

**NOTE TO READER:** *This is an abbreviated version that serves only to provide an overview of the Employee Polygraph Protection Act (EPPA). Please go to the U.S. Department of Labor Website (<http://www.dol.gov/>) to view the EPPA in its entirety.*

## **SYNOPSIS of EMPLOYEE POLYGRAPH PROTECTION ACT**

29 CFR, Section 801.12 of the Federal Registrar, Vol 56, No. 42, page 9067, Final Rules and Regulations, March 4, 1991

### **An employer may request an employee to submit to a polygraph test, only if-**

- (1) The test is administered in connection with an "Ongoing investigation" of an economic loss or injury to the employers business, such as theft,... or an act of industrial espionage or sabotage.
- (2) The employee had "access" to the property.
- (3) The employer has "reasonable suspicion" that the employee was involved in the incident.
- (4) The employer provides the examinee with a statement, which fully explains with particularity, the specific incident being investigated and the basis for testing particular employees and which contains
  - (i) an identification with particularity the specific economic loss or injury.
  - (ii) a description of the employee's access.
  - (iii) a description in detail of the basis of the employer's reasonable suspicion.
  - (iv) the signature of a person authorized to legally bind the employer.
- (5) The employer retains a copy of the statement and proof of service for at least three years.

### **In addition...**

- (c)(1)(i) The terms "economic loss or injury to the employers business" include both direct and indirect economic loss or injury.
- (iv) Indirect loss or injury also includes theft or injury to property of another for which the employer exercises fiduciary, managerial or security responsibility.
- (2) Economic losses or injuries which are the result of unintentional or lawful conduct would not serve as a basis for the administration of a polygraph test.

### **The examinee must be:**

- (i) provided with a written notice as to when and where the examination will take place and that the examinee has the right to consult with counsel or an employee representative before each phase of the test. Such notice shall be received by the examinee at least 48 hours, excluding weekend days, before the examination. The written notice must set forth the time and date of receipt by the employee...and be verified by his signature.

This examinee has other specified rights regarding the polygraph which are the responsibility of the examiner. Section 801.26 specifies qualifications and requirements for examiners.