Legal Matters®

winter 2018

Fitbits may be helpful tool in employment cases, but reliability concerns still an issue

Wearable technology has exploded in popularity over the past few years as a way of monitoring fitness, athletic performance, health and alertness. Fitbits can track things like calories burned, your heart rate at different times, the steps you've taken over the course of a day or a week, your blood sugar levels and even your sleep patterns.

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This is useful information for people to monitor their own wellness metrics, but it could also potentially be useful evidence in legal disputes. Data from Fitbits and other wearable devices has already been used in personal injury cases in Canada. In one case, an injured woman used a Fitbit to show how much less active she was now than before the accident in question. Fitbit data also helped authorities in Pennsylvania support criminal charges against a woman who falsely reported that a man broke into her house while she was sleeping and raped her. The data showed that she was actually awake and out of bed at the time of the alleged home invasion.

There are plausible scenarios where Fitbit data could help resolve legal disagreements arising in the workplace by boosting a worker's claim of mistreatment or undercutting such an accusation.

For example, let's say a worker sues for handicap discrimination claiming the employer refused to reasonably accommodate the employee's disability by denying a more flexible schedule, a more convenient work location or scaled-down job requirements. If the court ordered the employee to produce wearable device data

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Can a court make you maintain life insurance for your ex?

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In many divorces, one spouse is ordered to make monthly payments for "alimony" or "maintenance" to the other spouse to help that spouse support him/herself. Usually the spouse receiving the payments is entitled to keep receiving them unless he or she remarries or starts "cohabiting" with someone as a partner.

But what if the spouse who's paying the support passes away sooner than expected, leaving the other spouse without any means of support?

In some states, a judge can order one spouse to purchase and maintain a life insurance policy for the benefit of the other spouse to protect against that. This means the spouse pays an insurance company a certain amount of money each month (a "premium") in exchange for the insurance company's promise to pay the ex a certain sum (a "death benefit") if he or she dies.

In many states, this is a pretty new development. For example, Virginia just passed a law giving divorce courts the power to order a support-paying spouse to keep a life insurance policy for the benefit of the recipient spouse. Previously, Virginia only allowed courts to order that such a policy be maintained if it was being used to support their children. Still, the new law has its limits. For example, it doesn't allow a judge to order a paying spouse to go out and buy a brand-new policy for his or her soon-to-be ex. The court can only order that an existing policy continue after the divorce, preventing the paying spouse from changing the beneficiary.

Other states have similar laws. In Minnesota, a court apparently has the power to order that a life insurance policy actually be purchased in certain circumstances. There's no specific statute in place that states this, but courts have ordered spouses to do this without higher courts overturning the orders on appeal.

Regardless of where you live, however, you shouldn't expect a judge to order your ex to purchase or maintain a life insurance policy for your benefit at the drop of a hat. If they allow it at all, they'll take into account things like how old and healthy the paying spouse actually is. That's because insurance companies don't like to insure older, sicker people given the high likelihood they'll be paying a big death benefit before collecting much in premium payments.

Courts will also consider the age and health of the spouse who supposedly needs support. If that person is fairly young and healthy, a court is less likely to enter such an order because that spouse is probably capable of working and contributing to his or her own support. If a judge is considering ordering a life insurance policy as backup for alimony payments, the judge will probably take into account the number of years for which alimony has been ordered. It wouldn't be fair to make someone purchase a policy for a longer term than the alimony term. Like anything else, it all comes down to fairness.

It's also worth mentioning that if you live in a state that does not allow a court to require someone to buy a new policy or maintain an existing policy for the ex's benefit, you might want to check your existing life insurance policies and, if you have someone else in mind who you'd rather receive the proceeds if you pass away, change your beneficiary designations. But it's also a good idea to first talk to a family attorney to find out more about the laws where you live, since these are such complex issues.

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Protect your business idea before you patent

The patent process is lengthy, complicated and expensive. So how can an inventor or small business owner move forward with an innovation? Eventually you're going to have to share your idea with someone who will help develop it, manufacture it, or otherwise bring it to market.

Here are three legal tools you can use, with assistance from an attorney:

► **Work-for-hire agreement:** When you hire someone to help develop your innovation, a work-for-hire agreement establishes that you own all progress and improvements. Anything they do to contribute to your product, you own. Contributing individuals must still be listed on future patent applications, but they will have no ownership rights to your invention.

► **Non-compete agreement:** Employees and contractors should sign a non-compete agreement that prevents them from starting (or working for) a business that threatens yours.

► **Non-disclosure agreement:** Before you disclose product information, require consultants and vendors to sign a non-disclosure agreement. Such an agreement prohibits them from sharing information about your innovation with a third-party.

Beyond these legal agreements, you may file for a provisional patent application, available from the U.S. Patent and Trademark Office (USPTO). The USPTO has an application assistance unit and an inventors' assistance center which can answer general questions, send you the necessary forms and provide non-legal assistance.

Fitbits may be helpful tool in employment cases

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showing his heart rate (which might be relevant to allegations of emotional distress), steps taken during the alleged period of disability (perhaps the worker claims he has walking limitations), or sleep patterns (maybe the worker claims he suffers from a sleep disorder that is impacting his ability to sleep), this could help the employer disprove the claim. From the employee's perspective, such data could boost his case if the employer is disputing that the disability is real.

This doesn't mean that there aren't potential roadblocks to the use of wearable device data in employment cases. The technology is pretty new, and as with any new technology courts might be reluctant to admit it into evidence because they don't trust the reliability of the data. But the potential use of Fitbit data is an issue worth keeping an eye out for, and it's worth making a call to you labor and employment lawyer if you think it might have implications for your case.

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College settles suit brought by suspended student

It's a terrible idea to post offensive things on social media. For one thing, it could cost you your job. That's because while First Amendment "freedom of speech" protections may shield you from being imprisoned or fined by the government, private companies are still free to decide they don't want someone like you representing them.

It could also cost you friendships, because people might see your posts and decide they want nothing to do with you. It reflects badly on your judgment, and there may come a time where you look back at the things you've posted and cringe.

But what if you're a student at a public university and your school seeks to punish you over your use of social media? That's a more complicated situation, and a recent case from Virginia indicates that you might have some recourse.

In that case, "John Doe," a freshman at Virginia Tech who lived in the dormitory where the first killings in the infamous April 2007 mass shooting took place, started a Facebook group chat discussing the shootings. Another participant changed his name and Doe's name in the group chat to those of the shooters in the 1999 Columbine High School massacre in Colorado.

Doe changed his name back, but also changed the cover photo for the group chat to an internet meme showing a "Grim Reaper" video character superimposed over an image of the Columbine cafeteria with the caption, "Die! Die! Dieee!"

University officials saw a screenshot and ordered Doe to attend a student conduct hearing for allegedly violating the school code of conduct. A panel found him responsible and suspended him for the rest of the semester, banned him from student housing for a year and ordered him to attend counseling.

Doe sued Virginia Tech in federal court, claiming the disciplinary proceeding was flawed. Specifically, he argued that he only received four days' notice of the hearing, was never told that he faced suspension and was denied a full opportunity to speak at the hearing. These amounted to violations of his rights to freedom of speech and due process, he claimed.

SchuminWeb via Wikimedia Commons

The case never made it to a jury because the university settled the claim. However, the fact that Virginia Tech settled suggests it believed Doe had a legitimate claim and feared the consequences of letting it go before a jury.

Despite the settlement that this student obtained, court cases can be complicated and dependent on the facts. A different student in a similar situation might not achieve the same result.

This newsletter is designed to keep you up-to-date with changes in the law. For help with these or any other legal issues, please call our firm today. The information in this newsletter is intended solely for your information. It does not constitute legal advice, and it should not be relied on without a discussion of your specific situation with an attorney.

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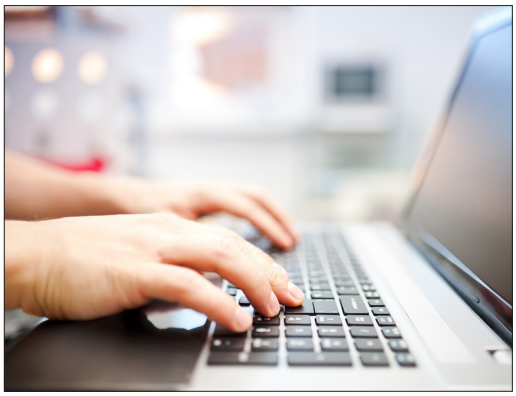
Employees can take CVS to court over unpaid online training time

A class action lawsuit brought by pharmacy technicians in federal court against the CVS drugstore chain highlights the risks employers take by "nickel-and-diming" their workers.



According to the lawsuit, which was filed by technicians in Pennsylvania and New Jersey on behalf of themselves and other CVS pharmacy technicians, the company violated state and federal wage laws and breached their contracts by failing to pay them for time they spent taking a mandatory online training course.

The technicians claim that while CVS let them do some of the coursework during work hours, they had to finish the courses at home on their own time. One of the technicians named in the suit said she was told she'd be paid for this time, but was never given proper timesheets to fill out. Another technician claimed that after repeated inquiries as to how he'd be paid for the training, the CVS pharmacist he worked for said he wouldn't be paid at all.

CVS tried to get the class action thrown out of court, arguing that there was never any agreement that technicians would be paid for the online training time.

But the judge hearing the cases found that CVS's own corporate policy suggested the trainees had to be compensated for the time completing the training.

The technicians still need to win in court. But surviving a motion to dismiss is a pretty high hurdle and CVS is now going to need to spend time and money fighting these claims. Even if the company wins at trial or settles before that point, it could end up costing far more than it would have to simply pay the technicians what they allegedly were entitled to in the first place.

If you are requiring your employees to undergo any sort of mandatory training that takes them off the clock, it's important to talk to an employment attorney and make sure you're not running afoul of any wage laws or contractual provisions that could ultimately ensnare you in a legal case.