

# POLYGRAPH TESTING

## WHAT IS A POLYGRAPH TEST?

It is a test used to verify a person's truthfulness and is often called a 'Lie Detector Test.'

## IS THERE ANY LAW CONTROLLING USE OF POLYGRAPH IN SOUTH AFRICA?

Polygraph testing is a fairly new concept in South Africa, especially in disputes relating to employment relationships. There is no legislation at this point to control the use of the test or to protect the employee's right against the abuse of the test.

## CAN ONE BE COMPELLED TO UNDERGO A POLYGRAPH TEST?

It is against the Constitution of South Africa to compel a person to undergo a polygraph examination, unless she or he consents to it. The consent must be in writing.

The individual should be informed that—

- the examinations are voluntary;
- only questions discussed prior to the examination will be used;
- he/she has a right to have an interpreter, if necessary;
- should he/she prefer, another person may be present during the examination, provided that person does not interfere in any way with the proceedings;
- no abuse in whatever way will be allowed;
- no discrimination will be allowed;
- no threats will be allowed.

## WHEN IS THE EMPLOYER PERMITTED TO USE POLYGRAPH?

Generally, employers are permitted to use the polygraph to investigate specific incidents where—

- Employees had access to property which is the subject of the investigation;
- There is a reasonable suspicion that the employee was involved in the incident;
- There has been economic loss or injury to the employer's business like theft of company property;
- The employer is combating dishonesty in positions of trust;
- The employer is combating serious alcohol, illegal drugs or narcotics abuse and fraudulent behaviour within the company;
- The employer is combating deliberate falsification of documents and lies regarding true identity of the people involved.

## WHO GETS THE POLYGRAPH TEST RESULTS?

Polygraph results can only be released to an authorised person.

Generally it is the person who has undergone the polygraph test (examinee), or anyone specifically designated in writing by the examinee; and the person representing the company, corporation or government agency that requested the examination.

## WHAT IS THE STATUS OF POLYGRAPH TESTS AT THE CCMA?

Polygraphists have been accepted as expert witnesses whose evidence needs to be tested for reliability. The duty of the commissioner is to determine the admissibility and reliability of the evidence.

Polygraph tests may not be interpreted as implying guilt but may be regarded as an aggravating factor especially where there is other evidence of misconduct. In other words, polygraph test results, on their own, are not a basis for a finding of guilt. It can be used only in support of other evidence.

## RELEVANT LEGISLATION

The Constitution of the Republic of South Africa, Chapter 2.