

EEOC Issues Guidance on Wearable Technology in the Workplace

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On December 19, 2024, the Equal Employment Opportunity Commission (“EEOC”) issued a fact sheet titled, “Wearables in the Workplace: Using Wearable Technology Under Federal Employment Discrimination Laws” which highlights risks wearable technology may bring to the workplace. This guidance addresses a new and growing concern amongst employers and legislators about the possible pitfalls of using wearable technology in the workplace.

The EEOC describes wearable technology as including smart watches, smart rings, smart glasses, smart helmets, sensors that warn of nearby hazards, and other GPS devices that track location. The EEOC did not provide any singular definition for wearable technology and instead referred to “wearable technology” as “digital devices embedded with sensors and worn on the body that may track bodily movements, collect biometric data, or track location.”

The EEOC identified three major areas of concern when it comes to wearable technology: (1) Collecting Information on Wearables; (2) Using Information from Wearables; and (3) Reasonable Accommodations Related to Wearables.

Collecting Data from Wearables

The EEOC warned that employers using wearable technology to collect information about an employee’s physical or mental conditions (such as blood pressure or eye trackers) may be conducting “medical examinations” or making “disability-related inquiries” in violation of the Americans with Disabilities Act (the “ADA”).

This is significant because the ADA strictly limits disability-related inquiries or medical examinations to situations when it is “job related and consistent with business necessity.” The EEOC specifically notes that this portion of the ADA does not only apply to employees with disabilities, but to *all* employees.

Disability-related inquiries or medical evaluations are allowed in very limited circumstances and must meet the following requirements: (1) the inquiry or evaluation must be required by “federal, safety-related laws or regulations;” (2) the inquiry is only for certain employees in positions affecting public safety (i.e. - police officers, firefighters) or (3) the employee is a volunteer and part of an employee health program, which is reasonably designed to promote health or prevent disease. If an employer is using wearable technology to conduct disability-related inquiries or medical evaluations, then absent a proper purpose as defined by the ADA, these actions may pose a compliance risk.

Using Information from Wearables

Even if the employer is collecting data from wearables under one of the purposes described by the ADA above, there still may be compliance issues with how this data is utilized. While the collection of the data is largely governed by the ADA, the use of that data is largely regulated by the Equal Employment Opportunity Act (“EEO” laws). The EEO laws prohibit employment discrimination based on a protected characteristic including: race, color, religion, sex (including gender, sexual orientation and/or pregnancy, child birth or related conditions), national origin, age (40 or older), disability, or genetic information. If an employer uses information from wearable technology to make an employment decision that has an adverse effect on employees due to a protected trait, they may be in violation of the EEO laws.

The EEOC provided the following examples of actions that may violate the EEO laws related to the use of information from wearable technology:

- Using heart rate, fatigue level, and/or temperature information to infer that an employee is pregnant, and then as a result firing that employee or putting her on unpaid leave against her will (pregnancy/childbirth);
- Relying on data from wearable technology that produces less accurate results for individuals with dark skin to make adverse employment decisions against those workers (race/color);
- Firing an employee based on an elevated heart rate when the elevated heart rate relates to a heart condition (disability);
- Tracking an employee during their lunch break when the employee is taking their parent to a dialysis center and then inquiring or researching why the employee was at the center, in a way that elicits genetic information, which includes family medical history (genetic information);
- Analyzing heart rate variability and skin temperature to infer or predict menopause, and then refusing to promote the employee because of sex, age, and/or disability.

The EEOC notes that while all the above examples may constitute violations of the EEO laws, they may also constitute violations of the ADA’s requirement to keep medical information confidential. Thus, the risk with the use of information from wearable technology is twofold.

Reasonable Accommodation Related to Wearables

The EEOC further advises that employers may need to make exceptions to their wearable technology policy in order to make proper accommodations under Title VII (religious belief, practice, or observance), to abide by the ADA, and to abide by the Pregnant Workers Fairness Act.

For example, due to their religious beliefs, certain individuals may be opposed or unable to wear usable technology. In such instances, the employer may need to excuse the employee from wearing the device. The EEOC also advises that if an employee has a disability prohibiting them from wearing a device, the employer again would likely need to allow that employee to work without using the device, or otherwise provide a reasonable accommodation.

Final Considerations

Affected employers must consider: (1) what data will the wearables collect, including their accuracy and validity across different protected bases; (2) how that data will be stored; and (3) whether and how that data will be used in employment-related decision-making, including whether the use of wearables impacts employees of different protected bases differently.

It is imperative that employers develop a comprehensive plan for the use of wearable technology which addresses what data will be collected, how that data will be utilized and what accommodations can be made should an employee be unable to use wearable technology. Failure to do so may subject employers to liability.