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POLYGRAPH TESTING OF EMPLOYEES IN PRIVATE INDUSTRY

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ABSTRACT

An increasing number of employers are using polygraphy or 'lie detector' tests in the workplace. These tests are given to prescreen job applicants as well as to check on suspected employees. This report discusses the main legal questions regarding polygraph use: whether it is an invasion of privacy and criticisms regarding its reliability. The polygraph process is described and pending federal legislation is discussed. A summary of pertinent state statutes and a bibliography are included.

POLYGRAPH TESTING OF EMPLOYEES IN PRIVATE INDUSTRY
A LEGAL OVERVIEW

INTRODUCTION

In an effort to curtail the losses resulting from employee thefts estimated by the Commerce Department at \$40 to \$50 billion annually, employers have increased their use of polygraph testing in the workplace.^{1/} The American Polygraph Association, a nonprofit organization based in Dearborn, Michigan, claims that about 30 percent of the Fortune 500 companies use the polygraph.^{2/} The New York Civil Liberties Union reports that half a million employees and job applicants are required to take a polygraph exam annually.^{3/} The increasingly widespread use of this method to detect veritableness has come to be viewed as a right by employers to protect their property and as a prerequisite by employees who wish to obtain or maintain their jobs.

Two criticisms often made of the polygraph are that it intrudes into workers' privacy and that it is of questionable reliability. The polygraph is becoming a common feature of job applicant screening, investigations into financial irregularities and random spot checks on employees. But because polygraph's popularity may be threatening to workers, thirty-two states have enacted legislation restricting employer use of polygraph tests given to employees.

^{1/} "Use of Honesty Tests Raises Privacy Issue," 68 A.B.A.J. 671 (June 1982).

^{2/} N.Y. Times, Feb. 13, 1983.

^{3/} N.Y. Times, Feb. 13, 1983.

This report will describe the process of polygraph testing, the criticisms and merits of its usage, and its use in labor arbitration. Also included is a discussion of pending federal legislation. In the Appendix is a list of pertinent state statutes concerning the use of the polygraph in employment. This is followed by a bibliography.

THE POLYGRAPHY PROCESS

In theory lying produces stress because the subject being tested has a fear of detection.^{4/} His stress can be measured by a polygraph which monitors a person's physiological responses to selected questions. For optimal results, the exam should be given in a nonthreatening environment free from distraction.

Before the interview a subject familiarizes himself with the questions. This prevents deceptive test findings resulting from nervousness and anxiety over test questions.

Next, the examinee is strapped to the machine. Respiration rate is measured by two tubes placed around the torso. Change in blood pressure and pulse is measured by a rubber cuff secured around the arm. Lastly, galvanic skin responses, or perspiration activity is recorded through small electrodes placed on two fingers.^{5/}

Usually, three types of test questions are asked: control, relevant and irrelevant. The control and irrelevant questions determine respectively deceptive and truthful response patterns. A typical control question would

^{4/} "Wiretapping the Mind," 21 San Diego L. Rev. 297 (1984).

^{5/} "Polygraph in the Workplaces," 18 U. Rich. L. Rev. 50 (1983).

be, "Have you ever stolen anything?" The relevant questions pertain specifically to the matter under investigation. The worker's response to this type of question is most indicative of deception.^{6/}

THE ISSUE OF PRIVACY AND POLYGRAPH EXAMS

A major criticism of lie detector tests given in the workplace is that they may intrude into employees' personal lives. The worker's privacy may be chiefly invaded because of his inability during the exam to refrain from divulging information about himself.^{7/} The examiner can ask various questions and the worker's physiological responses continuously give answers. Furthermore, in order to explain a particularly extreme reaction to a question the employee might have to confess some information wholly unrelated to the matter at hand but of very personal significance to him.

In addition, intrusion may occur because through a polygraph test, an employer can acquire information about the applicant or employee which could not be obtained through other background checks or personality tests.^{8/} This data, possibly incorrect, kept in the employee's file could preclude future employers from inquiring into the individual's character and could even prevent employment opportunities. However, polygraph testing proves to be a cheaper interview method than an extensive background search.^{9/}

^{6/} "Wiretapping the Mind," 21 San Diego L. Rev. 297 (1984).

^{7/} "Wiretapping the Mind," 21 San Diego L. Rev. 305 (1984).

^{8/} "Employment Polygraph Testing," 15 U.C.D. L. Rev. 117 (1981).

^{9/} "Employment Polygraph Testing," 15 U.C.D. L. Rev. 118 (1981).

QUESTIONS OF POLYGRAPH VALIDITY

Another controversy surrounding use of the polygraph on the labor force is over the machine's accuracy. For years, scientists, academics and polygraph proponents have debated this issue. The three areas of concern are experimental verification of the process, the examinee's emotional state, and the examiner's competence. ^{10/}

Although the polygraph's accuracy has been assessed in criminal investigations, there have been no studies compiling data on its reliability in the workplace. David Raskin, an acclaimed scholar and psychologist on the accuracy of the polygraph, claims the machine's accuracy in criminal investigations is 90% but states its accuracy in employment contexts could be "no better than flipping a coin." ^{11/}

The reasons for this possible difference are that a criminal suspect has a constitutional right to deny taking the exam, and the questions he is asked tend to be specifically related to the trial. An employee, on the other hand, may risk losing his job if he refuses to submit to the employer's request thus making the testing atmosphere more coercive and anxious. Also, the types of questions the worker is asked tend to be vague and broad because these inquiries are meant to provide insight into the examinee's tendencies. This technique of predicting the future is said to be highly speculative and inconclusive as a proper indicator of employee performance.

^{10/} "Wiretapping the Mind," 21 San Diego L. Rev. 300 (1984).

^{11/} Hearings on Polygraph Control and Civil Liberties Protection Act before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary. 95th Cong. 1st and 2d Sess. 31, 226 (1977-78).

Another factor possibly interfering with reliable test results is the variability of a subject's mental condition.^{12/} Weariness, mental abnormalities or anger at the examiner's personal probings into the employee's lifestyle can bring about unreliable results. Fear and stress are natural reactions even for a truthful person when he is subjected to a distrustful atmosphere. Furthermore, an argumentative examiner can aggravate the employee's tensions also causing adverse effects on the accuracy of the results.^{13/}

This brings us to the most important component in the truth verification process: examiner competence. The examiner is the designer, administrator, and evaluator of the test and thus the results are subject to his interpretation. Many employees feel accused when asked to take the test, and this presumption of guilt often causes distrust of the examiner which in turn leads to a disruptive exam environment. The examiner must be sensitive to the subject's character in order to ensure the examinee's trust and cooperation — important factors aiding reliable test results.

Most examiners are not considered fully qualified, i.e., possessing a college degree or extensive investigative experience, graduation from a school of polygraphy and successful completion of a competency exam.^{14/} Presently, some states have enacted legislation requiring that polygraph examiners obtain a license. These state statutes can be found in the attached Appendix.

^{12/} "Wiretapping the Mind," 21 San Diego L. Rev. 301-302 (1984).

^{13/} "Wiretapping the Mind," 21 San Diego L. Rev. 304 (1984).

^{14/} "Polygraphy in the Workplace," 18 U. Rich. L. Rev. 54 (1983).

THE EMPLOYMENT AT WILL DOCTRINE

An employment contract of indefinite duration is typically held to be terminable at the will of either employer or the employee, and no reason need be given for termination by either party.^{15/} In recent years Congress and state legislatures have put some constraint on this common law doctrine and enacted legislation protecting employees from harsh acts by employers.^{16/} Nevertheless, the at will doctrine prevails unless there is a collective bargaining agreement, a contractual provision, a statute, or a judicially-conferred right which limits the possibility of wrongful discharge.^{17/} The New Hampshire Supreme Court in Monae v. Beebe Rubber Co., 114 N.H. 130, 316 A.2d 549 (1974), for instance, decided that the employer's interest in conducting his business as he wishes must be weighed against the employee's interest in maintaining his employment and the public's interest in maintaining a balance between the two. That court held a breach of the employment contract occurred when the employer terminated the employee's contract in bad faith (the employee refused to date the foreman). Id. at 555.

Alternatively, an employee can adopt another approach in pleading exception from the at will doctrine. Where discharging an at will employee violates a clear mandate of public policy, the employer may be held liable in tort. See Parnar v. Americana Hotels, Inc., 65 Hawaii 370, 652 A.2d 625

^{15/} 9 Williston, Contracts § 1017 (3d ed. 1967); Annot., 51 A.L.R. 2d 742 (1957).

^{16/} Demonstrating federal regulation of wrongful dismissal is Title VII of the Civil Rights Act of 1964 § 703(a), 42 U.S.C. § 2000e-2 (1976).

^{17/} A key article on the at will doctrine is Blades, "Employment at Will vs. Individual Freedom: On Limiting the Abusive Exercise of Employer Power," 67 Colum. L. Rev. 1404 (1967).

(1982) where a terminable at will employee's right was upheld to sue her employer for retaliatory discharge.

Similarly, in Molush v. Orkin Exterminating Co., Inc., 547 F. Supp. 54 (1982), a former employee pleaded a valid cause of action against his employer for tortious discharge. The plaintiff there claimed that his employer requested him to take a polygraph exam and that his dismissal was based on the results of that exam. This conduct violated the Pennsylvania statute which makes it unlawful for an employer to require a prospective employee to submit to a polygraph exam as a condition of employment. The court in Molush held the "causal connection" between the exam and the dismissal was sufficient authority to grant a tort action against the employer. Id at 56.

Still another case upholding tort actions against an employer for wrongfully discharging an employee is Perks v. Firestone Tire & Rubber Co., 611 F.2d 1363 (3d Cir. 1979). There the employee was terminated for refusing the employer's request to submit to a polygraph exam. The same situation occurred in Cordle v. General Hugh Mercer Corp., 325 S.E. 2d 111 (W. Va. 1984). That court determined the plaintiff's wrongful discharge violated a significant principle of public policy opposing such testing. Id. at 113. Additionally, the court noted that at will employees need not be distinguished from other employees who have certain protections in circumstances involving public policy. Id. at 114. Furthermore, the court recognized that "the public policy against such testing is grounded upon the recognition in this state of an individual's interest in privacy." Id. at 117. (Note that West Virginia has a statute limiting the use of polygraph exams.)

However, there may be a sliding scale measuring public policy violations in terms of job status. This was better stated by the court in Cort v. Bristol-Myers Co., 385 Mass. 300, 431 N.E. 2d 908 (1982):

In public policy terms, it is the degree of intrusion on the rights of the employee which is most important. In measuring the nature of the intrusion, at least as to its reasonableness...., the nature of the employee's job is of some significance. The information that a high level or confidential employee should reasonably be expected to disclose is broader in scope and more personal in nature than that which should be expected from an employee who mows grass or empties waste baskets. A salesman responsible for the sale of drug products to hospitals, doctors, & pharmacies falls in the middle of this range, but toward its upper side.

Id. at 305, 431 N.E. 2d at 913.

In that case public policy was found not to be violated when an employee alleged his employer had invaded his privacy by asking him to answer personal questions on a questionnaire. Thus significant factors determining whether a court will allow a public policy violation argument may be one's occupation and state statute.

However, employers sometimes can overcome the obstacle of a state statute restricting polygraph exams in the workplace. In Cisco v. United Parcel Service, Inc., 328 Pa. Super. 300, 476 A.2d 1340 (1984), business reputation was valued more than the individual's loss of his job. Criminal charges were filed against an employee-deliverer, and he was subsequently discharged. The employee brought an action in trespass claiming he was wrongfully discharged, but the court held the employer's reason for discharge was plausible and that no public policy was violated.

Another example of employers escaping the legislature's restriction of polygraph testing is Wright v. Commonwealth of Pennsylvania Unemployment

Compensation Board of Review, 77 Pa. Commw. 278, 465 A.2d 1075 (1983). That case involved an employee alleging her employer had violated the state statute prohibiting employers from requiring their employees to submit to polygraph exams by having her polygraphed during an investigation where she was suspected of theft. The court held that when the employer turned the investigation over to the police and they administered the test, the employer did not violate the state statute.

Sometimes an issue can turn on whether the company rules will dictate admitting the employee's polygraph exam results as evidence in a trial for wrongful discharge. In Green v. American Cast Iron Pipe Co., 446 So.2d 16 (Ala. 1984), an employee was under investigation for his alleged use and selling of marijuana. The plant rules provided that an employee could be required to take a polygraph exam, and that those exam results could be considered by its Investigating Committee. Id. at 18. The Alabama Supreme Court upheld the trial court's decision to admit the results of Green's polygraph test in the trial of his action for wrongful discharge. It should be noted however that Alabama has no anti-polygraph statute.

Lastly, courts have ruled on the applicability of waiver forms to tort actions. Before a polygraph exam, the employee may be asked to sign a consent form stating that he is voluntarily taking the exam and that he waives all liability against the employer and the polygrapher arising from the test. Courts have treated discharged employees who bring actions against their employers in this situation according to the respective state statutes and public policy considerations. In Ising v. Barnes Hospital, 674 S.W.2d 623 (Mo. Ct. App. 1984), the Missouri

Court of Appeals found that an employee at will could be discharged for refusing to sign a consent and waiver form. Missouri has no statute restricting the use of polygraph exams in the workplace. But in Pennsylvania, which has a statute limiting polygraph use, a release form was held invalid and the discharged employee was allowed to bring an action for wrongful discharge. See Polsky v. Radio Shack, 666 F.2d 824 (3rd Cir. 1981).

THE POLYGRAPH IN LABOR ARBITRATION

Questions regarding use of the polygraph have also arisen in the labor arbitration process. Polygraphs are commonly used by management to detect employee theft and then to justify the subsequent discharge.^{18/} An employee may bring a grievance to his union, the collective bargaining agent for the workers. Both the union's and management's views are then represented at an arbitration hearing where the matter at hand is decided by an arbitrator. Regarding polygraph usage, arbitrators have been confronted with conflicting prior decisions, confused case law, and paradoxical statutes.^{19/}

One issue explored by arbitrators is that of the consequences of an employee's denying an employer's demand to submit to a polygraph test. A great deal of authority suggests that employees should not be penalized for refusing to submit to lie detector tests; and that where an employee does take the exam, the results should be given little or no attention. Arbitrators seem to prefer other types of evidence although the exam results are useful for corroboration.^{20/}

^{18/} Carr, "Employer Use of the 'Lie Detector': The Arbitration Experience," Lab. L.J. 701 (1984).

^{19/} Id. at 713.

^{20/} Elkouri and Elkouri, How Arbitration Works, 268-69.(1973).

Additionally, arbitrators must be aware of pertinent state statutes; however, their decisions have been inconsistent regarding the impact of state laws on polygraph usage. In Brinks Inc., 78-1 Lab. Arb. Awards (CCH) ¶8236, (1978) the use of any polygraph evidence at an arbitration hearing was found to be forbidden by a Massachusetts statute. But in Golden Pride Inc., 68 Lab. Arb. (BNA) 1232 (1977) the arbitrator admitted the results from the polygraph exam because the employee took the test voluntarily. There the Maryland law prohibiting mandatory polygraph testing was considered not violated.

Concerning voluntariness as a prerequisite to any admission of polygraph evidence, most arbitrators enforce this arrangement unless a collective bargaining agreement provides otherwise. That is, the results are usually ignored if an employee is forced to submit. ^{21/} In Glenn Manor Home for the Jewish Aged, 81 Lab. Arb. (BNA) 1178 (1983), management administered polygraph tests to employees suspected of stealing from the elderly residents. The employees refused to take the test and were subsequently fired. In that decision, the arbitrator ordered the employees to be reinstated. Similarly, in Bisbee Hospital Association, 79 Lab. Arb. (BNA) 977 (1982), a patient was reinstated after refusing to take a polygraph exam. Again, the arbitrator cited the majority view that refusal to take a polygraph exam is not just cause for dismissal. However, in Grocers Supply Co., 75 Lab. Arb. (BNA) (CCH) 27 (1980), an employee refused to abide by the waiver he had signed at the beginning of his employment. There the arbitrator bound the employee to his original agreement and upheld his discharge.

^{21/} Lab. L.J. supra at 706.

Another issue concerning arbitrators is how they should respond when an employer has imposed lie detector tests in violation of state law. In Safeway Stores, Inc., 82-2 Lab. Arb. Awards (CCH) ¶8506 1982, an employee was given a polygraph exam after conflicting evidence was produced regarding the employee's involvement in a car accident. The employee failed the polygraph exam and was terminated. The union contended that the test was given in violation of a Washington statute forbidding an employer from requiring a polygraph as a condition of employment. Nevertheless, the arbitrator decided the law was not violated because the employee submitted to the test voluntarily, and therefore it had not been a 'condition' of employment. Also in Sunshine Mining Co., 77 Lab. Arb. (BNA) 1260 (1981), an arbitrator upheld management's decision to terminate an employee. The worker, accused of harrasing a strike-breaker, refused to take a polygraph exam and was suspended. At arbitration the union contended that the employer had violated the Idaho statute barring polygraph use and therefore also breached the employment contract containing a conflict of laws clause. However, the arbitrator stated that the act, though possibly illegal under state statute, did not specifically violate any contractual provision. Id. at 1262. Thus, for the employee to obtain relief he would have to bring the statutory violation to the local prosecutor's attention. The employee would then have to file a civil suit for damages or for reinstatement with back pay.

The previous case illustrates the difference between the courtroom process and an arbitration hearing. Because the latter is a private procedure, there are no legal duties to follow requirements of due process. ^{22/}

^{22/} Id. at 711.

Thus an arbitrator's interpretation of the employment agreement would be facilitated if he could rely on more consistent precedents and more specific contractual provisions regarding polygraph usage.

NLRB DECISIONS REGARDING THE POLYGRAPH

The National Labor Relations Board (NLRB) has had several cases come before it concerning polygraph usage. Again, inconsistency pervades these decisions and has resulted in a stand-off between labor and management.

In Fixtures Manufacturing Corp., 251 NLRB No. 107 (1980), an employee was subjected to a polygraph exam allegedly because of his union activities. The test implicated the employee in thefts taking place at the employer's facility, and the worker was discharged. The Board ruled that the examination had unlawful motivations and that the employer had committed an unfair labor practice.

However, in Consolidated Casinos Corp., Sahara Div., 266 NLRB No. 172 (1983), a gambling casino operator was found not to have acted unlawfully by requiring his employees to take a polygraph exam during the weeks preceding a representation election, where the casino was under investigation for gambling irregularities by the state commission and the examination was related to the investigation.

Also in Munford, Inc., World Bazaar Div., 266 NLRB No. 205 (1983), the employer's administration of polygraph tests was not considered unlawful when it was based on inventory shortages.

On the other hand, in Restaurant Management Services, Inc., 266 NLRB No. 144 (1983), an employer's use of lie detectors during an alleged inquiry into an employee theft was held to constitute an unfair labor practice. Here the employees were involved in union activity and were asked to take tests, after which they were dismissed. Indications of employee theft had been present for several months but the employer initiated polygraph tests only after union discussions

had persisted. Also to be noted was that the employees signed consent forms when they were hired. Nevertheless, this was held not to absolve the employer from administering illegal polygraph tests.

CURRENT LEGISLATION

Presently, there is no federal law controlling the use of polygraph testing in the private sector. Several different types of legislative proposals are pending in Congress.

H.R. 1524, 99th Congress, has been proposed by Rep. Pat Williams (D-Mont.) to prohibit polygraph use as a condition of employment for job applicants and employees. The bill would exempt federal, state and local governments.

H.R. 1924, 99th Congress, is a similar proposal introduced by Rep. Stewart McKinney (R-Ct). This stricter bill would ban the use of the polygraph in private industry, impose fines on those who violate the law, and allow aggrieved workers and applicants to file suit for damages. The measure contains an exemption for the Department of Defense, the National Security Agency, and the CIA when contracting with private industry for national defense and intelligence purposes. ^{23/}

H.R. 1792, 99th Congress, was introduced by Rep. Butler Derrick (D-SC) and would require uniform qualification standards for polygraph examiners.

^{23/} House Committee Considers Proposal to Ban Polygraphs in Private Employment, 147 Daily Labor Report A-11, July 31, 1985.

Hearings on the proposed banning of polygraphs were held before the House Labor Subcommittee on Employment Opportunities on July 30, 1985. ^{24/}

Testimonies were given by business groups, unions, academicians and civil libertarians.

^{24/} Statements Before House Labor Subcommittee on Employment Opportunities on Use of Polygraphs in the Workplace, 147 Daily Labor Report F-1, July 31, 1985.

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APPENDIX

**COMPILATION OF STATE AND
FEDERAL PRIVACY LAWS**

1984-85

By

ROBERT ELLIS SMITH

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Alaska—Suggesting or requiring a lie-detecting test in private or public employment (except police applicant) is prohibited. Maximum penalty: \$1,000 and one year. Alaska Stat. Sec. 23.10.037.

Arizona—License is required; grounds for refusal, suspension or revocation of license include failing to inform subject that participation is voluntary, making inquiries during pre-employment exam regarding religious, labor, sexual activities or political affiliation, failing to inform subject of results if requested. Ariz. Rev. Stat. sec. 32-2701.

California—Cal. Labor Code sec. 432.2 prohibits polygraphing in private employment. Police officers do not have to submit to polygraphing in departmental investigations. Cal. Gov't. Code sec. 3307.

Connecticut—Conn. Gen. Stat. Ann. sec. 31-51g prohibits an employer or employment agency from using polygraph or similar device. Penalty: \$250 to \$1,000.

Delaware—Use in both public and private employment is prohibited. Del. Code tit. 19, sec. 704.

District of Columbia—Polygraphs may not be used as a condition of employment. D.C. Code sec. 36-801 to 803.

Hawaii—Haw. Rev. Stat. sec. 378.21 prohibits use in both public and private employment. Maximum penalty: \$1,000 and one year.

Idaho—Prohibits polygraphing in private employment; exempts governmental agencies. Idaho Code sec. 44-903.

Iowa—Employers may not require an applicant or employee to take a polygraph test as a condition of employment, except for applicants for law enforcement jobs. Iowa Code Ann. 1983 Interim Suppl. ch. 730.4.

Maine—A employer may not request or suggest a polygraph test. Me. Rev. Stat. tit. 32, sec. 7166. [See Appendix.]

Maryland—Md. Ann. Code art. 100, sec. 95 requires private and public employers to include the following language on applications: "Under Maryland law an employer may not require or demand any applicant for employment or prospective employment or any employee to submit to or take a polygraph, lie detector or similar test or examination as a condition of employment or continued employment. Any employer who violates this provision is guilty of a misdemeanor and subject to a fine not to exceed \$100." [See 78-79 book.]

Massachusetts—Mass. Gen. Laws, Ann. ch. 149, sec. 19B prohibits use in employment; exempts law enforcement officials in the performance of their duties. Fine not to exceed \$200.

Michigan—Employers may not require a "lie detector" or similar test of an employee nor discharge an employee for failure to submit to a test or solely for allegedly lying in a test. Employees may not be required to waive their rights and must receive a copy of this law if requested to take polygraph exam. An employer may not use the results of a polygraph test nor divulge them. Mich. Comp. Laws, Ann. sec. 37.201.

Minnesota—An employer may not request, require or coerce an individual to take any test, including voice stress analysis, "purporting to test the honesty of any employee or prospective employee." Even if a person takes such a test at

his own request, the results may go only to those authorized by the individual tested, and it is a misdemeanor to disclose that another person has taken a polygraph test. Minn. Stat. Ann. sec. 181.75.

Montana—"No person, firm or corporation shall require as continuation of employment any person to take a polygraph test or any form of a mechanical lie detector test." Mont. Rev. Codes Ann. sec. 39.2-304.

Nebraska—Generally no one may require a truth detection test as a condition of employment, unless (1) there are no questions on sex, politics, labor organizing, religion, or marriage; (2) the subject volunteers, in writing; (3) the test is job related and not selectively administered; (4) it is part of a specific investigation and not the sole determinant. Neb. Rev. Stat. sec. 81-1932.

Nevada—Written consent to take a test is required, and there is a limit on questions. Nev. Rev. Stat. sec. 648A.190.

New Jersey—N.J. Stat. Ann. sec. 2A:170-90.1 states that any employer who influences or requires a polygraph test is a disorderly person.

New Mexico—License required; may be revoked or refused if examiner asks any question relative to sexual affairs, race, creed, religion, union affiliation or activity not previously agreed to by written consent. N.M. Stat. Ann. sec. 67-31A-1.

New York—No employer may require, request, suggest or knowingly permit applicant to take a test with a psychological stress evaluator, a machine that purports to detect falsehoods. An employer may not use test results. A practitioner may not administer a test to an employee. An employee may not be discriminated against for complaining about a violation of this law. N.Y. Labor Law sec. 733.

Oregon—Or. Rev. Stat. sec. 659.225 prohibits use in private and public employment. Maximum penalty: \$500 and one year.

Pennsylvania—18 Pa. Cons. Stat. Ann. sec. 7321 prohibits employment polygraphing except for those persons in law enforcement or those who have access to narcotics or dangerous drugs. Maximum penalty: \$500 or one year.

Rhode Island—R.I. Gen Laws sec. 28-6.1-1 prohibits use in both public and private employment. Maximum fine: \$200.

Texas—A test must be voluntary and the subject informed of the results. Tex. Rev. Civ. Stat. art. 4413(29cc).

Utah—It shall be unlawful for refusal to submit to a surreptitious exam to be the basis for denying or terminating employment. Utah Code Ann. sec. 34-37-16.

Vermont—Similar to Arizona's. Vt. Stat. Ann. tit. 26, sec. 2901.

Virginia—Questions on sex are prohibited. Va. Code sec. 54-916 to 922.

Washington—Wash. Rev. Code Ann. sec. 49.44.120 exempts public law enforcement employees, persons who dispense narcotic or dangerous drugs and persons in positions related to national security from the polygraph prohibition. Violation is a misdemeanor.

West Virginia—Employers may not subject employees or applicants to tests. W. Va. Code sec. 21-5-5a. [See Appendix.]

Wisconsin—Polygraphs are permitted in employment if the person consents in writing, if questions are disclosed in advance, and if there is a chance to retake the test. A person may be fired for the results, but not for refusing to take a test. Psychological stress evaluators may not be used. Wisc.

Because of a printing mistake, several states were omitted from the chapter on POLYGRAPHS in the 1984-85 Compilation (although they are accurately reflected in the chart on page 2). The correct listing is here.

POLYGRAPHING IN EMPLOYMENT

Georgia -- Polygraph exams are limited to no more than 15 questions (and no fewer than seven), and all questions must be provided in advance in writing. A person examined is entitled to a written copy of the results, and no one else may receive the results without consent of the examined person. No questions may be asked about religion, politics, race and racial opinions, labor organizing, or sexual activities. An examiner may be sued for violations of the act, passed in March 1985 as SB 19, Ga. Code Ann. 43-36-1.

Illinois -- Polygraph examiners may not ask about religion, beliefs on racial matters, political views, labor organizing or union membership, sexual preferences, or sexual activities unless the inquiry is "directly related to the employment." Ill. Stat. Ann. 2415.1.

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