

ASK A LAWYER

No lie: Polygraphs are workplace no-nos

Q. As an employer, am I permitted to request that an employee or prospective employee take a polygraph test, commonly known as a "lie detector test"?

"No" is the short answer under most circumstances. Both federal and New Jersey state law prohibit an employer from requesting, either directly or indirectly, that a current employee or an applicant for employment take any lie detector test.

Both laws also forbid an employer from taking any adverse action against an employee or job applicant (such as discharging or disciplining an employee or denying employment to an appli-

cant) because that person has refused to submit to a polygraph or on the basis of the results of a polygraph.

Furthermore, even if an employee has given written consent for a lie detector test, an employer still can be found to have unlawfully requested the test.

The federal law, known as the Employee Polygraph Protection Act (EPPA), is based on protecting employees' and prospective employees' right to privacy. The EPPA and New Jersey's law do have exceptions to the ban on polygraphs.

For instance, New Jersey's statute permits polygraphs under

certain circumstances when the employer is authorized to manufacture, distribute or dispense controlled dangerous substances. The EPPA does not apply to any government employers.

There also are certain limited exceptions under the EPPA for ongoing investigations involving economic loss or injury to an employer's business.

However, there are extremely detailed and specific criteria and protections that must be complied with before a polygraph will be allowed in that instance. The general rule in most cases, therefore, is that an employer

should not request an individual take a polygraph and an employee need not submit to a polygraph.

Wendy F. Klein is a member of the Litigation Department at Cole, Schotz, Meisel, Forman & Leonard, P.A., the largest law firm in Bergen County. This is not intended to be legal advice, which can only be given after the attorney understands the facts of particular matters and the goals of a client.

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