

**Wearable Technology in the Workplace: Potential CAA Issues**

Office of Congressional Workplace Rights

Office of the General Counsel

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*advancing workplace rights, safety & health, and accessibility in the legislative branch*

1

**Welcome**

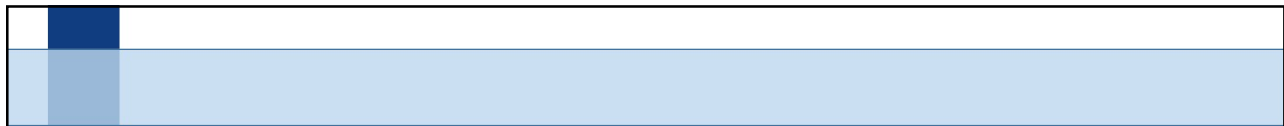
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**Presenters**

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3



**Overview**

- Introduction to wearable tech
- Potential implications for CAA-applied statutes
  - OSH Act
  - ADA
  - Labor-Management Relations
  - Other statutes

4



5

**Introduction**

- Wearable technologies 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
- Employers are increasingly offering or requiring the use of wearables by their employees
- Can be many implications under the Congressional Accountability Act of 1995 (CAA) for legislative branch employing offices' use of wearable technologies
- While this presentation focuses on employer-provided devices, issues may also arise concerning employee-provided personal wearables

6

**Examples**

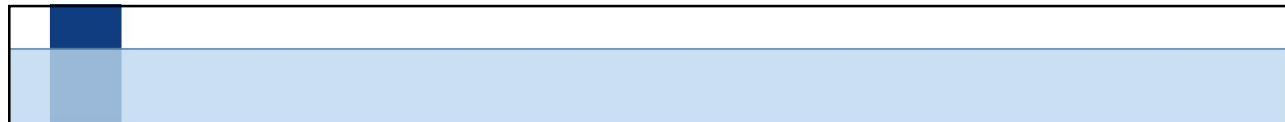
- Wearable health monitoring sensors, such as Fitbits, that track activity, heartrate, sleep, and more
  - Many are designed for the consumer market, but have become increasingly common in the workplace, often as part of employee wellness programs
- Employee monitoring badges that can sense other badges and record data such as tone of voice, allowing employers to monitor employee interactions
- Arm bands monitoring employee productivity and tracking when they take breaks
- Phone apps – connected to wearables or stand-alone

7

**Why are wearables used in the workplace?**

- Decrease healthcare costs
- Enhance employee safety
- Increase productivity
- Monitor employee locations and hours worked

8



**A few notes...**

- There is little to no relevant case law specifically concerning wearables in employment
- An EEOC fact sheet, “Wearables in the Workplace: Using Wearable Technologies Under Federal Employment Discrimination Laws,” was posted in December 2024, and removed from the website in early 2025
- The intention of this presentation is to highlight potential issues and considerations for employing offices that choose to use wearable technologies

9



**OSH Act**

10

**Wearable tech and worker safety**

- Monitoring for heat stress
  - Vital signs – core body temp, heart rate
  - Environment – ambient heat and humidity
  - Dehydration – skin temp, perspiration, sodium/electrolyte loss
  - Logging rest breaks, shade, etc.
  - Cooling vests can monitor and respond
- Geofencing – warns if employee enters dangerous area
- Proximity detection – warns of imminent collisions
- Ergonomics – monitors posture, movement, lifting techniques

11

**Wearable tech and worker safety (cont'd)**

- Environmental – detects hazardous substances, heat, cold, noise, radiation, etc.
- Helping lone workers
  - Fall detection sensors
  - GPS tracking
  - Communication and emergency response

12



**Considerations when implementing wearable tech as safety controls**

- Look into industry practice
- Review guidance from OSHA, NIOSH, ANSI, etc.
- Be aware of implications for other CAA-applied statutes

13



**Americans with Disabilities Act**

14

**Medical examinations and disability-related inquiries**

- The ADA prohibits employers from making disability-related inquiries or requiring employees to undergo medical examinations unless job-related and consistent with business necessity. 42 U.S.C. § 12112(d)(4)(A)
  - Medical examination = any procedure or test that seeks information about an individual’s physical or mental impairments or health
  - Disability-related inquiry = any question likely to elicit information about a disability
- Therefore, the use of wearable technology devices may constitute a medical examination under the ADA; directing employees to provide health information in connection with using wearable technology may constitute a disability-related inquiry
- Applies to all employees, regardless of disability status

15

**Job-related and consistent with business necessity**

- If an employer requires an employee to wear a device, and wearing the device constitutes a medical examination or entails a disability-related inquiry, the employer must meet the “job-related and consistent with business necessity” standard:
  - When employer has a reasonable belief, based on objective evidence, that: (1) an employee’s ability to perform essential job functions will be impaired by a medical condition; or (2) an employee will pose a direct threat due to a medical condition
- If an employer simply knows of an employee’s health condition or has a suspicion about the employee’s health, but has no other indications that the employee cannot perform their job, the employer is not permitted to require exams or inquiries

16

**Job-related and consistent with business necessity (cont'd)**

- This includes inquiries or medical examinations that might be necessary to the reasonable accommodation process, such as if an employee requests a reasonable accommodation and their disability or need for the accommodation is not obvious
  - A medical exam is by no means required in this situation and is certainly not always necessary, but if it is, the medical exams and inquiries provision does not prohibit it

17

**Other circumstances where wearables that constitute medical exams may be allowed**

- *Employees in positions that impact public safety*, when medical examinations are narrowly tailored to address specific job-related concerns
- *When a federal safety-related law or regulation*, such as the OSH Act, requires employees exposed to toxic or hazardous substances to be medically monitored at specific intervals
- *In the context of voluntary employee health programs* reasonably designed to promote health or prevent disease in participating employees

18

**Confidentiality**

- Information about an employee's medical conditions or medical history that is obtained from any permitted examination or inquiry, including information collected via wearable technology, must be collected on separate forms, maintained in separate medical files, and be treated as a confidential medical record

19

**Using information from wearables**

- Employing offices must not use information gathered from wearable technology to infer that an employee has a disability, and then discriminate against them on the basis of the inferred disability
- Wearable technology may flag disability-related behaviors as misconduct, and it could violate the ADA for an employing office to take action against an employee on this basis
  - For instance, an employee with gastrointestinal issues might take longer or more frequent restroom breaks than is typical. Their employer may be alerted to this break pattern by wearable technology that tracks the employee's location. If the employer disciplines the employee for taking excessive breaks, the employer could be violating the ADA

20

**Using information from wearables (cont'd)**

- This becomes more complicated if an employer does not notify the employee that wearable technology is being used. While the ADA does not require employers to notify employees that wearable technology is being used, this is one reason disclosure can be beneficial

21

**Other ADA concerns regarding wearable technology**

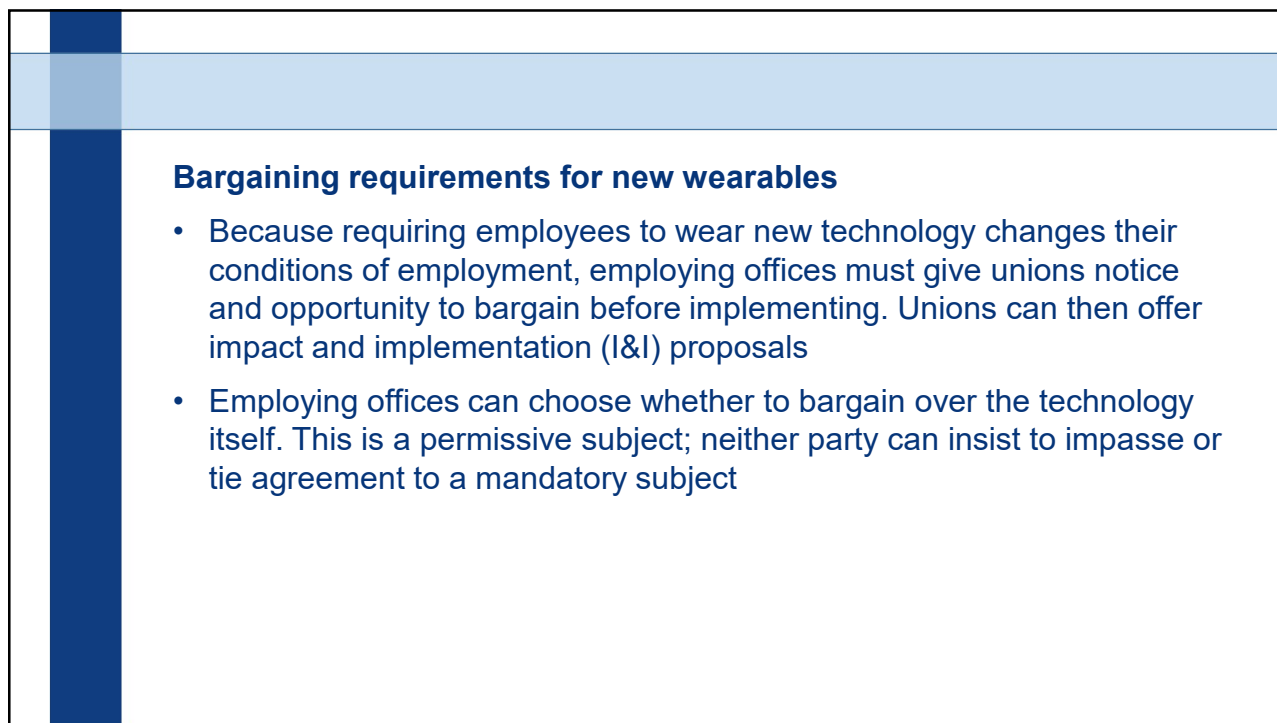
- *Device accessibility* – An employer may need to consider accessibility of a device, such as whether it is usable by a blind employee, and may need to accommodate an employee with a disability by providing an alternate device or exempting them from a requirement to use the device
- *Employee-provided devices* – An employer may need to provide an accommodation that allows an employee to use their own disability-related wearable technology device

22




# Labor-Management Relations

23

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- ### **Bargaining requirements for new wearables**
- Because requiring employees to wear new technology changes their conditions of employment, employing offices must give unions notice and opportunity to bargain before implementing. Unions can then offer impact and implementation (I&I) proposals
  - Employing offices can choose whether to bargain over the technology itself. This is a permissive subject; neither party can insist to impasse or tie agreement to a mandatory subject

24



**Surveillance functions may restrain union activity**

- Technology that tracks location, records employees, or gathers biometric data has the potential to discourage employees from supporting a union in violation of the FSLMRS
- Employing offices should be careful to limit the technology to its lawful purpose
- Using technology to investigate union activity, telling employees that their protected activity is being watched, or installing technology in response to union organizing all may violate the Statute

25



**Other CAA Statutes**

26

**Title VII of the Civil Rights Act of 1964**

- Discrimination because of race/color
  - Some wearables are less accurate for individuals with darker skin tones
- Religious accommodations
  - Objections to using wearables based on employees' sincerely held religious beliefs
  - Employers denying accommodations must demonstrate undue hardship – i.e., that the burden is substantial in the overall context of the employer's business

27

**Fair Labor Standards Act (FLSA)**

- Employers are responsible for tracking employee work hours
- Employers might be tempted to use wearable tech to track employees' arrivals, departures, breaks, etc.
- Potential for FLSA violations if relying on wearables for this purpose
  - Technology failures or user errors could lead to improper recording of employees' hours worked
  - Leaving devices on while outside the workplace could blur the lines between work and personal time

28

**Employee Polygraph Protection Act (EPPA)**

- To the extent that a wearable technology device constitutes a “lie detector” test, employers may not require employees to use it
- Example – employee monitoring badge including a microphone that assesses an employee’s tone of voice, if used by an employer for the purpose of evaluating an employee’s honesty

29

**Genetic Information Nondiscrimination Act (GINA)**

- Employers may not discriminate on the basis of an employee’s genetic information
- Under most circumstances employers may not acquire an employee’s genetic information
- If any data collected from wearable tech meets the definition of “genetic information” then each employee should provide “prior, knowing, voluntary, and written authorization” for the collection of that information

30

**General considerations**

- Wearable tech policies must be applied without regard to protected characteristics under CAA-applied statutes
- Beware the potential for disparate impact
  - Older workers (ADEA)
  - Pregnant workers (PWFA)

31

**Questions?**

32

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