in a timely fashion. Cleveland requested that an assistant aid her performance of these grading-related tasks.

The College argued that personally recording grades is an essential function, and refused to provide Cleveland with an assistant for that task. Cleveland was not rehired because she could not record students’ grades herself without an assistant.

The court rejected the College’s argument that personally recording grades was an essential function when grades could have been recorded a different way. As a result, the court held that the College may have violated the ADA by refusing to accommodate Cleveland’s disability by denying her request for assistance with grading and not renewing her employment contract.

3.

Hoppe v. Lewis University, 692 F.3d 833 (7th Cir. 2012)

Elizabeth Hoppe was a tenured professor of philosophy. Hoppe complained that various decisions of the University were motivated by disability discrimination, including determining that she could not teach courses outside of her discipline, directing her to take a leave of absence, moving her office to a new location and barring her from serving on hiring committees.

Hoppe had been diagnosed with “adjustment disorder with anxiety and depressed moods.” Her condition caused her to avoid the internet and enlist her friends, therapist or attorney to read and summarize email messages. Hoppe once went a full month without personally checking her voice mail or opening her postal mail. Hoppe’s mental health disorder was allegedly exacerbated by Professor Miller, the Philosophy Department chair. Hoppe had an office in the same building as Professor Miller—and being near or interacting with him heightened Hoppe’s anxiety.

The court rejected the University’s argument that Hoppe was unable to perform the essential functions of her job. The court held that the University had not provided any evidence of Hoppe’s essential job functions, and, as a result, the University could not establish that, “[c]ommunication with students, committees, fellow professors and administrators are a necessity . . .” In addition, because Hoppe “ha[d] been and remains employed with Lewis University,” she could show that she could perform the essential functions of her job. The court went on, however, to find that the University reasonably accommodated Hoppe’s disabilities and had not discriminated against her.