



NEWSLETTER

THE LEGALITIES OF POLYGRAPH TESTING



Polygraph Testing

With corruption and dishonesty becoming the common denominators across many of South Africa's industries, employers are hard-pressed to ensure good governance, adherence to stated company policies on contracts signed by employees, and collecting the 'burden of proof' required to charge an employee suspected of theft or fraud.

On US television, the FBI and detectives at local police stations use the polygraph as an immediate means of confirming guilt or innocence, with the occasional criminal (whom we know is guilty) managing to fool the polygraph machine.

It's actually remarkably simple to fool the polygraph. However, given that it takes practice, and given that the person accused of a misconduct would probably not be aware of the ways to cheat the test, an employer can be reasonably confident that the outcome of the test will be a true reflection of the person's innocence or guilt.



If you are unlucky enough to be testing an employee with sociopathic tendencies, that's a totally different ballgame.

Sociopaths are remarkably tolerant of electric shock' (Hare & Schalling, 1978). Under tense conditions they show heart rate acceleration but few other signs of stress—no sweaty palms, for example. They typically pass a lie detector test even if they are lying.

Exactly how does a polygraph work?

"A polygraph refers to several instruments which combine to simultaneously record changes in blood pressure, pulse, and respiration. Apparatus worn by the subject includes a pneumograph tube around the chest, an ordinary blood-pressure cuff, and electrodes on the fingers and surfaces of the hand. The actual physiological changes are transmitted into synchronized readings on graph paper; these parallel graphs are then correlated and interpreted to determine whether the subject is lying."

(Mncube and Cash Paymaster Services (1997) 1 CCMA 2.1.5)

Some History

It's incredible that a serious inventor, psychologist, lawyer, writer and scientist such as William Moulton Marston was also the creator of the most popular female comic-book hero of all time, Wonder Woman!

'He began working on his invention in 1915, but he wasn't fully inspired until his wife told him that her blood pressure seemed to climb if she felt angry or excited. This led Marston to believe that a connection existed between lying and blood pressure, and he came to the conclusion that when people lie, their blood pressure increases. Thus, the early version of the polygraph machine was born.'

Source: [The Vintage News](#).

Marston is credited with the creation of the systolic blood pressure test, which is an important component of the modern polygraph.

The legalities surrounding polygraph testing in South Africa

'In South Africa there is currently no legislation regulating the use of the polygraph. Therefore, there is nothing prohibiting or preventing the submission of polygraph results to corroborate other evidence in our Courts of Law. It is also legal to request employees to voluntarily subject themselves to polygraph examinations'.

Source: [PISA Integrity Assessment Centre](#).

This means that employers may use polygraph tests once an employee has been accused of a misdemeanour, but the employee has to give written consent to the test, and the results are to be used ONLY in conjunction with other supporting or corroborating evidence. This is insisted upon by the CCMA, for example, although they do acknowledge polygraph testing as a forensic tool. For some interesting decisions involving the inclusion of the polygraph in CCMA cases, visit the [Polygraph Institute of South Africa](#).

When to test

According to PRISA, the United States passed the Employee Polygraph Protection Act, (EPPA) which bans the use of polygraphs by employers for pre-employment screening of job applicants. This Act may well be used by our courts as a reference should any such dispute be brought before them.

The EPPA does, however, lay down polygraph testing criteria to be used by employers when investigating incidents, and PRISA recommends that South African employers use the criteria as a guideline:

- If the employer has a reasonable suspicion that an employee was involved
- If the employee had access to the items or goods involved in the investigation
- Where the employer has suffered a financial loss or damage to the business

The accuracy of the polygraph is a contentious issue

Not everyone believes the polygraph gives any indication whatsoever of a person's guilt or innocence. "There's no unique physiological sign of deception. And there's no evidence whatsoever that the things the polygraph measures — heart rate, blood pressure, sweating, and breathing — are linked to whether you're telling the truth or not," says Leonard Saxe, a psychologist at Brandeis University who's conducted research into polygraphs. Saxe's 1983 report for Congress ended up leading to a nationwide ban on private employers giving polygraph tests to employees, and a 1998 Supreme Court decision ruled against the use of polygraphic evidence in some federal courts because "there is simply no consensus that polygraph evidence is reliable." Source: [Vox](#)

The admissibility of the test results

The criteria have been discussed previously, but another important factor to consider is the professionalism of the polygraph examiner. As the results of the test could be presented in court as supporting proof of guilt or innocence, it is vital that a fully-qualified and reputable examiner is used, preferably one with proven experience testifying during a court procedure.

If in doubt, consult GEO.

Regards
Andre Rabe



The creator of the first polygraph machine to be used by law enforcement agencies was himself a liar!

William Moulton Marston was a married man when he met an attractive young student, Olive Byrne, who became an inspiration for his famous comic book character 'Wonder Woman'. He persuaded his wife to allow Olive to move into their home, where they lived as a family. Marston had children by both of them. However, when questioned about Olive, he would lie by telling people she was his widowed sister-in-law! Source: [The Vintage News](#).

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In This Issue

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GEO members are advised to subscribe to the CIRIS internet labour law advice site. It provides valuable information on all matters related to Labour Law. Contact Andre Rabe on 0824910708 or email him on

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Summary

Taking a Polygraph test in South Africa: - Written consent is needed to do the test, and the results are to be used ONLY in conjunction with other supporting or corroborating evidence.

WHO KNEW!

The creator of
Wonder Woman
invented the
Polygraph machine



The accuracy of the polygraph

The American
Psychology Association
has a similar view to
Leonard Saxe, a
psychologist at
Brandeis University:

A particular problem is that polygraph research has not separated placebo-like effects (the subject's belief in the efficacy of the procedure) from the actual relationship between deception and their physiological responses. One reason that polygraph tests may appear to be accurate is that subjects who believe that the test works and that they can be detected may confess or will be very anxious when questioned. **If this view is correct, the lie detector might be better called a fear detector.**