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THE HIRE ACT UPDATE: FORM W-11

In an effort to encourage employers to hire again in this period of recession, President Obama signed the Hiring Incentives to Restore Employment (HIRE) Act on March 18, 2010, where qualified employers will receive two important tax breaks for hiring and holding onto previously unemployed workers: (1) A payroll tax exemption, and (2) A new hire retention credit.

What is the new hire retention credit and what does it apply to? It is a business credit for each qualified employee retained for 52 consecutive weeks, provided that the employee's pay does not significantly decrease in the second half of the year. Wages paid during the previous 26 weeks must equal at least 80% of wages during the first 26 weeks of employment. The tax credit is the lesser of \$1,000 or 6.2 % of wages (as defined for income tax withholding purposes) paid to the retained qualified employee during the 52 weeks. The credit cannot be carried back but can be carried forward.

What is the payroll tax exemption? An exemption from the employer's 6.2% share of Social Security tax on all wages paid to *qualifying employees* from March 19, 2010 through December 31, 2010, up to the \$106,800 Social Security wage base. There is no limit to the total amount of tax benefits or hires during this period, so employers will receive greater tax benefits by hiring individuals earlier in the year. The employee's 6.2% share of social security tax and the employer and employee's share of Medicare tax still apply to all wages.

Who are qualified employees? Qualified employees are individuals who begin employment with a qualified employer after February 3, 2010 and before January 1, 2011, who have been unemployed or employed for less than 40 hours during the 60-day period ending on the date such employment begins, and who are not family members of or related in certain other ways to the employer. The qualified employee must certify by a signed affidavit, under penalties of perjury, that they have not been employed for more than 40 hours during the 60 day period ending on the date they started employment. Employers can now use the recently issued "HIRE Act Employee Affidavit," or "Form W-11" to claim the payroll tax exemption. The form is available on the home page of the firm's website. For more questions and answers on the HIRE Act, please visit the IRS website.



MOST COMMON JOB DESCRIPTION ERRORS

Spending time on job descriptions is not a high priority for employers, especially since job descriptions are not required by law. However, accurate and current job descriptions are central to hiring, classifying exempt employees, evaluations and exploring accommodations for disabled employees (not to mention avoiding lawsuits). Employers and their employees are more likely to work more enjoyably and productively when what is expected in an employee's job performance is detailed in writing.

Employee job descriptions are written statements that describe the duties, responsibilities, required qualifications, and reporting relationships of a particular job. They should be based on objective information obtained through job analysis, an understanding of the competencies and skills required to accomplish needed tasks, and the needs of the organization to produce work. The following are commonly made mistakes which, if avoided, should help you develop effective job descriptions:

1. **Neglecting Job Descriptions**

Many organizations that utilize job descriptions perform a regular review of job descriptions. Employers should consider revising job descriptions when:

- There is a re-organization in the company
- The job changes (perhaps due to new technology) or there is a change in essential functions
- Incumbents of the same position are not expected to perform the same or similar tasks

Employee job descriptions become dated as soon as you write them in a fast-paced, changing, customer-driven work environment. You must supplement employee job descriptions with regularly negotiated goals and developmental opportunities, at a minimum, quarterly. If you have not reviewed your job descriptions recently, answering these questions will help give your job description process a boost:

- Why do we need job descriptions?
- What are the shortfalls of our existing job descriptions?
- To what specific uses will the job descriptions be put?
- Who will be involved in developing and managing the job descriptions?

2. **Omitting Critical Elements of a Job Description**

The effectiveness of a job description will be diminished if key elements are missing from it. Most job descriptions contain the following:

- Job title
- Statement of purpose or objective of position
- Salary range
- Essential functions and additional responsibilities in order of significance (the most important duties should appear at the top of the list). This list should cover every activity that will take 5% or more of the employee's time and include any accountability the employee may have for meeting

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certain objectives.)

- Description of reporting structure
- Experience and skills needed
- Description of ideal candidate (e.g., able to meet strict deadlines, able to work with multiple bosses)
- Work location and schedule
- Disclaimer list of tasks is not exhaustive, with phrase like “and additional duties as directed.”

3. Failing to Accurately Describe the Actual Job

A typical job description is deficient in at least one of the following ways:

- It exaggerates or downplays the importance of the job.
- It fails to identify the standards that distinguish between successful and unsuccessful job performance.
- It ignores the decision-making aspects of the job.
- It either fails to focus on the current position’s actual duties or it defines required responsibilities in ambiguous terms
- It describes worker requirements or characteristics that are not really needed to succeed in the job.

4. Failing to Use Job Descriptions Properly (or at All)

Employee job descriptions that sit unused in a drawer, or worse, filed in the HR office, are a waste of time; they must be integral in your hiring process. Take the actions discussed in the first part of this article, and make employee job descriptions an integral part of your hiring and selection process. Use employee job descriptions to obtain employee ownership and support for the position and to trace the parameters of the skills and abilities you seek for the position. In addition to the updating of regular goals and objectives suggested above, employee job descriptions are a valuable part of the performance management and evaluation system. They are used to determine salary increases and bonus eligibility. They are a job reference for determining how an employee spends his or her time at work. Job descriptions can also be valuable evidence of legal compliance (or noncompliance) under a number of state and federal employment laws.

5. Poor Drafting

To achieve the primary objectives of job description drafting — accuracy and brevity — you must double-check the words you have chosen to describe each job activity. Make certain employee job descriptions have enough flexibility so individuals can “think outside of the box.” Employee job descriptions should be flexible so that employees are comfortable cross-training, helping another team member accomplish a task, and confident they can make appropriate decisions to serve their employer’s operational goals. The following guidelines should be kept in mind:

- Use a terse, direct style throughout the description.
- Keep sentence structure simple; omit all words that don’t provide necessary information.



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- Be clear and use nontechnical language whenever possible. A good job description is understandable even to a layperson.
- Begin each sentence with an active verb, third-person singular. Always use the present tense.
- Wherever possible, describe the desired outcome of the work, rather than the method for accomplishing that outcome.
- Focus on essential activities. NOTE: a task that is performed frequently throughout the day may not be as essential to the job as something done only once or twice a week.

Still on the fence about whether to have job descriptions, or need to update existing ones? If effectively written, and kept up to date, job descriptions can serve a significant role in informing employees of the goals, duties, and responsibilities they have within an organization, upon which they will be gauged.

PRACTICE TIPS FOR EMPLOYERS: It is advantageous to use your current incumbents as valuable sources of information needed to develop your new or updated job descriptions. Conducting informal interviews of the current employees can provide a good starting point on the critical elements of a description.

Other Resources: *Handbook of Model Job Descriptions*, by Barry Cushaway London, Kogan Page, 2003; *Writing job descriptions*, by Alan Fowler, London: Institute of Personnel and Development, 2000. For a checklist to use drafting job descriptions, please contact Elizabeth Koumas at ejk@koumaslaw.com.

MOST FREQUENT HIRING-RELATED MISTAKES TO AVOID



1. Failure to Properly Analyze the Position Available

Too many managers start interviewing before they know what they are looking for in an ideal candidate. Start with an accurate job description, which clearly details the objective qualifications and responsibilities necessary to perform the job available. To get it right, you have to involve the people who work with the job, do the job, and supervise it. A good job description should:

- describe the essential functions of the job, as required by state and federal anti-disability-bias laws, in addition to others such as education, skills and work experience;
- indicate the task that must be accomplished or the quality that must be possessed as opposed to the means for accomplishing the task;
- focus on skills and abilities as opposed to personal attributes of applicants.

To determine your hiring criteria, focus on knowledge, skills, abilities, relevant job experience, education. Determine what is really necessary to succeed. After you have decided your criteria, develop a series of questions that will help you distinguish candidates with the attributes sought.

2. Failure to Use a Good Employment Application

Every applicant must fill out an employment application. Recommendations for a good application include:

- Equal employment opportunity statement;
- Statement limiting duration of application effectiveness;
- Question to disclose exact job or category sought by candidate

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- Section for detailed employment history;
- Area to list last supervisor for each prior employer, and references and signed statement granting consent to conduct background check and contact references, along with waiver for release of former employment files;
- At will disclaimer coupled with Acknowledgment for applicant to sign that no offer or promise of employment has been made and application is not a contract;
- Verification for applicant to sign indicating that all information provided on application and resume is true and complete, along with acknowledgment that incorrect or omitted information may render the applicant disqualified or subject to discharge;
- Notice regarding any required drug testing / medical exams as a condition of employment offer.
- Acknowledgment that applicant is not bound by any Nondisclosures or Noncompetes.

3. Failure to Check References and Basic Application Information

Surveys show that more than 50% of all applicants supply incorrect information in some significant area. Knowing this, you must perform background checks promptly and respond accordingly.

4: Failure to Provide a Real Orientation

Avoid rushing orientation, in an arbitrary attempt to fit it into a pre-determined timeframe. Instead, adopt an approach which decreases turnover, increases productivity and familiarizes new employees with key issues. Topics include: (a) Review of duties, schedule and expectations on the first day; (b) Review important policies and get them acknowledged; (c) Provide full-on harassment prevention training right from “Day 1;” (d) Include disclosure of your right to monitor and a “no expectation of privacy;” (e) Prohibit employees from bringing trade secrets and proprietary information from former employers; (f) Go over workplace guidelines, such as your dress code and attendance and have the employee sign an acknowledgment.

5. Failure to Maintain Records of Applicants

Recordkeeping is required for federal contractors, and is also necessary for defending possible discrimination claims. Devise a policy for handling applicants and be consistent for both on-line and hard-copy application submissions. Based on the time limitations for federal and state related employment claims that could arise from the hiring process, hiring related records should be kept for at least 2 years.

EMPLOYMENT LAW COMPLIANCE AND RISK REDUCTION SERVICES

Annual Audit of Employee Handbook

“When was the last time an audit was conducted of your written policies, to ensure compliance with current labor laws?”

It is critical to the success of any business operations to learn how to protect your company’s interests while conveying your employees’ rights and obligations in a handbook. Periodic review of your policies and practices will help ensure compliance with the ever changing labor laws. By way of example only, if you are a covered employer, do your leaves of absence policies contain the new protections for leave relating to active duty reservists (enacted in October 2008), or to care for injured military personnel (effective January 2009)? To prevent your written policies from being used against you, includ-



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ing but not limited to, your leave of absence policy being silent on how long the company will continue to pay for its portion of health insurance premiums where you are not otherwise obligated to provide them, schedule an audit of your employee handbook immediately.

Sexual Harassment Training Workshops

“When was the last time you provided training to your employees and supervisors to prevent sexual harassment in the workplace?”

Whether you are an organization with 50 or more employees, (or one who regularly receives services from 50 or more persons), *required* by California law to conduct supervisor training every other year since January, 2005, or a smaller business equally interested in preventing workplace harassment, in order to demonstrate that you exercise reasonable diligence to establish a work place that is harassment free, schedule your 2010 Sexual Harassment Prevention Training workshop. This can be an important factor if a court needs to decide whether or not there is employer liability for the conduct of one of its employees.



- Staff Workshops are intended to inform employees what harassment is (and is not), your company's specific policy, and the reporting procedures in place to protect the employee's rights.
- Supervisor Workshops are intended to ensure that your managers not only understand the law and the possibility of personal exposure for their own actions, but also their role and duties in preventing harassment; as well as understanding the proper procedures to follow should a complaint be received from an employee. Since January 2005, Assembly Bill 1825 requires all supervisors to be provided with at least two (2) hours of training relating to sexual harassment. All new supervisors (hired or promoted) must receive training within 6 months of obtaining the position. The training must be repeated every 2 years.

Please contact Elizabeth J. Koumas at (619) 398-8301 or ejk@koumaslaw.com for more information about how to obtain for a **flat rate fee agreement** for either of these services.

FUTURE SEMINAR

Avoiding Liability in the Hiring Process: Safe Recruiting Practices

Topic: Many employers overlook the fact that liability can arise in the hiring process. We will discuss proper/improper use of applications and references, rights of disabled applicants, proper/improper interview questions, and the obligations of an employer with respect to Background Checks/Credit Reporting.

Date: Wednesday May 26, 2010 **Time:** 5:30pm-7:00pm (light food)

Location: 110 West C Street, 7th Fl. Conference Room A (The Chamber Bdg)

Sponsor: The San Diego Human Resources Meet Up Group

Cost: Members: \$ 5 Non-members: \$ 15

RSVP by May 24. *Registration Form on firm website. SPACE LIMITED*

