

### **Fingerprinted to Ride: Ill. Supreme Court Finds Damage at Collection of Biometric Data**

Under the provisions of the Illinois Biometric Information Privacy Act, companies are required to protect the privacy rights of persons whose biometric information has been collected. State and local government agencies are excluded from this Act. The Illinois Supreme Court has recently issued a major decision that interprets this Act and individuals' rights against companies that have collected and stored biometric information.

The case involves a lawsuit filed by the parents of a fourteen-year-old boy who had purchased a season pass for him and gave him the paper ticket to present when he went on a school field trip to Six Flags Great America. Upon his admission to the park, the son presented his ticket and was asked for a fingerprint scan, which then became the basis of his season pass. Neither he nor his parents were given a written policy of the amusement park to inform them about the biometric identifiers collected, nor were they asked to sign a release. The park retained his biometric information, but it was unclear for how long his information would be retained.

"Biometric identifier" under the Act means a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry. Biometric identifiers do not include writing samples, written signatures, photographs, human biological samples used for valid scientific testing or screening, demographic data, tattoo descriptions, or physical descriptions such as height, weight, hair color, or eye color.

Employers are using these identifiers to record employee time records, to allow access into restricted work areas and for other purposes. It is therefore important to know about the rights that individuals, including employees, have under this law. The law was enacted by the Illinois General Assembly because major corporations have used this state as a testing site for applications of biometric-facilitated financial transactions, including finger-scan technologies.

Companies in possession of biometric identifiers and biometric information must develop a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within 3 years of the individual's last interaction with the private entity, whichever occurs first.

There are strict restraints on the collection, capture and use of biometric identifiers and information. The company must first:

(1) inform the subject or the subject's legally authorized representative in writing that a biometric identifier or biometric information is being collected or stored.

This requirement could be interpreted to mean that the union, as the exclusive bargaining representative, could be given this notice and sign a release for the collection of data.

(2) inform the subject or the subject's legally authorized representative in writing of the specific purpose and length of term for which the biometric identifier or information is being collected, stored and used; and

(3) receive a written release executed by the subject of the biometric identifier or information or the subjects legally authorized representative.

The company must store, transmit and protect from disclosure all biometric information using a reasonable standard of care and in the same manner as the company stores and transmits and protects other confidential and sensitive information. This information may not be disclosed by the company without the consent of the subject or the subject's legally authorized representative, which places a union in a position of having to exercise great care in dealing with this issue. The biometric information may also be disclosed pursuant to a subpoena, warrant or court order.

Unions should be aware of this important law and the possible collective bargaining implications it may have.

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