

Employee Polygraph Protection Act of 1988 (EPPA) - Checklist

What is EPPA?

On December 27, 1988, the Employee Polygraph Protection Act (EPPA) became law. This federal law established guidelines for polygraph testing and imposed restriction on most private employers. The following is a brief summary of the essential elements of the law.

Who is affected by EPPA?

This legislation only affects commercial businesses. Local, State and Federal governmental agencies (such as police departments) are not affected by the law, nor are public agencies, such as a school system or correctional institution. In addition, there are exemptions in EPPA for some commercial businesses. These are:

1. Businesses under contract with the Federal Government involving specified activities (e.g., counterintelligence work).
2. Businesses whose primary purpose consists of providing armored car personnel, personnel involved in the design, or security personnel in facilities which have a significant impact on the health or safety of any state. Examples of these facilities would be a nuclear or electric power plant, public water works, or toxic waste disposal.
3. Companies which manufacturer, distribute or dispense controlled substances.

How does EPPA affect businesses which are not exempt?

In general, businesses cannot request, suggest or require any job applicant to take a pre-employment polygraph examination. Secondly, businesses can request a current employee to take a polygraph examination or suggest to such a person that a polygraph examination be taken, only when specific conditions have been satisfied. However, the employer cannot require current employees to take and examination, and if an employee refuses a request or suggestion, the employer cannot discipline or discharge the employee based on the refusal to submit to the examination.

What are the conditions that an employer must meet in order to ask a current employee to take a polygraph? The American Polygraph Association is furnishing the following information, which it believes is in good faith, and conforms with the Department of Labor's Regulations relating to polygraph tests for employees. This information is considered only as a guideline to assist in complying with the Act and Regulations, and the American Polygraph Association is disclaiming any liability in connection therewith. Employers should develop their own forms, using their own company name, and should also review their final forms through their own legal counsel.

I. Checklist for the Employer

- 01) The incident must be an ongoing, specific investigation.
- 02) It must be an identifiable economic loss to the employer.
- 03) Obtain a copy of the Employer Polygraph Protection Act of 1988.
- 04) Provide the employee with a written statement that includes:
 - a. identification of the company and location of employee
 - b. description of the loss or activity under investigation
 - c. location of the loss
 - d. specific amount of the loss
 - e. type of economic loss
 - f. how the employee had access to the loss
(Note: access alone is not sufficient grounds for polygraph testing)
 - g. what kind of reasonable suspicion there is to suspect the employee of being involved in the loss.
- 05) The Statement provided to employee MUST be signed by someone other than the polygraph examiner, who is authorized to legally bind the employee, and MUST be retained by the employer for at least 3 years.
- 06) Read the Notice to Examinee to the employee, which should be signed, timed, dated and witnessed.
- 07) Provide the employee with 48 hours advanced notice (not counting weekends or holidays) to the date and time of the scheduled polygraph test.
- 08) Provide employee with written notice of the date, time and location of the polygraph test, including written directions if the test is to be conducted at a location other than at the place of employment.
- 09) Maintain a statement of adverse actions taken against the employee following a polygraph test.
- 10) Conduct an additional interview of employee prior to any adverse action following a polygraph test.
- 11) Maintain records of ALL of the above for a minimum of 3 years.
- 12) Employees may not waive their rights.

13) Police and investigators are not exempt and must comply if they are conducting an employment related polygraph test, i.e., when conducting a polygraph test on an internal theft for a missing deposit. Information about a polygraph provided to the employer by a police officer or investigator is prohibited under the Act, since employers are not allowed to use, accept or inquire about the results.

14) There is a \$10,000 penalty for EACH violation of the law.

15) Check out the credentials of the polygraph examiner that you use and verify that the examiner meets EPPA requirements. Never hesitate to ask for written proof of licensing, liability insurance, etc.

16) Use your company letterhead on all forms you provide to the employee. Have your corporate attorney review your actions to assure your compliance of EPPA.

II. Checklist for the Polygraph Examiner:

01) Provide the employer with a copy of EPPA guidelines. Do not just try to explain what has to be done during a phone conversation with the employer.

02) The examiner should not get involved in assisting the employer to determine who should or should not be tested, or who does or does not have access or reasonable suspicion.

03) Obtain a copy of the signed statement of advance notice provided to the employee, along with a copy of the explanation of their rights and written directions/appointment PRIOR to the Interview. Obtain a photo I.D. of the employee. RULE OF THUMB: No form, no test! No identification, no test!

04) Provide the employee with a written explanation of the polygraph test and procedures. Have it signed by the employee and be sure to include the date and time it was provided.

05) Read and explain the rights to the employee. Have it signed, dated and timed.

06) Advise the employee of any taping and/or one-way mirrors.

07) Carry a minimum of \$50,000 or equivalent professional liability coverage.

08) Conduct no more than 5 polygraph tests during one calendar day, even if only 1 test is under EPPA. This includes ALL tests for all employers and/or lawyers you conducted during the day!

09) Administer no test that is less than 90 minutes in duration.

- 10) Provide the employee with the polygraph test questions in writing. Have the employee write out their answers and sign the question sheet for verification of review.
- 11) Have an appropriate license, if so required, in the state where the test is to be conducted.
- 12) Keep a log of company name, employee name, date and times for all polygraph tests during the course of a day when 1 test is given under EPPA.
- 13) Inform the employee of the results of the test and allow him/her an opportunity to explain any reactions.
- 14) Provide any opinion of deception or non-deception in writing.
- 15) Results must only be based on the polygraph test results, and should NOT be based on behavior.
- 16) Do not include any information not relevant to the original purpose of the test to the employer.
- 17) Keep a copy of ALL reports, notes and records for a minimum of 3 years.
- 18) Provide a copy of charts, questions and reports to the employee upon request.
- 19) Provide a copy of charts, questions and reports to the employer when results are deceptive.
- 20) Provide the Department of Labor with copies of the same, within 72 hours, upon request of the Secretary of DOL, or other authorized person of DOL.