

# Illinois Appellate Court Agrees with Seventh Circuit: Federal Labor Law Preempts BIPA Claims

AUTHOR: JAMES KEANEY

This is the same conclusion recently reached by the Seventh Circuit Court of Appeals in *Fernandez v. Kerry, Inc.*, 14 F.4th 644 (7th Cir. 2021).

The case at issue—*Walton v. Roosevelt University*—involved BIPA claims by union employees based on the university's use of a hand scanner to have them clock in and out for work. The union employees alleged the university did not obtain the necessary informed consent, did not follow the required retention policies with respect to their biometric information, and unlawfully disclosed this information to a third-party payroll company without their consent.

The university countered that how employees clocked in and out for work was covered by the collective bargaining agreement between them, noting the United States Supreme Court has held the LMRA preempts any claims that depend substantially on an analysis of a collective bargaining agreement.

The trial court disagreed with university, concluding the BIPA claims did not require or depend upon an analysis of the collective bargaining agreement. However, the appellate court reversed.

On appeal, the court reasoned timekeeping procedures and employee privacy are the type of matters about which employers and unions frequently bargain. While the employees attempted to argue the collective bargaining agreement does not mention or refer to biometric information, the appellate court reasoned that the very act of wading into the waters of what was or was not bargained for—especially given the agreement's broad management rights clause—necessarily invited an analysis of the collective bargaining agreement at issue, resulting in preemption.

This is not a surprise decision given the Seventh Circuit's conclusion last year; however, it does serve as a useful reminder to Illinois employers with union employees to be mindful of this unique law in the context of collective bargaining and the importance of securing broad management rights clauses.