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Good News For Illinois Employers: Illinois Supreme Court Holds That Federal Labor Law Preempts BIPA Claims

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Illinois Biometric Information Privacy Act (BIPA) case law continues to develop on as the Illinois Supreme Court has issued yet another BIPA decision. This time, however, the court has provided Illinois employers with a bit of good news. In March 2023, the Illinois Supreme Court held that Illinois BIPA allegations by union-represented employees are preempted by federal law.

In *Walton v. Roosevelt Univ.*, plaintiffs alleged that as a condition of employment, Roosevelt required Walton, and other employees, to enroll scans of their hand geometry onto a biometric timekeeping device for timekeeping purposes. *Walton v. Roosevelt Univ.*, 2023 IL 128338. As the proceedings developed, Roosevelt University argued that Walton's claims under the Privacy Act were preempted by the Labor Management Relations Act (LMRA) because time keeping measures were subject to the broad management-rights clause in the CBA. Through various appeals, the Illinois Supreme Court was tasked to determine whether the LMRA preempted claims under BIPA.

In answering this question, the Court was persuaded by the federal courts' interpretations of federal law. *Walton v. Roosevelt Univ.*, 2023 IL 128338 (Mar. 23, 2023). In particular, the Seventh Circuit's decision in *Miller v. Sw. Airlines Co.* explained that under BIPA an authorized agent may receive the

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requisite notices and consent to the collection of biometric information. Moreover, the court found that unions were authorized agents of employees under the statute, and that the timecard management is a mandatory subject of bargaining. And, whether the union authorized use of employees' biometric data or consent to the collection of the data through a management-rights clause is a question for an adjustment board. Therefore, the Seventh Circuit held the plaintiffs' claims under BIPA were preempted by the Railway Labor Act.

Similarly, in *Fernandez v. Kerry, Inc.*, the Seventh Circuit found the preemption analysis in *Miller* applicable to section 301 of the LMRA. Id. at 646. The *Fernandez* court determined that a broad management-rights clause exists in a CBA can preempt a BIPA claim, pursuant to the LMRA, because the express language in the CBA provision stated that timekeeping and identification systems were bargaining topics between the union and management. Preemption can also occur when the CBA expressly consents to the collection of biometric data.

Applying the holdings of *Miller* and *Fernandez* the Illinois Supreme Court found that when an employer invokes a broad management rights clause from a CBA, such clause will preempt a BIPA claim brought by bargaining unit employees. Thus, the court held that Walton's Privacy Act claims are preempted by the LMRA.

This decision is in favor of employers who employ union-represented employees and suggests that employers review their CBAs and management rights provisions. This ruling, similar to the ruling in *Tims*, highlights the precautionary measures employers should implement to ensure compliance with BIPA.