

Supreme Court Rules That BIPA Claims Are Not Barred By Ill. Workers' Compensation Act

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On February 3, 2022, the Illinois Supreme Court [ruled](#) that the exclusivity provisions of the Illinois Workers' Compensation Act ("IWCA") do not bar a claim for statutory damages under the Illinois Biometric Information Privacy Act ("BIPA"), 740 ILCS § 14/1, et seq. *McDonald v. Symphony Bronzeville Park, LLC*, 2022 IL 126511.

Background

On August 17, 2017, the plaintiff filed a class action lawsuit against Symphony Bronzeville Park, LLC ("Symphony") alleging that Symphony had violated various statutory requirements of BIPA. Symphony moved to dismiss, arguing in part that the claims were barred by the exclusive remedy provisions of the IWCA. The Cook County Circuit Court denied Symphony's motion, rejecting the argument that the IWCA preempted any claims for statutory damages under BIPA. Symphony appealed and, in September 2020, the Illinois Appellate Court *affirmed*. *Symphony appealed to the Illinois Supreme Court*.

Illinois Supreme Court's Decision

The Illinois Supreme Court affirmed. It reaffirmed that the test for whether an employee suffers a compensable injury under the IWCA is "whether there was a harmful change in the human organism—not just its bones and muscles, but its brain and nerves as well." *Id.* at ¶ 42. By contrast, violations of BIPA cause "personal and societal injuries," which are "different in nature and scope from the physical and psychological work injuries that are compensable under the [IWCA]." *Id.* Accordingly, the Illinois Supreme Court found that the Illinois Appellate Court correctly determined that the alleged violations of BIPA at issue were not the type of injuries that are compensable under the IWCA.

Notably, the Illinois Supreme Court was not moved by Symphony’s argument that ruling in plaintiff’s favor would mean that Illinois employers would have little protection from alleged injuries stemming from technical violations of BIPA and would expose employers to “potentially devastating class actions that can result in financial ruin.” *Id.* at ¶¶ 46-49. The Court found that issue “more appropriately addressed to the legislature.” *Id.*

Conclusion

McDonald eliminates a key defense on which defendant-employers were relying. Many BIPA cases were stayed to await this ruling and will likely now proceed. We will continue to monitor developments relating to this decision.

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