

As Biometric Privacy Cases Surge, Shook Hardy Hires 2 From Baker & Hostetler

Illinois employers are getting in trouble for scanning their employees' fingerprints, and Shook, Hardy & Bacon is building a team to handle the cases.

By Roy Strom
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Shook, Hardy & Bacon's Chicago office has added two former Baker & Hostetler lawyers to handle a recent surge of class action complaints against Illinois businesses for collecting biometric data like fingerprint scans from their employees.

Partner Melissa Siebert and of counsel Erin Bolan Hines are expected to be announced as new members of Shook's Chicago office Tuesday. The pair had previously co-led Baker & Hostetler's BIPA (Biometric Information Privacy Act) practice, Siebert said.

Since 2017, the pair have worked on more than 20 cases involving the Illinois law. The law requires companies receive consent from employees to collect biometric information such as fingerprint scans or eye scans—usually used as a way to clock in and out of work. The companies also must have policies on how the information will be stored.

Only in the last few years have plaintiffs lawyers started filing cases more frequently involving BIPA, which passed in 2008. Plenty of law firms expect more cases to be filed following an Illinois Supreme Court ruling last year that said plaintiffs didn't need to show actual damages from the information being collected to bring a case. Consumer advocacy groups



Melissa Siebert, left, and Erin Bolan Hines of Shook, Hardy & Bacon.

such as the American Civil Liberties Union and the Electronic Frontier Foundation praised the decision as a victory allowing individuals to control their private information.

According to Loeb & Loeb, in a seven-month span between late 2017 and early 2018, more than 40 BIPA class actions were filed in Cook County, naming defendants such as Hyatt Hotels, United Airlines and Presence Health Network, one of Illinois' largest hospital networks.

Since the Illinois Supreme Court ruling, about three or four cases are being filed each day, Siebert said.

In total, more than 150 BIPA class actions have been filed, and Shook lawyers—including Siebert and Hines—have managed more than 24 of those cases, the firm said in a statement.

“We will be what I like to call the BIPA super group on the defense side,” Siebert said in an interview. “It enables us to really give clients cutting-edge advice and to do so really effectively and efficiently. This is not our first rodeo.”

There is a lot of work to be done in litigating the cases, Siebert said, as the BIPA cases had been stayed while the Illinois Supreme Court was considering one of the cases. With motion practice set to resume next week, Siebert said courts have only just begun interpreting key parts of the BIPA statute. Lawyers are still waiting for judges to make decisions about the law’s statute of limitations; how its damages will be counted; and what constitutes “negligent” biometric information collection versus the “reckless” variation.

That distinction is important, though: The law provides for \$1,000 in damages per infraction for negligent actors and \$5,000 in damages for intentionally reckless violators. And Siebert said it is still

unclear if an “infraction” will be counted as every time an employee scanned their finger to clock in or out of work or if each employee who had their data collected without their consent will equal one infraction.

“The issue is the law is so unsettled that there is no ‘easy out,’” Siebert said. “There have been few settlements, and so much is undecided.”

Siebert said she decided to join Shook after working with the firm’s lawyers as co-counsel in BIPA defense matters and also writing an amicus brief together for the Illinois Supreme Court case. Prior to joining Baker & Hostetler in 2012, Siebert had been at K&L Gates.

A Baker & Hostetler spokeswoman did not immediately return a request for comment on the departures.

Based in Chicago, Roy Strom has been reporting on the legal world since 2011. He covers law firms with a focus on how the Big Law business model is changing. He writes a weekly column for Law.com called “The Law Firm Disrupted,” covering changes in the legal services market. He can be reached at rstrom@alm.com. On Twitter: @RoyWStrom