

Just the Essentials: Drafting a Sound Job Description

At first glance, an employer's task in crafting job descriptions may appear to be straightforward. Most employers prepare job descriptions with an eye toward attracting high quality candidates and establishing clear expectations for employees. Employers may be less focused, however, on the legal implications of the words they choose. A well-drafted job description is one which best postures the employer to assert its legal rights and successfully defend a lawsuit, while also fulfilling the practical goals of effective recruitment and employee accountability.

Why is a job description a legal issue?

There are several important reasons why a job description must be viewed as a legal document. All Pennsylvania employers with at least four employees are subject to the Pennsylvania Human Relations Act, which protects applicants and employees from discrimination on the basis of numerous characteristics such as disability, race, religion and gender. Larger employers are also obligated to comply with the Americans With Disabilities Act (ADA) and other federal anti-discrimination laws.

A sound job description is an indispensable step in meeting an employer's obligations toward disabled applicants and employees. Anti-discrimination laws require employers to offer reasonable accommodations to allow individuals to perform the essential functions of a position. An employer should begin this process by providing an applicant with a job description that clearly and accurately describes the position's essential functions. The employer should then ask the applicant if he or she can perform the essential functions of the position with or without a reasonable accommodation. It is preferable to ask this of the applicant in writing and to require the applicant's signed response.

If the applicant indicates that no accommodations are needed, the process is complete and the employer has documentation of compliance with its legal obligation. If the applicant indicates that an accommodation is needed, the employer must begin the interactive process of discussing with the applicant the question of whether a reasonable accommodation can be provided to allow the applicant to qualify for the position.

A good job description serves a similar purpose with respect to employees who may request an accommodation. In that scenario, the employer would refer to the job description's listing of the position's essential functions in order to discuss with the employee the possibility of reasonable accommodations to allow him or her to perform those functions.

An effective job description will also position the employer to defend an action alleging discrimination based on disability or other legally protected characteristics. An employer can position itself to successfully defend a lawsuit by an applicant who was not hired by demonstrating that the successful applicant was more qualified in light of the job description. Similarly, an employer should be able to point to a clear job description in defending an action brought by a terminated or disciplined employee in order to demonstrate that it was the employee's failure to meet clearly defined and communicated expectations, and not discrimination on the part of the employer, that led to the adverse consequence.

Finally, a good job description can assist in determining an employee's eligibility for worker's compensation. By providing the evaluating physician with a clear description of the physical demands of a position, the employer may be more likely to obtain an accurate and job-specific assessment of the injured employee's capabilities and limitations. This is preferable to the vague statements that are at times provided to employers by physicians, such as "employee is released to light duty."

What are some important qualities of a good job description?

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Just the Essentials: Drafting a Sound Job Description

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The basic rule of thumb in preparing job descriptions is to include everything that is necessary, and nothing that is unnecessary. This applies when listing both qualifications and job duties.

The process of writing a job description should begin with a thorough brainstorming session, taking into account all requirements and tasks of the job. This will require some critical and creative thinking on the employer's part as it is important to look beyond that which may at first seem obvious.

For example, when looking at a job that demands largely physical labor, it may be relatively simple for the employer to identify essential functions such as lifting a certain amount of weight, or the ability to climb a ladder. The employer should still take care not to neglect potentially less obvious physical demands, such as bending, crouching, crawling, sitting or standing.

When the position at issue is largely a desk job, employers may forget that certain basic physical capabilities will still come into play. The ability to see, hear, or communicate effectively through various means may need to be included among job qualifications and essential functions.

It is important to note that a person's physical inability to perform certain functions will not necessarily disqualify him or her from the position. Rather, it may be, depending on applicable law, incumbent upon the employer to discuss with the disabled applicant or employee whether a reasonable accommodation can be made in order to allow the person to perform the position's essential functions.

The question of whether a specific skill or task rises to the level of an essential function of the job may not always be immediately clear. For example, most modern workplaces are equipped with various forms of technology. To determine whether technology-related skills and tasks are essential, an employer should look to the nature and central purpose of the job, as well as the big picture of all positions within the workplace.

Consider the example of preparing a job description for an attorney seeking employment in a firm that also has separate positions for taking dictation and typing. While it may be convenient for the attorney to perform a certain amount of routine typing, it is likely not essential to the job.

Employers must also take care to omit non-essential qualifications. For example, an employer should not require a college degree, or even list it as a preference, if the essential functions of the position do not truly require one. Employers may mistakenly require a college degree based on a belief that it will better equip an individual to perform the essential functions of the position. If the employer cannot tie a specific qualification to specific essential job functions, the employer risks exposure in a discrimination action.

Likewise, employers should be aware that the Pennsylvania Human Relations Act prohibits discrimination against an applicant or employee who holds a GED instead of a high school diploma. Therefore, if a high school education is essential to a position, the correct approach is to require a "high school diploma or equivalent."

A carefully drafted job description, with the assistance of an employment attorney, will best posture an employer to protect its legal interests, while also serving the organization's needs for qualified and competent personnel.

By Rachel K. Lozosky



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The Employment Application **Questions of Interest to Employers**

Employers, large and small, may often feel bombarded with advice about what may or may not be said or done in addressing workplace concerns, the extent to which employees' "outside" conduct and comments may be considered by employers and similar issues. Although each of these issues warrant careful discussion, we feel compelled to comment at this time about an often overlooked, and legally precarious, aspect of the employment relationship: employment application. In our experience, employers continue to use applications which ask legally impermissible questions, of which could well serve as the basis for discrimination claims by unsuccessful applicants. This article serves as one component of a refresher course, our "back to basics" approach to advising employers.

Questions of interest to employers can be grouped into three categories: (1) legally permissible; (2) legally impermissible; and (3) irrelevant. that although irrelevant questions themselves may not be legally impermissible, including them on application forms can require answers which provide information that the employer was not permitted to ask about directly. In addition, if questioned by an investigating agency, such as the Pennsylvania Human Relations Commission or the Equal Employment Opportunity Commission, an employer may be hard pressed to justify their inclusion because, of course, they are irrelevant. This will not be helpful in supporting an employer's claim that the application process was appropriate.

What are the legally permissible questions? In addition to directory information, such as name and address, the position for which the application is submitted, and availability with respect to days and hours to work, an employer may ask an applicant about his educational background (without reference to dates of attendance/completion), prior work experience and whether he/she is legally permitted to work within the United States (without reference to completion of the I-9 form at this time). Moreover, an employer may ask questions specific to the duties of the position for which application is made, relating to an employee's skill set, physical competencies and certifications. If driving is an essential function of the position, an employer may ask if the applicant has a current, valid driver's license. To do so appropriately, however, the employer should have a written description for each position, to provide to the applicant contemporaneously with the application form. This will allow the employer to legitimately ask about a concern significant to all employers: can the applicant meet the physical requirements of the position listed in the job description: lifting, standing, climbing, crawling, etc.? Importantly, the application form can include the seminal question: is the applicant able to perform the essential functions of the position with or without reasonable accomodations?

Questions specifically relating to the applicant's health or medical history, at this point in the pre-employment process, are legally impermissible. This means, of course, that during the application process, questions about prior workman's compensation claims are forbidden. Under the law, these inquiries are forbidden because they may cause the employer to view the applicant as a disabled person, even if the applicant has fully recovered; the Americans with Disabilities Act provides certain protections for otherwise qualified applicants thought to be disabled, as well as those who are in fact disabled. Although an employer may require an applicant to have a physical examination after an offer of employment has been made, but before the employee begins work, the employer may not venture into this area prior to offering the applicant the position. To do otherwise may well violate the applicant's rights under the ADA and/or the Pennsylvania Human Relations Act.

questions, impermissible during the application process, include questions about gender, race, religion, date of birth/age, marital status, social security number, child care arrangements, and/or citizenship. While some of these attributes may be apparent when an applicant appears in-person, or if in-person interviews are conducted, the mere fact that the information may at some point be obvious does not justify inclusion of the question. Nor may an employer inquire into an applicant's criminal history, unless the inquiry is required by law, as it is for some employers, or unless felony or misdemeanor convictions of certain crimes relate to suitability for the position sought, in which case, the question must be tailored to crime of a nature relevant to the position. While some of these questions may be relevant for payroll processing purposes, they are not relevant unless and until the applicant is actually hired for the position.

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The Employment Application

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Finally, we have seen a number of questions included on application forms which are not relevant; usually these seemingly innocuous questions are included because the employer would like to know something personal about an applicant, to provide the employer a basis to narrow down those to be interviewed from among a large group of applicants, or to allow the establishment of rapport during an interview. The problem is that answers to these questions can lead to information which is legally problematic. For example, asking an applicant whether he belongs to any civic, social or fraternal organizations could well disclose his religious affiliation, ethnicity and/or race.

We encourage employers to review their application forms and prepare appropriate position descriptions to be used in conjunction with the application forms. encourage employers to adhere to the same limitations during the interview process. Finally, should you have any questions, we encourage you to contact one of Peacock Keller's employment attorneys.



By Barbara A. Graham

Charles C. Keller Named World Class CEO



Charles C. Keller, has been selected as a co-recipient of the Southpointe CEO Association's 2016 World Class CEO Award.

Keller and co-recipient, Douglas G. Lee, President of Waynesburg University, were selected for their excellence in profession, achievements in service, and dedication to the business development of the Southpointe Industrial Park. They will be jointly honored Thursday, June 16, at a dinner reception at the Hilton Garden Inn in Southpointe.

Keller has held many leadership roles with national, state and local bar associations receiving Washington County Bar Association's highest honor - the Distinguished Service Award, in 1963, and being named a

Fellow with American College of Trial Lawyers.

"I have long believed that community service and business development should go hand in hand," said Keller. "I am proud that I personally, as well as my law firm, have been able to not only serve the community through involvement in service clubs such as Rotary, Lions, Kiwanis and Zonta clubs, but also guide and help counsel many of the prominent businesses that make Southpointe what it is today.

I look forward to our firm's continuing representation of not only our existing Southpointe clientele, but also future businesses which will inevitably continue to be drawn to this incredible business community."

Throughout the communities of Southwestern Pennsylvania, Mr. Keller has impacted the quality of life with his leadership roles in the Washington County Easter Seal Society, the Mon Valley United Way, the Mon Valley Hospital, Southwest Pennsylvania Human Services, the California Area Chamber of Commerce and the Washington County Community Foundation. Keller also served as a member of the Board of Directors of the Pennsylvania State Chamber of Commerce, and Executive Vice President and Director of the Allegheny Trails Council, Boy Scouts of America.

Aside from his legal acumen, Keller is perhaps best known for his involvement with Rotary International, a world-wide service organization of more than 1,200,000 business and professional men and women organized into nearly 34,000 clubs in 170 countries.

Washington County Property Reassessment

Washington County recently contracted with Tyler Technologies to conduct a reassessment of all of the roughly 120,000 properties in the county. The County last revalued properties in the late 1970s with a base year set at January 1, 1981. This meant that the valuation date of all new construction thereafter, for the past thirty years, was January 1, 1981. As a result of the reassessment, all properties within the county will now have an assessment of what their property was worth on July 1, 2015.

The new values have been mailed to property owners during March and April 2016. If property owners are not satisfied with the valuation, they can request an informal review with Tyler Technologies. The official change of assessment notice will be sent to all property owners after July 1, 2016. If a property owner is still not satisfied with their valuation, a formal appeal may be filed with the County Tax Revenue Department and hearings will be held before the County Board of Assessment Appeals, until October 31, 2016.

In November, the new assessment values will be certified by the County to the taxing bodies which will utilize those values to calculate new tax bills starting with the 2017 tax year. (Beginning on January 1, 2017 for the county and local real estate taxes, and July 1, 2017 for school taxes.) Until those tax bills are calculated, property owners will not know whether their real estate taxes will increase or decrease as a result of the new assessment.

There are statutory limits, however, to which a municipal subdivision can raise taxes at the completion of a countywide reassessment. In the first year that any county implements a countywide reassessment, a taxing district levying its real estate taxes on the revised assessment roll for the first time shall reduce its tax rate, if necessary, so that the total amount of taxes levied for that year are not more than 10% greater than the total amount it levied on the properties the preceding year, notwithstanding the increased valuations of the properties under the revised assessment.

This section of the law does not apply to a school district, which is further restricted in its ability to raise taxes. Under Act 1 of 2006, known as the Taxpayer Relief Act, school districts cannot increase their taxes beyond an inflationary index unless they gain voter approval through a referendum. The current index for most school districts is approximately 3%. Therefore, a school district must decrease its millage following a countywide reassessment so that the total amount of taxes levied are no more than 3% greater than the total amount it levied on the properties the preceding year.

It will be several months before Washington County

residents will see the impact of the reassessment on the amount of taxes they will pay. However, state law guarantees that the overall tax increases will be minimal due to this anti-windfall legislation.



By Susan Mondik Key

Case Notes

- The Florida Supreme Court has issued a rule requiring all judicial robes to be solid black, finding that the courtroom is not a place to make a fashion statement.
- The Monroe County, Pennsylvania, Court of Common Pleas held that there was no compensable injury when a medical provider lost a biopsy specimen and a patient feared for cancer.
- The Northhampton County, Pennsylvania, Court of Common Pleas held that text messages between a homeowner and a contractor were sufficient evidence of the terms of a home remodeling contract.
- A North Carolina man was arrested after being pulled over for a broken taillight. The police officer informed the man that there was a warrant out for his arrest for his failure to return a rented video 14 years earlier. He was charged with a misdemeanor offense and was notified that he owed a fine of \$200. The overdue video was "Freddy Got Fingered," and the star of the movie, Tom Green, has offered to pay the fine.



PEACOCK KELLER IN ACTION

Peacock Keller tied for 10th place, out of 37 teams, in the Annual Rotary of Washington County Charity Trivia Contest

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The Washington Office of Peacock Keller participated in the 2016 "Scouting for Food" food drive.

Together we donated enough food to fill the trunk of a car benefitting the Greater Washington County Food Bank

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Peacock Keller joined Bowl for Kids' Sake in support of Big Brothers Big Sisters of Greater Pittsburgh on Saturday, April 2, 2016



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