

### § 801.3

### 29 CFR Ch. V (7-1-04 Edition)

(j) *Administrator* means the Administrator of the Wage and Hour Division, or authorized representative.

#### § 801.3 Coverage.

(a) The coverage of the Act extends to “any employer engaged in or affecting commerce or in the production of goods for commerce.” (Section 3 of EPPA; 29 U.S.C. 2002.) In interpreting the phrase “affecting commerce” in other statutes, courts have found coverage to be coextensive with the full scope of the Congressional power to regulate commerce. See, for example, *Godwin v. Occupational Safety and Health Review Commission*, 540 F. 2d 1013, 1015 (9th Cir. 1976). Since most employers engage in one or more types of activities that would be regarded as “affecting commerce” under the principles established by a large body of court cases, virtually all employers are deemed subject to the provisions of the Act, unless otherwise exempt pursuant to section 7 (a), (b), or (c) of the Act and §§ 801.10 or 801.11 of this part.

(b) The Act also extends to all employees of covered employers regardless of their citizenship status, and to foreign corporations operating in the United States. Moreover, the provisions of the Act extend to any actions relating to the administration of lie detector, including polygraph, tests which occur within the territorial jurisdiction of the United States, e.g., the preparation of paperwork by a foreign corporation in a Miami office relating to a polygraph test that is to be administered on the high seas or in some foreign location.

[56 FR 9064, Mar. 4, 1991; 56 FR 14469, Apr. 10, 1991]

#### § 801.4 Prohibitions on lie detector use.

(a) Section 3 of EPPA provides that, unless otherwise exempt pursuant to section 7 of the Act and §§ 801.10 through 801.14 of this part, covered employers are prohibited from:

(1) Requiring, requesting, suggesting or causing, directly or indirectly, any employee or prospective employee to take or submit to a lie detector test;

(2) Using, accepting, or inquiring about the results of a lie detector test

of any employee or prospective employee; and

(3) Discharging, disciplining, discriminating against, denying employment or promotion, or threatening any employee or prospective employee to take such action for refusal or failure to take or submit to such test, on the basis of the results of a test, for filing a complaint, for testifying in any proceeding, or for exercising any rights afforded by the Act.

(b) An employer who reports a theft or other incident involving economic loss to police or other law enforcement authorities is not engaged in conduct subject to the prohibitions under paragraph (a) of this section if, during the normal course of a subsequent investigation, such authorities deem it necessary to administer a polygraph test to an employee(s) suspected of involvement in the reported incident. Employers who cooperate with police authorities during the course of their investigations into criminal misconduct are likewise not deemed engaged in prohibitive conduct provided that such cooperation is passive in nature. For example, it is not uncommon for police authorities to request employees suspected of theft or criminal activity to submit to a polygraph test during the employee’s tour of duty since, as a general rule, suspect employees are often difficult to locate away from their place of employment. Allowing a test on the employer’s premises, releasing an employee during working hours to take a test at police headquarters, and other similar types of cooperation at the request of the police authorities would not be construed as “requiring, requesting, suggesting, or causing, directly or indirectly, any employee \* \* \* to take or submit to a lie detector test.” Cooperation of this type must be distinguished from actual participation in the testing of employees suspected of wrongdoing, either through the administration of a test by the employer at the request or direction of police authorities, or through employer reimbursement of tests administered by police authorities to employees. In some communities, it may be a practice of police authorities to request employer testing of employees before a police investigation is initiated on a reported