

SUBCHAPTER C—OTHER LAWS

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APPENDIX A TO PART 801—NOTICE TO EXAMINEE

AUTHORITY: Pub. L. 100-347, 102 Stat. 646, 29 U.S.C. 2001-2009.

SOURCE: 56 FR 9064, Mar. 4, 1991, unless otherwise noted.

Subpart A—General

§ 801.1 Purpose and scope.

(a) Effective December 27, 1988, the Employee Polygraph Protection Act of 1988 (EPPA or the Act) prohibits most private employers (Federal, State, and

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local government employers are exempted from the Act) from using any lie detector tests either for pre-employment screening or during the course of employment. Polygraph tests, but no other types of lie detector tests, are permitted under limited circumstances subject to certain restrictions. The purpose of this part is to set forth the regulations to carry out the provisions of EPPA.

(b) The regulations in this part are divided into six subparts. Subpart A contains the provisions generally applicable to covered employers, including the requirements relating to the prohibitions on lie detector use and the posting of notices. Subpart A also sets forth interpretations regarding the effect of section 10 of the Act on other laws or collective bargaining agreements. Subpart B sets forth rules regarding the statutory exemptions from application of the Act. Subpart C sets forth the restrictions on polygraph usage under such exemptions. Subpart D sets forth the recordkeeping requirements and the rules on the disclosure of polygraph test information. Subpart E deals with the authority of the Secretary of Labor and the enforcement provisions under the Act. Subpart F contains the procedures and rules of practice necessary for the administrative enforcement of the Act.

§ 801.2 Definitions.

For purposes of this part:

(a) *Act* or *EPPA* means the Employee Polygraph Protection Act of 1988 (Pub. L. 100-347, 102 Stat. 646, 29 U.S.C. 2001-2009).

(b) (1) The term *commerce* has the meaning provided in section 3(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(b)). As so defined, *commerce* means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(2) The term *State* means any of the fifty States and the District of Columbia and any Territory or possession of the United States.

(c) The term *employer* means any person acting directly or indirectly in the interest of an employer in relation to an employee or prospective employee.

A polygraph examiner either employed for or whose services are retained for the sole purpose of administering polygraph tests ordinarily would not be deemed an *employer* with respect to the examinees.

(d) (1) The term *lie detector* means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device (whether mechanical or electrical) that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual. Voice stress analyzers, or psychological stress evaluators, include any systems that utilize voice stress analysis, whether or not an opinion on honesty or dishonesty is specifically rendered.

(2) The term *lie detector* does not include medical tests used to determine the presence or absence of controlled substances or alcohol in bodily fluids. Also not included in the definition of *lie detector* are written or oral tests commonly referred to as “honesty” or “paper and pencil” tests, machine-scored or otherwise; and graphology tests commonly referred to as handwriting tests.

(e) The term *polygraph* means an instrument that—

(1) Records continuously, visually, permanently, and simultaneously changes in cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards; and

(2) Is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

(f) The terms *manufacture*, *dispense*, *distribute*, and *deliver* have the meanings set forth in the Controlled Substances Act, 21 U.S.C. 812.

(g) The term *Secretary* means the Secretary of Labor or authorized representative.

(h) *Employment Standards Administration* means the agency within the Department of Labor, which includes the Wage and Hour Division.

(i) *Wage and Hour Division* means the organizational unit in the Employment Standards Administration of the Department of Labor to which is assigned primary responsibility for enforcement and administration of the Act.