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EEOC Guidance on Wearable Devices May Impact Wellness Programs

Wearable devices and federal employment discrimination laws

On December 19, 2024, the U.S. Equal Employment Opportunity Commission (EEOC) issued a new fact sheet, [Wearables in the Workplace: Using Wearable Technologies Under Federal Employment Discrimination Laws](#) (the “fact sheet”), which addresses how federal employment discrimination law apply to the collection and use of information from wearable devices by employers.

The fact sheet defines wearable devices and identifies ways in which the federal equal employment opportunity (EEO) laws, including the Americans with Disabilities Act (ADA), may apply to an employer’s use of wearable devices when used to obtain health-related information.

This Alert is specific to the fact sheet’s guidance related to the use of wearable devices in connection with employer-provided wellness programs and is relevant for employers using or considering the use of wearable technology in connection with their wellness programs. The fact sheet’s other guidance related to the use of wearable devices for employment and/or other workplace purposes and its labor & employment issues is generally outside the scope of this Alert.

The ADA and wellness programs

The ADA generally prevents employers from making disability-related inquiries or requiring medical examinations unless: (1) it is related to the essential performance of the employee’s job (e.g., can you stand for long periods of time?); or (2) it is part of a voluntary employee health program (e.g., a wellness program) that maintains the confidentiality of information and is not used to discriminate against employees.

If an employer offers a wellness program that includes disability-related inquiries and/or medical examinations, the wellness program is subject to the ADA and must be considered voluntary to comply. This includes wellness programs that incorporate health risk assessments, biometric screenings, physical examinations, or testing for tobacco use. For a wellness program to be considered voluntary under the ADA, an employer:

Highlights

Overview

The EEOC issued a fact sheet addressing how federal employment discrimination laws apply to wearable devices such as fitness trackers, glucose monitors, and smart watches.

Employers that use wearable devices to collect health-related information from employees may be conducting medical examinations under the ADA.

This alert is specific to employers offering wellness programs that incorporate wearable devices.

Employer action items

If an employer’s wellness program includes the use of wearable devices to collect health-related information, it should review the fact sheet and program to ensure that the program does not strictly require the use of the wearable device(s), allows for accommodations when necessary, and otherwise complies with the ADA’s rules for voluntary employee health programs.

Employers that direct or require the use of wearable devices outside the context of a wellness program (e.g., for health and safety purposes) should consult with labor and employment counsel for additional guidance.

1. May not require or coerce any employee to participate;
2. May not deny any employee who does not participate access to health coverage or prohibit any employee from choosing a particular plan; and
3. May not take any other adverse action or retaliate against, interfere with, coerce, intimidate, or threaten any employee who chooses not to participate or fails to achieve certain health outcomes.¹

In addition to the voluntary requirement, a wellness program must generally provide reasonable accommodations to enable participants with disabilities to earn an incentive under the program, unless the employer can demonstrate undue hardship (e.g., such as a significant financial hardship).

EEOC's guidance on wearable devices

The EEOC's fact sheet defines wearable devices 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. This includes, but is not limited to, devices such as glucose monitors, wearable fitness trackers, smart watches or rings, GPS trackers, and smart glasses.

According to the EEOC, the use of wearable devices to collect information about an employee's physical or mental conditions (e.g., blood pressure monitors; eye trackers) or for diagnostic testing (e.g., electroencephalograms or "EEGs") may be a medical examination under the ADA. Additionally, an employer that directs or requires employees to provide health information (e.g., information about prescription drug use or a disability) in connection with using wearable devices may be making disability-related inquiries under the ADA. As a result, an employer wellness program incorporating wearable devices must comply with the ADA, including the voluntary requirement discussed earlier in this Alert.

The fact sheet also addresses other compliance considerations regarding wearable devices, including the circumstances in which an employer can require the use of these devices for health and safety purposes, so long as it is related to performance of the job. Even if the ADA permits an employer's collection of information by wearables, the employer must still comply with the nondiscrimination requirements of all EEO laws and may potentially need to provide a reasonable accommodation to its wearables policy under Title VII of the Civil Rights Act, the ADA, or the Pregnant Workers Fairness Act.

Employer action items

Employers offering wellness programs that incorporate wearable devices to obtain employee health-related information should review the fact sheet and determine whether the program satisfies the ADA's voluntary program requirements and whether any reasonable accommodations are necessary. Employers should not strictly require the use of wearable devices for wellness program purposes without exceptions.

Employers that require the use of wearables outside the context of a wellness program for general employment and/or other workplace reasons (e.g., for health and safety purposes) should consult with labor and employment counsel to determine whether they are complying with applicable EEO laws.

¹ See [29 C.F.R. § 1630.14\(d\)](#).

About the author



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