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AGRICULTURAL EMPLOYERS COULD FACE LESS OVERSIGHT, MORE UNCERTAINTY IN THE POST-CHEVRON ERA: 3 STEPS TO SUCCESS

Insights
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The Supreme Court's recent landmark ruling that gives employers a powerful tool to fight back against regulatory overreach will have a broad impact on just about every area of workplace law – and every industry. We're looking at the way industries will be specifically impacted now that federal agency rules and positions are more susceptible to attack after SCOTUS ditched the decades-old *Chevron* doctrine. This edition will focus on how the new standard will affect employers in the agriculture industry and provide three steps that agricultural employers can take to stay ahead of the curve.

What Happened?

SCOTUS rocked the legal world on June 28 when it overturned the famous *Chevron* doctrine, holding that that courts may not defer to an agency's interpretation of the law just because it might be ambiguous. Instead, from now on, the Supreme Court said that judges "must exercise their independent judgment" when ruling on cases involving agency rules, regulations, guidance, or other actions. This signifies a major shift, putting much more oversight and accountability in the hands of judges. You can read all about it here, including all the different ways that the workplace law landscape may soon change.

How Does This Impact Agricultural Employers?

The end of *Chevron* means that federal agencies will have less power to regulate the agricultural community and mold their own (often political) agendas, as their positions

Related People

Boris Gautier
Associate
404.240.5870

Rebecca Hause-Schultz
Partner
916.210.0391

become subject to increased and meaningful judicial scrutiny. The National Council of Agricultural Employers (NCAE) celebrated this shift in a press release, describing the regulations applicable to agricultural employers as a "dizzying web" and the H-2A temporary agricultural worker visa program as "one of the most heavily regulated areas of the American economy, with an ever-changing set of rules and agency interpretations, including three new regulations in the past two years, spanning everything from wages to seatbelts to what food to serve to employees." Now that courts are less obligated to yield to agencies' interpretations of the law, balance should gradually be restored as agency actions are more effectively challenged in court.

Agricultural employers and their advocates are now in a better position to push back against overly burdensome regulations that could hinder business operations, and the end of *Chevron* could impact recent regulations, such as:

- the wage rate calculation for H-2A adverse effect wage rates (AEWR) and the new AEWR regulations requiring higher pay for jobs that do not fit within the traditional agricultural jobs described by the DOL's Bureau of Labor Statistics Occupational Employment and Wage Statistics survey.
- the Occupational Safety and Health Administration's proposed national heat safety rule, and its impact on workers in the fields;
- H-2A regulations that expanded the definition of joint employment; and
- the new federal overtime rule and its impact on salaried exempt white collar professionals that work in the agricultural industry.

Are There Any Downsides?

While the end of *Chevron* is largely viewed as a win for agricultural employers, we could see some negative consequences stemming from this change, including:

- **Regulatory Uncertainty**: The transition away from the *Chevron* doctrine may lead to a period of regulatory flux, as courts reassess existing agency interpretations. And not every agency action will be susceptible to the same kind of attack, as the laws that created the agencies and

Marty Heller
Partner
404.231.1400

Alden J. Parker
Regional Managing Partner
916.210.0404

Joshua H. Viau
Co-Regional Managing Partner
404.240.4269

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gave them power to issue rules are all a little different. This uncertainty can complicate compliance efforts and strategic planning for agricultural employers.

- **Inconsistent Jurisdictions**: Without a uniform deference standard, different courts in different states may interpret statutes in varied ways, creating a patchwork of compliance requirements across the country. This, of course, can be challenging for agricultural employers operating across multiple states.

3 Practical Tips for Agricultural Employers

We encourage agricultural employers to take these three steps to remain agile during this period of uncertainty.

1. **Stay Informed and Proactive** – Ensure your legal team or external counsel provides regular updates on significant court decisions and regulatory changes (sign up for FP Insights here). Staying ahead of the curve will allow you to anticipate and prepare for potential impacts.

2. **Enhance Legal and Compliance Resources** – Consider expanding your in-house legal team or increasing collaboration with external legal counsel. Actively foster compliance by assigning a member of your team to review resources, identify areas where changes are proposed, and ensure real-time tracking of regulatory changes.

3. **Advocate for Clarity and Fairness** – Actively participate in industry and trade associations, which will lead the way in providing resources and advocacy support to help navigate the shifting regulatory landscape. Hand in hand with these organizations, you can engage with policymakers and advocate for clear, fair, and predictable regulatory frameworks. Effective advocacy can help shape regulations that support the growth and stability of the agriculture industry.

Conclusion

The Supreme Court's blockbuster decision marks a significant shift in the regulatory landscape, presenting both challenges and opportunities for agricultural employers. By staying informed and actively engaging in advocacy, agricultural employers can effectively navigate this period of change.

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