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Illinois Supreme Court Holds Five-Year Statute of Limitations Applies to All BIPA Claims

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On February 2, 2023, the Illinois Supreme Court issued its long-awaited decision regarding the proper statute of limitations for claims arising under the Illinois Biometric Information Privacy Act ("BIPA"), which regulates the collection, storage, disclosure, and other aspects of using biometrics. In *Tims et al. v. Black Horse Carriers Inc.*, 2023 IL 127801, the Court ruled that a five-year limitations period applies for any BIPA claim.

BIPA does not contain its own statute of limitations. The First District Appellate Court in *Tims* had ruled that two different statutes of limitations could apply, depending on the BIPA claim. *Tims v. Black Horse Carriers, Inc.*, 2021 IL App (1st) 200563. For claims arising under Sections 15(c) and 15(d) of BIPA, which implicate the publication or disclosure of biometrics, the one-year limitations period under 735 ILCS 5/13-201 governed because that statute applies to "publication of matter violating the right of privacy." For claims arising under Sections 15(a), 15(b), and 15(e) of BIPA – which would include the most frequently raised claim of failure to provide written notice and to receive written consent before collecting biometrics – the *Tims* appellate court ruled that the five-year "catch-all" limitations period set forth in 735 ILCS 5/13-205 should control. Both parties appealed this decision.

The Illinois Supreme Court ruled that there should be only *one* statute of limitations for *any* BIPA claim, as "[t]wo limitations periods could confuse future litigants about when claims are time-barred, particularly when the same facts could support causes of action under more than one subsection of section 15." 2023 IL 127801 at ¶ 20. The Court ruled that this limitations period should be **five years**, finding that when it considers "not just the plain language of section 15 but also the intent of the legislature, the purposes to be achieved by the statute, and the fact that there is no limitations period in [BIPA] … that it would be best to apply the five-year catchall limitations period[.]" *Id.* at ¶ 32. The Court also reasoned that "it would thwart legislative intent" to shorten the amount of time an aggrieved party could sue and that a party could be held liable. *Id.* at ¶ 39.

The *Tims* decision alleviates some confusion associated with potentially disparate limitations periods, including the potential of differently constituted classes in BIPA class actions. But the Illinois Supreme Court has (again) provided an employee- and consumer-friendly result by facilitating larger potential class sizes and enabling suits that otherwise may have been time-barred. With potential increased exposure, employers and others deploying alleged biometric devices in Illinois should review their policies and practices and continue to ensure they are

complying with BIPA's numerous procedures.

Additional Information

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