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GAME-CHANGING SCOTUS RULING SERVES UP A MENU OF POSSIBILITIES FOR HOSPITALITY EMPLOYERS: YOUR 4-STEP ACTION PLAN 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 employers in the hospitality industry. We'll also give you four steps you can take now 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 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 This Impact Hospitality Industry Employers?

Whether you operate a hotel, restaurant, entertainment venue, or other hospitality-related business, there are a number of workplace regulations that have a tremendous

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impact on your everyday work. Here are just a few key areas where you could see huge changes now that *Chevron* has been overturned:

- **Tip Pooling and Tip Credit Regulations:** Employers must follow stringent rules if they take a so-called "tip credit" and pay tipped workers less than the standard minimum wage – and recent rules from the Department of Labor (DOL) have created more challenges for hospitality businesses that utilize the tip-credit method of wage payments. Employment associations representing the hospitality community have filed legal challenges in the past to fight burdensome rules on tip pooling, and the end of *Chevron* could be key to fighting such overreach in the future.

- **More Wage and Hour Rules:** Since the federal Fair Labor Standards Act (FLSA) is silent or ambiguous as to so much of the detail necessary to practically deal with wage and hour issues, courts have often applied *Chevron* deference to the DOL's regulations and other interpretations. While this has provided stability throughout the years, it has given the DOL outsized power to set regulations that govern the workplace.

  Now, we expect to see employer advocates bolster their arguments by pointing to the new *Loper Bright* decision when challenging DOL rules, such as the new salary threshold for exempt employees under the FLSA's white-collar exemptions. Hospitality employers will likely feel a big impact from the new federal overtime rule, which raised the exempt salary threshold to about $44k on July 1 and will mandate another hike to nearly $59K at the start of 2025. Already, a court has cited to *Loper Bright* when it issued a very limited ruling blocking the federal government from enforcing the new rule against the State of Texas as an employer. We 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 your concerns about the impact of this significant change on your operations.

- **Labor Relations:** Labor unions cover many occupations and industries beyond traditional manufacturing settings – and there's been a recent focus on hospitality jobs, like baristas and other service roles. Now that courts are less obligated to yield to agency interpretations of their own

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regulations, the NLRB is poised to lose its recently unchecked power as its positions become subject to increased and meaningful judicial scrutiny. We expect to see a flurry of cases attacking the NLRB's recent interpretations of federal labor law that significantly tipped the scales in favor of unions.

- **Workplace Safety:** 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. Additionally, hospitality industry employers will want to track OSHA's proposed regulation on heat-related illnesses and injuries, which will impact numerous jobs, including employees at outdoor dining restaurants and hotel employees who work entirely or partially outside.

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 hospitality industry 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

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course, can be particularly challenging for hospitality employers with operations in multiple states.

4 Steps You Can Take Now

You should note that the federal agencies mentioned above have not changed their current approaches, so you'll want to ensure your policies and programs comply with current rules and regulations unless and until a legal challenge against a given agency rule is successful.

As we wait for the post-*Chevron* reality to take shape, you may want to review your company's practices and policies to plan for how various cases may turn out. We also 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. **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.

4. **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

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The Supreme Court's blockbuster decision marks a significant shift in the regulatory landscape, presenting both challenges and opportunities for hospitality industry employers. 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 authors of this Insight, or any attorney on our Hospitality Industry Team.

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