

**Illinois Appellate Court Rules That Actions Under the Biometric Information Privacy Act
are not Subject to Wage and Hour Arbitration Clause**

With the recent spate of class actions under Illinois' Biometric Information Privacy Act ("BIPA"), courts are considering an array of litigation-related questions that such actions pose. One such issue recently was addressed in *Liu v. Four Seasons Hotel, Ltd*, 2019 Ill App (1st) 182645 (April 9, 2019), when the Four Seasons argued that a class action brought by Chicago Four Seasons hotel employees, Tony Liu and Cathy Li, should be arbitrated pursuant to an arbitration clause in its employment agreements, which specified that wage and hour claims must be arbitrated. Since the employees' suit was based on allegations that the hotel chain violated the privacy law by using their biometric data, namely their fingerprints, to record their hours, the Four Seasons argued that such claims constituted a wage and hour dispute. Both the trial court and the appellate court disagreed.

Plaintiffs Liu and Li asserted claims for BIPA violations, alleging they were never told that their fingerprints would be used and that neither gave permission for the hotel to share such data with an outside vendor that administered its payroll. The Four Seasons filed a motion to compel arbitration, citing the mandatory arbitration clause in its standard employment agreements. After the trial court denied the motion, the hotel took an interlocutory appeal. In affirming the trial court's denial of the Four Seasons' motion, the appellate court noted that employees are not required to sign their employment agreements or agree to the mandatory arbitration provision contained therein.

In addition, the court ruled that the lawsuit was really about individuals' privacy rights rather than wage claims and, therefore, was not subject to the mandatory arbitration clause, in any event. In so holding, the court also rejected the hotel's argument that an arbitrator, rather than the court, should determine the dispute's arbitrability, citing the Uniform Arbitration Act.

The lesson? If Illinois employers are looking to avoid the courts to resolve disputes for BIPA violations, they cannot rely on arbitration clauses that merely address wage and hour claims. Rather, it is clear that the arbitration provision must specifically target claims for privacy breaches.