

IL Supreme Court to Consider Impact of Workers' Compensation Exclusive Remedy Rule on BIPA Claims

Labor & Employment Law Update

By Molly Arranz on January 29, 2021

Back in October 2020, we reported on the *McDonald v. Symphony Bronzeville Park LLC* decision, where the Illinois Court of Appeals for the First District ruled that the state Workers' Compensation Act (WCA) and its exclusivity provisions **do not bar** claims for statutory damages under BIPA. The decision found that while the WCA provides remedies to workers that have sustained an actual injury, BIPA provides statutory, liquidated damages to employees who allege privacy right violations even when there is no injury and as a result, employees could continue to pursue BIPA damages against their employers. We did not believe this outcome should have come as a surprise given past rulings on what employees or consumers needed to show to successfully pursue BIPA claims. In light of the First District's ruling, the WCA exclusivity defense was no longer viable in relation to BIPA claims. At the time, we anticipated the case would be appealed to the Illinois Supreme Court.

Indeed, on Wednesday January 27th, the Illinois Supreme Court granted leave to appeal the appellate court ruling that BIPA claims are not the type of injuries falling under the scope of the WCA. The Supreme Court's decision later this term ought to provide clarity to class action litigants across the state. Of course, BIPA claims continue to be filed and employers ought to be mindful and ensure compliance with BIPA requirements by:

- Analyzing the type of biometric information being collected
- Evaluating what BIPA compliant disclosures are in place
- Ensuring that a BIPA policy is in effect and properly applied
- Staying alert and on top of court decisions and pending regulations

For our part, we will monitor the status of the *Symphony Bronzeville Park* appeal and ongoing BIPA litigation and will continue to provide updates as needed.