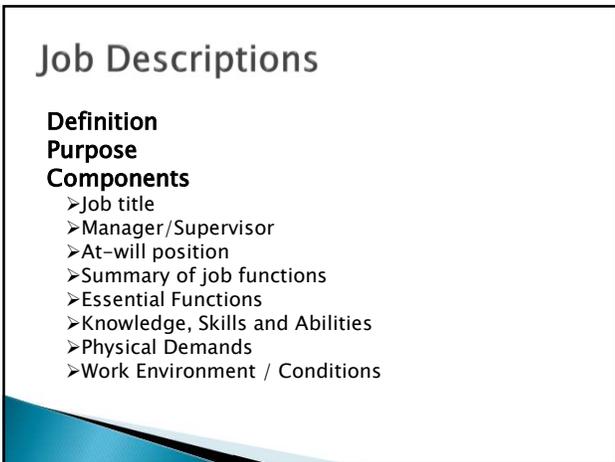


1



2



3

Job Postings

Job Advertisements

- ▶ It is illegal for an employer to publish a job advertisement that shows a preference for or discourages someone from applying for a job because of his or her race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information;

4

Position Postings

Example:

- ▶ A help-wanted ad that seeks "females" or "recent college graduates" may discourage men and people over 40 from applying and may violate the law.

5

Disparate Impact in Recruiting

Recruitment

- ▶ It is illegal for an employer to recruit new employees in a way that discriminates against them because of their race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information;

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Disparate Impact in Recruiting

Example

- ▶ An employer's reliance on word-of-mouth recruitment by its mostly male workforce may violate the law if the result is that almost all new hires are male.

7

Disparate Impact in Recruiting

Adverse Impact

- ▶ Adverse impact is a substantially different rate of selection in hiring, promotion or other employment decision which works to the disadvantage of members of a race, sex or ethnic group;

http://www.eeoc.gov/policy/docs/qanda_clarify_procedures.html

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Disparate Impact in Recruiting

Applicants	Hired	Selection Rate	Percent Hired
80 White	48	48/80 or 60%	
40 Black	12	12/40 or 30%	

- ▶ A comparison of the black selection rate (30%) with the white selection rate (60%) shows that the black rate is 30/60, or one-half (or 50%) of the white rate. Since the one-half (50%) is less than 4/5ths (80%) adverse impact is usually indicated.

http://www.eeoc.gov/policy/docs/qanda_clarify_procedures.html

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Disparate Impact in Recruiting

What does this mean to you?

- ▶ If your selection process results in an adverse impact, you will be required to validate your process.

http://www.eeoc.gov/policy/docs/qanda_clarify_procedures.html

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Disparate Impact in Recruiting

What is "Validation"?

- ▶ Validation is the demonstration of the job relatedness of a selection procedure;
- ▶ The EEOC Uniform Guidelines recognize the same three validity strategies recognized by the American Psychological Association;
- ▶ They are....

http://www.eeoc.gov/policy/docs/qanda_clarify_procedures.html

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Disparate Impact in Recruiting

1. Criterion-related validity: a statistical demonstration of a relationship between scores on a selection procedure and job performance of a sample of workers.
2. Content validity: a demonstration that the content of a selection procedure is representative of important aspects of performance on the job.
3. Construct validity: a demonstration that
 - a) a selection procedure measures a construct (something believed to be an underlying human trait or characteristic, such as honesty) and
 - b) the construct is important for successful job performance.

http://www.eeoc.gov/policy/docs/qanda_clarify_procedures.html

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Form I-9 Class B Documents

The documents of Class B establish only identity. Employees who choose to present a Class B document must also present a document from Class C for Section 2.

Class B Documents are.....

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Form I-9 Class B Documents

- ▶ Driver's License
- ▶ ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address
- ▶ School ID card with a photograph
- ▶ Voter registration card
- ▶ U.S. Military card or draft record
- ▶ Military dependent's ID card
- ▶ U.S. Coast Guard Merchant Mariner Document (MMD) card
- ▶ Native American tribal document
- ▶ Driver's license issued by a Canadian government authority

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Form I-9 Class C Documents

The documents in Class C only establish employment authorization.

Employees who choose to present a Class C document must also provide a document from Class B, evidence of identity, for Section 2.

Class C Documents are.....

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Form I-9 Class C Documents

- ▶ U.S. Social Security account number card
- ▶ Original or certified copy of a birth certificate issued by a state, county, municipal authority
- ▶ Native American tribal document
- ▶ Form I-197, U.S. Citizen ID Card
- ▶ Form I-179, Identification Card for Use of Resident Citizen in the United States
- ▶ Employment authorization document issued by the Department of Homeland Security (DHS)

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Recordkeeping Obligations Federal Recordkeeping Requirements

1. Age Discrimination in Employment Act of 1967 (ADEA).
2. Americans with Disabilities Act (ADA).
3. Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).
4. Electronic Signatures in Global and National Commerce Act (ESIGN).
5. Employee Polygraph Protection Act (EPPA).
6. Employee Retirement Income Security Act of 1974 (ERISA).
7. Employment tax laws — Federal Insurance Contribution Act (FICA) and Federal Unemployment Tax Act (FUTA).
8. Equal Pay Act (EPA).
9. Fair Credit Reporting Act (FCRA).
10. Fair Labor Standards Act (FLSA).
11. Family and Medical Leave Act of 1993 (FMLA).
12. Federal contractors.
13. Health Insurance Portability and Accountability Act (HIPAA).
14. Immigration Reform and Control Act (IRCA).
15. Labor Management Reporting and Disclosure Act (LMRDA) and the Civil Service Reform Act (CSRA).
16. Occupational Safety and Health Act (OSHA).
17. Sarbanes-Oxley (SOX).
18. Title VII Civil Rights Act of 1964 (Title VII), Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA).

20

Age Discrimination in Employment Act of 1967

Payroll Records. Employers must keep records containing an employee's name, address, date of birth, occupation, rate of pay, and compensation earned per week. The records must be kept for **at least 3 years from the date of entry.**

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Age Discrimination in Employment Act of 1967

Personnel Records. The records must be kept for **1 year after the record is made or the personnel action described is taken — whichever is later.** Personnel records for persons in temporary positions must only be kept for 90 days after the personnel action. If enforcement action is brought against an employer, records must be kept until the final disposition of the action. The following personnel records must be kept:

- Records used in hiring (for example, applications, résumés, and responses to job ads).
- Records pertaining to employment decisions (for example, termination, demotion, promotion, transfer, layoff, recall, and selection for training).
- Results from employment tests, job advertisements, training records, and physical exams in connection with any personnel action.

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Age Discrimination in Employment Act of 1967

Employee Benefits. Benefit plans, written seniority systems, and written merit plans (if such a plan or system is not in writing, then a summary memorandum is to be kept) must be **kept for 1 year longer than the duration of the plan.**

23

Americans with Disabilities Act (ADA)

Personnel Records. General personnel records (including application forms, promotion, involuntary termination, transfers, discharges, tests, training, rates of pay, and requests for reasonable accommodations) must be kept for **at least 1 year from the date after the record is created or the action described is taken — whichever occurs later.**

24

Fair Labor Standards Act Section 7(r)

Break Time for Nursing Mothers Provision

An employer shall provide—

1. A reasonable break time for an employee to express breast milk for her nursing child **for 1 year** after the child's birth each time such employee has need to express the milk; and
2. A place, **other than a bathroom**, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

Section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207)

25

Fair Labor Standards Act (FLSA)

Payroll Records must be retained for **at least 3 years after the last date of entry**. Payroll records include the following:

- ▶ Employee's name, Social Security number, address, and ZIP code.
- ▶ Employee's date of birth (if the employee is under 19 years of age).
- ▶ Gender of employee.
- ▶ Occupation of each employee.
- ▶ Time of day and the day of the week the employee's workweek begins (if the employee is part of a workforce where all employees' workweeks begin at the same day/time, then a single notation of the day and the time all employees' workweeks begin is sufficient).
- ▶ Employee's daily and weekly hours worked.
- ▶ Total overtime earnings for the workweek.
- ▶ Total additions to and deductions from employee's pay each pay period.
- ▶ Total wages paid each pay period.
- ▶ Date of payment and the pay period covered by the payment.

Continued.....

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Fair Labor Standards Act (FLSA)

Supplementary Records must be retained for **2 years after the record is made**.

Supplementary records include, but are not limited to, the following:

- Timecards.
- Wage rate tables.
- Customer order and billing records.
- Records explaining wage differentials to employees of the opposite sex.
 - RSMo 290.410. Employer not to pay female lower wage.

27

Family and Medical Leave Act (FMLA)

Public agencies are covered employers under the FMLA, regardless of the number of employees they employ. (50 for private)

The following must be kept for at least **3 years after the date the record is made:**

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Basic payroll and identifying employee data.

This information includes the following:

- Employee name, address, and occupation.
- Rate or base of pay and terms of compensation.
- Daily and weekly hours worked for each pay period.
- Additions to or deductions from wages.
- Total compensation paid.

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Dates FMLA leave is taken by eligible employees.

- ▶ This information can be in the form of time records or leave requests.
- ▶ **The leave time must be designated in the records as FMLA leave** and may not include leave required under state law or employer plans that are not also covered by the FMLA.
- ▶ If leave is taken in increments of less than one full day, the hours of leave must be recorded.

30

Copies of written employee notices of leave given employee under the FMLA.

This information includes both copies of general and specific written notices given to employees as required by the FMLA.

Documents describing employee benefits or employer policies and practices related to the taking of paid and unpaid leaves.

This documentation should include written and electronic records and records of premium payments of employee benefits.

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Records of disputes between the employer and an eligible employee regarding the designation of leave as FMLA leave.

Any written statements from the employer or employee relating to the reasons for the designation and/or the dispute should be included.

- ▶ These records must be available for inspection, copying, and transcription by authorized representatives of the Department of Labor upon request.
- ▶ **Note:** Records relating to **medical certifications and medical histories must be maintained in separate files** and treated as confidential records.

32

Immigration Reform and Control Act (IRCA) Form I-9

Under the IRCA, employers must keep an employee's completed Form I-9 for **3 years from the date of hire or 1 year after termination — whichever is later.**

If an employee is rehired within **3 years**, an employer may rely on a previously completed I-9.

However, if an employee is rehired after **3 years**, the employee must submit a new I-9.

33

Immigration Reform and Control Act (IRCA)

Employers are required to retain the page of the form on which the employer and the employee entered data.

Any copies of documents presented by the employees for employment verification must be retained with the corresponding Form I-9.

34

Title VII of the Civil Rights Act of 1964

All personnel and employment records made or used (including, but not limited to, requests for reasonable accommodation, application forms submitted by applicants, and records dealing with hiring, promotion, demotion, transfer, lay-off or termination, rates of pay, compensation, tenure, selection for training or apprenticeship, or other terms of employment) must be preserved as follows:

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Title VII of the Civil Rights Act of 1964

Educational institutions and **state and local governments must retain such records for 2 years from the date of the making of the record or the personnel action involved, whichever occurs later**; however, in the case of involuntary termination of an employee, the terminated employee's personnel or employment records must be maintained for **2 years from the date of termination**.

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Types of Employee Files

Personnel
Medical
Confidential
I-9

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Personnel Files

All job-related documentation such as hiring records, performance reviews, disciplinary actions and job descriptions should be kept in an employee's general personnel file.

If it is related to the employee's performance, knowledge, skills, abilities or behavior then it should be in the personnel file.

38

Medical Files

The Americans with Disabilities Act (ADA) prohibits employers from including medical information in an employee's general personnel file.

Employers should create a separate file for employee medical information that includes records related to medical leave, reasonable accommodations, workers' compensation claims, etc.

39

Confidential Files

These are records that should not be accessible to managers and supervisors due to the sensitive nature of the information.

These include documents that contain information such as date of birth, marital status, dependent information, Social Security number, immigration status, national origin, race, gender, religion, sexual orientation and criminal history.

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I-9 Files/Folder

Completed I-9 Form
Copies of Documents Submitted by Employees

3 Sections of an I-9 Binder

1. Administrative
2. Active Employees
3. Former Employees

No matter how you choose to store your Form I-9, you must be able to present them to government officials for inspection within **3 business days** of the date when the forms were requested.

[How to Retain and File I-9 Forms](#)

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Labor Law / FLSA – PTO

Fair Labor Standards Act. Sets basic minimum wage and overtime pay standards. **FLSA does not require:**

- Vacation, holiday, severance, or sick pay;*
- Meal or rest periods, holidays off, or vacations;*
- Premium pay for weekend or holiday work;*
- Pay raises or fringe benefits; or (Minimum Wage)*
- A discharge notice, reason for discharge, or immediate payment of final wages to terminated employees.**

* RSMO Does not require

** RSMO Requires in some cases

42

Labor Law / FLSA

Fair Labor Standards Act. 29 CFR § 553.11 – Exclusion for elected officials and their appointees.

Excluded under this provision are:
Personal staff members;
Officials in policymaking; and
Certain advisers to such officials.

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Labor Law / FLSA – Comp Time

Fair Labor Standards Act. Comp Time § 553.22 section 7(o).

- ▶ A rate not less than 1.5 hours for each hour for which overtime compensation is required
- ▶ Not more than 480 hours
 - Public Safety / Emergency Response Activity
- ▶ Not more than 240 hours
 - Any other activity
- ▶ Paid at normal rate
- ▶ Taken off hour for hour

§ 553.24 "Public safety", "emergency response", and "seasonal" activities defined.

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Labor Law / FLSA – Comp Time

Fair Labor Standards Act. Comp Time § 553.23
Agreement or understanding prior to the work-public employee with no representation

This agreement or understanding with individual employees **need not be in writing**, but a record of its existence must be kept. (See § 553.50.)

The employee knowingly and voluntarily agrees to it **as a condition of employment**

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Labor Law / FLSA - Comp Time

Fair Labor Standards Act. Comp Time § 553.25

Reasonable Period:

- (a) the normal schedule of work,
- (b) anticipated peak workloads based on past experience,
- (c) emergency requirements for staff and services, and
- (d) the availability of qualified substitute staff.

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Labor Law / FLSA - Comp Time

Fair Labor Standards Act. Comp Time § 553.25

Unduly Disrupt:

When an employer receives a request for compensatory time off, it shall be honored unless to do so would be "unduly disruptive" to the agency's operations. **Mere inconvenience** to the employer **is an insufficient basis for denial** of a request for compensatory time off.

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Labor Law / FLSA - Pay Periods

Exempt Employees

- ▶ No Overtime pay

Nonexempt Employees

- ▶ 40 Hour Workweek (7 consecutive days)
- Law Enforcement Section 7(k) Exemption**
- ▶ 7 consecutive days to 28 consecutive days
- ▶ Fulltime for LEO is 171 in 28 days
 - $(365/28 = 13 \text{ pay periods} \times 171 = 2,229 \text{ hours})$
- ▶ Law enforcement personnel must receive overtime after 86 hours worked during a 14-day work period

7(k) Exemption
Includes Jail Staff

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Labor Law / FLSA – Exemption

Police Officers not exempt from overtime.

29 C.F.R. § 541.3 provides that police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers,who perform work such as preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; and other similar work are not exempt under Section 13(a)(1) or the regulations and thus are protected by the minimum wage and overtime provisions of the FLSA.

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What We Will Covered

- Job Descriptions
- Essential Job Functions
- Job Postings
- Disparate Impact in Recruiting
- Employment Eligibility Verification – Form I-9
- Recordkeeping
- Labor Laws
- Comp Time
- Pay Periods & Overtime
- Exempt vs. Nonexempt Employees.

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