

Can My Employer Force Me to Take a Lie Detector Test?

People tend to think that a Polygraph test, or a Lie Detector Test as they are more commonly referred to, is the perfect test to catch someone who is being dishonest. There is also a general misconception that you can dismiss an employee if they fail a polygraph test.

In simple, practical terms, a polygraph test involves connecting a person or employee to a machine that measures their bodily response to questions. Factors such as blood pressure, pulse, breathing patterns, and cardiac responses are observed when a person responds to a series of questions. A polygraphist is the person who facilitates and records such a process.

Our country has no specific legislation regulating the use of polygraph tests. The general practice is that employers can use polygraph tests to investigate employees. However, an employer cannot force an employee to take a polygraph test, and the employee must do it voluntarily.

It is advisable to provide for consent to polygraph tests in the employment contract, but even with this prior consent, you cannot dismiss an employee simply because they are refusing to take the test or because the polygraph indicates that the employee is being dishonest.

In various past instances, the Labour Court had to decide whether a dismissal based solely on a polygraph test was fair, and in each instance, the court found that it was not enough to summarily dismiss an employee. *Algorax (Pty) Ltd v CWIU 1995 MBLR (1) LAC* and *Census Tseko Moletsane v ASCOT Diamonds (Pty) Ltd (91993)21ICD 310(IC)* are only two of the matters in which the Labour Court confirmed this.

The results of a polygraph test can only be used in addition to other evidence that the employee is dishonest and cannot, on its own, stand as evidence that someone is dishonest.

Even if the employee has consented to a polygraph test, the employer should inform the employee of the following:

1. The polygraph test is voluntary.
2. The employee may request that another person (a co-employee) be present during the investigation. However, such a person should not interfere.
3. No abuse, threats or discrimination is allowed.
4. The employer has a right to have an interpreter.

Although they are not accepted as evidence, polygraph tests can still be used as a valuable tool to investigate misconduct in the workplace, as long as they are used fairly and without force.

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