

WORKPLACE SAFETY AND MINE SAFETY WILL BE TRANSFORMED IN THE POST-CHEVRON ERA: WHAT SHOULD EMPLOYERS EXPECT?

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. We're looking at the specific federal agency rules and positions most susceptible to attack now that SCOTUS ditched the decades-old *Chevron* doctrine. This edition will focus on how the new standard could be used to combat rules issued by both the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA).

SCOTUS Stripped Power From Federal Agencies – Including OSHA and MSHA

For 40 years, courts routinely deferred to an agency's "reasonable" interpretation of ambiguous statutory provisions due to so-called *Chevron* deference. This standard gave administrative agencies like OSHA and MSHA a great deal of power in how they interpreted, applied, and enforced their statutes. And the outcome of cases decided under the *Chevron* doctrine tended to heavily favor the government and required courts to accept an administrative agency's position on the law, even in questionable instances.

But SCOTUS tossed out that so-called *Chevron* deference in a blockbuster June 28 decision. This decision significantly reduces the power of administrative regulators such as OSHA and MSHA. It now places more authority back in the hands of judges to interpret the laws applicable to workplace safety and mine safety.

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Federal courts across the country are now instructed to “exercise their independent judgment when deciding whether an agency has acted within its statutory authority.” In plain English, this ruling gives the courts – not the administrative agency – the power to say what the law actually is. It allows judges to judge, which is, after all, the court’s job. [You can click here to read more about this game-changing decision and how it could impact your workplace.](#)

Impact on Workplace Safety

So, how does this decision impact the Department of Labor and specifically OSHA? The answer is it will rein in the agency’s ever-expanding powers and will subject the agency’s rationale and actions to a greater amount of judicial scrutiny.

- One of the common criticisms of OSHA is that the agency has long used the power bestowed upon it by the *Chevron* doctrine as a means to advance its own expansive interpretation of laws by issuing **citations to employers**. Some courts have permitted this practice, which is essentially an end-around to the legislative process and impermissibly expands OSHA’s authority. But the agency’s decisions in these situations will now be called into question when employers file challenges to OSHA citations.
- Another common criticism of OSHA is its ever-increasing and seemingly unsupervised **rulemaking process** that substantially affects employer’s rights. An example of this is the [new OSHA walkthrough rule](#) which aims to allow workers to designate a union representative to accompany an OSHA inspector during an investigation – even in non-union shops. Another example is the rule requiring certain employers to [electronically submit information regarding workplace accidents once a year or face potential fines](#). A court reviewing situations involving these rules under a *Chevron* analysis may well have ruled in OSHA’s favor and against the employer. But now these rules will be subject to a greater degree of judicial scrutiny – and the rights of employers may ultimately be better protected.

Impact on Mine Safety

Much like with OSHA, the SCOTUS decision will have an impact on how MSHA decisions are made involving the



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Federal Mine Safety and Health Act. Two key areas to watch are rulemaking and jurisdiction.

- With respect to **rulemaking**, expect courts to take a closer look as to whether newly enacted standards are in keeping within the text of the Mine Act. And just in time. **MSHA's controversial Silica rule** is currently being challenged before two Circuit Courts of Appeal. Expect the stricter review of agency actions to play a key role in whether the Silica Rule survives judicial scrutiny.
- Another area where the new standard could play a key role is **jurisdiction**. Unlike OSHA, which regulates nearly all workplaces unless another law controls, MSHA only regulates worksites that meet the Mine Act's definition of a "mine." But that definition has proved to be confounding at times, and courts have historically relied on *Chevron* to grant MSHA deference when determining whether a particular site falls under its oversight. With that no longer an option, employers who challenge mine designations – and by extension whether MSHA has jurisdiction over their site – may find themselves on more equal footing during court challenges.

What Should You Do?

- You should work with counsel to determine whether you can or should change any of your practices or policies given the expected shifts to come and to assess whether you should reexamine any ongoing litigation or agency investigations in light of the new standard.
- You should also team up with industry and trade associations to identify agency positions that affect your business and work together to challenge agency action that has crossed the line.

Conclusion

What's next? The Supreme Court's ruling has thrown 40 years of administrative practice into a tailspin. There are a lot of unknowns at this time, and it will take some time to fully understand the full implications of the ruling.

One thing is for certain though: in this quickly changing legal climate, employers must rely on their attorneys to help them navigate all of these changes and to be prepared to challenge unreasonable agency interpretations.

We will continue to monitor developments in the expected new wave of challenges to OSHA's and MSHA's rules and positions, 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, the authors of this Insight, or any attorney in our [Workplace Safety](#) or [Mine Safety](#) teams.