

Determining Essential & Marginal Job Functions

Essential Job Functions -

Whether a particular function, task or job duty is "essential" is a factual determination that the EEOC says must be made on a case-by-case basis. "Essential functions" are those functions that the individual who holds the position must be able to perform unaided or with the assistance of reasonable accommodation. The EEOC says that any inquiry into whether a particular function is "essential" initially focuses on whether the employer actually requires current or prior employees in the position to perform those functions.

EEOC regulations address three aspects of essential functions:

- 1. Whether performance of a function is the reason that a position exists** – Meaning if the function or task ceased, serious consequences would occur or the job would likely cease to exist.
- 2. The number of other employees available to perform the function** - Employers can be required to restructure jobs and redistribute nonessential job duties to other employees as a reasonable accommodation. If an employer has a relatively small number of employees for the volume of work to be performed, otherwise nonessential functions might become essential. By “other employees,” the EEOC interprets this as broadly as **all** the organization’s employees – not just those within an office or a department.
- 3. The degree of expertise or skill required to perform the function** - In a profession or highly skilled position, the employee is hired for his or her expertise or ability to perform a specialized task that would be an essential function.

Naturally, we believe all the duties of a position are essential or we would not have them listed. We have to adjust our definition of “essential” and “marginal” to that of the EEOC and the ADA in this case and limit essential functions to those that meet the narrow definitions above.

By their nature, essential functions should encompass at least 5% of time (100 hours per year). As a guideline, it is perfectly acceptable to have only 25% - 50% of the job duties be considered essential. This does not change the classification level or minimize the importance of the work.

Marginal Job Functions -

“Marginal” is an unfortunate choice of words in that even marginal functions or tasks under the ADA are important to us. For these purposes, marginal just means those functions that are not essential.

A function may be “marginal” when:

- * The character of the job (scope of the responsibility, type of work, major duties) would remain the same if the duty were not performed
- * The function occupies a small percentage of time
- * Failure to perform the function may have minor consequences
- * The nature of the duty is such that another University employee could perform the work with minimal to moderate disruption or inconvenience