

FLASHPOINTS (ARCHIVED 2023)

EMPLOYMENT & LABOR LAW FLASHPOINTS APRIL 2023

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Illinois Supreme Court: Federal Labor Law Preempts BIPA Claims Brought by Union Employees

On March 23, 2023, the Illinois Supreme Court held that the federal Labor Management Relations Act, 1947 (LMRA), ch. 120, 61 Stat. 136, can preempt claims brought by union employees under the Illinois Biometric Information Privacy Act (BIPA), 740 ILCS 14/1, *et seq.* The decision, [Walton v. Roosevelt University, 2023 IL 128338](#), is a rare pro-employer ruling in the sphere of BIPA claims and provides employers with unionized workplaces a defense to BIPA claims asserted by employees covered by a collective-bargaining agreement (CBA) with a broad management rights clause. As a result of the ruling, bargaining unit employees subject to broad management rights language within their union contracts will now be required to pursue BIPA claims through the contractual grievance procedure as opposed to filing a lawsuit in state court.

The Illinois Biometric Information Privacy Act

BIPA was enacted in 2008 to regulate the collection, use, safeguarding, handling, storage, retention, and destruction of biometric identifiers and information. 740 ILCS 14/5(g). Unlike other sensitive personal information (e.g., social security numbers), once compromised, an individual's biometric data (*i.e.*, data biologically unique to the individual) cannot be changed. 740 ILCS 14/5(c). BIPA therefore regulates how private entities may collect and handle biometrics and provides a private cause of action for any person "aggrieved by" a violation. 740 ILCS 14/20. BIPA specifically provides that private entities may not "collect, capture, purchase, receive through trade, or otherwise obtain" a person's biometric data without first providing notice to and receiving consent from that person, nor may a private entity "disclose, redisclose, or otherwise disseminate" biometric data without receiving consent. 740 ILCS 14/15(b), 14/15(d). A plaintiff can recover actual damages or statutory damages of \$1,000 (whichever is greater) for each negligent violation of BIPA and actual damages or statutory damages of \$5,000 (whichever is greater) for each reckless or willful violation. 740 ILCS 14/20.

The Labor Management Relations Act

The LMRA, also known as the Taft-Hartley Act, is a federal law that amended the National Labor Relations Act to prohibit certain actions and activities by labor unions. At issue in *Walton* was §301 of the LMRA, which states: "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." 29 U.S.C. §185(a).

Walton's BIPA Claim Against Roosevelt University

Plaintiff William Walton was employed in Roosevelt University's campus safety department from January 2018 through January 2019. 2023 IL 128338 at ¶4. As a condition of employment, Roosevelt required Walton, as well as other similarly situated employees, to provide hand geometry scans into a biometric timekeeping device to clock in and out of work. *Id.* Walton alleged that he was (1) never provided with nor signed a release consenting to the collection, storage, or dissemination of his biometric data; (2) never informed of any biometric data retention policy developed by Roosevelt; and (3) never informed of the specific purpose or length of time for which his biometric information was being stored. *Id.* As part of a class action complaint against Roosevelt, Walton claimed that these actions (and/or inactions) violated BIPA's requirements and sought damages, injunctive relief, and reasonable attorneys' fees. 2023 IL 128338 at ¶¶3 – 4.

In response to Walton's complaint, Roosevelt filed a motion to dismiss, asserting that Walton's BIPA claims were preempted by the LMRA. 2023 IL 128338 at ¶5. Specifically, Roosevelt argued that because Walton was a member of a bargaining unit during his employment, his BIPA claims were preempted because the manner by which an employee clocks in and out was a subject covered by a broad management rights clause within the CBA. *Id.* Citing to a previous decision by the Seventh Circuit Court of Appeals (*Miller v. Southwest Airlines Co.*, 926 F.3d 898, 903 (7th Cir. 2019)), Roosevelt argued that federal law preempts BIPA claims when the claims require interpretation or administration of a labor contract. *Id.* The circuit court denied Roosevelt's motion to dismiss but certified the question of whether §301 of the LMRA preempted BIPA claims brought by bargaining unit employees covered by a union contract for interlocutory appeal. 2023 IL 128338 at ¶¶6 – 7.

The appellate court answered the certified question in the affirmative, citing to the Seventh Circuit's decision in *Fernandez v. Kerry, Inc.*, 14 F.4th 644 (7th Cir. 2021), which had indistinguishable relevant factual and legal circumstances to the case at hand. 2023 IL 128338 at ¶8. As such, the appellate court's objective on appeal was to decide whether the *Fernandez* ruling on a matter of federal law lacked logic or reason and was, thus, wrongly decided. *Id.* In *Fernandez*, the Seventh Circuit explained that when the employer invokes a broad management rights clause from a CBA in response to a BIPA claim, the claim is preempted because it would require an arbitrator to determine whether the employer and union bargained over the issue or whether the union consented on the employees' behalf. 2023 IL 128338 at ¶9. In concluding that *Fernandez* reached the proper conclusion, the appellate court found that because the CBA contained a broad management rights clause, the timekeeping procedures are a topic for negotiation that was clearly covered by the CBA and therefore required the interpretation or administration of the CBA. 2023 IL 128338 at ¶10. Even though there was no reference to biometric information within the CBA, the appellate court found that federal courts interpreting labor contracts containing similar management rights clauses found that the broad authority granted to employers is sufficient to preempt BIPA claims. 2023 IL 128338 at ¶11. Ultimately, the appellate court noted that Walton and other bargaining unit members were not prohibited from pursuing action against Roosevelt for a violation of their right to biometric policy but that such action must be pursued through the CBA's grievance procedure rather than in state court. 2023 IL 128338 at ¶12.

Supreme Court Upholds Decision To Preempt Walton's BIPA Claim

On appeal, because the U.S. Supreme Court had not addressed the specific issue presented (*i.e.*, whether BIPA claims brought by unionized employees subject to a CBA are preempted by federal law), the court turned to lower federal courts to guide its analysis. 2023 IL 128338 at ¶25. In closely analyzing the Seventh Circuit's decisions in *Miller* and *Fernandez*, which Walton argued were outside of logic and reason and, therefore, wrongly decided, the court noted that BIPA "provides that a worker or *an authorized agent* may receive necessary notices and consent to the collection of biometric information." [Emphasis added by *Miller* court.] 2023 IL 128338 at ¶28, quoting *Miller, supra*, 926 F.3d at 903. The court, in reviewing the management rights language within the CBA that specified the terms and conditions of Walton's employment with Roosevelt, stated that the case was "similar" to *Fernandez*, in which the Seventh Circuit held that when an employer invokes a broad management rights clause in response to a BIPA claim, the claim is preempted because it is up to an arbitrator to determine whether the employer properly obtained the union's consent. 2023 IL 128338 at ¶30.

After reviewing both decisions from the Seventh Circuit, the court did not agree with Walton's contention that either decision was without logic or reason, holding that, considering the language in the CBA and the LMRA, it was both logical and reasonable to conclude that any dispute regarding employee biometric information must be resolved according to federal law and the CBA. 2023 IL 128338 at ¶31. The court therefore deferred to the uniform federal caselaw on the matter and concluded that when an employer invokes a broad management rights clause from a labor agreement in response to a BIPA claim from a union employee, there is an arguable claim for preemption. *Id.*

Key Takeaway

The *Walton* decision is notable for those employers who are faced with BIPA claims from union employees. In a legal landscape where employers have had minimal success in defending against BIPA claims, this decision provides employers with unionized workforces a defense to any future BIPA lawsuits lodged by bargaining unit

employees. Specifically, employers may now move to dismiss such claims as preempted by federal law and argue they are instead subject to the contractual grievance procedure as the manner to resolve a dispute pertaining to collection and/or use of employee biometric data. However, while the court generally held that a BIPA claim is preempted when a “broad” management rights clause is invoked by the employer, the question remains as to what specific criteria and/or language is necessary to characterize a management rights clause as sufficiently “broad” enough to preempt BIPA claims. The *Walton* decision is another example of the value that a broad and encompassing management rights contractual provision can provide to employers when addressing various employment and personnel issues involving unionized employees. Employers should continue to be vigilant in prioritizing the inclusion of strong management rights language within any union contract and may even consider negotiating contract language that expressly provides the employer with the right to collect and store employee biometric data.

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