



LEBANON DIVERSITY, EQUITY, AND INCLUSION COMMISSION

JUNE 21, 2022 - 6:00 PM

COUNCIL CHAMBERS, CITY HALL OR
REMOTE VIA VIRTUAL PLATFORM

LEBANONNH.GOV/LIVE

1. Call to Order

The June 21, 2022, Diversity, Equity & Inclusion Commission (DEI) Meeting is hereby called to order.

2. Approval of Minutes

A. June 7, 2022

3. Old Business: None

4. New Business

A. Discuss and approve the distribution of the discrimination survey

B. Receive reports from the City Manager and Councilor Hill regarding the City's Race Equity And Leadership (REAL) training program and core city staff diversity team

C. Discuss ADA compliance relative to City job postings

D. Report out regarding assignments:

1. Juneteenth celebration (June 19) - Karen Liot Hill and Tia Winter
2. Listening session (June 17) - Devin Wilkie
3. HCOEI - Kathy Beckett
4. Arts & Culture - Devin Wilkie
5. Lebanon School District - Tia Winter
6. Multicultural Festival - Karen Liot Hill and Richard Ford Burley
7. Equity worksheet - Richard Ford Burley

E. Discuss placement of School Resource Officer (SRO) related documents on the website

5. Open to the Public

Any member of the public who desires to speak on any item may do so when the item is taken up by the Commission and will be allowed to speak on the subject for not more than three minutes. (Note: Speakers are asked to state their name, ward of residence, and to use the microphone provided.)

6. Future Agenda Items

7. Other Business

8. Adjournment

Lebanon Diversity, Equity, and Inclusion Commission Agenda
June 21, 2022

Meetings are open for in-person and remote attendance. Members of the public that wish to attend remotely may do so by going to [LebanonNH.gov/Live](https://lebanonnh.gov/live) where you will find instructions on how to enter the meeting. Members of the public will be able to participate and ask questions through the City's virtual platform or by phone. Please note: Should technical difficulties occur during the meeting that disrupts virtual or phone connection(s), the meeting will continue without remote access capabilities.

CITY OF LEBANON
DIVERSITY, EQUITY, & INCLUSION COMMISSION
June 7, 2022— 6:00pm
COUNCIL CHAMBERS, CITY HALL or
Remote Via Microsoft Teams: LebanonNH.gov/LIVE

MEMBERS PRESENT: Kathy Beckett (Public Representative Alternate); Richard Ford Burley (Secretary); Nancy Graham (Public Representative); Keiselim Montas (Public Representative); Bise Wood Saint Eugene (Public Representative); Emily Walton (Vice-Chair); Simone Whitecloud (Public Representative Alternate); Devin Wilkie (City Council Representative); Tia Winter (Public Representative)

MEMBERS ABSENT: Renee DePalo (Chair); Karen Liot Hill (City Council Representative); Karen Zook (City Council Alternate)

STAFF PRESENT: Shaun Mulholland (City Manager)

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3 **1. CALL TO ORDER**

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5 Vice-Chair Emily Walton calls the 7 June 2022 Diversity, Equity & Inclusion Commission (DEI)
6 Meeting to order at 6:00pm.

7
8 **2. APPROVAL OF MINUTES**

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10 A. 17 May 2022

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12 *A MOTION by Devin Wilkie to approve the minutes of the 17 May 2022 meeting. Nancy*
13 *Graham seconds The Motion.*

14 **The Motion is approved unanimously.*
15

16 **3. OLD BUSINESS**

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18 Due to time constraints, old business is shelved until the next scheduled meeting.
19

20 **4. NEW BUSINESS**

21
22 **A. Nominate and elect a new chairperson to replace Chairperson Renee DePalo who is**
23 **resigning for employment out of state.**

24
25 Devin Wilkie nominates Emily Walton for the position. Emily Walton is unanimously approved
26 as Chair, leaving the Vice-Chair position vacant. Devin Wilkie Nominates Bise Wood Saint
27 Eugene for Vice-Chair. Bise Wood Saint Eugene is unanimously approved as Vice-

Chair. Outgoing Chair Rene DePalo's departure leaves one Public Representative seat open. Kathy Beckett feels Simone Whitecloud should, if she wishes, be made Public Representative. Simone Whitecloud declines the position. As a result Kathy Beckett will forward her own name to the City Council for consideration for the position.

B. Discuss the School Resource Officer (SRO) position as it relates to the School Board's decision.

Devin Wilkie presents the statement as found on page 5 of this week's packet. Discussion of the statement follows.

A MOTION by Devin Wilkie to approve the statement as written on page 5 of this week's packet, and to the extent allowable post it on the DEI website, pending revision by the City Manager. Emily Walton seconds The Motion.

**The Motion is approved unanimously.*

Emily Walton presents the recommendation as found on page 6 of this week's packet, to determine whether the recommendation should be amended and/or forwarded to the City Council. Keiselim Montas recommends amending the language. Statement is amended as follows (amended language in bold): "Given racial and (dis)ability inequities that result from police presence in schools, the City of Lebanon recommends discontinuing the School Resource Officer position in favor of supportive, non-punitive interventions, **which may include increased social worker and mental health professionals, to benefit the student population.**"

A MOTION by Devin Wilkie to approve the recommendation, as amended, and forward it and the statement to the City Council. Kathy Beckett second The Motion.

**The Motion is approved unanimously.*

C. Status report regarding planning for the Juneteenth event.

Tia Winter presents regarding details of Juneteenth event to take place on 19 June 2022.

On a related scheduling note, Emily Walton mentions signups for the listening session at the Pride event to take place two days earlier, on 17 June 2022, multiple members sign up.

D. Worksheet for the introduction of new items for consideration.

Richard Ford Burley presents on worksheet for formalizing introduction of new topics, as found on page 7 of this week's packet. Richard will amend it per discussion and put it in the Commission's SharePoint for internal DEI Commission use.

5. OTHER BUSINESS

Further clarifications are made regarding details of Pride event on 17 June 2022, including banners, shirts, and planning for future events.

DRAFT

74 **6. OPEN TO THE PUBLIC**

75

76 No discussion.

77

78 **7. FUTURE AGENDA ITEMS**

79

80 **8. ADJOURNMENT**

81

82 Chair Emily Walton adjourns the meeting at 6:50pm.



To inform the development of a strategic plan for Diversity, Equity, and Inclusion (DEI) in the City of Lebanon, the DEI Commission would like to hear about your experiences with discrimination. We highly value your input and will use it to craft recommendations that address these issues for *all* our residents.

You can access the 5-minute survey [here](#) or scan the QR-code below. Your participation is voluntary, and you may opt out of the survey at any time. If you have questions, please reach out to manager@lebanonnh.gov



Thank you for participating in our survey. We would like to know about your experiences with discrimination in Lebanon. We will also ask some basic demographic characteristics. This survey should take about 5 minutes to complete. Your responses will remain anonymous and confidential.

1. How long have you lived in Lebanon?

☐

I was born and raised in Lebanon

☐

I moved to Lebanon in ... (enter year) _____

2. Overall, how satisfied are you with Lebanon as a place to live?

☐

Very satisfied

☐

Satisfied

☐

Neither satisfied nor dissatisfied

☐

Dissatisfied

☐

Very dissatisfied

3. What is your gender?

4. What is your sexual identity / sexual orientation?

5. In what year were you born?

6. Do you own your home?

☐

Yes

☐

No

7. What is the highest grade or year of school you have completed?

- ☐ Less than high school
- ☐ High school or GED
- ☐ Some college
- ☐ College degree
- ☐ Professional degree
- ☐ Vocational degree
- ☐ Other _____

8. Which of the following racial or ethnic groups do you identify with? (Choose all that apply.)

- ☐ Black or African American
- ☐ White
- ☐ Latino/a/x or Hispanic
- ☐ Asian American
- ☐ Native American
- ☐ Other _____

9. Were you born in the United States?

- ☐ Yes
- ☐ No

10. What is your current religion, if any?

11. In your day-to-day life in Lebanon, how often do any of the following things happen to you?

	Almost every day	At least once a week	A few times a month	A few times a year	Less than once a year	Never
You are treated with less courtesy than other people are.	☐	☐	☐	☐	☐	☐
You are treated with less respect than other people are.	☐	☐	☐	☐	☐	☐
You receive poorer service than other people at restaurants or stores.	☐	☐	☐	☐	☐	☐
People act as if they think you are not smart.	☐	☐	☐	☐	☐	☐
People act as if they are afraid of you.	☐	☐	☐	☐	☐	☐
People act as if they think you are dishonest.	☐	☐	☐	☐	☐	☐
People act as if they're better than you are.	☐	☐	☐	☐	☐	☐
You are called names or insulted.	☐	☐	☐	☐	☐	☐
You are threatened or harassed.	☐	☐	☐	☐	☐	☐

12. What do you think is the main reason for these experiences? (Choose all that apply.)

- ☐ Your ancestry or national origin
- ☐ Your accent
- ☐ Your gender
- ☐ Your race or ethnicity
- ☐ Your age
- ☐ Your religion
- ☐ Your body type or build
- ☐ Your sexual identity or sexual orientation
- ☐ Your education or income level
- ☐ A disability
- ☐ Your skin color
- ☐ Other _____

13. Do you have any comments about your experiences with discrimination?

14. Do you have any suggestions for how the City of Lebanon might work to reduce discrimination?

15. If you are willing to participate in a follow-up conversation regarding these questions, please share your contact information.

- ☐ email (optional) _____
- ☐ phone (optional) _____

Thank you for your participation in our survey. If you have any questions, please contact: manager@lebanonnh.gov

ORGANIZING RACIAL EQUITY IN LOCAL GOVERNMENT

National League of Cities - Race, Equity, and Leadership
&
City of Lebanon, NH



May 11, 2022

NLC-REAL – Lebanon, NH
Organizing for Racial Equity – Participant Agenda
Wednesday, May 11th – 11am-5pm ET

Objectives:

- Understand the importance of applying the Racial Equity Tool in developing and updating policies, practices, and procedures
- Gain exposure to and work through the first three steps of the Racial Equity Tool

10:30-11:00 (30 min)	Check-In - Please change your zoom name to your first name and last initial, add your pronouns, and one word that describes how you're feeling today
11:00-11:05 (5 min)	Host Welcome
11:05-11:30 (25 min)	Welcome and Introductions - Energizer - Virtual Housekeeping - Think/Pair/Share - Objectives - REAL Mission and Vision - Learning Environment
11:30-11:40 (10 min)	Practices and Principles
11:40-11:55 (15 min)	Refresher: Normalizing Key Terms
11:55-12:25 (30 min)	Introduction: Racial Equity Tools
12:25-12:40 (15 min)	BREAK
12:40-2:00 (80 min)	Racial Equity Tool: Step 1 - Desired Result
2:00-3:00 (60 min)	LUNCH
3:00-3:45 (45 min)	Racial Equity Tool: Step 2 – Data
3:45-4:00 (15 min)	BREAK
4:00-4:45 (45 min)	Racial Equity Tool: Step 3 - Community Engagement
4:45-4:50 (5 min)	Racial Equity Tool: Homework and Next Steps Preview

4:50-5:00 (10 min)	Closing, Survey, and Next Steps

Racial Equity Tool: Worksheet Instructions

Homework

- Meet within your Racial Equity Tool workgroup
- Complete Steps 1-3 of this worksheet, to the best of your ability
 - Aim to meet at least twice
 - Discuss your plan of action for completing the worksheet
 - Agree upon your findings/answers for the worksheet prompts
- *NOTE: We provide Steps 4-6 at the end of this document as a reference for those who want to preview what we'll cover in Operationalizing. There is no need to complete these steps.*

Timeline

- **Submission Deadline:** June 1, 2022
- **Technical Assistance Window:** June 21-21, 2022

Additional Resources:

- GARE Racial Equity Tool Guide: https://www.racialequityalliance.org/wp-content/uploads/2015/10/GARE-Racial_Equity_Toolkit.pdf
- Annie E. Casey Racial Equity Tool Guide: https://assets.aecf.org/m/resourcedoc/AECF_EmbracingEquity7Steps-2014.pdf
- MURAL Video: https://www.youtube.com/watch?v=mhslj4-OSRM&feature=emb_logo
- MURAL Link: <https://app.mural.co/t/real1823/m/real1823/1651585535682/a1561e5837debd6c264f090bf8b791ed4deb56eb?sender=u5a1452441832101fbf5274>
- Disaggregated Data: https://www.youtube.com/watch?v=4R_g4py_PXI

Racial Equity Toolkit Worksheet

Guiding Questions

- Where do you see racial disparities in your community?
- Is anyone/a department already working on these racial disparities?
 - If yes, is the project early in the concept stage?
 - Could you still influence the project?
- Does your group/department have power to influence or make decisions about any of the root causes of the community level racial disparities?
- What disparities do you need to consider related to Covid-19?

Tips to Consider

- Don't let "perfect" be the enemy of getting started
- Using the tool is like building a muscle
 - The more you use it, the stronger you become
- Start small and choose something specific
- Be prepared to learn along the way
- Pair process-oriented staff with people-oriented staff
- Pair big-picture with detail-oriented staff

Guidance Criteria

- The topic or project addresses a component of a root cause leading to disparities
- The topic or project would not duplicate current efforts in the jurisdiction
- My team has influence or power to make decisions about this topic
- This topic or project could impact policy, practice, and procedure in multiple departments
- 4-8 people want to work on this topic
- The topic is narrow

Step #1 – Desired Result

What is your topic and the desired results?

What are your indicators?

1. Describe a policy, program, practice or budget decision that you *think* might have racial impacts.

	<i>Example</i>
	<i>The educational requirements for positions we are hiring have increased such that we are screening out people who are qualified, and this may disproportionately impact people of color.</i>

2. What is the desired result (in the community)?
What indicators will you focus on (choose 3 to 5)?

	<i>Example</i>
<u>Desired result (community level):</u>	<u>Desired result:</u> All people are economically mobile and financially secure.
<u>Indicators (community level):</u>	<u>Indicators:</u> • Unemployment Rate • Disaggregated wage data • Poverty Rate • Specified social service data (Food stamps, Medicaid, etc)

Step #2 – Data

What are your sources? What's the data?

What does the data tell us?

Who is most impacted based on the data?

1. What data will you seek and from which sources?

What are your data sources for community level indicators? (e.g., high school grad. Income, crime, life expectancy, employment)	Is the data disaggregated by race, gender, and geography? Is it a reliable source? (e.g., available annually/bi-annually)

2. What opportunities are there to share data and build a data source by your team, department, enterprise, and community?

Opportunities	Collaborators/Stakeholders

3. What does population-level data (community level indicators) tell you about existing racial inequities? Who is most negatively impacted (be specific)?

	Example
	The unemployment rate is at the lowest levels seen for decades, with an overall unemployment rate for adults 20 years and over of 3.5%, with data disaggregated by race as follows: whites, 3.1%, African Americans, 5.9%; Asians, 3.1%; and Latinos, 3.9%. Data from the Bureau of Labor Standards website (data for Native Americans was not available).

	Because the education system should prepare young people for work, we also examined high school graduations rates. While over 80% of all students graduate with a regular high school diploma within 4 years of starting 9th grade, there are differences by race (Asian / Pacific Islander students had the highest rate (91%), followed by White (88%), Latino (79%), Black (76%), and Native American (72%), according to the National Center for Education Statistics website).
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4. What does the data tell you about root causes influencing racial inequities?

5. What gaps were there in the data? What additional data would be helpful? How can you obtain better data?

	Example
	We do not have data on career pathways, e.g., when and how a person might enter our town in a lower paid position and move their way up, nor do we have data on retention rates.

Step #3 – Community Engagement

How have the most impacted communities been engaged?

Are there opportunities to expand engagement?

What forms of community engagement have been used?

Step 3a – To be completed before engagement:

1. Which department(s) usually engage the community on this issue? What does that usually look like?

<i>Department</i>	<i>Engagement</i>

2. Based on the data, what communities are most impacted by this issue? What partnership/engagement efforts have occurred?

<i>Community</i>	<i>Engagement/Partnership Strategies</i>

3. Which approach from the Continuum of Engagement will you use?
(Inform, Consult, Collaborate, Shared Decision Making, Ownership)
4. What methods will you use to engage and build partnerships with those most impacted?

Step 3b – To be completed during the engagement process:

5. What has your engagement process told you about the factors that produce or perpetuate racial inequity related to this issue?

	<i>Example</i>
	<i>We have heard that there is a perception that 1) the path into management is based on family and friend connections, 2) the college tuition reimbursement program does not allow flexibility in work hour scheduling for all employees, so while in theory it is a benefit available to all, our systems do not result in it being available for everyone, and 3) there are biases against employees who speak with accents / are immigrants that have been expressed in the interview panel debriefs.</i>

6. What additional engagement needs to take place to help you gain a better understanding of perspectives?

	<i>Example</i>
	<i>We do not have any information from people who have applied but were not selected. We believe they may have some useful insights into our processes.</i>

The Americans with Disabilities Act (ADA) (DRAFT)

Note: While the Americans with Disabilities Act is federal law, New Hampshire has its own statute prohibiting discriminatory employment practices based on disability. The Law covers private employers with six or more employees and all state and local government agencies, regardless of size (*NH Rev. Stat. Sec. 354-A:1 et seq.*).

<https://www.blr.com/HR-Employment/Discrimination/Disabilities-ADA-in-New-Hampshire>

Under Title I of the [Americans with Disabilities Act](#) (ADA), employers, including state and local governments, with 15 or more employees, are prohibited from discriminating against people with disabilities. Title I protects [qualified individuals with disabilities](#) in several areas, including job application procedures, hiring, firing, advancement, compensation and job training. It is also unlawful to retaliate against someone for opposing employment practices that discriminate based on disability, or for filing an ADA discrimination charge. The [Office of Federal Contract Compliance Programs](#) (OFCCP) shares enforcement authority for [Title I of the ADA](#) with the [U.S. Equal Employment Opportunity Commission](#) (EEOC), which has primary responsibility for enforcing the [employment provisions of the law](#). (Note: Federal employees and job applicants are covered by [Section 501](#) of the Rehabilitation Act of 1973 instead of the ADA. The protections are mostly the same.)

One of the key non-discrimination aspects of Title I is the requirement to provide [reasonable accommodations](#) for [employees](#) and [job seekers](#) with disabilities. Accommodations make it possible for a person with a disability to perform their job, but they must not create an "[undue hardship](#)" for the employer, in other words cause too much difficulty or expense to implement. What are some examples of reasonable accommodations that may be needed during the hiring process? They can take many forms, including providing written materials in accessible formats, such as large print, Braille or audiotope, and providing readers or sign language interpreters.

While the U.S. Department of Labor's [Office of Disability Employment Policy \(ODEP\)](#) does not enforce the ADA, it does offer information and resources to educate employers about their responsibilities under [the law](#), in particular as they relate to providing [accommodations](#). A key resource is the [Job Accommodation Network](#) (JAN), which provides expert, one-on-one assistance to employers on accommodations for employees with disabilities.

[Section 503 of the Rehabilitation Act of 1973](#) (Section 503) is another law that protects the employment rights of job seekers and employees with disabilities. OFCCP enforces Section 503, which prohibits employment discrimination based on disability and also requires [affirmative action](#) in the hiring, placement and advancement of people with disabilities by [federal contractors](#) or subcontractors. Federal contractors with contracts in excess of \$10,000 must take affirmative action to employ and advance in employment qualified individuals with disabilities. Recent updates to Section 503 have strengthened these affirmative action requirements. Contractors that have a contract or sub-contract of \$50,000 or more and 50 or more employees must have an actual affirmative action program or plan.

The regulations also include a [utilization goal of 7 percent](#). That goal is a "yardstick" against which federal contractors can measure their success in recruiting and hiring individuals with disabilities.

DOL's [Civil Rights Center \(CRC\)](#) enforces the employment-related provisions of [Section 504 of the Rehabilitation Act](#) (Section 504). Section 504 prohibits recipients of federal financial assistance from discriminating against qualified individuals with disabilities in employment and in their programs and activities. CRC also enforces [Title II of the ADA](#) as it [applies] to the labor- and workforce-related practices of state and local governments and other public entities. In addition, CRC enforces [Workforce Innovation and Opportunity Act \(WIOA\) Section 188 Nondiscrimination and Equal Opportunity Regulations](#), which prohibit disability-based discrimination by programs and activities that are offered as part of the public workforce development service delivery system. This includes job training for adults and youth and programs or activities provided by [American Job Centers](#). See the [Laws & Regulations](#) subtopic for specific information on these laws.

<https://www.dol.gov/general/topic/disability/employersresponsibilities>

MAKING A STATEMENT – ABOUT REASONABLE ACCOMMODATION AND EQUAL OPPORTUNITY

From the desk of [Tracie DeFreitas](#), M.S., Principal Consultant — ADA Specialist

JAN (JOB Accommodation Network) Consultants frequently receive requests from employers for sample language to aid in the development of a reasonable accommodation statement. A reasonable accommodation statement is often included in job postings, on-line applications, employee handbooks, reasonable accommodation policies, etc. There is no formal reasonable accommodation statement that employers are required to use under the Americans with Disabilities Act (ADA). Employers have the flexibility to draft their own statement to communicate their commitment to provide reasonable accommodations to qualified applicants and employees. <https://askjan.org/publications/consultants-corner/vol11iss02.cfm>

WHO IS PROTECTED?

Title I of the ADA protects qualified individuals with disabilities from employment discrimination. Under the ADA, a person has a disability if he has a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment, and people who are regarded as having a substantially limiting impairment.

To be protected under the ADA, an individual must have, have a record of, or be regarded as having a substantial, as opposed to a minor, impairment. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, caring for oneself, learning or working.

An individual with a disability must also be qualified to perform the essential functions of the job with or without reasonable accommodation, in order to be protected by the ADA. This means that the applicant or employee must:

- satisfy your job requirements for educational background, employment experience, skills, licenses, and any other qualification standards that are job related; and
- be able to perform those tasks that are essential to the job, with or without reasonable accommodation.

The ADA does not interfere with your right to hire the best qualified applicant. Nor does the ADA impose any affirmative action obligations. The ADA simply prohibits you from discriminating against a qualified applicant or employee because of her disability.

ARE YOU COVERED?

Job discrimination against people with disabilities is illegal if practiced by:

- private employers,
- state and local governments,
- employment agencies,
- labor organizations, and
- labor-management committees.

The part of the ADA enforced by the EEOC outlaws job discrimination by:

- all employers, including State and local government employers, with 25 or more employees after July 26, 1992, and
- all employers, including State and local government employers, with 15 or more employees after July 26, 1994.

Another part of the ADA, enforced by the U.S. Department of Justice, prohibits discrimination in State and local government programs and activities, including discrimination by all State and local governments, regardless of the number of employees, after January 26, 1992.

Because the ADA establishes overlapping responsibilities in both EEOC and DOJ for employment by State and local governments, the Federal enforcement effort will be coordinated by EEOC and DOJ to avoid duplication in investigative and enforcement activities.

In addition, since some private and governmental employers are already covered by nondiscrimination and affirmative action requirements under the Rehabilitation Act of 1973, EEOC, DOJ, and the Department of Labor will similarly coordinate the enforcement effort under the ADA and the Rehabilitation Act.

<https://www.eeoc.gov/laws/guidance/ada-your-responsibilities-employer>

ELEMENTS OF AN ADA COMPLIANT JOB POSTING/DESCRIPTION (DRAFT)

I. A Statement About Reasonable Accommodation and Equal Opportunity

Sample Statement:

[Employer] is an affirmative action and equal opportunity employer. All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, disability, age, sexual orientation, gender identity, national origin, veteran status, or genetic information. [Employer] is committed to providing access, equal opportunity and reasonable accommodation for individuals with disabilities in employment, its services, programs, and activities. To request reasonable accommodation, contact [include name and/or department, telephone, and e-mail address].

<https://askjan.org/publications/consultants-corner/vol11iss02.cfm>

II. The Essential Functions of the Job

Essential functions are the basic job duties that an employee must be able to perform, with or without reasonable accommodation. They are the tasks which are considered to be fundamental, critical, primary and necessary. Supervisors are required to determine what functions are actually performed in the job and which, if eliminated, would fundamentally alter the nature of the job. To determine the essential functions of a position, consider each task separately by applying the following factors:

1. The position exists to perform the function

A person is hired to proofread documents. The ability to proofread is an essential function because this is the reason that this position exists.

2. There are a limited number of other employees available to perform the function, or among whom the functions can be distributed.

It may be an essential function for a file clerk to answer the telephone if there are only three employees in a very busy office and each employee has to perform many different tasks. Or, a department may have periods of heavy labor-intensive activity alternating with less active periods. The heavy work flow during peak periods may make performance of each function essential and limit an employer's flexibility to reassign a particular function.

3. A function is highly specialized and the person in the position is hired for special expertise or ability to perform it.

Positions such as electrician, graphic artist, computer programmer, laboratory technician, and marine scientist require special expertise that is an essential function of these types of jobs.

4. The amount of time spent performing the function.

If an employee spends most of the time or a majority of the time performing one particular task, this would be evidence that the task is an essential function.

5. Actual work experience of people who have performed a job in the past and work experience of people who currently perform similar jobs.

The work experience of previous employees in a job and the experience of current employees in similar jobs provide objective evidence of actual duties performed. The supervisor should consult such employees and observe their work operations to identify essential functions, since the tasks actually performed provide significant evidence of these functions.

6. The consequences of not requiring a person in this job to perform a task or duty.

Sometimes a function that is performed infrequently may be essential because there will be serious consequences if it is not performed. For example, a campus police officer may spend only five percent of his or her time apprehending suspects, but the ability to do so is an essential function of a police officer position. A clerical worker may spend only a few minutes a day answering the telephone, but this could be an essential function if no one else is available to answer the phones at that time, and business calls would go unanswered.

7. Your judgment as the supervisor of the position.

The supervisor's judgement as to which functions are essential is important. The supervisor sets production standards, and the quality and quantity of work performed. If a supervisor requires employees to perform at a certain minimum level, then employees in those positions must be able to perform at that level, regardless of disability.

<https://www.odu.edu/content/dam/odu/offices/human-resources/docs/Essential%20Tasks%20Requirements.pdf>

III. Avoiding the Requirement of Marginal/Non-essential Job Functions

A marginal function is relatively incidental to the reason for the job's existence. An essential function can not or should not be assigned elsewhere, but a marginal function, even though it is desirable to include in the job design, could be made part of another job without causing significant problems.

A marginal function is not unessential to the work unit, only to a given job. The function has to be accomplished, but it can be done by another employee or position.

Three factors to consider when evaluating a function as essential or marginal:

1. Relationship of the functions to other tasks within the job
2. How reassigning the functions will affect other employees and their jobs
3. Significance of the function and the conditions under which it is performed

For example, a job requires the operation of a machine. In the job description, “painting the machine twice a month” is stated. However, this is not critical to the execution of the job. “Operating the machine” is the critical role, hence it is listed in the “essential functions”. “Painting the machine” is not critical to the performance; hence, it is listed in the “marginal functions”. Redistributing the “painting the machine” function would not alter the “Machine Operators” job description.

<https://hr.ufl.edu/manager-resources/classification-compensation/classification/establishing-a-new-position/guidelines-for-essential-vs-marginal-positions/>

IV. Words That Convey Actual Job Requirements

In writing job descriptions, some words are better than others are. Certain words tend to exclude individuals with disabilities (e.g., see or hear). It is better to choose words that convey the actual requirements of the job without limiting the physical demands to certain abilities.

See the following examples:

<i>Physical Demand</i>	<i>ADA-Compliant Words</i>	<i>Job Description Language Example</i>
Stand or Sit	Stationary position	Must be able to remain in a stationary position 50% of the time.
Walk	Move, Traverse	The person in this position needs to occasionally move about inside the office to access file cabinets, office machinery, etc.
Use hands/fingers to handle or feel	Operate, Activate, Use, Prepare, Inspect, Place, Detect, Position	Constantly operates a computer and other office productivity machinery, such as a calculator, copy machine, and computer printer.
Climb (stairs/ladders) or balance	Ascend/Descend, Work atop,	Occasionally ascends/descends a

	Traverse	ladder to service the lights and ceiling fans.
Stoop, kneel, crouch, or crawl	Position self (to), Move	Constantly positions self to maintain files in file cabinets.
Talk/Hear	Communicate, Detect, Converse with, Discern, Convey, Express oneself, Exchange information	The ability to communicate information and ideas so others will understand. Must be able to exchange accurate information in these situations.
See	Detect, Determine, Perceive, Identify, Recognize, Judge, Observe, Inspect, Estimate, Assess	The ability to observe details at close range (within a few feet of the observer).
Carry weight, lift	Move, Transport, Position, Put, Install, Remove	Frequently moves boxes weighing up to 20 pounds across office for various needs.

<https://www.umassp.edu/sites/default/files/documents/human-resources/ADA%20job%20descriptions.pdf>