

## Issues to Consider When Using Biometric Scanners to Track Attendance

Many employers now track employee attendance by using biometric scanners that require an employee to clock in and out by scanning a fingerprint or a palmprint. Such scanners have largely replaced paper timesheets and have made managing employee attendance more accurate and efficient. However, employees sometimes express privacy concerns when asked to provide such data. Many employees are concerned about what an employer may do with the gathered information or whether the information could be hacked by an outside individual.

Recently, an employee was [awarded a judgment of \\$586,860](#) (including back pay, front pay, and compensatory damages) after his employer forced him to retire due to his refusal to use the biometric hand scanner that the company installed to track attendance. The employee, who was an Evangelical Christian, had informed his employer that using the hand scanner violated his sincerely held religious beliefs because it could potentially be used to create an identifier for followers of the antichrist known as "The Mark of the Beast." While this is an extreme example, many employees have expressed fears that their biometric data may be improperly used in the future.

New York employers should be aware that New York State has one of the few statutes that limits the collection of biometric data. New York Labor Law Section 201-a prohibits employers from requiring the fingerprinting of employees as a condition of obtaining or continuing employment. There are limited exceptions to this restriction. For example, the New York State Department of Labor has taken the position that voluntary fingerprinting is permissible. Additionally, Section 201-a does not apply to state or municipal employees, workers at medical institutions, many school employees, or to other employees who are subject to fingerprinting by law or regulation. Aside from these exceptions, however, many New York employers may be limited to the use of hand scanners or the more expensive iris scanning equipment, rather than a device that requires an employee's fingerprint.

As an alternative to biometric scanners that require an employee's fingerprint, some employers have installed devices that use a finger geometry "scan" rather than an actual "fingerprint." This technology scans a user's finger and identifies an individual's finger "geometry" by measuring its length, width, thickness, and surface area, and disregards surface details, such as fingerprints, lines, and scars. Those measurements are often converted into a mathematical algorithm that are then stored in the attendance scanners. Because a fingerprint is not taken, Section 201-a is not implicated. Once employees understand that their actual fingerprints are not being taken or kept by their employers, their privacy concerns generally dissipate.

In addition to potential Section 201-a issues, employers should also be aware that they may have a duty to bargain with a union before requiring the use of such biometric devices pursuant to the National Labor Relations Act or the Taylor Law.

Employers who are considering implementing a biometric scanner system to track attendance should: (1) communicate with employees prior to introducing the biometric system, so that all employees will understand exactly how the technology is used; and (2) distribute a clear employer policy. Often, employee privacy concerns are based on misinformation that can be alleviated by taking these two simple steps.

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