

Wearable technology: A Pandora's box of HR evils?



The wearable technology revolution affects a host of seemingly unrelated employment law issues.

Software company Salesforce recently released a survey showing that 86% of American companies plan on investing in some form of wearable technology over the coming year. Additionally, 40% are planning to use wearable technology to monitor employee time-management and real-time employee communication. Early data suggest wearables are making a positive impact.

According to a Rackspace survey, workers who use wearables are 8.5% more productive and 3.5% more satisfied with their jobs.

WHAT'S NEW

Wearables come in many forms, from watch-like wristbands that behave like GPS devices to helmets that overlay the employee's field of vision with valuable information that assists the worker in performing a variety of tasks.

For example, Amazon uses wearable GPS technology to help warehouse workers find the quickest route to the item they are seeking.

A device known as the Daqri Helmet projects pressure readings and other critical data onto the helmet's visor, allowing a repair technician to view the data at the same time as the equipment being serviced.

In coming years, developers will likely develop wearable technology customized to a wide variety of jobs.

THE LAW

A plethora of federal and state anti-discrimination laws protect women, minorities, the disabled and older workers from unfair employer discrimination.

State workers' compensation laws provide numerous protections and benefits to workers injured on the job, both when recovering from workplace injuries and when attempting to return to work.

The National Labor Relations Act guarantees employees the right to discuss workplace conditions and organize into unions.

Various states have laws that bar recording another person's conversation without permission.

These may seem like unrelated issues, but enforcement and administration of these laws will be dramatically affected by the wearable technology revolution.

HOW TO COMPLY

Wearable technology generates data not only on employees' work, but also on their movements, location and even health. Some devices may record conversations and provide a previously unknowable world of metrics.

That's why wearables could potentially increase employer liability to discrimination suits under Title VII, the Age Discrimination in Employment Act, the ADA and state workers' compensation laws. Employees who wish to organize a union will now potentially be monitored on an ongoing basis.

Incorporating wearable data

If you decide to use data from wearables as part of any employee evaluation, you need to develop a policy outlining exactly what metrics will be used for each job, and apply those criteria uniformly.

That way, no employee can claim he or she was singled out for special treatment.

The one exception: Disabled employees who require a reasonable accommodation. Employers must find a way to account for the accommodation when using the data for employee evaluations.

On the other hand, too much new information may create a legal quandary for some employers. Should an employer note a decline in an employee's performance, it could be due to a disability the employer doesn't know about. Employers may not assume this because doing so violates the ADA's prohibition on regarding a person as disabled when the individual is not.

Employers confronted with this situation should talk to the employee about the numbers being reported, and see what the employee says. The employee may reveal a disability and ask for an accommodation. If the employee does not reveal a disability, then the employer can only address the performance.

Workers' compensation issues

Wearable technology has great potential to improve workplace safety. For example, some trucking firms employ a "smart cap" that keeps drivers from falling asleep while driving. Some wearables may have the capability to report data about accidents that can lead to better safety standards.

In a personal injury lawsuit, a fitness trainer used wearable data to demonstrate her activity levels fell after being in an auto accident.

Wearable data may be a significant part of future workers' compensation and other litigation. This means wearable data may have to be preserved for possible litigation the same way paper documents and emails are now.

The wearable spy

Under the National Labor Relations Act, employees have the right to meet to discuss workplace conditions in public areas of the workplace on their own time. If a wearable also records conversations, this could place the employer in legal hot water. Also, many states have laws barring surreptitious recordings.

The best approach is to tell workers to leave wearables at work or turn them off when off the clock. Don't use

any data obtained from employees when they are not working.

Advice: As each wearable device is deployed, employers should identify the data it will produce and develop protocols about how to use that data.