



Webinar 16 – August 28, 2024

# How Effective Performance Management and Job Descriptions Mitigate Risks

## WEBINAR OUTLINE

### INTRO/SETTING THE STAGE

- Why are Current and Accurate Job Descriptions Important?
- Effective Performance Management in the Workplace
- Why are Job Descriptions and Performance Expectations Important?

### JOB DESCRIPTIONS: AN EMPLOYER'S BEST FRIEND

- Are Your Job Descriptions Fulfilling Their Crucial Role? Legal Compliance
  - Hiring
  - FLSA Classification Analysis
  - ADA Accommodations
  - Return from Leave Issues
  - Equal Pay Analysis
  - RIFs/Succession Planning
  - Defending Wrongful Termination Claims
  - Defending Retaliation Claims

### EFFECTIVE PERFORMANCE MANAGEMENT

- Job Descriptions and Performance Reviews
- Clear Job Descriptions Promote Transparency
- Increase of Employee Retention
- How Job Descriptions can be Used to Effectively Communicate with Employees
- Strategies for Effective Performance Management

### HRtelligence TIPS

### INTRO/SETTING THE STAGE

#### Why Are Current and Accurate Job Descriptions Important?

- Job descriptions list the main features of a specific job.
- The description typically includes the person's primary duties, responsibilities, and working conditions.
- It also consists of the job title and to whom the person holding that job has to report.

Job descriptions are valuable tools to describe a position's tasks, duties, responsibilities, and minimum education and experience requirements. They also form the foundation for many important HR processes such as recruitment, selection, wage and hour classifications, compensation, training, performance management, and appropriately responding to Americans with Disabilities Act (ADA) accommodation or light duty requests.

**Note:**

*If you use employee job descriptions as living, breathing documents that are updated regularly to reflect the changing requirements of each position, they can be one of the most important tools for both employees and employers.*

#### Effective Performance Management in the Workplace

- Performance expectations, i.e., goals, are detailed and specific accounts of what each person on the team is responsible for within a set time.
- Performance expectations are targets for how each person on the team will fulfill their responsibilities.
- Performance expectations and job descriptions provide the specificity necessary to guide team members toward success.

#### Why are Job Descriptions and Performance Expectations Important?

- Job descriptions and performance expectations are important because they are the foundation of clear communication, collaboration, and achieving results.
- When everyone on the team knows their job responsibilities and performance expectations, they are empowered to work together to accomplish their goals.

- By setting clear job descriptions and performance expectations, teams have the clarity and structure to navigate any situation, stay on track, and work together to reach their desired outcomes.

## **JOB DESCRIPTIONS: AN EMPLOYER'S BEST FRIEND**

A well-written job description can help:

- Support performance management.
- Ensure that a company is in compliance with labor and employment laws.

### **Are Your Job Descriptions Fulfilling Their Crucial Role? Legal Compliance**

There are many instances when job descriptions come into play. Job descriptions are important for employers to stay in compliance with:

- The Americans with Disabilities Act (ADA)
- Title VII
- The Occupational Health and Safety Administration (OSHA) laws and regulations
- The Fair Labor Standards Act
- The Family and Medical Leave Act (FMLA)

Having an accurate job description can:

- Provide a defense for a discrimination in hiring claim.
- Serve as legal documentation that can be useful in the event an employee files a termination or discrimination lawsuit against the company.
- Act as a basis for determining exemption status from overtime requirements under the FLSA.
- Provide a guideline for determining essential job functions of a job when an employee has a potential disability.
- Provide a guideline for determining a “similar job” under FMLA’s return to work.
- Outline physical demands of the job and ensure compliance under OSHA.

## Hiring

Accurate job descriptions are critical to establishing the minimum requirements for the position before and during the recruiting process.

Identifying the essential duties of a position before interviewing is an important exercise that helps focus the recruiting process on those skills that are most essential, which in turn increases the likelihood that the correct person will be hired for the job.

**Note:**

*The hope is that this will increase the chances of hiring a productive, long term employee and reduce the risk of an involuntary termination down the road.*

## FLSA Classification Analysis

Accurate job descriptions are useful for clarifying whether an employee is exempt or non-exempt from overtime requirements under the Fair Labor Standards Act (“FLSA”) and state wage and hour laws.

A job description is critical in determining whether an employee is properly classified as exempt from overtime.

## ADA Accommodations

An accurate job description – including especially an accurate list of minimum qualifications and essential job functions – is critical in determining whether an employee or job applicant with a disability is “qualified” under the ADA and what type of accommodation may be required. To be “qualified,” an individual must have the requisite skills, experience, education, and licenses for the job, and must also be able to perform the essential functions of the job, with or without reasonable accommodation.

Under the ADA, an employer is never required to eliminate an employee’s essential job functions as part of a reasonable accommodation. An employee’s written job description is given deference by the EEOC and the Courts when there is a dispute about whether a skill is required and whether a particular function is essential.

**Note:**

*However, when the employee’s job description does not include a function that the employer argues is essential, a court may find that the issue is disputed and must be resolved by a jury. Likewise, where a job description is inaccurate or conflicts with other forms describing essential job functions, a court may find there is a genuine issue of material fact and decline to grant summary judgment on a failure-to-accommodate claim.*

## **Return from Leave Issues**

Job descriptions may be provided to health care providers when determining whether an employee is fit to return to work after taking medical leave under the Family Medical Leave Act (“FMLA”) or ADA. This provides the medical professional with a convenient means of evaluating the employee’s job functions and his or her ability to perform them with or without accommodations.

## **Equal Pay Analysis**

Job descriptions help reduce potential liability in cases involving compensation and equal pay issues.

Differing job descriptions may be evidence that different jobs are not functionally equivalent and therefore need not be paid the same.

## **RIFs/Succession Planning**

Job descriptions also can assist management when planning reductions in force, right sizing, and succession planning. In these situations, management can review accurate job descriptions to determine what jobs are still needed under circumstances where it could be uncomfortable, inappropriate, or inconvenient to interview the employees themselves about their job functions.

## **Defending Wrongful Termination Claims**

When called upon to defend an employee’s termination in a discrimination or other wrongful termination lawsuit, being able to point to the employee’s job description as evidence of the employer’s legitimate expectations can be powerful evidence to rebut an allegation of discrimination.

This is also true for employees who are not at-will and can be fired only for cause. Demonstrating that an employee cannot perform an essential job function as described in a job description can be convincing evidence that there is cause for discipline or termination.

## **Defending Retaliation Claims**

Job descriptions may also be used to clarify when an employee is engaging in protected activity versus merely performing their job functions.

For example, a Human Resources employee cannot claim they are engaging in protected activity when assisting with an investigation as part of their job duties.

## **EFFECTIVE PERFORMANCE MANAGEMENT**

Job descriptions can help companies better understand their skill base and needs. Specifically, they can:

- Serve as a reference guide for determining comparable industry salaries.
- Function as a foundation for developing interview questions for applicants.
- Provide managers with clear guidelines for hiring, promoting and supervising employees.
- Serve as a motivator and provide clarity on job roles and responsibilities.

Accurate job descriptions provide employers with a clear description of job functions against which employees can be held accountable in connection with annual performance assessments. Job descriptions and performance evaluation forms should sync up with each other.

### **Job Descriptions and Performance Reviews**

Performance reviews provide an opportunity to offer feedback to your employees, and it's essential that the job description accurately reflects the requirements of the job.

Having accurate and up to date job descriptions enable employers to better engage with and manage employee performance.

### **Clear Job Descriptions Promote Transparency**

Job descriptions help ensure there are no miscommunications or misunderstandings. With transparency and accurate job descriptions, your employees know what to expect.

When employers operate without job descriptions, roles cannot be easily defined for your employees which can cause confusion.

## Increase of Employee Retention

A job description offers a level of certainty to your employees, so they can focus on required tasks to increase productivity, improve their skillsets, and feel better about their achievements.

When your team has higher morale and motivation, they will feel better about their work with your company.

## How Job descriptions can be Used to Effectively Communicate with Employees

Job descriptions offer a roadmap for your employees, so they know what to expect both now and in the future.

Job descriptions are flexible that are intended to grow and change over the course of your employee's time at your company, but they are also only effective if you spend time to make them as accurate as possible.

Well-written job descriptions don't just help an employee understand their role and responsibilities; they also protect organizations in the event of legal action.

- **What to Include in the Job Description**

An effective job description details the primary functions of the job, how the tasks will be carried out, and the necessary skills needed to perform the job. It should anticipate employee growth and any potential problems that may arise due to misunderstandings. It should include the following:

- Job Title
- Salary Range
- Exemption Status and Basis for Exemption
- Statement of Purpose and Objectives
- Job Description
- Description of Reporting Structure
- Experience and Skills
- Physical Requirements
- Description of Ideal Candidate
- Work Location and Schedule

Framework of the Job Description:

- **Job Title:** This clarifies the position, job title, and rank or level (if applicable).

- **Salary Range:** List starting salary, mid-range, and high (maximum) salary for the position. You should also include information about how employees may be eligible for additional compensation (e.g., sales commissions, performance bonuses, annual raises, etc.).
- **Exemption Status and Basis for Exemption:** You should list the position's status and explain why it has been designated as such.
- **Statement of Purpose and Objectives:** Include a general statement summarizing in three or four sentences the purpose or objective of the position.
- **Description of Reporting Structure:** This section provides a detailed description of any and all roles the employee will hold. This should include their own supervisory roles (if any) as well as whom they are subordinate to directly and indirectly. If the employee is to work with other employees or departments, include that information as well. It is helpful to include a corporate organizational flow chart that depicts all positions in the company and their hierarchy.
- **Experience and Skills:** Be as specific as possible when detailing the experience and skills required to perform the job. For example, if the position requires the use of a computer, list the type of software or hardware used to perform the job.
- **Physical Requirements:** Any physical requirements (e.g. must be able to lift 50 pounds) should be clearly detailed and explained.
- **Description of Ideal Candidate:** Detail other strengths needed to perform the job such as "ability to work with tight deadlines and multiple bosses."
- **Work Location and Schedule:** List the physical location of the job, the days and hours of the position, and include any potential overtime that may be required to perform the job.

## Strategies for Effective Performance Management

Effective performance management isn't a one-time event—it's a process.

- **Align Performance Management With Organizational Objectives**

In order to be effective, your performance management process needs to support the organization's priorities and objectives. When performance goals are based on strategic objectives, employees are able to focus their time on activities that will generate results. Purpose drives process, therefore aligning your performance management strategy with organizational objectives will help create a coherent, systematic process.



- **Set Clear Expectations**

You can't manage performance without first knowing what good performance looks like. Do your employees clearly know what you expect of them? Effective performance management requires clear expectations.

How are clear expectations set and defined? Referencing job descriptions, goal setting activities, and cultural values when setting expectations. Being straightforward will help ensure that employees are focused on activities that drive performance results.

- **Provide Quality Feedback**

Quality feedback drives effective performance management. Unfortunately, many managers and supervisors have never been formally trained on how to give feedback. If you don't already have a process in place to train managers and supervisors to provide effective feedback, now is the time to put this on your radar. The impact of performance management is a direct result of the feedback provided, which makes quality feedback a crucial element of effective performance management.

- **Review Goals Periodically**

Because performance management is a process and not an event, goal setting should be fluid. Effective performance conversations should include a focus on outcomes, changing priorities, and new directions. The following questions may be helpful in guiding goal-setting conversations:

- What are the next steps employees should take?
- What kind of follow-up and check-ins will you do?
- How often will you review and potentially revise goals to ensure ongoing performance alignment with business priorities?

A lot can change for an organization, both internally and externally, so goals should be revisited as often as necessary. Asking thoughtful questions and frequently revisiting goals will help make your performance management process more efficient.

- **Give Frequent Feedback**

Performance feedback should be built into performance conversations on a regular, ongoing basis. To make your performance management process more effective, consider giving more frequent feedback.

**Note:**

*This may look like going from an annual review to quarterly reviews, adding goal check-ins, and holding weekly 1-on-1s.*

An effective performance management process will ensure that managers and supervisors are engaging regularly with their staff and providing feedback to help keep everybody focused and on track.

- **Create a Streamlined Process**

The easier it is for managers and supervisors to manage the performance management process, the more likely they'll be to establish an effective environment where feedback is ongoing.

Performance management is about feedback, not learning complicated and convoluted processes. Offer clear next steps with ongoing prompts and alerts to keep performance management top-of-mind for both managers and employees.

Source: <https://www.performyard.com/articles/effective-performance-management>



Job requirements are the skills, experiences, and knowledge needed; whereas, performance expectations outline what the person will do on the job. To set clear performance expectations:

- Review current job descriptions.
- Identify the gaps between your current performance levels and what you want to do in the future.
- Create new performance expectations to close the gaps.
- Energize your team to achieve the performance expectations.

When everyone on the company understands their job description and performance expectations, they can work together to accomplish their goals. When employees know their roles and the expectations of their roles, they can focus their efforts on the tasks at hand and reach their highest potential to succeed. Further, with complete transparency and understanding of the job descriptions and performance expectations, employers can avoid misunderstandings that arise from unclear expectations.