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Use of psychological methods in the workplace and their legal aspects

Summary

In recent years, psychological methods in the workplace have become increasingly widespread. This report discusses two psychological methods for examination of employees for the purpose of internal investigation and the legal aspects of their use by the employer.

Keywords: security, staff, professional misconduct, right to security

Introduction

Security is a state of non-hazard [2], where there is satisfactory control by the defending party over the impacts on it. It involves calmness, confidence and protection [2]. Security is particularly important for business and is directly related to the development of the market and its participating businesses. Workplace security is a major component of employee attitudes and interests [12]. Security is also a fundamental right guaranteed in Article 5 of the European Convention for the Protection of Human Rights and Article 6 of the Charter of Fundamental Rights of the European Union.

When talking about corporate security it must be borne in mind that it is multi-faceted. It encompasses ensuring protection of the interests of the owners and as well as those of the customers. Its effective action implies continuity of key business processes in the company. It is engaged in activities such as keeping the security of cash flows and of material assets; information security (including working with confidential information and personal data), labor security, personnel security, physical security, security in crisis situations and a number of other activities. Some of the most important aspects of security are related to the prevention and detection of violations of labor and service staff retention.

Workforce is a risk asset. Practice shows that many of the company's risks are triggered by intentional or non-intentional acts of employees. These include financial abuse, leaking of company information, misuse of personal data, impairment to reputation and defamation and other series, which significantly increase the risk profile of each organization. This requires awareness of the need for different methods of prevention and detection of fraud by company personnel. In the recent years in corporate practice wider place is given to the prevention performed by using psychological methods and tools.

At the same time, it should be taken into account that the application of these methods should be consistent with the basic civil rights as well as with the labor rights of workers. Enterprise security should not be at the expense of the security of employees. Moreover, both have a common interest in the end, because the welfare of the enterprises depends directly on the work of the workers, and the welfare of the workers - on the economic performance of the enterprise.

1. Psychological methods of detecting infringements

In order to enable the prevention, identification and detection of risk related to the job abuse various methods and means can be employed. This work focuses on two psychological methods. The first one is developed by a Bulgarian team of criminal psychologists and is named Integrity Check [12].

The method is suitable for:

- Recruitment of people on executive positions in different organizations;
- Introducing programs and systems to increase loyalty;
- Reduction of theft and diversion of funds.

Integrity Check is a test designed to measure the loyalty of the people surveyed. Furthermore it takes into account the individual attitudes of the respondents and their willingness to comply with various social, moral or company rules. The test is able to identify job applicants or employees who tend to carry out infringements of the rules and discipline. It can be used in recruitment for work or in the evaluation of current employees. The questionnaire is based on the theory of moral development of L. Kohlberg and allows you to make certain links between counterproductive work behavior and the level of moral maturity of the employee. The methodology and the economic benefit of implementing it have been confirmed in various empirical studies. The test was developed on psychometry basis and has a high degree of accuracy. The scope of the test is 90 questions. Each question must be given a multiple-choice answer. The questions are divided into different fields which form the overall assessment of fidelity. The areas of study can be defined as:

- Counterproductive behaviors – accounts of the behavior of the tested person in the past.
- Estimates of the frequency of violations – an indirect indicator of tendencies towards counterproductive behavior.
- Ethical dilemmas – consists of short scenarios related to theft or disloyalty in the workplace.
- Counterproductive predispositions - measure the responses and judgments of the studied person to different common problems in the workplace.

Thus the managers of the respondents receive information about their workers' understanding and compliance with the rules and regulations; their honesty and attitudes in relation to theft and abuse; sustainable motivations; assessment of opportunities; discipline; respect to the others; tolerance; lack of counterproductive behavior in the past; expectations about the behavior of the others; attitudes towards work and rules.

In each of these groups of questions the tested person gets average grade, and on the basis thus obtained a score is formed. The scale of evaluation is divided into three levels: low, medium and high. The respondents falling in the lower scale are classified as risky and prone to abuse. With an increase in assessment increases the reliability of the researched person. Any organization which administers the test determines the level of acceptability itself regarding the assessment at the individual groups and overall results in accordance with the nature of the work position.

The methodology for handling the Integrity Check test suggests the test to be held in the working environment within 40 minutes on a computer with the relevant software. After completing the test, on the basis of the chosen responses, the person is categorized after the results being calculated by correlations and combinatorics implemented in the test. Along with the overall evaluation, the program outputs those “embarrassing” responses given by the person, too. This is the basis for a subsequent clarifying conversation with the researched person. The test suggests keeping the personal data of the tested person confidential.

To enter into the essence of the research it is necessary to clarify the following. To achieve its goals, the questions in the test are of two types. The first are directly asked, as they uncover past actions and draw on the methods of questioning during polygraph tested. The second are aimed at displaying the personal profile of the tested person or the so-called psycho profile. These are questions revealing behavior, morality, fears, attitudes towards what is good and what is not, different judgments and others. On this basis, conclusions are drawn about the specifics of the studies person: if s\he would abuse his\her official position, to what extent is s\he reliable, to what degree of tension would s\he withstand and his\her appropriateness for a particular job position.

The test is intended for activities and positions with access to sensitive and/or classified information, risky activities, industries with identified high risk of abuse. At present, the method is applied at a number of commercial banks, consulting firms, government offices, fire stations, police, army and state administrations etc. and is held in countries such as Slovenia, Ukraine, Russia, Bulgaria, Chile, India, Kazakhstan and others. [12]

The second psychological method for detecting abuse in the carrying out Labor obligations and service is the polygraph examination. Polygraph examination in the business world is becoming more and more popular as a method of detecting lies and deceit. In many states polygraph examination is used by police departments in criminal investigations. Apart from that business undertakings are using as for internal investigation and the big business and industrial concerns in USA use the lie detector for checking the honesty of their employees [5].

The most widely it is used in companies whose nature of business implies high level of abuse: banking; companies engaged in transportation of valuables; companies working with classified information; security companies; hazardous industries in which loss or theft by employees is often observed, pharmaceutical industries and many others. The polygraph is an efficient device that helps many companies to periodically check the loyalty of their employees and to investigate the veracity of their explanations in cases of abuse or a number of problematic situations related to the integrity of the workers.

The modern “lie detector” is a compact, computerized device equipped with sensors and pickups that are placed all over the body of the tested person. These

sensors and pickups record changes in certain physiological processes, not subject to conscious control. During the polygraph examination changes are observed due to more than 20 physiological processes that are taken into account by the equipment. Thus obtained information is processed by software and is read by specially trained technicians. Sensors take into account any movement of the test person, too.

Normally, people are worried when subjected to the polygraph examination but contrary to popular belief - the distress does not affect the test results. Before the start of the instrumental part of the study, i.e. working with the very polygraph, a PRE interview is conducted. During the test itself there are no surprises – all issues have been discussed in advance so that the tested person can give unambiguous answers to each of them. During the study itself it is necessary to strictly follow the instructions namely, to answer only “Yes” or “No” and not make additional moves.

Polygraph examination is a scientific method with extremely high precision. “The lie detector” cannot be cheated, despite claims that there are people who are capable of it. The very nature of the polygraph test – recording the responses of the body that are subject to the autonomic nervous system is evidence of this. Even if someone would manage to control his\her behavior, one cannot control all the internal processes of the body. These reactions can be measured, and their power is increased by the spent mental and emotional energy [3]. Even if he can control external behavior, one cannot control the internal reactions of his or her organism. Therefore, it is believed that the polygraph may be cheated, but not the polygraph, as it “does not measure truth” The device records in an objective manner the smallest changes in the internal state of the body and the good specialist recognizes immediately any attempt at manipulation or obstructions that the tested person might undertake. Post-test of the polygraph examination is as important as the PRE test and instrumental one itself. It lays down the results and, if necessary, continuing talks with the tested person are held.

In polygraph tests there are no small or big lies – the tested person has either passed or failed the test. The anxiety is a normal part of the process, but experts are aware of this and the respective state of mind does not in any way affect the results [8].

2. Legal Aspects of Use of Psychological Methods in Labor Relations

Use of psychological methods in employment has two different sides. Psychological methods may be very effective for the employer. They can be used widely in employer-employee relation: in the process of screening of candidates, at the stage of work evaluation of employee’s performance, for the purposes of judg-

ment of professional development, and also for the need of internal investigations of workers misconduct and termination of employment contract. On the other hand their misuse may result in work discrimination, breach of employee's privacy, wrongful termination of employment contract and even in psychological damages for the worker. Psychological methods have a relatively long history of usage in employer-employee relations. They have proved to be reliable and have high accuracy. For these and other reasons they have become more common nowadays, but there is essential lack of special legislation to regulate their use. The challenges of such laws are that they have to manage the conflict between the interest of the employer to apply such methods widely and employee's fundamental and labor rights to avoid it. As it was said above the employer may suffer monetary damages or damages of reputation as a result of employee's misconduct. On the other hand if no special protection is provided by law, the employee may be subject to discrimination, his right to security or other fundamental rights as personal privacy, freedom, dignity, etc. may be easily infringed by the employer. After all, the employer has the economic strength and occupies more powerful position in the relation where employee is more or less dependent on his employer.

It can be said that there are no special legal acts to regulate the use of psychological methods in labor relations. In some states statutory law has been adopted to govern different aspects of the polygraph exams. Courts have also ruled in such cases on grounds on Constitutional or labor law provisions. In 1988 the Congress of the USA adopted the Employee Polygraph Protection Act (EPPA). The Act established general prohibition to the employers to use polygraph. Its main purpose was "To prevent the denial of employment opportunities by prohibiting the use of detectors by employers involved in or affecting interstate commerce" (Employee Polygraph Protection). EPPA was a result of concerns that polygraph test were widely used, but often inaccurate [6]. The EPPA forbids to employers use of polygraph tests in pre-employment and during employment. It provides some exceptions for government use for certain national defense and security reasons and for ongoing workplace investigations, as well as for use by private employers engaged in security services and for investigation conducted by employers engaged in the manufacture and distribution of controlled substances.

In the lack of special legislative provisions courts have played essential role in drawing the line between lawful and prohibited use of polygraph testing by the employer. When courts rule on termination of employment based on results from polygraph test results they would strictly observe for any breach of employee's rights. In several decisions under the EPPA, US courts have judged in favor of the worker, for example when the contract was terminated partly on lie detector test, or after the employer had forced the worker to take a polygraph examination, as well as in a case where the employee has initially waived her procedural rights

under EPPA [1]. In several decisions Bulgarian High Administrative Court finds results from lie detector tests as insufficient for work dismissal [4]

One can ask if there is a need of passing special laws to regulate use of psychological methods in employment relations. Yet fundamental rights and freedoms such as right to security, right to privacy, right to dignity, right to non-discrimination, right to remain silent and others may continue to safeguard of employee's rights and interests. Moreover labor laws grant additional rights that can protect workers in such situation. This may be good enough if the use of such methods is viewed only from the perspective of protection of employee's rights. Psychology methods may be useful and beneficial to both employer and employee. It can help the employer in screening and in internal investigations, without breaching employee's rights and interests. A working model should encompass more than legislative measures [11].

Psychological methods used by employers should be limited to the examination of behavioral or personal aspects that are strictly related to the job or to the misconduct of the employee. Any method applied should be first validated and examination conducted by qualified and/or certified professional. On third place any and all results should be kept confidential. And lastly, but most important is to preserve the right of security of the employees by a special provision in law to prevent application of psychological examination methods in employer-employee relations and use of any results of such examination without previous written consent of the employee.

References:

- Amy Onder and Michael Brittan, Recent Case Law Under the Employee Polygraph Protection Act: A Practical Review, *Privacy & Data Security Law Journal*, June 2009, pp 483–503, p. 484.
- Balgarski talkoven rechnik (2004) Andreichin I kolektiv, Sofia, p. 881.
- Belenski Radostin, *Detektorat na lazhata. Kriminalistichni aspekti*, Sofia, 2005, p. 7.
- Case 11235/2011 of the Supreme Administrative Court, Case 2367/2006 of the Supreme Administrative Court.
- Ganapati M. Tarase*, Dr. Prakash D. Haveripeth & Dr. M. S. Ramadurg, *Scientific And Legal Procedure Of Polygraph Test*, *J.Bio.Innov2*(1), pp: 05–16, 2013.
- Elizabeth D. De Armond, *To Cloak the Within: Protecting Employees From Personality Testing*, *Chicago-Kent College of Law Scholarly Commons @ IIT Chicago-Kent College of Law*, 1-1-2012, p. 1179.
- Employee Polygraph Protection Act, accessible at: <https://www.dol.gov/whd/regs/statutespoly01.pdf>.

How does the polygraph, <http://www.security.bg/topnews/kak-raboti-detektorat-na-lazhata>.

Ionchev D., (2008), *Ravnishta na sigurnost*, Sofia, NBU, p. 32.

Some authors suggest that an “ideal legal framework would have features of justification, test reliability and validity, confidentiality, and accountability.” For more details see Elizabeth D. De Armond, *To Cloak the Within: Protecting Employees From Personality Testing*, Chicago-Kent College of Law Scholarly Commons @ IIT Chicago-Kent College of Law, 1-1-2012, pp. 1177–1184

Reymand Dzh. Korsin,(1998) *Entsiklopedia “Psihologia”*, Sofiq, Nauka i izkustvo, pp. 1103.

Zanev S., Nikolov, N., (2013) *Integrity Check*, Sofia.