

HR Weekly Podcast  
03-05-2014

Today is March 5, 2014, and welcome to the HR weekly podcast from the State Human Resources Division. Today's topic concerns the use of biometrics in the workplace.

Because of the increase in cases where employees clock in and out and fraudulently record inaccurate hours worked, some employers are turning to the use of biometrics. The use of biometrics is an attempt by employers to establish better records of employee hours worked. Also, to avoid potential claims of failure to pay compensation properly including overtime, employers are looking for a more accurate and reliable way to know whether an employee was actually present or not present at work.

For a safer and more secure work environment, some employers are using GPS devices to restrict employees' access to certain areas within the workplace. Using GPS devices allows employers to know the location of a company vehicle or specific employee at any given time. Although GPS tracking has been challenged as too invasive, it may be a generally acceptable manner in which to track employees and company property.

In accordance with the provisions of the Patient Protection and Affordable Care Act, some employers are notifying employees concerning the availability of free biometric screening. Possibly in the future, biometric screening by some employers may become mandatory.

Since employees are being asked for more information more often, employees have concerns that data obtained by employers could be compromised, stolen, or misused. Employees may question what else employers could do with the data they obtain from the employee. Some employees may refuse to allow their employer to record, scan, collect, or obtain biometric data for fear of the misuse of their private information.

In Illinois, the collection and use of biometric information on employees is regulated by law. Also, New York law prohibits employers, unless required by law, from fingerprinting employees. In 2010, proposed legislation to limit biometric data use was defeated in New Hampshire. State legislators may look for ways to limit the collection and use of biometric information by employers.

Under federal or state laws, the use of biometrics can also be challenged based on protected class claims. In a recently filed lawsuit against Consol Energy Inc. and Consolidation Coal Company in West Virginia, the Equal Employment Opportunity Commission alleged religious discrimination in connection with biometric technology for timekeeping. An employee, who was an evangelical Christian, believed there was a connection between submitting to a workplace hand scan and the reference made in the Book of Revelation to the "mark of the beast." The employee requested that his employer allow him to track his time another way so as to accommodate his religious beliefs; however, the employer refused. As a result, the employee filed a charge which led to the lawsuit. As with any employment policy or practice, employers may need to consider objections or accommodation requests connected with the use of biometrics.

Things to consider regarding the use of biometric technology in the workplace are:

- Since laws concerning this issue can change and interpretation of current laws also change, employers should investigate all applicable privacy and relevant laws before implementing a biometric system;
- Employers should have strict security policies and procedures so that all biometric data will be secure;
- Employers should notify employees, in writing, should they intend to use a biometric system, including such things as the reasons for the decision, safeguards that will be put in place, and, if employees have questions or concerns, what they should do; and
- If issues are raised by employees based on disability, religious beliefs, or other areas that may be protected by law, employers should be prepared to consider accommodations or requests.

If you have a question about this topic, please contact your HR Consultant at 803-896-5300. Thank you.