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ILLINOIS SUPREME COURT LIMITS APPLICABILITY OF BIOMETRIC PRIVACY CLAIMS FOR EMPLOYEES COVERED BY COLLECTIVE BARGAINING AGREEMENTS

On March 23, 2023, the Illinois Supreme Court decided *Walton v. Roosevelt University*, 2023 IL 128338. In *Walton*, the Court held that Section 301 of the Labor-Management Relations Act ("LMRA") preempts Illinois state law claims arising under the Biometric Information Privacy Act ("BIPA") asserted by bargaining unit employees covered by a collective bargaining agreement ("CBA") when the CBA contains a broad management rights clause—even if that clause does not mention the activity for which the employer collected biometric data. The result is that Illinois bargaining unit employees covered by CBAs with broad management rights language will be prevented from bringing BIPA lawsuits in the majority of cases.

In *Walton*, Plaintiff William Walton worked for Defendant Roosevelt University. Walton was a member of SEIU Local 1 and covered by a CBA. Roosevelt required biometric data from Walton—a hand scan—to clock in and out. Roosevelt never gave notice of this practice to Walton, never got his consent, and never promulgated a biometric data policy. Walton sued, alleging violations of BIPA sections 15(a), (b), and (d). In response, Roosevelt moved to dismiss based on Walton's CBA-covered status. Roosevelt argued that the manner in which an employee clocks in and out was covered by the CBA's management rights clause. As a result, Roosevelt argued, the claims required the interpretation of a CBA, making them preempted under Section 301.

The Court, citing the Seventh Circuit cases *Miller v. Southwest Airlines Co.*, 926 F.3d 898 (7th Cir. 2019), and *Fernandez v. Kerry, Inc.*, 14 F.4th 644 (7th Cir. 2021), agreed with Roosevelt. The Court noted that it had to follow federal court decisions on preemption unless they were "without logic or reason," no matter how the Court would have ruled on its own. In *Miller* and *Fernandez*, BIPA claims brought by CBA-covered employees were found to be preempted due to the CBAs' management rights clauses. *Walton* reached the same result.

In *Miller*, the Seventh Circuit noted that section 15(b) of BIPA allows an employee's union to receive notice of data practices and to consent. It further noted that clocking in was a mandatory subject of bargaining. The Seventh Circuit thus concluded that the issue in *Miller* was whether the union consented to the employer's actions through the management rights clause or otherwise. Therefore, the dispute was about what the CBA said, and whether preemption was appropriate under the Railway Labor Act. *Fernandez* addressed virtually the same issue as *Miller*, but involved Section 301, like the instant case. In *Fernandez*, the Seventh Circuit held stated that when an employer invokes a broad CBA management rights clause in response to a BIPA claim, the claim is preempted by Section 301 and an arbitrator must determine whether the employer obtained the union's consent. The *Walton* Court, examining *Miller* and *Fernandez*, concluded that they were not without logic or reason.

The Court then turned to the management rights clause in the instant case, which referred to Roosevelt's rights to direct employees and control all operations, but did not mention clocking in or biometric data. The Court, however, noted the breadth of the clause and its similarity to the clause in *Fernandez*. The Court followed *Miller*

and *Fernandez* and held that the dispute had to be resolved according to federal law and the parties' CBA. The court concluded that the BIPA claims were preempted.

Walton is a discouraging departure from recent cases that recognized and reinforced the vitality of BIPA. Under *Walton*, bargaining unit members may not bring BIPA claims if their CBA has a broad management rights clause, as most contracts arguably do. This appears to vastly expand the scope of claims that are automatically preempted under Section 301 and makes it easier for employers to dismiss legal claims based on mere assertions that a management rights clause may apply. This application of the management rights clause is not consistent with decisions from the NLRB or the Illinois Appellate Court that have rejected employer claims that statutory rights have been waived based on those clauses. Illinois unions should review all of their contracts to determine whether the CBAs' language could be read as waiving claims or giving consent to the collection or dissemination of biometric data under BIPA.

During collective bargaining, unions may want to protect bargaining unit members' rights to bring claims under BIPA by including specific language clarifying that nothing in the contract waives or releases BIPA claims or consents to any of activities covered by BIPA. It is also important to note the possible effect of *Walton* on other state statutes. *Walton* can, and should, be read as BIPA-specific, meaning employers could not use it automatically to nullify other state protections for bargaining unit employees. *Walton* addressed only BIPA claims, and was decided based on prior cases that addressed only BIPA claims. The Seventh Circuit emphasized the "legally authorized representative" language in BIPA; when a state statute does not have this language, an employer will find it harder to argue that a union has consented to its actions in violation of state law. However, because the opinion in *Walton* is broadly written, it is possible that employers will seek to expand the scope of that ruling to other, unrelated state law claims. It is troubling that the Court was so willing to read so much authority in a broad management rights clause, and that willingness may encourage employers to seek to nullify other state statutes. We will continue to monitor developments and assist unions in enforcing state laws against employers in order to mitigate any harm caused by this decision.

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