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Cybersecurity & Privacy Alert

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New York City Biometric Law — Are you in compliance?

By Christopher Mason, Richard Tilghman, and Katherine Letcher

Amazon sued (again) for alleged violations of NYC Biometric Privacy Law — here's what businesses can learn.



What's the Impact

- / New York City has its own local biometric privacy law—the Biometric Identifier Information Law.
- / In addition to regulatory enforcement, the law gives private parties a right of action, see N.Y.C. Admin. Code § 22-1203, for claims against commercial establishments, including statutory damages per violation ranging from \$500 to \$5,000.

On March 16, 2023, a private plaintiff (represented in part by lawyers who have also sued the New York City Police Department over alleged biometric surveillance in Times Square) filed a putative class action under the New York City law, *Perez v. Amazon.com*. One element of the law is that a commercial establishment collecting or using biometric information must post a conspicuous sign at its entrances notifying customers that biometric information is being collected, retained, converted, stored, or shared. While, according to the *New York Times*, many commercial establishments you might expect to use [such technology](#) apparently do not yet do so, the plaintiff in the *Perez* case alleges that Amazon Go stores do collect such information and that the collection is unlawful because Amazon fails to provide the proper notices.

The plaintiff asserts that, between January 15, 2022, when the law's implementing rule went into effect, and March 13, 2023, Amazon failed to post any biometric information signs at the entrances of its New York City Amazon Go stores. The plaintiff allegedly notified Amazon in writing, as required by the Biometric Identifier Information Law, that Amazon was not complying with its obligation to post signs. While Amazon then apparently posted some signs, the plaintiff alleges that they still do not comply with the Biometric Identifier Information Law. Plaintiff is now seeking, among other things, damages for himself and a class of all customers who made a purchase from an Amazon Go store in New York City that lacked proper signage.

What's Next?

- / Earlier this year, a different plaintiff and set of lawyers sued Amazon in a putative class action for allegedly violating the Biometric Identifier Information Law as to the use of finger- or palm-print data at Amazon Go, Whole Foods and other locations using Amazon Go technology, see *McCall v. Amazon.com Servs. LLC*.
- / The new *Perez* case reminds businesses operating in NYC that claims under the Biometric Identifier Information Law are likely to increase in number in the future.
- / The damages provision in the law is subject to a notice and cure period. If a commercial establishment cures a signage violation within 30 days of receiving notice of a purported violation, no claim can be filed against the establishment.
- / Any commercial establishment that receives a notice from an individual that it is not complying with the Biometric Identifier Information law should immediately retain counsel, assess its compliance, and take any steps necessary to cure a violation.

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