It's Now Official –- A Union Worker's BIPA Claims are Subject to Federal Labor Law Preemption

Labor & Employment Law Update

By Molly Arranz and Jeffrey Risch on March 27, 2023

In a rare win for employers, on March 23, 2023 the Illinois Supreme Court issued its decision in *Walton v. Roosevelt University*, affirming dismissal of claims brought under the Biometric Information Privacy Act (BIPA) by a union worker trying to pursue a class action lawsuit against his prior employer due to the employer requiring employees to enroll a scan of their hand geometry onto a biometric timekeeping device in order to clock in and out for work. Specifically, the Court held that federal labor law -- Section 301 of the Labor Management Relations Act (LMRA) -- preempts BIPA claims brought by union workers where their underlying collective bargaining agreement (CBA) contains a broad management rights provision. The ruling requires workers, whose employment is controlled by a CBA containing a broad management rights clause (which is common), to proceed with BIPA claims through the collective bargaining process; not through the courts. This decision serves as a major blow to those pursuing class action BIPA lawsuits where a union contract is in place. To be more clear, this decision can effectively shut down and close out BIPA lawsuits and the dreaded class action lawsuit.

In the underlying BIPA lawsuit, Roosevelt University moved to dismiss the claims as being preempted by the LMRA. The plaintiff in the case was a union worker governed by a union contract that contained a common management right's clause that essentially provided, in relevant part: *the Employer shall have the exclusive right to direct the employees covered by this Agreement… and among the exclusive rights of management… the right to plan, direct, and control all operations performed in the building… and to direct the working force.* Roosevelt argued that the management rights clause was broad enough to cover the manner by which all union workers "clocked" in and out of work.

The Cook County Circuit Court denied the defendant's motion. However, on appeal, the Appellate Court reversed. The Appellate Court noted that BIPA prohibits private entities from collecting biometric information without obtaining consent from the [worker] *or the [worker's] legal authorized representative.* The Appellate Court also recognized that the 7th Circuit Court of Appeals has previously found that federal labor law can preempt BIPA claims when the claims

require an interpretation or administration of a CBA. On final review of the issue, the Illinois Supreme Court agreed and went on to conclude that since the established federal case law was not "without logic and reason" it unanimously held that when an employer invokes a CBA's broad management rights clause in response to BIPA claims brought by a union worker, the plaintiff's claims are preempted by the LMRA. As such, the plaintiff must proceed with such disputes through the underlying CBA and applicable collective bargaining process vs pursuing such claims through the courts.

What to do now? Employers with a unionized workforce operating in states where employee privacy rights are subject to legal challenges (i.e. Illinois' BIPA law), should carefully review their CBA(s) and specifically note the language contained in any management rights provisions. For many reasons, it is critical for unionized employers to maintain broad management rights. As the *Walton* decision reflects, federal labor law preemption is a powerful mechanism for employers to avoid wildly out-of-control lawsuits when faced with employee legal challenges. This decision also reminds private union employers to have competent and experienced labor law counsel at the negotiation table (or, at a minimum, working behind the scenes to ensure the CBA's management rights provisions are written as broad as possible). Also, not to be a Debbie Downer here, but… this decision very well may result in the plaintiff-friendly Legislature to amend BIPA to try and reverse this decision. Further, the National Labor Relations Board is also looking at every angle to erode an employer's management rights protections in existing and future CBAs. It is important for employers to continue to voice their concerns to key trade associations and to their elected representatives in the fight and struggles related to expansive BIPA liabilities and other privacy laws.