

Massachusetts Employers: Do Your Job Applications Contain the Mandatory Notice About Lie Detector Use in Employment?

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- **Takeaways**
- Under Massachusetts law, all job applications must contain a specific notice regarding the use of lie detector tests.
- It is unlawful for employers to require or administer lie detector tests as a condition of employment or continued employment.
- Employers should consider the suggested steps below to ensure compliance with the law.

Article

Massachusetts law, G.L. c. 149, § 19B, makes it unlawful for an employer to require or administer a lie detector test as a condition of employment or continued employment.

In addition, the statute requires that all job applications “for employment within the Commonwealth” contain the following notice:

It is unlawful in Massachusetts to require or administer a lie detector test as a condition of employment or continued employment. An employer who violates this law shall be subject to criminal penalties and civil liability.

An employer that violates this law may be subject to fines and/or a private right of action for \$500 in statutory damages “for each such violation,” among other things.

Although the law is decades old, a number of questions remains:

1. The statute’s wording leaves ambiguity regarding the scope of the private right of action. Does it apply only to individuals who are subjected to a “lie detector test,” or does it extend to anyone who completes an application without the required notice? In a 2016 case defended by Jackson Lewis attorneys, Judge Mitchell H. Kaplan of the Massachusetts Superior Court held that the statute’s private right of action did not apply to individuals who merely completed an application lacking the notice but were not subjected to a lie detector test. *Auguste v. G4S Secure Solutions (USA), Inc.*, No. SUCV14-3311-BLS1. Another court more recently reached the opposite conclusion, although it is unclear whether that court considered the arguments raised in *Auguste*.
2. The extent of the statute’s reach is unclear. The law purports to apply to any application “for employment within the Commonwealth.” Given the recent rise in remote work, how this provision is interpreted could result in extending the law’s reach to positions beyond those that are clearly based in Massachusetts.

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Similarly, the statute could possibly apply to Massachusetts residents who apply for remote positions outside the Commonwealth.

3. The statute's definition of "lie detector test" extends beyond a polygraph and includes:

any test utilizing a polygraph or any other device, mechanism, instrument or written examination, which is operated, or the results of which are used or interpreted by an examiner for the purpose of purporting to assist in or enable the detection of deception, the verification of truthfulness, or the rendering of a diagnostic opinion regarding the honesty of an individual.

Employers should exercise caution and carefully evaluate the methods they use to determine the truthfulness of job applicants or current employees. Whether using hiring software, artificial intelligence (AI), or other means, it is possible that these tools could be considered lie detector tests under the statute.

Steps for Employers

In order to ensure compliance with the law, employers should take the following steps:

1. Confirm that the mandatory notice appears in all Massachusetts job applications, including for remote jobs.
2. Evaluate your interview, hiring, performance management, and discipline tools, including any AI tools, to determine whether they may be construed as a lie detector test under the statute.
3. Review and, if necessary, revise your Massachusetts separation agreements to ensure they release claims under G.L. c. 149, § 19B.

Please contact a Jackson Lewis attorney if you have any questions or need assistance to ensure compliance with Massachusetts workplace laws.

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