

device through which the test can be observed,

(ii) whether any other device, including any device for recording or monitoring the test, will be used, or

(iii) that the employer or the examinee may (with mutual knowledge) make a recording of the test;

(D) is read and signs a written notice informing such examinee—

(i) that the examinee cannot be required to take the test as a condition of employment,

(ii) that any statement made during the test may constitute additional supporting evidence for the purposes of an adverse employment action described in subsection (a),

(iii) of the limitations imposed under this section,

(iv) of the legal rights and remedies available to the examinee if the polygraph test is not conducted in accordance with this chapter, and

(v) of the legal rights and remedies of the employer under this chapter (including the rights of the employer under section 2008(c)(2) of this title); and

(E) is provided an opportunity to review all questions to be asked during the test and is informed of the right to terminate the test at any time.

### (3) Actual testing phase

During the actual testing phase, the examiner does not ask such examinee any question relevant during the test that was not presented in writing for review to such examinee before the test.

### (4) Post-test phase

Before any adverse employment action, the employer shall—

(A) further interview the examinee on the basis of the results of the test; and

(B) provide the examinee with—

(i) a written copy of any opinion or conclusion rendered as a result of the test, and

(ii) a copy of the questions asked during the test along with the corresponding charted responses.

### (5) Maximum number and minimum duration of tests

The examiner shall not conduct and complete more than five polygraph tests on a calendar day on which the test is given, and shall not conduct any such test for less than a 90-minute duration.

### (c) Qualifications and requirements of examiners

The exemptions provided under subsections (d), (e), and (f) of section 2006 of this title shall not apply unless the individual who conducts the polygraph test satisfies the requirements under the following paragraphs:

#### (1) Qualifications

The examiner—

(A) has a valid and current license granted by licensing and regulatory authorities in

the State in which the test is to be conducted, if so required by the State; and

(B) maintains a minimum of a \$50,000 bond or an equivalent amount of professional liability coverage.

### (2) Requirements

The examiner—

(A) renders any opinion or conclusion regarding the test—

(i) in writing and solely on the basis of an analysis of polygraph test charts,

(ii) that does not contain information other than admissions, information, case facts, and interpretation of the charts relevant to the purpose and stated objectives of the test, and

(iii) that does not include any recommendation concerning the employment of the examinee; and

(B) maintains all opinions, reports, charts, written questions, lists, and other records relating to the test for a minimum period of 3 years after administration of the test.

(Pub. L. 100-347, § 8, June 27, 1988, 102 Stat. 650.)

#### EFFECTIVE DATE

Section effective 6 months after June 27, 1988, except that rules and regulations shall be issued not later than 90 days after June 27, 1988, see section 11 of Pub. L. 100-347, set out as a note under section 2001 of this title.

## § 2008. Disclosure of information

### (a) In general

A person, other than the examinee, may not disclose information obtained during a polygraph test, except as provided in this section.

### (b) Permitted disclosures

A polygraph examiner may disclose information acquired from a polygraph test only to—

(1) the examinee or any other person specifically designated in writing by the examinee;

(2) the employer that requested the test; or

(3) any court, governmental agency, arbitrator, or mediator, in accordance with due process of law, pursuant to an order from a court of competent jurisdiction.

### (c) Disclosure by employer

An employer (other than an employer described in subsection (a), (b), or (c) of section 2006 of this title) for whom a polygraph test is conducted may disclose information from the test only to—

(1) a person in accordance with subsection (b); or

(2) a governmental agency, but only insofar as the disclosed information is an admission of criminal conduct.

(Pub. L. 100-347, § 9, June 27, 1988, 102 Stat. 652.)

#### EFFECTIVE DATE

Section effective 6 months after June 27, 1988, except that rules and regulations shall be issued not later than 90 days after June 27, 1988, see section 11 of Pub. L. 100-347, set out as a note under section 2001 of this title.

## § 2009. Effect on other law and agreements

Except as provided in subsections (a), (b), and (c) of section 2006 of this title, this chapter shall