

UNDERSTANDING BIPA



BIPA – The Class Action De Jour

The Illinois Biometric Information Privacy Act (BIPA) is the latest vehicle for the plaintiff's bar to attack businesses of all kinds and all sizes. Biometric information is, among other things, a fingerprint, retina scan, voiceprint, hand scan, or face geometry. BIPA applies to virtually all entities, no matter how big or small. And many companies, even those collecting biometric information, have no idea BIPA even exists. By the time they discover it does, the harm may have already been done.

While BIPA is most often used by employees to assert class action claims against their employers, BIPA is not exclusively an action brought in the employment context. BIPA class actions have been filed by employees, consumers, licensees – pretty much anyone in Illinois whose biometric information has been collected.

What is BIPA?

- BIPA prohibits entities from collecting biometric information unless the entity notifies the individual that biometric information is being collected, and the purpose for the collection, and, critically, the individual from whom the biometric information is collected must give his or her written consent.
- The entity is further prohibited from selling or disclosing such biometric information.
- If an entity is in possession of biometric information, it must have a publicly-available written policy concerning the preservation and destruction of such information, and must ensure that appropriate security measures are taken to protect the biometric information.
- BIPA was enacted with little fanfare in 2008, and it was not until January 2019 that the floodgates opened after the Illinois Supreme Court's *Rosenbach* decision held that a BIPA plaintiff **need not have suffered an actual injury** (e.g., stolen or compromised biometric information) to have standing to sue under the law.
- Since then, hundreds of BIPA class action lawsuits have been filed in Illinois, with Cook County being the epicenter of this wave of litigation. BIPA class actions are filed virtually every day.

Because of the nature of the conduct BIPA is ostensibly designed to protect against, BIPA claims are uniquely amenable to class action litigation. Typically, employers and other entities will use biometric information as a time clock or for security clearance. As a result, biometric information is likely gathered from a sizeable group of people, and in the same manner. Moreover, the statute provides for damages of \$1,000 to \$5,000 per violation. These statutory damages can add up – just ask Facebook, which agreed to shell out \$550M to settle a BIPA class action, but was recently told by the court that the price tag may not be high enough.

Learn More

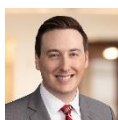
Fortunately, Barnes & Thornburg has seasoned workplace class and collective action litigators in our Chicago office experienced in defending this class action de jour.

Our team has not only defended a number of these cases, but they have also [written on recent developments](#) and lectured extensively on this topic. So whether it is counseling on how to mitigate risk or defending your company in litigation, we have you covered.



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