Legal Update Article

Go Fish! U.S. Supreme Court Overturns 'Chevron Deference' to Federal Agencies: What It Means for Employers

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June 28, 2024

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The U.S. Supreme Court has overturned the decades-old *Chevron* doctrine of judicial deference to a federal agency's interpretation of an ambiguous statute. ***Loper Bright Enters. v. Raimondo***, No. 22-451, and *Relentless, Inc. v. Department of Commerce,* No. 22-1219 (June 28, 2024). The Court's decision came in response to a pair of cases brought by two fishing vessel operators challenging federal regulations on fishery management in federal waters.

Although the underlying cases were not workplace-related, the decision may significantly affect employers because of the many regulations issued by federal agencies such as the Equal Employment Opportunity Commission (EEOC), Department of Labor (DOL), Occupational Safety and Health Administration (OSHA), and National Labor Relations Board (NLRB) that affect the workplace every day.

Chevron Doctrine

Previously, courts were required to defer to agency regulations if the language of the statute at issue was ambiguous and the agency's interpretation was "reasonable." *Loper Bright* requires lower federal courts to uphold an agency's statutory interpretation only if the court is persuaded that it is the best interpretation of the law.

Under the *Chevron* doctrine, courts used a two-step framework when reviewing an agency regulation interpreting a statute. At step one of the *Chevron* analysis, the court looked at the underlying statute to determine whether the provision at issue was clear. If the statute was clear, the analysis ended at step one. However, if the provision was ambiguous, or the statute was silent on the matter, a court went to step two and considered whether the agency's interpretation of the statute as reflected in the regulation was a "reasonable" one. If determined to be reasonable, the court had to uphold the interpretation, *even if* the court might conclude there is another, better interpretation. This was a fairly low burden for an agency defending a challenged action.

Chevron's Impact on Workplace Law

Chevron deference has been a foundational precedent for more than 40 years. In that time, courts have issued thousands of decisions deferring to a broad swath of regulations issued by federal agencies. This deference has allowed agencies to shape the contours of employment laws with minimal judicial review.

Through rulemaking, agencies have refined the meaning of the statutes they enforce and, in some cases, have broadly expanded the scope of those statutes. For example, the DOL imposed a minimum salary requirement for application of the executive, administrative, and professional exemptions, although there is no such provision in the Fair Labor Standards Act (FLSA). More recently, the EEOC stretched the Pregnant Workers Fairness Act (PWFA)

to require accommodations for medical conditions related to abortion.

Since *Chevron,* federal agencies have routinely relied on the decision in response to challenges to these statutory interpretations. *Chevron* deference has allowed the agencies to survive legal challenges to similar expansive interpretations of the laws they enforce — emboldening agencies to extend their regulatory reach.

The Court's Decision

In *Loper Bright,* the Court's majority held that courts may not defer to an agency's interpretation of a statute merely because the statute is ambiguous. A court must exercise independent judgment in interpreting a statute and reviewing the agency interpretation of the statute. The Administrative Procedure Act (APA), which Congress enacted to curb overzealous agencies, the Court said, prescribes how courts are to review such agency actions. The APA makes clear that agencies are *not* entitled to deference when interpreting statutes, the majority explained.

However, an agency's interpretation, as reflected in a regulation or other agency action, may have *some* sway, the Court said. A court may look to the agency charged with enforcing a statute for guidance in interpreting its meaning. An agency's interpretation may be "especially useful" if it was issued concurrently with the statute itself and has "remained consistent over time," the Court observed. Further, if a statute expressly authorizes an agency to act, courts must respect that delegation of authority, but "consistent with constitutional limits," the court must ensure the agency has acted within those limits. At bottom, though, the essential question for a reviewing court is: "Does the statute authorize the challenged agency action?"

Although it made clear that the *Chevron* framework is abandoned, the Court emphasized that prior decisions that relied on the *Chevron* framework are not overturned.

What Does This Mean for Employers?

Nothing changes today. The Supreme Court's decision did not address a challenge to a specific employment regulation. Regulations and guidance from the EEOC, DOL, OSHA, NLRB, and other agencies will continue to exist and be in effect. Employers should continue to follow agency regulations and guidance unless and until a court rejects these interpretations.

But the *Loper Bright* decision will make it easier to challenge regulations and thus may limit the ability of agencies to reshape labor and employment law to the degree with which they have over the last 40 years. The decision is likely to affect pending legal challenges to an array of federal agency rules, including:

- EEOC regulations implementing the PWFA (which are currently enjoined (in part) in Louisiana and Mississippi pending ongoing litigation);

- DOL rules increasing the minimum salary threshold for application of the FLSA's "white collar" exemptions; defining "independent contractor" vs. statutory employee under the FLSA; limiting the amount of time tipped employees can spend doing work that is not "tip producing"; adopting sweeping revisions to Davis-Bacon and Related Act prevailing wage regulations (recently enjoined pending a final court decision); and implementing an executive order boosting the minimum wage for federal contractors;

- OSHA's new "walkaround" rule allowing union organizers to accompany OSHA inspectors on workplace inspections;
- The NLRB's joint-employer rule; and
- The Federal Trade Commission's rule barring non-compete agreements.

Of course, just because a court has more discretion to accept or reject an agency's interpretation does not mean the interpretation will be rejected. However, with greater judicial discretion, a rule may be upheld in one court and invalidated in another. This could lead to a spate of inconsistent rulings throughout the country, creating jurisdictional conflicts and compliance headaches for large employers in multiple states.

While less judicial deference to federal agencies may hold some immediate appeal for employers, it also may bring less predictability. An uncertain regulatory backdrop and a potentially chaotic landscape of court decisions across jurisdictions can make it harder for employers to manage their workplace, as a practical matter, and to comply with the law.

Employers must stay on top of developing cases and know how to reconcile conflicting court decisions around the country, in addition to using the other compliance tools at their disposal — including agency guidance.

Finally, while employers should not expect an immediate change to the interpretation of employment statutes, employers facing lawsuits based upon agency interpretations of the law may have additional legal arguments in defense of litigation.

Jackson Lewis Guidance

Jackson Lewis has launched a task force comprised of the firm's key leaders across practice groups to identify the potential impact of these decisions on all aspects of workplace law, to utilize the decisions in litigation where helpful, and to advise employers on the short- and long-term implications.

Loper Bright is just one of the decisions issued this term that impact agency actions. Watch for further analysis soon from Jackson Lewis attorneys on the repercussions of these Supreme Court decisions and what they mean for your organization. In the meantime, please reach out to a Jackson Lewis attorney if you have questions about the impact of these landmark rulings.