

/* We continue with the final sections of the Employee Polygraph Protection Act. */

Section 2007. Restriction on use of exemptions

(a) Test as basis for adverse employment action.

(1) Under ongoing investigations exemption. Except as provided under subsection (d) of section 2006(d) shall not apply if an employee is discharged, disciplined, denied employment or promotion, or otherwise discriminated against in any manner on the basis of the analysis of a polygraph test chart or the refusal to take a polygraph test, without additional supporting evidence. The evidence required by such subsection may serve as additional supporting evidence.

/* Sections (1) and (2) require something other than a polygraph test to support an adverse decision. This is going to be a litigation breeder as employees will state that employers did not additional supporting evidence. */

(2) Under other exemptions. In the case of an exemption described in subsection (e) or (f) of such section (2006(e) or (f)) the exemption shall not apply if the results of an analysis of a polygraph test chart or the refusal to take a polygraph test is used, as the sole basis upon which an adverse employment action described in paragraph (1) is taken against an employee or prospective employee.

/* The following sections state your rights when an employer seeks to have an employee take a polygraph test. */

(b) Rights of examinee. The exemptions provided under subsections (d), (e) and (f) of section 2006 (d)-(f) shall not apply unless the requirements described in the following paragraphs are met:

(1) All phases. Throughout all phases of the test--

/* Here are the rights specifically enumerated. */

(A) the examinee shall be permitted to terminate the test at any time;

(B) the examinee is not asked questions in a manner designed to degrade, to needlessly intrude on such examinee;

(C) the examinee is not asked any questions concerning--

(i) religious beliefs or affiliations,

(ii) beliefs or opinions regarding racial matters,

(iii) political beliefs or affiliations,

(iv) any matter relating to sexual behavior; and

(v) beliefs, affiliations, opinions, or lawful activities regarding unions or labor organizations; and

(D) the examiner does not conduct the test if there is sufficient written evidence by a physician that the examinee is suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the actual testing phase.

(2) Pretest phase. During the pretest phase, the prospective examinee--

(A) is provided with reasonable written notice of the date, time, and location of the test, and of such examinee's right to obtain and consult with legal counsel or an employee representative before each phase of the test;

(B) is informed in writing of the nature and characteristics of the test and of the instruments involved;

(C) is informed, in writing--

(i) whether the testing area contains a two-way mirror, a camera, or any other device through which the test can be observed,

(ii) whether any other device, including any device for recording or monitoring the test, will be used, or

(iii) that the employer or the examinee may (with mutual knowledge) make a recording of the test;

(D) is read and signs a written notice informing such examinee--

(i) that the examinee cannot be required to take the test as a condition of employment,

(ii) that any statement made during the test may constitute additional supporting evidence for the purposes of an adverse employment action as described in subsection (a),

(iii) of the limitations imposed under this section,

(iv) of the legal rights and remedies available to the examinee if the polygraph test is not conducted in accordance with this Act, and

(v) of the legal rights and remedies of the employer under this Act (including the rights of the employer under section 9(c); and

(E) is provided an opportunity to review all questions to be asked during the test and is informed of the right to terminate the test at any time.

(3) Actual testing phase. During the actual testing phase, the examiner does not ask such examinee any questions relevant during the test that was not presented in writing for review to such examinee before the test.

/* After a test there are many requirements that an employer must follow- and here they are-- */

(4) Post-test phase. Before any adverse employment action, the employer shall--

(A) further interview the examinee on the basis of the results of the test, and

(B) provide the examinee with--

(i) a written copy of any opinion or conclusion rendered as a result of the test, and

(ii) a copy of the questions asked during the test together with the corresponding charted responses.

(5) Maximum number and minimum duration of tests. The examiner shall not conduct and complete more than five polygraph tests on a calendar day on which the test is given, and shall not conduct any such test for less than a 90-minute duration.

(c) Qualifications and requirements of examiners. The exemptions provided under subsections (d), (e), and (f) of section 2006(d)-(f) shall not apply unless the individual who conducts the polygraph test satisfies the requirements under the following paragraphs:

(1) Qualifications. The examiner--

(A) has a valid and current license granted by the licensing and regulatory authorities in the State in which the test is to be conducted, if so required by the State, and

(B) maintains a minimum of a \$ 50,000 bond or equivalent amount of professional liability coverage.

(2) Requirements. The examiner--

(A) renders any opinion or conclusion regarding the test--

(i) in writing and solely on the basis of an analysis of polygraph test charts,

(ii) that does not contain information other than admission, information, case facts, and interpretation of charts relevant to the purpose and stated objectives of the test, and

(iii) that does not contain any recommendation concerning the employment of the examinee; and

(B) maintains all opinions, reports, charts, written questions, lists, and other records relating to the test for a minimum period of 3 years after administration of the test.

Section 2008. Disclosure of information

/* Polygraph test information cannot be disclosed except to limited sets of individuals stated in this section. */

(a) In general. A person, other than the examinee, may not disclose information obtained during a polygraph test except as provided in this section.

(b) Permitted disclosures. A polygraph examiner may disclose information acquired from a polygraph test only to--

(1) the examinee or any other person specifically designated in writing by the examinee;

(2) the employer that requested the test; or

(3) any court, governmental agency, arbitrator, or mediator in accordance with due process of law, pursuant to an order from a court of competent jurisdiction.

(c) Disclosure by employer. An employer (other than an employer described in subsection (a), (b) and (c) of Section 2006(a), (b) or (c) for whom a polygraph test is conducted may disclose information from the test only to--

(1) a person in accordance with subsection (b); or

(2) a governmental agency, but only insofar as the disclosed information is an admission of criminal conduct.

Section 2009. Effect on other law or regulations

/* If your union contract, or a local law is more restrictive, it will apply. This act sets the minimum standards. */

Except as provided in subsection 2006 (a)-(c) this Act shall not preempt any provision of State or local law or of any negotiated collective bargaining agreement that prohibits lie detector tests or is more restrictive with respect to lie detector tests than any provision of this Act.