

## Job Descriptions Are Not "Exemption Descriptions"

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Among the famous last words in the federal Fair Labor Standards Act Hall of Infamy are, "Let's write the job descriptions to make them exempt." The problem is this: Job descriptions do not "make" employees exempt.

Instead, most FLSA exemptions apply, if at all, only on an employee-by-employee basis according to the nature of each individual's actual work as judged against specific and often-detailed requirements.\* Moreover, in any U.S. Labor Department investigation or in a lawsuit, the legal burden of establishing that a person is exempt rests with the employer, who must prove that each exemption requirement is met as to any individuals whose exempt status has been challenged. The Labor Department and the courts construe FLSA exemptions very narrowly, and doubt is often resolved against the employer.

So no job description, irrespective of what it says, will bring about exempt status for an employee whose actual work does not meet the legal tests. Does this mean that job descriptions are irrelevant to FLSA exemptions? Absolutely not!

Job descriptions that are vague, ambiguous, jargonized, out-of-date, or poorly-written can lead to ill-considered and incorrect decisions about who is or is not exempt. Those that are puffed-up for ego purposes, or that are unrealistic or inaccurate, can have a similar impact. Flawed job descriptions can also seriously undercut efforts to defend against legal challenges to exempt status.

On the other hand, job descriptions that are *accurate, specific, realistic, clear, well-crafted,* and *current* can contribute appreciably to management's proper analysis of whether one exemption or another may legally be applied to an employee. They can also play a significant role in defending against a claim that employees should not have been treated as exempt.

For example, one requirement for the FLSA's executive exemption is that an employee who has no authority to hire or fire must at least make suggestions and recommendations about those actions (or about other status changes) that carry "particular weight". 29 C.F.R. 541.100(a)(4). The fact that making these suggestions and recommendations is truly part of an employee's job helps to show that they are indeed given "particular weight", and listing these responsibilities in the job description is some evidence that they really are part of the individual's work. 29 C.F.R. 541.105; 69 Fed.Reg. 22122, 22135 (April 23, 2004).

The bottom-line is that job descriptions standing alone are not enough to establish or refute exempt status, but poor ones are useless (or worse), whereas good ones are useful.