



Your Best Assets: Preparing Job Descriptions and Evaluating Job Performance

By Katherine DeForest, Esq.

Job descriptions: What are they good for?

- Provide notice to employees of employer expectations prior to hire
- Provide objective metric for evaluation
- Provide evidence of essential functions of job for ADA and RSA 354-A accommodation analysis
- Attract qualified applicants during job process



Anatomy of a Job Description



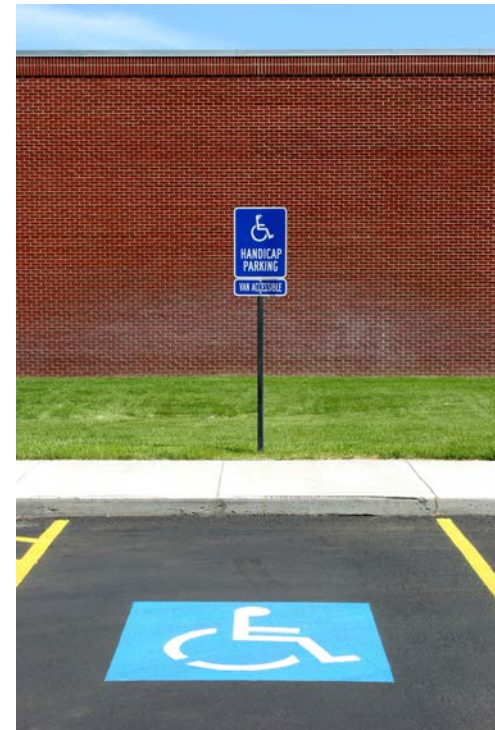
- Title
- Hourly or Salary Exempt
- Qualifications
 - Education level
 - Experience
 - Certifications
 - Preferred or required?
- Responsibilities

Job Descriptions

- Focus should be on **what** needs to be accomplished instead of **how** it should be accomplished
- List essential functions of the position
- List physical requirements necessary to complete essential functions
- A good description takes time to develop

ADA/NH RSA 354-A

- ADA applies to employers with **15** or more employees
- NH RSA 354-A applies to employers with **6** or more employees
- Prohibits discrimination on the basis of disability
- Requires reasonable accommodation be made for qualified individuals with disabilities



How does ADA/NH RSA 354-A apply to job descriptions?

- Essential functions of the position
 - Written job description is compelling (though not dispositive) evidence of essential functions of the position
 - Provides guidelines for management/board in determining whether function is essential/accommodation is reasonable
- Disparate impact claim
 - Job functions should accurately reflect the requirements of the position

Case Study I

- Job description for children's librarian states that lifting 50 lbs is requirement of the position
 - Individual holding the position for two years has had to lift 50 lbs once during that time, but has to lift 15lbs on a regular basis
 - Individual has chronic back condition that limits her ability to lift to 20 lbs
 - Individual asks for an accommodation of shifting the task of lifting more than 20 lbs to a library aide position
 - What do you do?



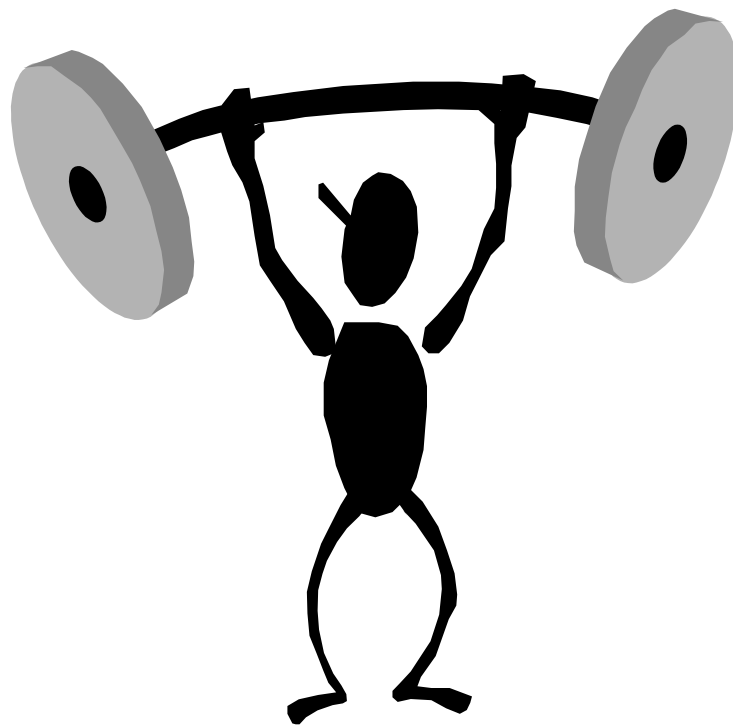
Case Study II

- The job description does not include any physical requirements
 - Individual employed as library aide brings in a note from his doctor which states the individual cannot, for medical reasons, lift more than 10 lbs
 - Your library director tells you that the aide is responsible for loading and unloading interlibrary loans, which come in boxes that weigh, on average, 15lbs
 - There is no one else in the library that can take over the loading and unloading of books
 - What do you do?



Case Study III

- Job description states that lifting 50 lbs is job requirement
 - In practice job requires lifting 10 lbs on an infrequent basis
- What's the problem?



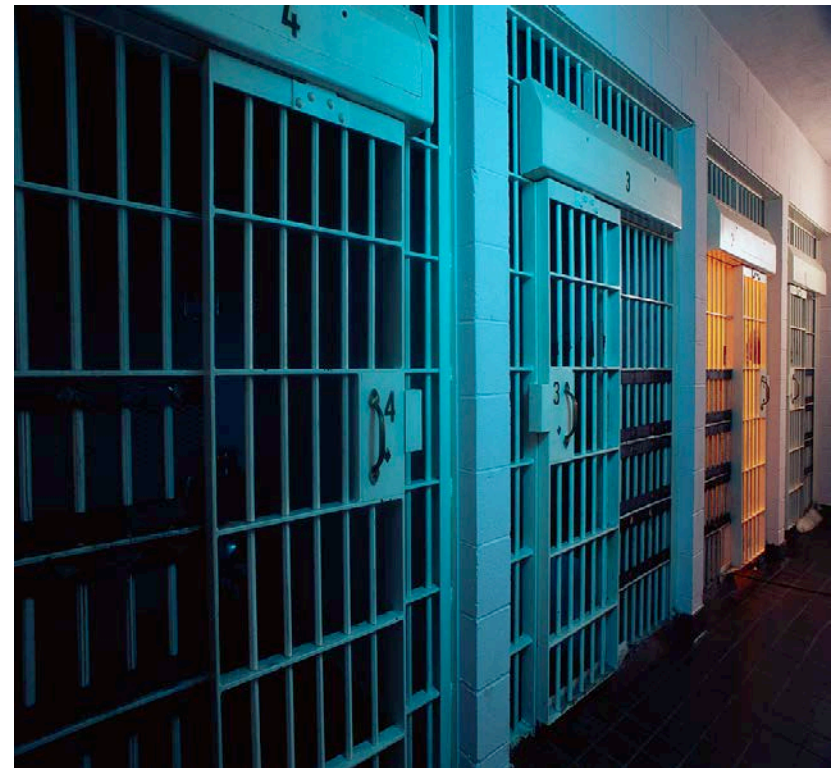
Performance Evaluations

- Why have them?
 - Operating under RSA 202-A:17
 - No employee of a public library shall be discharged or removed from office except by the library trustees for **malfeasance, misfeasance, or inefficiency in office, or incapacity or unfitness** to perform the employee's duties.



Job Evaluations

- This is a **high** standard
- Malfeasance = “evil” intent
- Misfeasance = a little less than “evil” intent, but having negative effects nonetheless
- Inefficiency in office
- Incapacity
- Unfitness



If your employee is here, you probably have a good case for malfeasance (if the crime involved the library, or incapacity) otherwise, it's a hard sell

Best Practices

- **Have a thoughtful form**
 - Categories of evaluation should be keyed to job description (job descriptions should not exist in a vacuum)
- **Have a policy regarding performance evaluations and follow the policy**
 - Determine what makes sense for your organization
 - Annual, bi-annual
- **Evaluator should have first hand knowledge of employee's performance**
- **Board should review evaluations, ask questions**



Best Practices

- Be constructive but honest in your criticism
 - If there is a problem, identify it and set forth steps to improvement
 - Include distinct and measurable goals
 - If a performance evaluation requires follow up, then follow up!
 - Set reminders and stick to them



Best Practices

- Good evaluations take time, but it's time well spent
- Evaluations are an opportunity to develop your workforce and identify crucial information regarding your organization's management and training needs



Case Scenario IV

- Your library director consistently fails to keep adequate records regarding book purchases
- The board has spoken to the library director about his inadequate record keeping on numerous occasions, but on an informal basis, usually by one or two board members
- The board has not set an agreed upon term of years for the library director as directed by RSA 202-A:15
- The board has not completed performance evaluations for the librarian in the five years he's been library director
- What should the board do?
- What are the risks/areas of exposure?



Case Scenario V



- A librarian has been chronically underperforming for years
- The employee has been counseled on numerous occasions (not documented), including for failing to adequately secure the library and for using library supplies for a private cleaning business
- The library director wants to let the employee go
- The library policy states that progressive discipline will be applied in most cases, but serious infractions can result in termination
- What are the board's options? Issues?

Case Study VI

- The librarian in the prior scenario is a member of a protected class
 - Alleging employment action was discriminatory on the basis of race, age, sex, national origin, sexual orientation (NH)
 - McDonnell-Douglas burden shifting analysis
 - Once the employee makes out a prima facie case for discrimination, burden of proof shifts to the employer to show a nondiscriminatory reason for the employment action



Bottom Line

- Performance evaluations and job descriptions can be key tools to assist an employer to make employment decisions
 - Tools to develop your workforce
 - Defend claims (wrongful termination, discriminatory treatment)
 - Ability to take the employment actions you need to take to make your organization run most effectively



