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Insights

Illinois Supreme Court Rejects Workers' Compensation Argument for Limiting Data Privacy Damages

After the Illinois Supreme Court's ruling in *McDonald v. Symphony Bronzeville Park, LLC, et al.* on February 3, 2022,¹ threats of employee class actions against Illinois businesses for violations of the Biometric Information Privacy Act (BIPA) loom larger than before. *McDonald* holds that the Illinois Workers' Compensation Act's exclusivity provisions do not bar BIPA claims brought by employees, eliminating a potent class action defense for businesses. As a result, employees may litigate individual and class damages claims against employers in court, as opposed to pursuing limited individual remedies before the Workers' Compensation Commission.

In *McDonald*, the plaintiff filed a putative class action against her former employer, Symphony Bronzeville Park, LLC (Bronzeville), a medical care facility, alleging that Bronzeville violated BIPA by collecting employees' fingerprints without following BIPA's prescribed protocol. Bronzeville sought to dismiss this claim, arguing that the Illinois Workers' Compensation Act² provides the exclusive remedy for accidental workplace injuries, including injuries arising under BIPA.

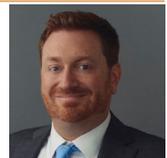
The circuit court rejected Bronzeville's argument, as did the appellate court on interlocutory appeal. The Illinois Supreme Court agreed with the lower courts, ruling that the Workers' Compensation Act does not preempt employee claims for statutory damages under BIPA.

To understand the *McDonald* decision and its impact, it helps to provide some background on BIPA and the Workers' Compensation Act.

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BIPA

BIPA imposes restrictions on when and how private entities may collect, retain, use, disclose, and destroy “biometric identifiers” and “biometric information,”³ which includes “a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry.”⁴ Among other restrictions, entities collecting biometric identifiers must provide certain information to the person whose data is being collected and obtain a signed written release before collecting the data.⁵

BIPA’s provisions are enforceable through private rights of action.⁶ The penalties can be steep. For each violation, a prevailing party may recover:

- (1) Liquidated damages of \$1,000 or actual damages, whichever is greater, for negligent violations;
- (2) Liquidated damages of \$5,000 or actual damages, whichever is greater, for intentional or reckless violations;
- (3) Reasonable attorneys’ fees and costs, including expert witness fees and other litigation expenses; and
- (4) Other relief, including an injunction, as a state or federal court may deem appropriate.⁷

Illinois Workers’ Compensation Act

The Illinois Workers’ Compensation Act provides financial protection to workers for accidental injuries arising out of and in the course of employment. It imposes no-fault liability upon employers and, in return, prohibits lawsuits under common law by employees against an employer.⁸ The Workers’ Compensation Act’s exclusive remedy provision serves as a *quid pro quo*: “the employer relinquishes certain defenses, and the employee relinquishes certain recoverable elements of damage of a common-law negligence action.”⁹ As a result of this trade-off, “the [Compensation] Act generally provides the exclusive means by which an employee can recover against an employer for a work-related injury.”¹⁰

McDonald Exempts BIPA Suits from the Workers’ Compensation Act

Employers collecting biometric data from employees for purposes such as timekeeping and point of sale systems have been frequent targets of BIPA suits.¹¹ Bronzeville, however, conceived a novel argument for limiting the damages available in such suits: preemption by the Workers’ Compensation Act. Unfortunately for Bronzeville and other employers, the Illinois Supreme Court held



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that BIPA claims by employees fit within one of the statutory exceptions to the Workers' Compensation Act's exclusive remedy provision.

In *McDonald*, it was conceded that the plaintiff's alleged injury was accidental, arose from her employment, and occurred during the course of employment. At issue, then, was the fourth exception to the Workers' Compensation Act's exclusive remedy provision—namely, whether the plaintiff's and putative class's alleged injuries are “compensable” under the Workers' Compensation Act. According to the Court, the answer to that question depends upon the type of injury sustained. The nature of the injury matters, the Court reasoned, “because the exclusivity provisions, by their express language, only apply if the injury is one that is covered by the [Workers'] Compensation Act.”¹²

Since the Workers' Compensation Act covers all accidental deaths, injuries, and illnesses, the test for whether an employee suffers an injury under the Act is “whether there was a harmful change in the human organism—not just its bones and muscles, but its brain and nerves as well”—arising out of and in the course of employment.¹³ The Court concluded that injuries under BIPA cannot satisfy this test. In particular, the Court held that “the personal and societal injuries caused by violating [BIPA]'s prophylactic requirements are different in nature and scope from the physical and psychological work injuries that are compensable under the [Workers'] Compensation Act.”¹⁴ Put another way, the “lost opportunity” to withhold consent and preserve biometric privacy “is not the type of injury that categorically fits within the purview of the [Workers'] Compensation Act.”¹⁵

Nor does BIPA's plain language support the conclusion that BIPA claims are covered under the Workers' Compensation Act. The Court zeroed in on BIPA's definition of a “written release,” which means “informed written consent or, in the context of employment, a release executed by an employee as a condition of employment.”¹⁶ According to the Court, this definition shows “the legislature was aware that [BIPA] claims could arise in the employment context, yet it treated [employee claims] identically to nonemployee claims except as to permissible methods of obtaining consent.”¹⁷ The Court therefore concluded that BIPA's text, which mentions its application in the employment context, further supports the conclusion that BIPA injuries fall outside the reach of the Workers' Compensation Act's exclusive remedy provisions.

Conclusion

McDonald confirms that employee class actions under BIPA are here to stay. *Amici* supporting Bronzeville's position cautioned that allowing BIPA claims to proceed in court—as opposed to review by the Workers' Compensation Commission under the parameters of the Workers' Compensation Act—will “expose employers to

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potentially devastating class actions that can result in financial ruin.”¹⁸ The Court, too, acknowledged the “substantial force” and “the substantial consequences the legislature intended as a result of [BIPA] violations.”¹⁹ For those reasons, the Court forewarned that entities subject to BIPA “have the strongest possible incentive to conform to the law and prevent problems before they occur and cannot be undone.”²⁰

The Illinois House of Representatives recently introduced a bill amending BIPA and the Workers’ Compensation Act to provide that BIPA actions against employers must be adjudicated in accordance with the Workers’ Compensation Act.²¹ It remains to be seen whether political will exists to enact this legislature. In the meantime, employers should heed the Court’s warning by strictly enforcing policies on the collection and use of employees’ biometric information. The best defense to a BIPA claim is taking proactive measures to ensure compliance before such a claim is ever brought.

¹ *McDonald v. Symphony Bronzeville Park, LLC*, 2022 IL 126511 (February 3, 2022).

² 820 ILCS 305/1 *et seq.*

³ 740 ILCS 14/1 *et seq.*

⁴ *Id.* § 10.

⁵ See *id.* § 15(b). For more background on BIPA, see Brent Austin, Daniel Birk, & J.D. Tripoli, “[Illinois’ Broad Biometric Data Privacy Law](#),” Eimer Stahl Insights, Feb. 2021, <https://www.eimerstahl.com/publication-5007>.

⁶ *Id.* § 20.

⁷ *Id.*

⁸ 820 Ill. Comp. Stat. Ann. 305 §§ 5(a), 11.

⁹ *McDonald*, 2022 IL 126511, ¶ 30.

¹⁰ *Id.* at ¶ 32. An employee “can escape the exclusivity provisions of the [Compensation] Act if the employee establishes that the injury (1) was not accidental; (2) did not arise from his employment; (3) was not received during the course of employment; or (4) was not compensable under the [Compensation] Act.” *Folta v. Ferro Eng’g*, 2015 IL 118070, ¶ 14.

¹¹ See “[Illinois’ Broad Biometric Data Privacy Law](#),” *supra*.

¹² *McDonald*, 2022 IL 126511, ¶ 40.

¹³ *Id.* at ¶ 42.

¹⁴ *Id.* at ¶ 43.

¹⁵ *Id.* at ¶ 44.

¹⁶ 740 ILCS 14/10.

¹⁷ *McDonald*, 2022 IL 126511, ¶ 45.

¹⁸ *Id.* at ¶ 47.

¹⁹ *Id.* at ¶ 48.

²⁰ *Id.*

²¹ See Bill Status of H.B. 5396, available at <https://tinyurl.com/26pp2ndv>.

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