Landmark SCOTUS Ruling Strips Power From Federal Agencies: How Today's Decision Will Impact Your Workplace

Insights
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The Supreme Court just upended the legal world by significantly reducing the power of federal regulators and placing more authority in the hands of judges – a move that will have a major impact on workplace regulations for years to come. In today's ruling, SCOTUS overturned the decades-old *Chevron* doctrine which required courts to defer to a federal agency's position on the law when a statute is open to interpretation. As we predicted earlier this year, the Court tossed out that standard in favor of judicial interpretation, enabling courts to strike down agency rules much more easily and giving employers a powerful tool to fight back against regulatory overreach. Here's what you need to know about today's momentous ruling and what it means for employers.

What Happened?

In two separate cases, commercial fishing groups claimed that a federal agency exceeded its power by forcing their fishing vessels to pay the salaries of observers on board. After lower federal courts upheld the agency regulation based on the *Chevron* framework, the fishing companies asked the Supreme Court to overrule or at least limit *Chevron.*

In a 6-3 decision issued today, SCOTUS overruled *Chevron* , holding that that courts may not defer to an agency's interpretation of the law just because it is ambiguous but instead "must exercise their independent judgment when deciding whether an agency has acted within its statutory authority." In its reasoning, the Court wrote that *Chevron* is at odds with the requirements of the Administrative Procedure Act, because it allows agencies to change positions as they please without being authorized by Congress to do so. The Court also wrote that *Chevron* "prevents judges from judging."

Chief Justice Roberts wrote for the majority, "At best, our intricate Chevron doctrine has been nothing more than a distraction from the question that matters: Does the statute authorize the challenged agency action? And at worst, it has required courts to …yield[ ] to an agency the express responsibility, vested in the reviewing court, to decide all relevant questions of law and interpret . . . statutory provisions."

While the decision involved two cases that had nothing to do with workplace law, the results will have a sweeping effect on all federal agencies for years to come, including the regulators who oversee many of the nation's labor and employment laws.

How Did the *Chevron* Test Work?

Since the Supreme Court's 1984 decision in *Chevron USA Inc. v. Natural Resources Defense Council Inc.*, the law has been relatively stable, favoring agencies wielding tremendous power over businesses. The *Chevron* doctrine provided a two-step framework for courts to interpret federal statutes:

1. If the text of the statute directly speaks to the precise question at issue, then an agency and a court must give effect to the unambiguously expressed language of the statute; and
2. If the court determines that the statute has not directly addressed the precise question at issue but is instead silent or ambiguous with respect to the specific issue, the court should defer to an agency's interpretation of the statute so long as that interpretation is permissible.

Because many statutes are silent or ambiguous as to much of the detail necessary to practically deal with workplace law issues, courts have often applied the second step and deferred to the relevant agency's regulations and other interpretations. This deference has provided stability throughout the years – but has given agencies outsized power to set regulations that govern the workplace.

How Does the New Test Work?

Today's ruling put an end to *Chevron* deference and requires courts reviewing agency action to exercise their own independent judgment. Going forward, if agency action is challenged in court, courts will continue to respect the agency's authority if it has been properly delegated by statute. However, if a law is ambiguous, courts will now get to decide whether an agency has acted within its statutory authority – rather than yielding to the agency.

What Does This Mean for Employers?

Much of your daily life as an employer has been shaped by federal agencies that have benefitted from courts' deference to agencies under the *Chevron* doctrine to mold their agendas. We previously covered how this decision will dismantle workplace regulations and the three biggest wage and hour steps employers can take in a post-*Chevron* world. Today's decision does not change anything in terms of prior cases that relied on the *Chevron* framework – in fact, SCOTUS specifically stated that those cases remain valid legal precedent despite the Court's change in interpretive methodology. But it does open the door for new challenges to agency actions.

Here are some agency rules and positions we foresee coming under attack in the coming months and years now that employers will be able to wrest back power from the federal government:

- **Wage and Hour:** The Department of Labor has recently issued rules on the so-called overtime rule, tip pooling and tip credit rules – and finalized a rule making it far harder to classify workers as independent contractors.

- **Labor Law:** The National Labor Relations Board (NLRB) has reshaped labor law in the last few years with a series of actions, ranging from the so-called "quickie" election rule to other recent pro-union shifts in Board doctrine governing the representation process, protected concerted activity, and the remedial framework for unfair labor practices and bargaining orders. Not to mention the Board's attempt to revise its "joint employer" rule to make it easier for workers to be considered employees of more than one entity, which is now in legal limbo due to a court order.
- **Discrimination/Harassment:** The Equal Employment Opportunity Commission (EEOC) has issued a number of regulations that shape not only employers' compliance measures but also workplace litigation. The Age Discrimination in Employment Act (ADEA) and Americans with Disabilities Act (ADA) are often cited as prime examples of statutes with overbroad rules.
- **Workplace Safety:** The Occupational Safety and Health Administration (OSHA) recently issued a broad electronic recordkeeping rule and a game-changing walkthrough rule permitting union representatives to accompany safety inspectors during facility walkarounds (even in non-union settings). And the Mine Safety and Health Administration (MSHA) recently published its final rule on respirable crystalline silica.
- **Non-Competition:** Until last year, most employers didn't pay attention to the concept that federal regulators would – or even could – regulate the employee defection arena. But the Federal Trade Commission (FTC) blindsided the nation by issuing a rule that will effectively ban most non-competition agreements as of September 4.
- **Pay Equity:** The EEOC has signaled an interest in returning to the short-lived pay data reporting requirement from a few years ago that required employers to turn over compensation information in an attempt to tackle pay equity issues.
- **Immigration:** Much of the nation's immigration policy is carried out through regulation, especially those impacting the workplace. The Department of Homeland Security is heavily involved in creating regulations and adjudicating employment-based immigration applications, for example. The demise of *Chevron* deference may make it easier to challenge the agency's restrictive regulations or denials of immigration applications. On the other hand, certain immigration benefits that were largely created by regulations may face fresh legal challenges – including programs such as employment authorization for the spouses of certain H-1B workers.
- **Affirmative Action:** The Office of Federal Contract Compliance Programs (OFCCP) has pushed broad interpretations of its regulations to govern federal contractors, including an expansive and ever-changing approach to compensation and significant revisions to the audit scheduling letter. And some observers even go so far as to wonder whether the Executive Order that created the entire affirmative action system for federal contractors is an overbroad regulatory reach.

What Should You Do?

Here are your immediate action steps and some steps to consider for longer-range planning:

1. **Expect instability**. You will need to keep up with the flurry of cases attacking administrative interpretations of workplace laws as many rules and other pieces of administrative guidance may not pass the new standard. Moreover, judges in different jurisdictions will almost certainly hand down different rulings on the same issue in different states, leading to a patchwork of compliance obligations and adding to the headaches of multistate employers. The best way to stay up to speed is to ensure you are subscribed to FP's Insight System.
2. **Do a thorough review.** Evaluate whether practices and policies you have developed at your workplace rely on administrative rules or guidance – and work with counsel to determine whether you can or should change any rules or prepare to change them given the expected shifts to come.
3. **Reconsider litigation positions.** Work with your FP attorney to determine whether you should reexamine any ongoing litigation or agency investigations in light of this new standard. You might have new areas of attack to raise that may have seemed untenable just a few days ago.
4. **Team up.** Work with industry and trade associations to identify agency positions that affect your business. This could help shape the avenues that could be subject to attack by these advocacy organizations.
5. **Don't forget about state and local laws.** Even if a court interprets a federal statute in a way that helps smooth a path for you, there is no guarantee that state laws will follow suit. In fact, you may see some state lawmakers and regulators push for increased regulation given the softening that will soon exist at the federal level.

Conclusion

We will continue to monitor developments, so make sure you subscribe to Fisher Phillips' Insight System to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney or the authors of this Insight.

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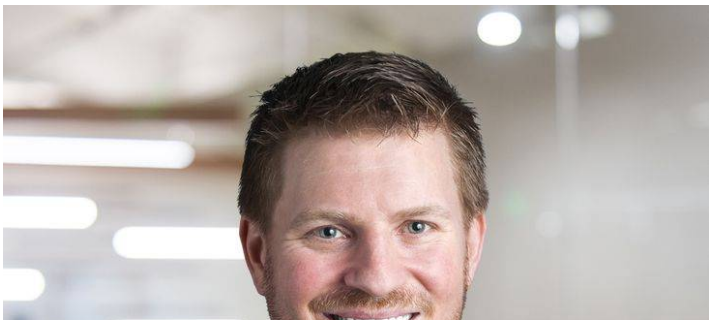

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