

## Fact Sheet #36: Employee Polygraph Protection Act of 1988

The Department of Labor administers and enforces the [Employee Polygraph Protection Act of 1988](#) (the Act) through the Wage and Hour Division of the Employment Standards Administration. The Act generally prevents employers engaged in interstate commerce from using lie detector tests either for pre-employment screening or during the course of employment, with certain exemptions. The Act, signed by the President on June 27, 1988, became effective on December 27, 1988.

Under the Act, the Secretary of Labor is directed to distribute a notice of the Act's protections, to issue rules and regulations, and to enforce the provisions of the Act. The Act empowers the Secretary of Labor to bring injunctive actions in U.S. district courts to restrain violations, and to assess civil money penalties up to \$10,000 against employers who violate any provision of the Act. Employers are required to post notices summarizing the protections of the Act in their places of work.

### Definitions

- A lie detector includes a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator or similar device (whether mechanical or electrical) used to render a diagnostic opinion as to the honesty or dishonesty of an individual.
- A polygraph means an instrument that records continuously, visually, permanently, and simultaneously changes in cardiovascular, respiratory and electrodermal patterns as minimum instrumentation standards and is used to render a diagnostic opinion as to the honesty or dishonesty of as individual.

### Prohibitions

An employer shall not:

- Require, request, suggest or cause an employee or prospective employee to take or submit to any lie detector test.
- Use, accept, refer to, or inquire about the results of any lie detector test of an employee or prospective employee.
- Discharge, discipline, discriminate against, deny employment or promotion, or threaten to take any such action against an employee or prospective employee for refusal to take a test, on the basis of the results of a test, for filing a complaint, for testifying in any proceeding or for exercising any rights afforded by the Act.

### Exemptions

Federal, state and local governments are excluded. In addition, lie detector tests administered by the Federal Government to employees of Federal contractors engaged in national security intelligence or counterintelligence functions are exempt. The Act also includes limited exemptions where **polygraph** tests (but no other lie detector tests) may be administered in the private sector, subject to certain restrictions:

- To employees who are reasonably suspected of involvement in a workplace incident that results in economic loss to the employer and who had access to the property that is the subject of an investigation; and
- To prospective employees of armored car, security alarm, and security guard firms who protect facilities, materials or operations affecting health or safety, national security, or currency and other like instruments; and
- To prospective employees of pharmaceutical and other firms authorized to manufacture, distribute, or dispense controlled substances who will have direct access to such controlled substances, as well as current employee who had access to persons or property that are the subject of an ongoing investigation.

### **Qualifications of examiners**

An examiner is required to have a valid and current license if required by a State in which the test is to be conducted, and must maintain a minimum of \$50,000 bond or professional liability coverage.

### **Employee/prospective employee rights**

An employee or prospective employee must be given a written notice explaining the employee's or prospective employee's rights and the limitations imposed, such as prohibited areas of questioning and restriction on the use of test results. Among other rights, an employee or prospective employee may refuse to take a test, terminate a test at any time, or decline to take a test if he/she suffers from a medical condition. The results of a test alone cannot be disclosed to anyone other than the employer or employee/prospective employee without their consent or, pursuant to court order, to a court, government agency, arbitrator or mediator.

Under the exemption for ongoing investigations of work place incidents involving economic loss, a written or verbal statement must be provided to the employee prior to the polygraph test which explains the specific incident or activity being investigated and the basis for the employer's reasonable suspicion that the employee was involved in such incident or activity.

Where polygraph examinations are permitted under the Act, they are subject to strict standards concerning the conduct of the test, including the pre-test, testing and post-test phases of the examination.

Civil actions may be brought by an employee or prospective employee in Federal or State court against employers who violate the Act for legal or equitable relief, such as employment reinstatement, promotion, and payment of lost wages and benefits. The action must be brought within 3 years of the date of the alleged violation.

### **Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).** This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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