

Illinois Appellate Court Reaches Important Holding Related To Biometric Information Privacy Act

04.19.2018

In prior *Fast Laner* editions, we highlighted the relatively new Illinois Biometric Information Privacy Act (BIPA), a law that addresses the collection, storage and use of the “biometric information” of individuals by private entities. “Biometric information” includes retina or iris scans, fingerprints, voiceprints, and scans of hand and face geometry.

Employers covered by BIPA, among other measures, must develop and distribute a written policy that addresses various issues related to biometric information, and obtain written consent from employees before collecting, capturing, or otherwise obtaining their biometric information.

Significant damages and attorneys’ fees can be awarded under BIPA, and alleged violations of the statute sometimes involve large numbers of potential plaintiffs. As a result, a wave of class action lawsuits have been filed under BIPA.

Recently, however, in *Rosenbach v. Six Flags Entertainment*, the Illinois Appellate Court (Second District) held that a mere technical violation of BIPA, standing alone, does not entitle an individual to damages. Rather, to qualify as an “aggrieved” person under BIPA, a plaintiff must allege an “injury or adverse effect” (although the injury need not be pecuniary in nature).

While the *Rosenbach* decision may prove helpful to employers defending BIPA lawsuits, covered employers should implement the basic steps now to comply with the law and avoid unnecessary litigation.

Attorneys

Matthew P. Kellam

Practice Areas

Class Actions / EEOC
Pattern and Practice

EEO and Other Corporate
Investigations

Employment Counseling

Employment Torts