



Employment Law Note

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EEOC Warns Wearable Technologies Can Violate Federal Law



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In recent years, technological improvements have made it possible for wearable digital devices to collect vast amounts of data—including about the human body. In what once would be a scenario in a science-fiction novel, the federal Equal Employment Opportunity Commission (“EEOC”) recently issued a factsheet covering wearable technologies in the workplace that includes guidance on employers’ use of everything from smart watches and glasses to exoskeletons. As employers have begun to introduce this technology in the workplace, regulatory agencies—including the EEOC—warn that misusing these workplace wearables to monitor employees may trigger numerous federal laws.

Background

Industries ranging from healthcare to construction utilize wearable technologies to aid in safety and performance. At its best, this technology can protect workers from health hazards and make performing their roles easier and even safer. Some, however, believe the use of wearable technology for this purpose comes with a cost. Wearable technologies can provide employers with extensive—and sensitive—data related to their employees’ health. Concerns that such technologies can violate workers’ privacy rights or be used for discriminatory purposes have been expressed by legislatures and agencies.

As is often the case, the law struggles to keep pace with technological change. Numerous legislative and regulatory bodies have now begun to weigh in on the subject and provide guidance to employers to stay on the right side of the law. General counsel for the National Labor Relations Board (“NLRB”) has previously issued a memorandum urging the NLRB to “vigorously” enforce employees’ rights under Section 7 of the

National Labor Relations Act (“NLRA”) as it pertains to the use of wearable technologies. Several states have passed or have proposed regulations that require written notice of workplace surveillance that could implicate wearable digital technologies. And through its recently issued guidance, the EEOC has now weighed in as well.

The EEOC Factsheet

On December 19, 2024, the EEOC issued a factsheet to provide guidance on the collection and use of employee information recovered from employees through workplace wearable technologies. In the factsheet—[Wearables in the Workplace: The Use of Wearables and Other Monitoring Technology Under Federal Employment Discrimination Laws](#)—the EEOC describes wearable technologies (“wearables”) as “digital devices embedded with sensors and worn on the body that may keep track of bodily movements, collect biometric information, and/or track location.” The factsheet lists several examples of what constitutes a wearable, including:

- Smart watches
- Smart rings
- Smart Helmets
- Smart Glasses
- Exoskeletons
- GPS Devices

This list is not exhaustive, and the definition provided does not fall under any statute or regulation. The four-page factsheet cautions employers on the multiple ways in which wearables in the workplace may violate federal law.

Americans with Disabilities Act

The EEOC factsheet describes how wearables that collect medical information may constitute impermissible

“medical examinations” and/or “disability-related inquiries” under the Americans with Disabilities Act (“ADA”). The ADA prohibits such examinations and inquiries except in circumstances where such conduct is “job-related and consistent with business necessity” and other narrow exceptions. Instances in which wearables that collect information about an employee’s physical or mental condition, or scenarios when employers seek medical information based on data collected from a wearable, could violate the statute. Moreover, even in instances in which an employer is permitted to collect sensitive health information, the ADA often places a requirement to keep such information confidential. Failure to do so may also subject an employer to liability.

Wearables and Discrimination Laws

The EEOC factsheet also describes scenarios in which collecting data from employees could violate federal anti-discrimination laws, including:

- when an employer places an employee on unpaid leave against her will after a wearable provides data that indicates the employee is pregnant;
- when an employer terminates an employee for an elevated heart rate that exists due to a heart condition; and
- when an employer tracks an employee and collects genetic information obtained from medical appointments.

The EEOC also warns employers about using collected data from wearables in ways that unfairly impact employees who fall under a protected class.

What Employers Need to Know

The EEOC factsheet does not address any new law. Rather, it describes how the EEOC (and potentially courts) will apply current law to wearables, and the data

collected from them, in the workplace. Businesses that wish to implement wearables in the workplace should confer with an attorney and take the following precautions:

1. Understand not only federal law, but also the laws of the state(s) where the business operates. Some states may have use limitations or written notice requirements.
2. Ensure that the business has adequate and robust measures to keep collected data confidential when required.
3. Discuss the use of wearables with employees to promote transparency and limit any confusion.
4. Ensure wearables do not collect information prohibited under the ADA.
5. Be prepared to provide reasonable accommodation if employees object to wearables for medical, religious, or pregnancy-related reasons.

Because the use of wearables in the workplace—at least wearables that can collect such vast amounts of information—is a relatively new phenomenon, employers can expect new regulatory guidance (and litigation) on the subject in the coming months and years. The validity of an employer’s policy on wearables will likely be fact- and context-dependent, as is often the case with employment law. As the technology continues to improve, legislatures and regulatory agencies will work to strike a balance between allowing the technology to improve the productivity and safety in the workplace and ensuring that worker rights are upheld under federal law. Employers can get a head start by ensuring that any policy regarding wearables considers the warnings in the EEOC factsheet.

Employers with questions about the EEOC’s new factsheet or about use of wearable technologies in the workplace should call Matt Coughlan at 425-460-2292 or email him at mcoughlan@sbj.law.

For more information about this month’s Employment Law Note
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