

Polygraphs – a useful tool, but don't expect too much

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“A polygraph on its own cannot be used to prove a person's guilt, but it can be used as corroboratory evidence.”

Most disciplinary enquiry chairpersons are likely at some time or other to hear a case where it is not easy to decide whether the employee is guilty. Invariably, management [the initiator] will be totally convinced that the employee is guilty but the employee will be equally convincing that he is not.

Unfortunately, employees who are caught red-handed with goods that don't belong to them still go to the CCMA or bargaining councils claiming their innocence. The onus is on the employer to prove guilt but sometimes this is not easy. That is where polygraphs (lie-detector tests) come in and where mistakes are often made.

An NGO whom we assist had been experiencing the theft of goods donated to it by the public. They were unable to identify the culprits so they asked all the state and volunteers of the department concerned to undergo polygraph tests.

The individual they suspected passed the test but a volunteer worker with long service didn't! When questioned after the test, the volunteer confessed that she had been stealing goods for years. "At first I took some items of small value. It was so easy that I started taking silverware and jewelry!"

She resigned and the matter was handled discreetly from management's point of view. The incident did not, however go down well with the staff and particularly the volunteers and led to a letter of complaint. They were incensed at "at staff being treated like criminals", the volunteer (a popular person) being "forced to leave" and "the illegal polygraph testing of staff". While the staff did not have the full story regarding the thief, they did have a point regarding the use of polygraph testing. By testing all the staff, everyone was made to feel "tainted" and the innocent people, particularly the volunteer workers, felt outraged.

The problem lay not in polygraph testing but what management expected from it.

If you suspect that goods are being stolen but you are unable to identify the culprits do not expect polygraph testing to do the job for you! This was determined in the 1985 test case of Mahlangu vs. CIM Deltok and still holds good today.

A polygraph test on its own cannot be used to prove a person's guilt. It can be used as corroboratory evidence (i.e. to support other evidence such as the direct testimony of a single witness or circumstantial evidence showing that the employee had the opportunity and motive to commit the transgression.)

Instead of requiring all staff to undergo a polygraph test the NGO should have used other means to catch the thieves. If circumstantial evidence points to a particular employee and that employee claims his innocence, a polygraph test can be a useful getting to the truth. For example where a complaint of sexual harassment is made and denied, ask both parties to do a polygraph.

In a recent case, where a cellphone went missing, only one employee was working in the area where the cellphone disappeared. He had gone off to the change room at about the time when the phone went missing but claimed he knew nothing.

The supervisor with the supplier, who had lost the cellphone, went to the change room and phoned the number. A ringing was heard to come from a locker in the employee's locker! They opened it and found the phone wrapped up in the employee's clothes.

At the enquiry which followed, the employee denied that he had taken the phone but he could not explain as to how it come to be in his locker. He could not also explain why anyone would want to "set him up". On the evidence, he was guilty but was asked to undergo a polygraph test to prove his innocence. He failed the test and was subsequently dismissed.

In another interesting case a number of driver salesmen were found to be involved in a theft ring. There was sufficient evidence to show that all were guilty of the theft of company

products. They were offered the opportunity to undergo a polygraph test to prove their innocence. All but

One employee refused the test, passed it and was found not guilty. The others were dismissed. Interestingly one of the dismissed drivers referred his dismissal to the CCMA and during the conciliation hearing was again asked if he would like to do a polygraph test to prove his innocence. An agreement was concluded that he would do the test and if he passed, he would be reinstated. If he failed, the dismissal would stand. The employee subsequently took the test but failed and his dismissal was confirmed!

In dealing with theft, particularly where there are syndicates involved, is difficult and employers need to use all the resources available to them to protect their interests. Polygraph testing is one instrument that can be useful but do not rely exclusively on them!

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