



How Will the End of Chevron Deference Impact Multinational Employers? 4 Practical Tips

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 multinational employers and provide four steps you 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 Multinational Employers?

In the absence of *Chevron* deference, multinational employers will have an easier time challenging federal agency regulations. You may be particularly interested in anticipated regulations stemming from a February 28 Executive Order, [which you can read more about here.](#) The EO will lead to new restrictions on transferring sensitive personal data "countries of concern."

The EO directs the Attorney General and the Department of Homeland Security to issue regulations that will prevent the large-scale transfer of data to China and other "countries of concern."

These regulations – which are expected to be unveiled by the end of August – may significantly limit multinational companies' ability to transfer employee and consumer data to certain countries. So, we expect impacted businesses to challenge the regulations in court now that judges will independently evaluate agency interpretations.

Is There a Downside to This New Reality?

While the end of *Chevron* is largely viewed as a win for 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 gave them power to issue rules are all a little different. This uncertainty can complicate compliance efforts and strategic planning for multinational employers.
- **Potential Delays in Rulemaking:** Now that *Chevron* has been overruled, agencies may be more cautious and thorough when developing new regulations in the face of greater judicial scrutiny.
- **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 employers operating across multiple states and nations. For multinational employers, this may affect how you coordinate your global compliance efforts and may prompt more-frequent review of your programs and policies.

4 Practical Tips for Multinational Employers

We encourage you to take these four 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 growth and stability across industries.
4. **Train Your Leaders** – Make sure your leadership team understands the impact of the recent SCOTUS ruling, what applicable rules and regulations may be affected in your industry, and how to track changes to ensure compliance with the latest updates.

Conclusion

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

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