

Dos and Don'ts of Using Biometric Data in the Workplace

Does your organization use employees’ “biometric data”? Probably. Fingerprint swipes for timecards, temperature screenings for COVID precautions and retina scans for security access—these are just a few examples of the proliferation of biometric data used in the workplace.

Using employee biometric data is not risk-free, however. In 2015, a court awarded a Pittsburgh-based employee \$586,860 in damages for being illegally fired after he refused to clock in and out of work via the employer’s biometric hand scanner. Employers that use biometric data should be wary of the developments in biometric data legislation and should take proactive steps to ensure compliance.

What is biometric data?

Biometric data can be divided into two categories: biometric identifiers and biometric information. Biometric identifiers include retina or iris imaging, fingerprint scans, voiceprints, hand scans, genetic prints and face geometry. Biometric information is the data collected from the



use of biometric identifiers specific to the target individuals. Both types of biometric data present legal issues for employers.

Why do employers use biometric data?

Using biometric data has its advantages. It can cut down on paperwork, increase processing speeds and lower the risk of human error. For example, a fingerprint swipe in lieu of a timecard may reduce

the incidence of wage theft. A fingerprint swipe record can also provide helpful rebuttal evidence if an employee alleges that an employer’s time records are inaccurate.

Biometric data laws vary across different jurisdictions, and there is currently no federal law regarding biometric data in the workplace. Generally speaking, most biometric data laws:

1. Require an employee’s informed

- consent prior to biometric data collection;
2. Protect the confidentiality of an employee’s biometric data;
3. Prohibit employment discrimination based upon an employee’s biometric data; and
4. Prohibit the sale or unauthorized dissemination of an employee’s biometric data.

In addition, some state legislatures go a step further by prohibiting specific types of mandatory biometric data collection altogether.

What are the legal risks?

Biometric data privacy violations can be costly. Some states have enacted laws that create a private right to file a civil action for biometric data privacy violations.

In addition to statutory damages, as noted in the example at the top of this article, employees who are fired for refusing to submit biometric data may also be entitled to compensatory damages for back pay, front pay and emotional distress.

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BUSINESS MANAGEMENT

USPS Requests Rate Increase

In May the U.S. Postal Service (USPS) filed notice with the Postal Regulatory Commission requesting price changes to take effect on August 29, 2021. The proposed price changes include:

Product	Current Price	Requested Price
Letters (1 oz.)	\$0.55	\$0.58
Letters additional ounce(s)	\$0.20	\$0.20 (unchanged)
Letters (metered 1 oz.)	\$0.51	\$0.53
Domestic postcards	\$0.36	\$0.40
Flats (1 oz.)	\$1.00	\$1.16
Non-saturation letters (ads & solicitations)	\$0.212	\$0.226
Non-saturation flats (catalogs)	\$0.31	\$0.339

You can download a fact sheet on the proposed rate changes, at <https://bit.ly/USPS-rate-increase>.



GOVERNMENT & LEGISLATIVE

On Our Radar

Recently added to the list of proposed regulations and other issues that we’re following:

- **SECURE Act 2.0** – The House is considering the bipartisan Securing a Strong Retirement Act of 2021 (H.R. 2954), which would raise the minimum distribution age, increase and “Roth-ify” 401(k) catch-up contributions, and more.

Updates to proposed legislation, regulations and other issues we’ve been following:

- **Expansion of CFRA paid leave** – A revised version of AB 1041, which expands the definition of “family member” in the California Family Rights Act to include a “designated person” of the employee’s choice, is now in the Senate. The bill has now been revised to allow an employer to limit each employee to one “designated person” per 12-month period.

The following bills all failed to meet the June 4 deadline for passing their house of origin.

However, because this is the first year of a two-year legislative session, there is a chance that some will reappear next year.

- **AB 137** – Would have prohibited certain types of plastic and polystyrene packaging in specified situations.
- **AB 842** – Would have enacted the California Circular Economy and Plastic Pollution Reduction Act.
- **AB 995** – Would have expanded number of paid sick days from 3 to 5.
- **AB 1028** – The Telework Flexibility Act, which would have given telecommuters more flexibility in their hours.
- **SB 54** – Would have enacted the Plastic Pollution Producer Responsibility Act.

Print Industries Affiliates’ Wage + Benefits 2021 Survey Opens for Submissions

Largest labor report in graphic communications is a critical asset in managing an essential workforce

Print Industries Affiliates have announced that the most comprehensive annual survey on labor costs and human resource policies of print-related companies is open for submissions through August 13, 2021. From top management to the shipping department, each year the Print Affiliate’s Wage + Benefits Survey captures labor costs and human resource practices from 500 firms and for 15,000 employees across North America.

“Each year, North American Print Industries Affiliates conduct one of the most powerful surveys in the industry,” commented Teresa Campbell, Print Affiliate operating committee chair and president of PIA MidAmerica. “The annual Wage + Benefits Report is used to recruit, train, and manage an essential workforce, crucial factors in a print service provider’s ability to remain competitive.”

The Wage + Benefit 2021 Survey captures wages for most industry positions in sixteen categories, segmented by region and company size. The report captures policies for overtime, vacation, PTO, sick time and health insurance, and includes job descriptions for more than 200 industry positions. New in 2021, the online portal supports participants with multiple locations and also offers updated COVID-related questions. Because the Wage + Benefits Survey makes the participant’s previous year’s employment data submissions available automatically upon login to the online portal, the survey process is quick and easy.

Survey participants receive access to a Wage + Benefits Whitepaper and Webinar at no cost, sponsored by financial and business management consulting firm, LB Carlson. The Whitepaper and Webinar offer insights regarding how to use the Print Industries Wage + Benefits Report to manage labor costs and improve company performance. To participate in the survey, contact Kristy Villanueva at kristy@piasc.org or 323.728.950 ext.215.

Upcoming Events

Colorado Par-Tee on the Green



Date: Wednesday, August 11, 2021
Location: Arrowhead Golf Club, 10850 W. Sundown Trail, Littleton, CO 80125
Cost: \$159 per member, \$179 per non-member
(Includes: cart, breakfast, lunch & 5 raffle tickets)
7:00 am - Registration/Practice Facility Opens
8:00 am - Shotgun Start
\$1500 worth of raffle items! Lunch, drinks and raffle on the 19th hole
Register today at <http://bit.ly/piasc-cogolf>.
For information, contact Cathy Skoglund at 602.999.1304 or cathy@piasc.org.
Interested in sponsorship opportunities? Visit <http://bit.ly/golfsponsor-co>

Arizona Par-Tee on the Green



Date: Saturday, October 2, 2021
Location: Arizona Grand Golf Resort, 8000 S. Arizona Grand Pkwy, Phoenix, AZ 85044
Cost: \$139 per member, \$159 per non-member
(Includes: cart, lunch & 5 raffle tickets)
6:30 am - Registration/Practice Facility Opens
7:30 am - Shotgun Start
\$1500 worth of raffle items! Lunch, drinks and raffle on the 19th hole
Register today at <http://bit.ly/piasc-azgolf>.
For information, contact Cathy Skoglund at 602.999.1304 or cathy@piasc.org.
Interested in sponsorship opportunities? Visit <http://bit.ly/golfsponsor-az>

FEATURE ARTICLE

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HUMAN RESOURCES

What should employers do to limit the risk of a biometric data lawsuit?

For most employers, the advantages of using biometric data will outweigh the legal risks. Plus, the legal risks are usually manageable. Here are a few steps employers should take to minimize the risk of a biometric data lawsuit:

1. Disseminate a written privacy policy describing the types of biometric data being collected, how it is being collected, stored and used and what entities are responsible for the collection and destruction of such data.
2. Obtain written consents from employees before biometric data is collected.
3. Provide employees written notice regarding when biometric data is collected and the purpose(s) of collection.
4. Consider potential racial bias claims associated with biometric data collection technologies, such as facial recognition software, when deciding which biometric data methods are appropriate for your organization.
5. Implement appropriate confidentiality, storage and data security measures, both internally and with third-party vendors that collect or use biometric data.
6. Negotiate indemnification agreements that entitle your organization to be indemnified in the event of a data breach or mishandling of biometric data by a third-party vendor.

Employers that collect or use employees’ biometric data should also consult with experienced employment counsel regarding the specific laws applicable to the jurisdictions in which they operate.

Source: Nicholas M. Reiter, Partner; Ronald W. Taylor, Partner; and Allison B. Gotfried, Associate, Venable LLP, www.Venable.com.

Are Temporary Disabilities Covered Under the ADA?

Yes, temporary disabilities are covered under the Americans with Disabilities Act (ADA), a civil rights act that, among other things, prohibits employment discrimination against people with disabilities.

How does the ADA define disability?

Under the ADA an individual is considered to be disabled if they:

1. Have a physical or mental impairment that substantially limits one or more major life activities;
2. Have a record of such an impairment; or
3. Are regarded as having such an impairment.

Does this disability have to be permanent or long-term?

No. The ADA was originally interpreted as not covering temporary conditions. However, a later amendment broadened its coverage. Provided the disability meets points 1 and 2 above—including the fact that it must be a substantial disability—today even a short-term disability is covered by the ADA.

What employers are covered by the ADA?

Employers with 15 or more employees.

What if a disabled employee or applicant cannot perform the essential functions of the job?



A covered employer must make a reasonable accommodation to the person’s known disability, provided doing so would not impose an “undue hardship” on the operation of the business. This is true even if the qualifying disability is temporary in nature.

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2020-2021 PIASC PRINT EXCELLENCE AWARDS CELEBRATION



JULY 15, 2021
PACIFIC PALMS RESORT

Date: Thursday, July 15, 2021
Time: 5:30 pm
Location: Pacific Palms Resort in the City of Industry.
Price: \$79 members | \$129 non-members
Attire: Business Casual

The evening will include networking, an exhibit of the winning printed pieces, dinner and a chance to honor the winners of the 2020-2021 PIASC Print Excellence Awards, the largest local printing competition.

The reception will be followed by the presentation of the awards: Best of Catalogs, Best of Packaging, Best of Foil Stamping, Best of Media Kits, Best of Point-of-Purchase, Best of Digital Printing, Best of Binding and much more.

To ensure you don’t miss out, get your tickets today at <https://bit.ly/PEA2021-link>



PIASC Events Calendar

JULY
15

Print Excellence Awards Winners Celebration “Revived Inspiration”
Thursday, July 15
Pacific Palms Resort, City of Industry
www.piasc.org/events

OCT
2

Arizona Par-Tee on the Green
Saturday, October 2
Arizona Grand Golf Resort. Phoenix, AZ
www.piasc.org/events

AUG
11

Colorado Par-Tee on the Green
Wednesday, August 11
Arrowhead Golf Club, Littleton, CO
www.piasc.org/events

NOV
6-7

International Printing Museum: Los Angeles Printers Fair
Saturday, November 6 to Sunday, November 7
International Printing Museum, Carson, CA
www.printmuseum.org