

Google Glass™: The Newest Technology Craze And 'Game-Changer' For Employment Laws

Written By **William A. Oden, III** (wao@wardandsmith.com) and **Devon D. Williams** (ddwilliams@wardandsmith.com)

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Google® recently began marketing its newest product: Google Glass™. Seemingly identical to the futuristic spy gadgets worn by James Bond, Google Glass™ is ahead of its time and on track to make big waves in the workplace, if nowhere else.

The Features of Google Glass™

The prototype of Google Glass™ contains a small camera within a computer module which sits on the corner of what appears to be a normal pair of eyeglasses. Looks can be deceiving, though, as Glass is anything *but* your typical pair of eyeglasses. Essentially, Glass combines into one device all the features of a smartphone, tablet, and video camcorder, along with Wi-Fi capabilities and an app-inspired platform. Probably the coolest element of Glass is that the user, or "wearer," can operate Glass with a simple tilt of the head or a voice command such as "take a picture" or "record a video." In addition to the normal features one would expect from a smartphone or tablet, Glass wearers are able to take videos of anything and everything within their field of vision, while simultaneously streaming the video to the Internet for others to enjoy.

Just as smartphones, Facebook®, and Twitter® have transformed the consumer market and the workplace, so, too, will Glass. Technology remains one step, or five, ahead of the law. Generally, our state and federal legislatures must react to, rather than predict and plan for, the situations that arise with the introduction of new technology gadgets into society. Here, however, it is easy to predict the problems and legal confusion that will coincide with the mass entrance of this revolutionary product into the workplace.

The Workplace Concerns: Privacy, Confidentiality, and Harassment, Oh My!

Perhaps the most innovative, yet troublesome, aspect of Glass to you as an employer is the wearer's ability to discreetly and secretly photograph and record anything. With only a slight tilt of the head, a Glass wearer can begin recording the wearer's surroundings in milliseconds. Because there are not any noticeable movements or audible cues, your other employees, business associates, and customers may never know that their actions or conversations are being recorded. This can, and inevitably will, give rise to claims for privacy violations, as well as federal indictments for electronic eavesdropping.

In addition to developing an infamous reputation for violating the privacy rights of your employees, business associates, and customers, you could also face sexual harassment problems. For instance, a Glass wearer could effortlessly walk into the restroom of the opposite sex and record everyone there and what they're doing, all while streaming the video live to the Internet. Or the Glass wearer may "gaze" a bit too long at a co-worker (or a particular physical attribute of that co-worker), giving the impression that the wearer is using Glass in an inappropriate or offensive manner to photograph or record that co-worker.

Furthermore, unlike a typical computer screen, the inconspicuousness of a Glass "screen" enables Glass wearers to view videos, pictures, and maps without anyone being able to see or hear what the wearer is viewing. At the very least, because you will not be able to effectively monitor what a Glass wearer is doing or watching, Glass will likely multiply the opportunities to distract your employee from assigned tasks and challenge the wearer's work productivity.

On top of the privacy concerns, harassment problems, and productivity implications that will accompany Glass to your workplace, your confidential and proprietary business information will face similar risks. Just as a Glass wearer can videotape an unsuspecting co-worker or covertly watch an inappropriate YouTube® video, the wearer can easily snap pictures of your business's private and confidential documents and processes, and then instantly upload the information to a website or email it to an outside source.

Even in the absence of any ill will on the part of your employee, an inexperienced Glass wearer may inadvertently disclose your confidential documents or record a private business conversation which, if released to the public, could devastate your company.

The Health Insurance Portability and Accountability Act ("HIPAA") creates added concerns if your company manages or receives private health information. Under HIPAA, employers who handle private health information must ensure that consumers' private health information is secure and protected from unauthorized disclosures. Without having a proper handle on the features of Glass or similar products, your company will not be able to effectively protect your employees, customers, or business.

The Common Employer Pitfalls: Avoidance, Denial, and Intolerance

Despite the negative implications that Glass will create for employers, some business owners have already concluded that Glass is worth the trouble. One such individual, a Las Vegas sandwich shop owner, outfitted his employees with Glass for educational and training purposes, as well as evaluating work efficiency and customer satisfaction during the lunch rush. While some strong entrepreneurial-spirited business owners will capitalize on the benefits offered by a new technology like Glass, others will retreat from the situation by avoiding the issues completely, denying any issues exist, or implementing and enforcing a zero-tolerance policy for Glass. None of these reactions is the proper way to respond to the issues presented by emerging technological advances in the workplace.

In 2011, nearly six years after the debut of Facebook®, the National Labor Relations Board ("NLRB") issued several opinions detailing the extent to which employees' social media statements, or "posts," constitute "protected concerted activity" under Section 7 of the National Labor Relations Act ("NLRA"). Until these opinions were released by the NLRB, many employers operated under the assumption that they could prohibit employees from discussing conditions of their employment on their social media sites like Facebook® or Twitter®. However, we have since learned that an absolute ban such as these will clearly violate your employees' Section 7 rights.

Since releasing these comprehensive opinions on social media in the workplace, the NLRB has developed an aggressive approach to enforcing the NLRA and protecting employees' Section 7 rights.

In the same way social media "posting" forced employers to reinvent employment policies on privacy, confidentiality, and workplace decorum, Glass will push the line of what is and is not tolerated by employers – forcing you, as an employer, to, yet again, evaluate your business's personnel policies to adequately and properly address the effects Glass will have on your workplace and work force. Regardless of whether you believe Glass will be an inevitable flop in the marketplace and not worth your time and energy, employers who choose to avoid or ignore the issue will be unable to control the all-too-certain impact Glass will have on

business operations and employee management.

On the other hand, taking a lesson from social media's history with the NLRB, any policy that operates as a total prohibition on Glass in the workplace is likely to raise red flags. Determining the appropriate level of tolerance for Glass will be a difficult balance for employers, but your human resources managers should revisit your business's policies on social media, Internet usage, and confidential information, and sooner rather than later.

Conclusion

Although there are many issues and pitfalls associated with new technology such as Glass, these innovative products are not half-bad. Depending on whether you view the glass (pun intended) as half-full or half-empty, the introduction of Glass into your workplace is not the introduction of a toy that should be ignored. Its benefits could far outweigh its risks. Both you and your employees should venture into this uncharted territory with caution, diligence, and good judgment.

At Glass's current price (\$1,500.00), it is unlikely the average employee will be showing up to work with a new pair of "Glass-es" anytime soon. Nevertheless, as with any other impressive invention, it will not take long for Google® to develop a Glass that is cost-effective for the average consumer. You, as an employer, are well-advised to take preemptive action by reviewing your business's personnel policies dealing with social media, Internet usage, privacy, and confidentiality. You should avoid gut reactions and complete prohibitions on emerging technology, as there can be many benefits to incorporating it into your workplace.

For information on the best practices for handling workplace issues posed by Glass and other technological advancements, both employers and employees should consider consulting legal counsel who is familiar with social media's growing impact on the employment sector before "going where no one has gone before" (except maybe Geordi La Forge).

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