

# West Virginia Polygraph Examiners General Reference Guide

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## **POLYGRAPH EXAMINER GENERAL REFERENCE GUIDE**

### **West Virginia Code Chapter 21, Article 5, Section 5(a)**

#### **JURISDICTION & AUTHORITY**

The West Virginia Wage Payment & Collection Act sets the terms and conditions for which an employee, or prospective employee, may or may not be subjected to a polygraph examination for the purpose of obtaining or continuing employment, and that any individuals administering such examinations have been issued a license by the Commissioner of the West Virginia Division of Labor.

#### **PERMITTED AND NON-PERMITTED EMPLOYEE TESTING**

No employer may require any employee, or prospective employee, to submit to a polygraph, lie detector, or other similar examination to evaluate truthfulness, for the purpose of hire or to continue existing employment unless the work to be performed, or that's being performed, involves access to a controlled substance. §21-5-5(b)

#### **Exemptions / Special Circumstances**

Employees, or perspective employees, who have, or will have, direct access to the manufacture, storage, distribution, or sale of any controlled substance as identified by United States Code Title 21, Section 812, or Chapter 30 of the West Virginia Code, may be subjected to a polygraph, lie detector, or other similar examination to evaluate truthfulness for the purpose of obtaining or continuing employment. This includes those employees that perform daily job duties in facilities that have been approved by the West Virginia Board of Pharmacy. However, should an examination be given under such circumstances, the results shall be used solely for the purpose of determining whether to employ or to continue to employ the individual tested and for no other purpose. §42CSR-6-2.6

Employees, or perspective employees, of law enforcement agencies may be subjected to a polygraph, lie detector, or other similar examination to evaluate truthfulness for the purpose of obtaining or continuing employment as long as such test is administered by a licensed West Virginia Polygraph Examiner.

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## REQUIREMENTS RELATING TO POLYGRAPH EXAMINERS

No person shall administer a polygraph examination, lie detector, or other similar examination utilizing mechanical or electronic measures of physiological reactions to evaluate truthfulness without holding a current valid license to do so as issued by the Commissioner of the West Virginia Division of Labor. §21-5-5(b) & §21-5-5(c)

### License Requirements

The Wage & Hour Section of the Division of Labor has been authorized by the Commissioner to accept applications for polygraph internships and examiner licenses, assess an individual's qualifications for internship or licensure, to administer written examinations for the purpose of determining an individual's competency to issue polygraph examinations, and to issue polygraph examiner licenses.

Before an individual may be considered as a qualified applicant for a polygraph examiner license, he or she must meet the following conditions: §21-5-5c(b)

- (1) Is at least twenty-one years of age.
- (2) Is a United States Citizen.
- (3) Has not been convicted of a misdemeanor involving moral turpitude or a felony.
- (4) Has not been released or discharged with other than honorable conditions from any of the armed services of the United States or that of any other nation.
- (5) Has passed an examination conducted by the Commissioner of Labor, or his or her representative, to determine his or her competency to obtain a license to practice as an examiner.
- (6) Has satisfactorily completed not less than six months of internship training with a West Virginia licensed polygraph examiner.
- (7) Has met any other qualifications of education or training as established by the Commissioner of Labor, which must be at least as stringent as those recommended by the American Polygraph Association.

### Two Different Types of Licenses are Available

The Division of Labor offers both a "Class I" and a "Class II" license, both of which are defined as follows:

- **Class I license** - Authorizes an individual to administer polygraphs examinations for all purposes which are permissible under the provisions of Article 21, Chapter 5, Section 5(a) of the West Virginia State Code. To qualify for a Class I license, satisfactory evidence is required to verify the applicant holds a baccalaureate degree and has graduated from a school of polygraphy accredited by the American Polygraph Association.
- **Class II License** - Authorizes an individual who is a full-time employee of a law-

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enforcement agency to administer polygraph examinations to its own employees, or prospective employees. To qualify for a Class II license, satisfactory evidence is required to verify that the applicant holds an associate degree and has graduated from a school of polygraphy accredited by the American Polygraph Association.

### **Application Forms / Fees / & Required Supporting Documentation**

When submitting application for a West Virginia Polygraph Examiner license, the following forms and/or affidavits are required.

1. Polygraph Examiner's Application form.
2. Code of Ethics form.
3. Polygraph Examiner's Affidavit

A \$100.00 fee is required with each application. In addition to a completed polygraph examiner application, code of ethics form, and polygraph examiner's affidavit, the following information and/or supporting documentation must also be submitted with each application.

1. A copy of the applicant's birth certificate.
2. A recent full face photograph (no larger than 3" X 4") must be attached to the application form in the area designated.
3. A copy of an educational degree, or school transcripts, appropriate for the type of license under application.
  - a. Class I licenses require a baccalaureate degree.
  - b. Class II licenses require an associate degree.
4. Evidence that the applicant has graduated from a school of polygraphy accredited by the American Polygraph Association.
5. A written statement from a licensed West Virginia polygraph examiner stating that the applicant has completed the required internship requirements.

### **INTERNSHIP PROGRAMS**

Other than those licenses issued under the terms and conditions of a reciprocal agreement with another state, all applicants for a polygraph examiner license must furnish evidence of having completed an internship period of at least six months under the supervision of a West Virginia licensed polygraph examiner.

In order to qualify as an intern, the individual must meet the same requirements that apply to applicants for a polygraph examiner license, with the exception of the minimum age requirement. While interns qualify at age eighteen, license applicants must be at least twenty-one.

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### **Requirements of the Licensed Supervisor**

Licensed examiners are limited to supervising no more than two interns at any one time. The supervising examiner's responsibilities include:

- Thoroughly covering all areas of required instruction during the internship period.
- Ensuring the intern's total training period consists of at least 1040 hours of work and instruction.
- Being on premises during any test conducted by the intern during the first 520 hours of training, and to make his or herself immediately available to the intern for instruction or consultation.
- Report any infraction or violation of the rules which regulate the internship program to the Commissioner of Labor.
- At the end of the internship, issue notice to the Commissioner of Labor stating that all requirements of the intern program were met, and that in his or her opinion the named intern was found competent to be a licensed examiner.

### **Internship Program Requirements**

The internship program itself must consist of no less than 1040 hours of work and instruction under the direct and close supervision of the licensed examiner, with the intern conducting at least fifty examinations. §42CSR-4

The internship program must cover all of the following areas of instruction.

- The history and development of polygraph.
- The legal and ethical aspects of polygraph.
- Physiology.
- Psychology.
- Interrogation and interviews.
- Chart interpretation.
- Question formulation and test construction.
- Instrumentation.

### **EXAMINATION PROCEDURES**

Once an individual's application has been reviewed and determined complete, a representative of the Division will contact the applicant for the purpose of scheduling the written exam. Examinations are scheduled based on the availability of Division staff as well as the availability of an area suitable for testing. Although exams are scheduled at the discretion of the Division of Labor, every effort is made to schedule the exam at a time that is also convenient to the applicant.

All exams are given at the main office of the Division of Labor, which is located on the grounds of the State Capitol Complex in Charleston.

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### **The Written Exam**

The Division does not offer reference or study materials relating to the type of questions that are on the test. As the test is not timed, the testing area will remain available for several hours allowing the applicant plenty of time to finish the test. Applicants are not permitted to take any type of electronic devices, books, or other documents into the exam room. All such devices and/or documents in an individual's possession on the day of testing will be held by Division staff until the test is completed.

### **Examination Results**

The Division will grade the test as soon as possible and notify the applicant of the results by phone, usually on the same day.

In order to receive a passing grade, the applicant must obtain an overall minimum score of 70%. If the applicant receives a passing score, the Division will immediately issue a license to operate as a polygraph examiner. As all polygraph examiner licenses are set to expire on June 30 of each year, the expiration date for the issued license will fall on that date. However, any polygraph examiner license issued within just weeks of the June 30 renewal date will be issued with an expiration date for the following year.

Any applicant who fails the written test may be rescheduled to take the test one additional time without an additional fee. However, an additional \$50.00 will be charged for each test administered after the second attempt. §42CSR-6-3

### **LICENSE EXPIRATION AND RENEWAL**

All licenses expire annually on June 30, and each license renewal requires an additional fee of \$100.00. Any license that is not renewed by September 30 of each year will be considered to permanently expire, and the holder of the expired license will be required to retest to obtain another license. As licenses are not automatically renewed, it is the responsibility of the license holder to make sure the annual renewal fee is paid and the license renewed in a timely manner.

### **RECIPROCITY AGREEMENTS**

The Commissioner of Labor has the authority to enter into reciprocal agreements with other states that have similar licensure requirements for polygraph examiners. Once such an agreement is reached, an applicant who is a licensed examiner of one of the reciprocal states may be issued a license by the other state without examination being required to serve an internship period. The State of West Virginia currently has such a reciprocal agreement with the Commonwealth of Virginia. §42CSR-6-5

When applying for a license under the rules of reciprocity, the examiner is required to provide the Commissioner of Labor with a current copy of his or her examiner's license from the other reciprocal state, as well as evidence that such licensure was in effect for a period of at least two years prior to applying for a West Virginia license.