

SCOTUS LANDMARK RULING WILL IMPACT WORKPLACE IMMIGRATION: A 5-STEP ACTION PLAN FOR EMPLOYERS POST-CHEVRON

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 specific areas of workplace law will be 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 workplace immigration and provide five 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 Employment Immigration?

There are two sides to the immigration impact on employers now that *Chevron* deference has been overturned:

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- **On the one side, employers will have an easier time challenging federal agency regulations that make it harder to hire and retain foreign national employees.** So, regulations or agency decisions that have a more-stringent reading than the applicable statute can become easier to challenge. But this usually only applies if an employer sues the government in certain immigration application denials unless the applicable regulations are declared invalid nationwide.
- **On the flipside, you may see helpful regulations tied up in litigation as well.** In particular, certain immigration benefit programs that were born out of regulations may see a renewed effort to challenge their validity. These benefits typically involve employment authorization for certain classes of immigrants, such as student visa holders in optional practical training (OPT), and employment authorization for H-1B workers' spouses (H-4 EAD).

Notably, some U.S. tech worker groups challenged both of these programs years ago. Their OPT challenge failed in 2021 after the court applied *Chevron*. However, their appeal in the H-4 EAD challenge is still pending with the D.C. Circuit – and they recently filed a letter with the court citing to the new SCOTUS ruling to support their claims. They may not prevail in the end, but the renewed challenge will certainly generate some anxiety for foreign nationals who rely on these benefits.

While the end of *Chevron* is largely viewed as a win for employers, the issues noted above may lead to the following negative consequences stemming from this change:

- **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 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.

Your 5-Step Action Plan

We encourage you to take these five steps to remain agile during this period of uncertainty:

1. **Rethink Your Immigration Strategy** – In certain situations, suing over a denied immigration application may make more sense than an administrative appeal or refile. If possible, you should consider filing an employer-sponsored petition for permanent resident status for those employees on statuses at risk of legal challenges (such as H-4 EAD and OPT). Employer-sponsored visas are a more secure option than those created by regulations or executive actions since they all have a direct statutory basis. In other words, it would take Congressional action to pass laws to undo them.
2. **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.
3. **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.
4. **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.
5. **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.

Conclusion

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

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