

EMPLOYER LAW BLOG

# BREAKING: Illinois Supreme Court Rejects Workers' Compensation Defense to BIPA Claims

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The Illinois Supreme Court answered “no” to the question of whether the Workers' Compensation law in Illinois precluded claims for statutory damages under BIPA. In short, the Court agreed with the lower courts that the injuries addressed by BIPA—that is, the loss of privacy rights—were not the type of physical or psychological injuries in the workplace covered by the Workers' Compensation law.

This is a tough decision to swallow for many Illinois employers who have unintentionally or inadvertently run afoul of an unusual statute that most states do not have. For example, a common pitfall has been the use of fingerprint scanners for employees to clock in and out at work without obtaining necessary written releases. Absent knowledge of this unusual law, one would not think such a timekeeping practice could—much less should—threaten the existence of a business.

Nonetheless, BIPA provides for severe penalties in the event of violations—financial damages which, in the aggregate, can be very substantial and effectively force a company out of business.

In its decision, the Illinois Supreme Court recognized the reality of these “substantial consequences,” including “financial ruin,” that can flow from employers being exposed to “devastating class actions” under BIPA.

However, the Court observed that the Illinois legislature seemed to have intended BIPA “to have substantial force” and that, ultimately, it was up to the legislature to make any changes to the law to address this issue.

The simple takeaway from this case (and many other BIPA cases) is that this is a very punitive law. Heightened caution and care should be taken by employers, with the assistance of counsel, when contemplating or planning on handling or using any biometric identifiers or information in the employment context.

We are here to provide such counsel, so do not hesitate to contact a member of our Labor & Employment Team with any of your questions or concerns.