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# Illinois Supreme Court Holds State's Workers' Compensation Act Does Not Preempt Claim For Statutory Damages Under Illinois' BIPA

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Last week, Illinois' Supreme Court in *Marquita McDonald v. Symphony Bronzeville Park, LLC*, Dkt. No. 126511 (Ill. Feb. 3, 2022), answered the certified question of whether the exclusivity provisions of the Illinois Workers' Compensation Act bar a claim for statutory damages under Illinois' Biometric Information Privacy Act ("BIPA") where an employer is alleged to have violated an employee's statutory rights under the BIPA. The appellate court answered the question in the negative and granted leave to appeal. The Illinois Supreme Court agreed.

In *McDonald*, Marquita McDonald filed a putative class action against Bronzeville alleging that Bronzeville's collection, use, and storage of McDonald's and the putative class's sensitive biometric data pursuant to a fingerprint timekeeping system violated the BIPA. McDonald alleged that she was employed by Bronzeville from December 2016 to February 2017 and that Bronzeville utilized a biometric information system, which required her to scan her fingerprint as a means of authenticating employees and tracking their time. McDonald alleged that she was never provided with nor signed a release consenting to storage of her biometric information and had never been informed of the purposes or length of time for which her biometric information was being stored.

Bronzeville filed motions to dismiss the class action complaint arguing that Illinois' Workers' Compensation Act was the exclusive remedy for accidental injuries occurring in the workplace, and that an employee has no common law or statutory right to recover civil damages from an employer for injuries incurred in the course of employment. The circuit court rejected Bronzeville's argument that the Workers' Compensation Act preempted any claims by an employee against an employer under the BIPA, reasoning that McDonald's injury involved the loss of the ability to maintain her privacy rights, which was neither a psychological nor physical injury and not compensable under the Workers' Compensation Act. The circuit court further held that the BIPA specifically defined "written release" in the employment context and, thus, the legislature intended for the BIPA to apply to violations by employers in the workplace. The appellate court granted leave to appeal, and "conclude[d] that the exclusivity provisions of the Compensation Act do not bar a claim for statutory, liquidated damages, where an employer is alleged to have violated an employee's statutory privacy rights under the [BIPA], as such a claim is simply not compensable under the Compensation Act." The Illinois Supreme court allowed Bronzeville's petition for leave to appeal in January 2021.

Ultimately, the Illinois Supreme Court sided with McDonald and the lower courts. While the Court recognized that the Workers' Compensation Act generally provides the exclusive means by which an employee can recover against an employer for a work-related injury, it also recognized that there are several exceptions for when an employee can escape the exclusivity provisions. The Court reasoned that the purpose of the Workers' Compensation Act is to afford employees financial protection when their earning power is diminished or terminated due to employment injuries. These injuries differed from the personal and societal injuries caused by violating the BIPA, which protects one's privacy rights. For example, "[t]he Privacy Act involves prophylactic measures to prevent compromise of an individual's biometrics. . . McDonald's claim seeks redress for the lost opportunity 'to say no by withholding consent.'"

The Illinois Supreme Court found that plaintiff's loss of the ability to maintain her privacy rights was not a psychological or physical injury that was compensable under the Workers' Compensation Act. Likewise, a BIPA violation is not the type of injury that categorically fits within the purview of the Workers' Compensation Act and is, thus, not compensable under the Compensation Act. Accordingly, the Court concluded that that McDonald could pursue her BIPA claims on her behalf and on behalf of the putative class in an action in the circuit court, rather than through a claim before the Workers' Compensation Commission. Because the injury alleged was not the type of injury compensable in a workers' compensation proceeding, McDonald's lawsuit was not preempted by the exclusive remedy provisions of the Workers' Compensation Act.