

# Can we administer a polygraph test to find out if one of our employees has been stealing?

**Q. I am a manager for a local bank. I strongly suspect that one of my tellers is stealing because his drawer is short every week. I have interviewed several employees, but no one knows anything, and the teller refuses to answer any questions regarding the missing money. Can I require him to take a polygraph test?**

**A.** The short answer is “yes, but...” Unfortunately, in this case, the “but” is clearly more important than the “yes.”

The federal Employee Polygraph Protection Act (EPPA) creates a right to privacy for most private-sector employees. The law permits polygraph testing only under the following circumstances:

- The employer has suffered a specific loss or injury. Because your bank is missing cash, it meets this burden.
- The employer asks the employee to submit to a polygraph examination as part of an ongoing investigation. In other words, the polygraph test cannot be the employer’s sole investigatory tool. Because the bank has already done some legwork (interviewing other employees, attempting to question the employee), it has likely met this burden.
- The employee had access to the property in question. In this case, you’re also on solid ground because the employee had access to the money in his drawer.
- The employer has a “reasonable suspicion” that the worker was involved in the loss or injury. Again, since the money missing was from this teller’s drawer, the reasonable suspicion requirement likely has been met.

Unfortunately, your burden does not end with meeting these requirements.

Before any testing, an employer must sign a statement setting out the basis for its suspicions, and must provide the employee with written notice of his rights under the EPPA. In addition to including the information contained in this summary, the bank must provide a statement saying something to the effect of: “Your drawer has come up short X dollars over the past X weeks. You have had access to the drawer, and have refused to answer my questions regarding the matter.”

More important, the employee must be told that he is not required to take the test, and the employer is prohibited from discharging or disciplining an employee based solely upon the results of a polygraph test or a refusal to take one.

Thus, if you take any disciplinary action against the employee, you will have to establish that it was not because he either refused to take or failed the polygraph exam. Violations of the EPPA may lead to fines of up to

\$10,000.

If you still decide to test, retain a reputable testing agency. All questions asked must be job-related. In advance, you must provide the employee with information about a number of technical details relating to test administration.

Treat the results confidentially.

Finally, remember that you must uniformly apply polygraph testing to all employees, without regard to their membership in a protected class.