Staffing Industry Needs to Prepare For Changes After Groundbreaking SCOTUS Ruling Pulls Power From Federal Agencies

Insights
7.30.24

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 focuses on what the **staffing industry** can expect in the post-*Chevron* world – both the good news and the bad – and provides four practical steps you can take to prepare for this new era.

What Happened?

SCOTUS rocked the legal world on June 28 when it overturned the famous *Chevron* doctrine, holding that courts should not simply defer to an agency's interpretation of an ambiguous federal statute. In *Loper Bright*, the Court said that, from now on, judges "must exercise their independent judgment" when ruling on cases involving agency rules, regulations, guidance, or other actions. In plain English, this ruling gives the courts – not administrative agencies – the power to say what the law actually is. You can read all about it here, including all the different ways that the workplace law landscape may soon change.

How Will the Staffing Industry Be Affected?

While there are no specific federal regulations that directly target staffing as an industry, there are a number of general workplace regulations that have a tremendous impact on your everyday work. All of them are now on the potential chopping block, with business advocacy organizations and employers lining up to file legal challenges against them. However, remember that state-level rules are unaffected by this new standard, so you shouldn't expect to see any changes to rules in states like California, New York, Illinois, New Jersey, Massachusetts, and other progressive jurisdictions.

From a staffing industry perspective, here are a few federal issues worth paying particular attention to – with some good news and maybe some bad news sprinkled in as well.

One Early Success Story: Joint Employer Rule

Copyright © 2025 Fisher Phillips LLP. All Rights Reserved.

Here is an example of a rule that was already effectively killed due in part to the demise of the *Chevron* doctrine. Months after a Texas federal court judge struck down **the National Labor Relation Board's joint employer rule** that would have made it far easier for workers to be considered employees of more than one entity and resulted in increased union organizing efforts, the Board just dropped its appeal and effectively ended its attempt to regulate this area through rulemaking.

While it didn't admit as much, it appears the Board saw the writing on the wall after the SCOTUS decision and knew it would have been facing a steep climb to pass such an expansive rule in the current environment. This development is a win for the staffing industry, knowing the rule would have inhibited or dissuaded potential clients from contracting with staffing firms due to fear of potential joint employer liability. Now that a potential barrier to business growth has been removed, you can expect positive growth for the staffing industry.

2 Stories Yet to Be Fully Written…

Staffing firms have been monitoring the **Department of Labor's Overtime Rule** closely for quite some time. It raises the minimum amount employers need to pay a worker in order for them to be considered exempt from overtime pay – from about $35K/year to $43K/year as of July 1, and with another big jump to $58K on January 1, 2025 (you can read a full summary here). The industry has been concerned about the negative consequences this rule will have on some types of employees used by staffing companies (such as recruiters) whose exempt status could be impacted by the new salary threshold. And while a Texas federal judge recently agreed that the rule should be struck down, his order is very limited and only applies to public workers in Texas. Expect courts to hear more challenges to the Overtime Rule in the coming months – and a successful such challenge would go a long way towards alleviating those concerns.

And several of **OSHA's workplace safety rules** have an outsized impact on the healthcare industry. Most specifically, the agency 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). You can expect challengers to line up in an attempt to beat back the more onerous portions of these well-intentioned but burdensome regulations.

Demise of* Chevron *Not All It's Cracked Up to Be?

The healthcare industry was already challenging **CMS's Minimum Staffing Rule for Nursing Homes** that will require nursing homes to provide a minimum of 3.48 hours of nursing care per resident per day, including 0.55 hours of care from an RN per resident per day and at least 2.45 hours of care from a nurse aide per resident per day, as well as 24/7 onsite RN services (among other requirements). The new SCOTUS standard case gives more ammunition to this challenge, which will play out over the next three years during the staggered implementation period (which begins in large part in May 2024).

Copyright © 2025 Fisher Phillips LLP. All Rights Reserved.

large part in May 2026).

But healthcare staffing firms actually stand to benefit from this rule as it would mandate increased staffing numbers and potentially lead to increased demand for healthcare staffing – so a successful challenge might actually have a negative impact on the demand for staffing services. You can read a more thorough discussion on some other unintended consequences of *Chevron*'s demise here.

4 Practical Tips for Staffing Firms

We encourage staffing industry leaders 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. Legal counsel can also help determine if you have any new arguments to challenge agency actions and advise you on the level of risk associated with taking different stances under certain rules.
3. **Advocate for Clarity and Fairness** – Actively participate in industry and trade associations such as the American Staffing Association, 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 staffing industry.
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 staffing firms. You can effectively navigate this period of change by staying informed and actively engaging in advocacy.

Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information. We will continue to monitor the situation and provide updates as more information becomes available. Any questions may be directed to your Fisher Phillips attorney, the author of this Insight, or any attorney on our PEO, Staffing, and Gig Workforce Team.

Related People

Copyright © 2025 Fisher Phillips LLP. All Rights Reserved.

Benjamin M. Ebbink
Partner
916.210.0400
Email

Ree Harper
Partner
404.240.4215
Email

Service Focus

Government Relations

Labor Relations

Litigation and Trials

Wage and Hour

Workplace Safety and Catastrophe Management

Industry Focus

Healthcare

Copyright © 2025 Fisher Phillips LLP. All Rights Reserved.

Staffing

Copyright © 2025 Fisher Phillips LLP. All Rights Reserved.