Office of Congressional Workplace Rights

Office of the General Counsel

WEARABLE TECHNOLOGY IN THE WORKPLACE: POTENTIAL CAA ISSUES

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Wearable technologies, also known as 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.[1] Employers are increasingly offering or requiring the use of wearables by their employees. However, use of wearables in the employment context can have significant legal implications for employers, especially concerning the Americans with Disabilities Act of 1990 (ADA) and the Rehabilitation Act of 1973 (RA).

The Congressional Accountability Act of 1995 (CAA) applies the rights and protections of over a dozen labor and employment laws to the legislative branch, including the ADA and RA.[2] In this outline we present considerations under the CAA for legislative branch employing offices' use of wearable technologies.

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[1] U.S. Equal Emp't Opportunity Comm'n, *Wearables in the Workplace: Using Wearable Technologies Under Federal Employment Discrimination Laws*, *available at* https://data.aclum.org/storage/2025/01/EOCC_www_eeoc_gov_wearables-workplace-using-wearable-technologies-under-federal-employment-discrimination-laws.pdf (last visited Apr. 16, 2026) (hereinafter "EEOC Wearables") Note: this document was originally published on the EEOC web site in 2024, then removed in early 2025.

[2] 2 U.S.C. § 1311(a)(3)

What is Wearable Technology?

Wearable technologies can be thought of in 4 general categories: (1) supporting devices that physically assist workers with tasks like lifting; (2) monitoring devices that alert workers to specific changes in vital signs or the workplace environment; (3) training devices that provide feedback on movements or help improve worker performance; and (4) tracking devices that observe the location of employees on a worksite.[3] Many wearables focus on one function, but this is not always the case.

Examples of wearable technology use in the workplace

- Wearable health monitoring sensors, such as Fitbits, that track activity, heartrate, sleep, and more. These devices can contain sensors for proximity, acceleration, gyroscopic motion, biomechanical detection, or GPS. 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.[4]

- An armband used by the British grocery chain Tesco containing a device to monitor its employees' productivity and to track when they take breaks.[5]

- Apps: many wearables connect to apps to display data that they collect. Additionally, apps by themselves that track or monitor employees could be considered wearable technology.

- Many examples of wearables that enhance worker safety are discussed below.

Reasons for employers to provide wearable technology to employees

Employers may have a variety of reasons for providing wearable technology to their employees. One reason is to decrease the employer's healthcare costs: It is common for employers to offer employee wellness programs, many of which involve the use of wearables.[6] If enough of their employees participate in these programs, presumably increasing their fitness, employers may be able to negotiate lower health insurance costs because of the likely decrease in claims for their healthier employees.

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[3] U.S. Gov't Accountability Off., *Wearable Technologies in the Workplace* (Mar. 2024), https://www.gao.gov/assets/d24107303.pdf. Though this publication focuses on industrial workplaces, these categories are useful when considering wearable technologies more broadly.

[4] Elizabeth A. Brown, *The Fitbit Fault Line: Two Proposals to Protect Health and Fitness Data at Work*, 16 YALE J. HEALTH POL'Y, L. & ETHICS 1, 14 (2016)

[5] *Id.*

[6] Kevin J. Haskins, *Wearable Technology and Implications for the Americans with Disabilities Act, Genetic Information Nondiscrimination Act, and Health Privacy*, 33 ABA J. LAB. & EMP. L. 69, 71 (2017)

Other reasons may include enhancing employee safety, as explained below in the Occupational Safety and Health Act section; increasing worker productivity; and tracking employees' work time.

While this Brown Bag focuses on employer-provided devices, issues may also arise concerning employee-provided personal wearables. See the ADA/RA section below.

Potential implications under labor and employment laws

As of the date of this presentation, there is little to no relevant case law specifically concerning wearable technology in the employment setting. The U.S. Equal Employment Opportunity Commission (EEOC) issued a fact sheet, "Wearables in the Workplace: Using Wearable Technologies Under Federal Employment Discrimination Laws," in December 2024; it was removed from the EEOC's website in early 2025, but the document has been preserved and is linked to in footnote 1 of this outline.

In this Brown Bag presentation, we aim to highlight potential issues and considerations for legislative branch employing offices that choose to offer or require wearable technologies for use in the workplace.

Wearable Tech and the OSH Act

One of the laws enforced by the OCWR is the Occupational Safety and Health Act (OSH Act), which applies through section 215 of the CAA.[7] Employing offices must comply both with the standards promulgated by the Secretary of Labor[8] and with the statute's General Duty Clause, which requires that employers provide their employees with "employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to [their] employees."[9]

Wearable tech has many potential benefits from a worker safety standpoint, which may help employing offices comply with their obligations under the OSH Act. A few examples:

- Heat stress prevention[10]
    - Devices can measure vital signs such as the employee's heart rate and core body temperature, as well as ambient heat and humidity in the employee's location
    - Adhesive skin-patch sweat sensors measure skin temperature, perspiration rate, and sodium/electrolyte loss, providing early warning of dehydration

[7] 2 U.S.C. § 1341
[8] 29 U.S.C. § 654(a)(2)
[9] 29 U.S.C. § 654(a)(1)
[10] Herbert Post, *Meeting OSHA's Heat Stress Standards with Wearable Tech Solutions*, TRADESAFE (June 30, 2025), https://trdsf.com/blogs/news/wearables-vs-heat-stress-for-osha-compliance

- Cooling vests or other smart textiles contain sensors to log vital signs and may deliver cooling to the employee to bring down their core temperature if it begins to rise

- Apps can log the employee's breaks for rest, shade, etc. to help ensure that administrative controls are being followed

- Preventing other illnesses and injuries[11]

  - Geofencing systems – warn if employees have entered a dangerous area

  - Proximity detection systems – warn of imminent collisions with machinery or vehicles

  - Ergonomics devices – measure and improve workers' posture, movement, and lifting techniques to prevent musculoskeletal disorders

  - Environmental monitoring – detect the presence of hazardous substances, such as gases and volatile organic chemicals (VOCs), as well as heat, cold, noise, or radiation

- Helping lone workers in distress[12]

  - Fall detection sensors – alert managers to an employee fall

  - GPS tracking – enables employers to locate ill or injured employees

  - Communication and emergency response – devices can detect if an employee is in need of help, and may alert management or even trigger pre-set response protocols

Legislative branch employing offices, especially those whose employees work in high-hazard areas or activities, may already be using or considering the use of these technologies to help enhance employee safety and promote compliance with the OSH Act as applied by the CAA. When deciding whether and how to implement such safety solutions – as with any other controls aimed at enhancing worker safety – we recommend that employing offices look to industry practice, as well as guidance from agencies such as OSHA,[13] NIOSH,[14] and ANSI.[15]

At the same time, it is important for all employing offices to keep in mind the potential implications that these devices might have for compliance with the other statutes applied by the

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[11] *Wearable Safety Technology Takes Safety From Reactive to Real Time*, DURALABEL (Dec. 8, 2025), https://resources.duralabel.com/articles/wearable-tech-safety-in-the-workplace-osha-ansi-duralabel

[12] *Exploring Wearable Devices for Enhanced Lone Worker Safety*, AATMUNN (last visited Apr. 16, 2026), https://aatmunn.com/blog/exploring-wearable-devices-for-enhanced-lone-worker-safety

[13] https://www.osha.gov/

[14] https://www.cdc.gov/niosh/

[15] https://www.ansi.org/

CAA, and to ensure that the implementation of these safety measures does not unintentionally run afoul of any of these other labor and employment laws, as described below.

Wearable Tech and the ADA/RA

The ADA and RA prohibit employers from making disability-related inquiries or requiring employees to undergo medical examinations unless job-related and consistent with business necessity.[16] The use of wearable technology devices may constitute a medical examination under these statutes, so employing offices choosing to use wearable technology (on a mandatory or voluntary basis) should carefully heed this prohibition. Below we summarize these issues and several other considerations under the ADA and RA for using wearables in the workplace.[17]

Medical Examinations and Disability-Related Inquiries

According to the EEOC, a "medical examination" is any procedure or test "that seeks information about an individual's physical or mental impairments or health."[18] Therefore, if a wearable device collects health-related information, as many do, requiring an employee to use it could constitute a medical examination under the ADA.[19] A "disability-related inquiry" is any question "likely to elicit information about a disability."[20] If employing offices direct employees to provide health information in connection with using wearable technology, those offices may be making disability-related inquiries.[21]

The ADA's restriction on inquiries and examinations applies to all employees, regardless of disability status; an employee need not be disabled to bring a claim under this provision.[22] Therefore, employing offices using wearable technology may have obligations under the ADA toward all of their employees.

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 an employer has a reasonable belief, based on objective evidence, that: (1) an employee's ability to perform essential job

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[16] 42 U.S.C. § 12112(d)(4)(A)

[17] Many resources are available regarding legal considerations under the ADA for employees and employers using wearables in the workplace. For a good example, *see Wearable Devices in the Workplace and the ADA*, *available at* https://rockymountainada.org/resources/research/wearable-devices-workplace-and-ada (last visited Apr. 16, 2026).

[18] *Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA)*, U.S. Equal Emp't Opportunity Comm'n (July 27, 2000), https://www.eeoc.gov/policy/docs/guidance-inquiries.html (hereinafter "EEOC Enforcement Guidance on Inquiries & Exams")

[19] EEOC Wearables

[20] EEOC Enforcement Guidance on Inquiries & Exams

[21] EEOC Wearables

[22] *See*, *e.g., Kurtzhals v. Cnty. of Dunn*, 969 F.3d 725, 730 (7th Cir. 2020)

functions will be impaired by a medical condition; or (2) an employee will pose a direct threat due to a medical condition.[23]

This includes permitting employers to make inquiries or require medical examinations 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.[24] 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 under the ADA; "there must be significant evidence that could cause a reasonable person to inquire as to whether an employee is still capable of performing his job."[25]

Wearable technology that constitutes a disability-related inquiry or medical examination may be allowed in a few other narrow circumstances:

- **Employees in positions that impact public safety**, when medical examinations are narrowly tailored to address specific job-related concerns.[26] The EEOC gives this example: "A fire department requires employees for whom firefighting is an essential job function to have a comprehensive visual examination every two years and to have an annual electrocardiogram because it is concerned that certain visual disorders and heart problems will affect their ability to do their job without posing a direct threat. These periodic medical examinations are permitted by the ADA."[27]

- **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.[28]

- **In the context of voluntary employee health programs**.[29] Such programs, including any medical exams or inquiries that are part of them, must be reasonably designed to promote health or prevent disease in participating employees. Programs must also not be overly burdensome or a subterfuge for violating the ADA or other employment discrimination laws. This may include wearable devices offered by employers to help improve health and lower insurance costs.

    - In Title V, the ADA contains a safe harbor provision that applies to Title I to allow employers to require certain medical examinations, which could include wearable technology, in connection with health insurance plans.[30] However, Title V of the ADA is not among the provisions of the ADA applied to the legislative

[23] EEOC Wearables; 42 U.S.C. § 12112(d)(4)(A); 29 C.F.R. § 1630.14(c). Regarding direct threat, EEOC Wearables suggests: "The relevance of this type of individualized assessment, called a 'direct threat' analysis, to the use of wearables may be relatively limited."
[24] *See* 29 C.F.R. § 1630 app. § 1630.14(c) (2024)
[25] *Sullivan v. River Valley Sch. Dist.,* 197 F.3d 804, 813 (6th Cir. 1999)
[26] *See* 42 U.S.C. § 12112(d)(4)(A); 29 C.F.R. § 1630 app. § 1630.14(c) (2024)
[27] EEOC Enforcement Guidance on Inquiries & Exams
[28] EEOC Wearables; EEOC Enforcement Guidance on Inquiries & Exams
[29] *See* 42 U.S.C. § 12112(d)(4)(B); 29 C.F.R. § 1630.20(d)
[30] *See* 42 U.S.C. § 12201(c)

branch by the CAA. The case law that would apply to wearable technology in the employee wellness program context deals with the Title V safe harbor, so it is unclear how such an issue would be decided in the CAA context.

Confidentiality

Employing offices must take great care with information about an employee's medical conditions or medical history that an employing office obtains from a permitted examination or inquiry, including information collected via wearable technology. Such information must be collected on separate forms, maintained in separate medical files, and be treated as a confidential medical record.[31]

Using information from wearables

Employing offices must use any information collected from wearable technology in a manner that complies with the ADA and other antidiscrimination laws, and does not discriminate against employees based on a protected characteristic. (The implications of other antidiscrimination laws applied by the CAA for employing office use of wearable technology are discussed below.) For instance:

- 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.

    - As another example, an employee with chronic pain may need to take calls while standing or walking. If their employer is alerted to this pattern by wearable technology and disciplines the employee for not spending a certain amount of time sitting at their desk, the employer could be violating the ADA.

- This becomes more complicated if an employer does not notify the employee that wearable technology is being used (for instance, a location tracker on a work cell phone). This could lead to a situation in which an employee has not disclosed their disability and is disciplined due to monitoring done without their knowledge, while the employer is disciplining the worker because of a disability that the employer does not know exists. While the ADA does not require employers to notify employees that wearable technology is being used, this is one reason disclosure can be beneficial.

[31] 42 U.S.C. § 12112(d)(4)(C)

Other ADA/RA concerns regarding wearable technology

- **Device accessibility** – Even where an employer's use of wearable technology otherwise complies with the ADA, the employer may need to consider accessibility of the 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 to allow an employee to use their own disability-related wearable technology device. For instance, an employer that prohibits employees from using cell phones during work may need to allow cell phone use by a diabetic employee with a continuous glucose monitor (which tracks glucose levels in real time and provides data via an app). Or an employer that prohibits employees from wearing smart watches may need to allow an employee with a heart condition to use their smart watch to monitor their heart rate.

- **Selection criteria** – The ADA prohibits employing offices from using qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual or class of individuals with disabilities, unless job-related and consistent with business necessity.[32] Employing offices should be mindful of this requirement if they use wearable technology to evaluate candidates on such standards or perform such employment tests.

- **Administration of tests** – When employment-related tests are permitted, the ADA generally requires employing offices to ensure that those tests are administered in a manner that accurately reflects what the test purports to me asure, rather than reflecting some aspect of the disability of the individual taking the test.[33] Employing offices should be mindful of this requirement if they administer such employment tests using wearable technology.

Wearable Technology and Labor-Management Relations

Section 220 of the CAA applies certain provisions of the Federal Service Labor-Management Relations Statute (FSLMRS) to many legislative branch employees and employing offices.[34] Implementing wearable technology will have significant legal ramifications in a unionized or unionizing employing office in the legislative branch. As discussed in this section, introducing wearable technology into the workplace changes conditions of employment. Therefore, unionized employing offices must give their unions an opportunity to bargain before requiring bargaining unit employees to wear it. There are also various ways that, depending on the circumstances, employer-provided wearable technology could unlawfully discourage union activity, including its potential to surveil union activity.

[32] 42 U.S.C. § 12112(b)(6)
[33] 42 U.S.C. § 12112(b)(7)
[34] 2 U.S.C. § 1351

Bargaining obligations when introducing new wearable tech

Employing offices must notify unions before making any changes to employee conditions of employment if the reasonably foreseeable effect of the change is "more than *de minimis.*"[35] Changes to employee uniforms and imposition of new workplace technology are generally found to have a "more than *de minimis*" effect on employee conditions of employment.[36] While it would depend on the breadth of the implementation and the exact technology being introduced, requiring bargaining unit employees to wear a new piece of technology would very likely have a more than *de minimis* effect on the employees.

Before requiring employees to wear the new technology, employing offices must give unions the opportunity to bargain over procedures management employs during implementation and appropriate arrangements for adversely affected employees.[37] Installing wearable technology on bargaining unit employees' uniforms without first allowing the union to offer impact and implementation proposals may be an unfair labor practice, in violation of 5 U.S.C. § 7116(a)(5). The types of impact and implementation proposals unions may offer include advance notice and opportunity to bargain about future modifications to the technology, how data from the technology will be used during investigations of employees, and a union right to data from the wearable technology.[38]

An employing office may choose whether to bargain over the wearable technology itself.[39] Because the underlying technology is a permissive (i.e., not mandatory) subject of bargaining, either party can abandon bargaining over it midstream without violating the FSLMRS.[40] If the parties begin bargaining over an aspect of the wearable technology, neither party can insist on their position to impasse, and submitting the impasse dispute to the OCWR Board would constitute an unfair labor practice.[41]

Wearable technology's potential to restrain union activity

The surveillance capabilities of wearable technology may interfere with employees' rights under the FSLMRS if it improperly discourages employees from unionizing. Whether the technology photographs employees, tracks employees' locations, or collects biometric information, these tools may gather information about employees' union activities, or create the impression that

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[35] *Portsmouth Naval Shipyard, Portsmouth, NH*, 45 F.L.R.A. 574, 576 (1992)
[36] *Dep't of Navy, Concord, Cal.*, 33 F.L.R.A. 770, 773 (1988) (unilateral change to uniform policy for firefighters during standby time found unlawful); *Dep't of the Air Force, Tinker Air Force Base*, 25 F.L.R.A. 914, 917-18 (1987) (potential adverse health effects of new degreaser machine required notification to union before installation)
[37] 5 U.S.C. § 7106(b)(2)
[38] UC Berkeley Labor Center, *Negotiating Tech: An Inventory of U.S. Union Contract Provisions for the Digital Age*, https://laborcenter.berkeley.edu/negotiating-tech/governance-of-workplace-technology-applications/electronic-monitoring-and-surveillance-technologies/union-rights-and-employer-obligations-for-monitoring-and-surveillance/ (last visited March 30, 2026)
[39] 5 U.S.C. § 7106(b)(1)
[40] *Def. Logistics Agency*, *Tracy, Cal.*., ALJ Decision, No. 9–CA–20241, 1982 WL 23451, at *9 (Dec. 28, 1982), citing *NLRB v. Wooster Div. of Borg-Warner Corp.*, 356 U.S. 342 (1958)
[41] *Sport Air Traffic Controllers Org.*, 52 F.L.R.A. 339 (1996) (union committed unfair labor practice when it insisted to impasse on the permissive proposal that collective bargaining negotiations be tape recorded)

they are doing so. Employing offices should be aware of their potentially coercive nature before introducing them into the workplace.

The National Labor Relations Board (NLRB) holds that "routine observation of employees engaged in [union activity] on company property does not constitute unlawful surveillance . . . However, an employer violates [the law] when it surveils employees engaged in [union activity] by observing them in a way that is "out of the ordinary" and thereby coercive."[42] Indicia which could make the surveillance unlawfully coercive include the duration of the observation, whether the employees had an expectation of privacy while engaging in the protected conduct, and whether the employer engaged in other coercive behavior during the observation.[43] Examples of "out of the ordinary" observation the NLRB has found unlawful include reviewing breakroom surveillance footage to see whether employees distributed union literature,[44] telling employees that cameras caught them speaking about the union "and more would be installed,"[45] and instituting a new rule that managers must eat lunch with bargaining unit employees.[46]

The NLRB also makes it unlawful for an employer to give the impression that union activities are under surveillance.[47] "The standard is an objective one, based on the rationale that employees should be free to participate in union organizing campaigns without the fear that members of management are peering over their shoulders, taking note of who is involved in union activities, and in what particular ways."[48] In one case, the NLRB found a violation when a supervisor told an employee during an organizing campaign to "be careful" because cameras at the facility were voice-activated and were used to monitor employee conversations.[49] The NLRB found a violation even though the employer proved at trial that the cameras were not operational.[50]

To avoid surveilling union activity or creating the impression of doing so, wearable technology that records and maintains information should be restricted to its lawful purpose. Employees should be trained about the recording capacity of any wearable technology, including how to turn off any recording functions when they are leaving work areas and ending their shifts. Managers should understand that using technology to monitor union activity is illegal, and merely creating the impression that new technology is being used to spy on union activity may improperly discourage union activity and invite litigation. Finally, employing offices should be wary of introducing new technology that could be interpreted as coercive: for instance, introducing surveillance technology during a union organizing campaign in a manner that is "out of the ordinary" could discourage employees from supporting the union's efforts.[51]

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[42] *Aladdin Gaming, LLC*, 345 NLRB 585, 585-86 (2005)
[43] *Id.*
[44] *Advancepierre Foods, Inc.,* 366 NLRB No. 133 at *1 (2018)
[45] *Remington Lodging & Hosp., LLC*, 363 NLRB 53, 61 (2015)
[46] *Elano Corp.*, 216 NLRB 691, 695 (1975)
[47] *Durham Sch. Servs., LP*, 361 NLRB 407, 407 (2014) ("An employer unlawfully creates the impression of surveillance by statements or other conduct which, under all relevant circumstances, would lead reasonable employees to assume that their union activities had been placed under surveillance.")
[48] *Metro One Loss Prevention Servs. Grp. (Guard Div. NY), Inc.*, 356 NLRB 89, 102 (2010), citing *Flexsteel Indus.*, 311 NLRB 257 (1993)
[49] *MEK Arden, LLC*, 365 NLRB 1065, 1074 (2017)
[50] *Id.*
[51] *See* NLRB GC Memo 23-02, "Electronic Monitoring and Algorithmic Management of Employees Interfering with the Exercise of Section 7 Rights" at 3-4

Implications for Other Statutes

In addition to the potential pitfalls discussed above, employing offices that are considering the use of wearable technology in the workplace should also keep in mind the implications that such use might have under various other statutes that apply to the legislative branch through the CAA.

As a general matter, wearable tech requirements – like other terms and conditions of employment – must be applied in a nondiscriminatory manner when it comes to protected classes under the CAA's various laws. In other words, employing offices' policies and practices with respect to wearables must apply equally to employees regardless of race, color, religion, sex, national origin, age, disability, pregnancy, military service, or other classes protected under the antidiscrimination statutes that apply to the legislative branch.

Below are some additional examples of how wearable tech could potentially lead employing offices to violate specific statutes applied by the CAA.

Title VII of the Civil Rights Act of 1964

Title VII applies to the legislative branch through section 201(a) of the CAA and prohibits discrimination on the basis of race, color, religion, sex, or national origin.[52]

- Some employees may have sincerely held religious beliefs that would prohibit them from using or sharing data from wearable tech. Religious accommodations may be required for those employees.

- Wearable technology that uses photoplethysmographic (PPG) green light signaling may be less accurate for people with darker skin tones.[53] Relying on data collected from employees with darker skin may lead employers to run afoul of Title VII's prohibition on discrimination on the basis of race or color.

Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) applies through section 203 of the CAA.[54] Employing offices and legislative branch employees may find that wearable technology offers benefits for tracking employee work time as employees may save time if they can use the technology to clock in or out of their shift and avoid having to go to a separate location. Management may also see a benefit to tracking employees' location during a shift as that could assist them in determining when employees have started and stopped working.

However, employing offices should exercise caution and patience before relying on the technology to determine the hours employees worked. For example, because employing offices

[52] 2 U.S.C. § 1311(a)(1); 42 U.S.C. § 2000e–2(a)(1)
[53] Peter J. Colvonen et al., *Limiting Racial Disparities and Bias For Wearable Devices In Health Science Research,* SLEEP, Oct. 2020, *available at* https://pmc.ncbi.nlm.nih.gov/articles/PMC8477341/ (last visited Apr. 16, 2026)
[54] 2 U.S.C. § 1313

are responsible for tracking employees' work hours under the FLSA,[55] a technological failure within the application or a failure to properly train employees on how to track hours within the system could lead to liability.[56] Finally, employing offices should train employees to turn technology off when outside of working hours and away from their duty station. This will avoid the risk that work and personal time blur, rendering time traditionally considered off-the-clock compensable.

Employee Polygraph Protection Act

The CAA at section 204 applies the Employee Polygraph Protect Act (EPPA) to the legislative branch.[57] To the extent that a wearable technology device constitutes a "lie detector" test, the CAA prohibits an employing office from requiring employees to use it. As defined in the EPPA, "The term 'lie detector' includes a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device (whether mechanical or electrical) that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual."[58]

For instance, one wearable device that has been developed for workplaces is an employee monitoring badge that includes a microphone that assesses an employee's tone of voice.[59] If this device was used by an employing office for the purpose of evaluating an employee's honesty, this could violate the CAA.

Genetic Information Nondiscrimination Act of 2008

The Genetic Information Nondiscrimination Act (GINA) applies to the legislative branch[60] and prohibits employers from discriminating against employees on the basis of genetic information and, in most circumstances, from acquiring employees' genetic information.[61] Genetic information is defined as, with respect to an individual, "information about – (i) such individual's genetic tests, (ii) the genetic tests of family members of such individual, and (iii) the manifestation of a disease or disorder in family members of such individual.[62] Also included is "any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by such individual or any family member of such individual."[63]

It is unclear whether the type of data gathered by wearable tech would qualify as genetic information under the statute, as opposed to medical information that is specifically excluded from the statute,[64] but employing offices should be sure that if any such information is indeed

[55] 29 U.S.C. 211(c); 29 C.F.R. 516.2
[56] *See Walsh v. Med. Staffing of Am.*, 580 F. Supp 3d 216, 236 (E.D. Va. 2022) (employer's failure to include overtime-tracking function in mobile app violated FLSA), *vacated on other grounds*, 2023 WL 3735221 (May 21, 2023)
[57] 2 U.S.C. § 1314
[58] 29 U.S.C. § 2001(3)
[59] Brown, *The Fitbit Fault Line*, *supra* note 4
[60] 42 U.S.C. § 2000ff(2)(B)(iii); 2 U.S.C. § 1302(c)
[61] 42 U.S.C. § 2000ff–1
[62] 42 U.S.C. § 2000ff(4)(A)
[63] 42 U.S.C. § 2000ff(4)(B)
[64] *See* 42 U.S.C. § 2000ff–9

collected from wearable tech, each employee should provide "prior, knowing, voluntary, and written authorization" for the collection of that information.[65]

Disparate impact under other statutes

Given the nature of the biometric data collected by many types of wearable tech, employing offices' actions based on certain aspects of employees' vital signs and other health data could disproportionately affect certain protected classes of workers. For instance, hormonal changes and lack of sleep associated with pregnancy and nursing may affect certain types of data[66] and result in a disparate impact for employees protected by the Pregnant Workers Fairness Act (PWFA), and health changes associated with aging may result in a disparate impact for older workers covered by the Age Discrimination in Employment Act (ADEA).

[65] *See* 42 U.S.C. § 2000ff–1(b)(2)(B)

[66] Elizabeth A. Brown, *A Healthy Mistrust: Curbing Biometric Data Misuse in the Workplace*, 23 STANFORD TECH. L. REV. 252, 286–88 (2020)