

Short notes on:

## **HOW ENFORCEABLE IS THE POLYGRAPH IN MODERN-DAY PROCEEDINGS?**

### ***Introduction***

A polygraph test, better known by the general public as a "lie detector test", is used in labour proceedings by the employer to assess the truthfulness of an employee on the events in question. The test monitors your bodily reactions towards specific questions to determine if the subject's blood pressure will spike, changes in breathing, and sweating on palms.

### ***What Are The Regulating Bodies Governing The "Polygraph" Procedure?***

The testing of employees by employers is a very old concept in South Africa. However, there has never been any labour or employment legislation that regulates or controls the use of the test. In addition to that, no governing body protects the employee's rights against the employer who misuses the test as an excuse to dismiss an employee based on the test results.

### ***Can A Polygraph Test Be Compulsory?***

An employer cannot force a polygraph test. It should always be free and voluntary. An employer conducting a test should ensure that the consent of the employee is obtained in writing and that the possibility of undergoing a polygraph test is agreed upon in the employment contract. This will curtail potential disputes.

### ***When Will A Polygraph Be Appropriate?***

As a general practice, employers will usually use polygraph testing to investigate an incident that occurred in the workplace or is related to the employee's duties.

An employer will usually request that a polygraph test be conducted under the following circumstances:

- If the employee has access to any property that is currently subject to an investigation;
- The employee is under investigation for misconduct;

- Any form of damage, injury or theft from the company that caused financial loss subject to an employee's actions;
- Any suspicion of substance abuse;
- Any fraudulent behaviour that the employer suspects the employee is partaking in or bears knowledge of.

### ***How Much Weight Does The "Test" Carry In Arbitration Proceedings***

Every case will be heard on its own merits. However, the commissioner has to determine whether or not the test results can be interpreted as guilt or merely a bodily reaction. It can attribute to additional evidence from the employer to strengthen their case but will not necessarily stand firm as "proof" of guilt.

### ***Conclusion***

There has never been any labour or employment legislation that regulates or controls the use of the test or protects the employee's right against the use of the polygraph test.

Be that as it may, polygraph tests can only be used with the consent of the employee. The polygraph will be taken into consideration in the proceedings but cannot be relied upon by the employer to make its case. It is merely in addition to other evidence.

Contact an attorney at SchoemanLaw for your labour law needs!