

## VLP Partner Michael Whitener Quoted in the Law360 Article “MLB Wearable Tech Experiment Raises Athlete Privacy Issues”

VLP Partner Michael Whitener, whose practice focuses on data privacy and cybersecurity issues, was quoted in the *Law360* article “MLB Wearable Tech Experiment Raises Athlete Privacy Issues.”

The article reported that Major League Baseball (MLB) will become the first major U.S. professional league to allow players to use wearable fitness devices during games. The MLB has approved the in-game use of wrist-worn biometric devices. The devices, made by Whoop Inc., track several factors around the clock, generating data that can be used to assess the players’ performance, endurance and recovery.

The article noted that these devices open a range of possibilities for athletes, teams and coaches to help optimize performance, but some attorneys raise concerns over who will control the data that is accumulated and how it will be used. If a player’s activities are constantly being monitored, the data accumulated could be used to help an athlete leverage a better contract. At the same time, it could also be used against them.

The article also noted that it is not clear that players even have a right to control the data. If a league allows players to wear devices, it could eventually try to mandate that they wear a specific brand or make it contingent on them giving the league or team access to data collected.

Another area to consider, according to the article, is the issue of the players’ medical information, which is protected by health privacy laws that give a player control over who sees it, particularly the Health Insurance Portability and Accountability Act (HIPAA).

Mr. Whitener said: “From a regulatory perspective, these devices fall through the cracks. HIPAA doesn’t cover these fitness tracking devices so I think when you have the use of a device like Whoop by an organization like Major League Baseball, the question becomes: How are they going to use the information? Health information is always sensitive, but here, [they] are dealing the livelihood of these athletes.”

This article is available online by subscription only. [Click here](#) to access the website.