



WEARABLES IN THE WORKPLACE

USING WEARABLE TECHNOLOGIES UNDER FEDERAL EMPLOYMENT DISCRIMINATION LAWS

Wearable technologies, or “wearables,” are digital devices embedded with sensors and worn on the body that may keep track of bodily movements, collect biometric information, and/or track location. Wearables are [increasingly used](#) in modern workplaces. For example, employees now can be fitted with: smart watches or rings that track their activities and monitor their physical or mental condition in the workplace; environmental or proximity sensors that warn wearers of nearby hazards; smart glasses and smart helmets that can measure electrical activity of the brain (electroencephalogram or “EEG” testing) or detect emotions; exoskeletons and other aids that provide physical support and reduce fatigue; Global Positioning System (GPS) devices that track location; and various other devices.

This fact sheet identifies some ways the federal equal employment opportunity (EEO) laws may apply to employers’ use of wearable devices. As discussed below, directing employees to use wearable devices in order to obtain health-related information may pose EEO compliance issues for employers, their agents, and other EEO-[covered entities](#) (together called “employer(s)”).

The Equal Employment Opportunity Commission (EEOC) enforces the federal EEO laws prohibiting employers from discriminating because of race, color, national origin, religion, sex (including pregnancy, sexual orientation, and gender identity), disability, age (40 or older) and genetic information.



Collecting Information Using Wearables

Employers using wearables to collect information about an employee's physical or mental conditions (such as blood pressure monitors or eye trackers) or to do diagnostic testing (such as EEGs) may be conducting "[medical examinations](#)" under the Americans with Disabilities Act (ADA). Employers also may be making "[disability-related inquiries](#)" under the ADA if they direct employees to provide health information (such as information about prescription drug use or a disability) in connection with using wearables.

The ADA strictly limits disability-related inquiries or medical examinations for all employees, not just those with disabilities, to situations when it is "[job related and consistent with business necessity](#)" for a specific employee, or otherwise permitted under the ADA, [42 U.S.C. § 12112\(d\)\(4\)\(A\)](#). Job related and consistent with business necessity may include situations where an employer individually assesses if an employee with a medical condition poses a significant safety risk that cannot be reduced by reasonable accommodation. [42 U.S.C. § 12111\(3\)](#). The relevance of this type of individualized assessment, called a "direct threat" analysis, to the use of wearables may be relatively limited.

Example

Marco's employer tells him that he must wear a company-issued tracking watch. The watch collects Marco's vital signs, information about his gait, and other medical information. This mandatory use of the watch does not satisfy the ADA's requirements for employee health programs that are voluntary, and it also may be a medical examination under the ADA.

Disability-related inquiries or medical examinations are allowed in a few limited circumstances, which have specific requirements:

- When required by a [federal, safety-related laws or regulation](#);
- For certain employees in positions affecting public safety ([e.g., police officers or firefighters](#)); and,
- If they are voluntary and part of an employee health program, which is reasonably designed to promote health or prevent disease. [42 U.S.C. § 12112\(d\)\(4\)\(B\)](#); [29 C.F.R. § 1630.14\(d\)](#).

If an employer uses wearables to conduct disability-related inquiries or medical examinations outside one of these exceptions to the ADA prohibition, then those inquiries or examinations may pose compliance risks.

And, if an employer collects medical or disability-related data from wearable devices, the ADA requires employers to maintain that data in separate medical files and treat it as confidential medical information with limited exceptions. [42 U.S.C. § 12112\(d\)\(3\)\(B\)](#); [§12112\(d\)\(4\)\(C\)](#). [29 C.F.R. § 1630.14\(d\)\(4\)](#).

Using Information from Wearables

When an employer uses information collected by wearables—even if the ADA were to permit its collection—the employer must comply with the nondiscrimination requirements of all the EEO laws. These laws prohibit employment discrimination based on a protected characteristic: race, color, religion, sex (including gender; sexual orientation; and/or pregnancy, childbirth, or related medical conditions), national origin, age (40 or older), disability, or genetic information. If an employer uses wearable-generated information to make employment decisions that have an [adverse effect](#) on employees because of a protected basis, they could violate these EEO laws.

For example, an employer could violate the EEO laws' nondiscrimination requirements by using wearable-generated information in the following ways:

- Using heart rate, fatigue level, and/or temperature information to infer that an employee is **pregnant**, and then as a result firing the employee or putting her on unpaid leave against her will.
- Relying on data from wearable technology that produces less accurate results for individuals with dark skin (**race or color**) to make adverse employment decisions against those workers.
- Firing an employee based on an elevated heart rate when the elevated heart rate results from 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 conducting research about the purpose for the employee's visit to the center, in a way that elicits **genetic information**, which includes family medical history.
- 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**.

Example

Employers that rely on wearable technology that produces less accurate results for individuals with dark skin to make adverse employment decisions may violate EEO law.

In each of these examples, the misuse of data from a wearable to identify an employee's protected characteristic also, separately, could violate the ADA's requirement to keep medical information confidential.

In addition, an employer may not selectively use wearables to monitor some employees based on a protected characteristic or in retaliation for an employee engaging in protected activity. For example:

- Requiring only Hispanic employees to use wearables that collect health information: the disparate treatment of Hispanic employees based on their national origin could violate EEO nondiscrimination requirements.

- Increasing surveillance or scrutiny of employees who assert their rights in order to retaliate against them for engaging in [protected EEO activity](#), without similarly monitoring other workers.

Finally, an employer could violate the EEO laws' nondiscrimination requirement by using wearable-generated information for employment decisions that have a disproportionately large negative effect on the basis of race, color, religion, sex, or national origin. See, e.g., [42 U.S.C. §§ 2000e-2\(a\)\(2\), \(k\)](#).



Reasonable Accommodation Related to Wearables

An employer also may need to make an exception to a wearables policy as a reasonable accommodation under Title VII (religious belief, practice or observance), the ADA (disability) or the [Pregnant Workers Fairness Act](#) (pregnancy, childbirth, or related medical conditions), even if the ADA were to allow the employer to use wearables to collect medical information. For example:

- Even if an employer complies with the ADA's limitations on collecting medical information, the employer may need to excuse an employee from wearing a device if doing so is against the employee's religion, or provide an alternative; and,
- An employer mandating use of a wearable device for reasons that comply with the ADA's limitations on collecting medical information still may need to make an exception or provide an alternative as a reasonable accommodation based on pregnancy or disability.

Final Pointers

Considerations for employers include:

1. What data wearables collect, including their accuracy and validity across different protected bases;
2. How those data are stored; and,
3. Whether and how those data are used in employment-related decision-making, including whether their use impacts employees of different protected bases differently.

To learn more, visit the EEOC at www.eeoc.gov/ai for additional resources.