

Employers Need To Be Mindful Of The Continued Impact Of The Illinois Biometric Information Privacy Act

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The Illinois Biometric Information Privacy Act (BIPA) will continue to garner significant attention in 2019. BIPA 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 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. Late in 2017, in *Rosenbach v. Six Flags Entertainment*, the Illinois Appellate Court 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,” such as their biometric information being compromised. *Rosenbach* is a helpful decision for employers defending BIPA lawsuits.

The *Rosenbach* decision has been appealed, however, and is currently pending before the Illinois Supreme Court. It is expected that the Supreme Court will issue a decision in *Rosenbach* in 2019, which will impact pending BIPA litigation matters and any private entities that are covered by this law.

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Employers should remain aware of BIPA, determine if they are covered and, if so, ensure that they are compliant with the law.