



## Employment Law Note

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# U.S. Supreme Court Overturns *Chevron* – What the Decision Means for Employers



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On June 28, 2024, the U.S. Supreme Court struck down a 40-year-old ruling known as the “*Chevron* Deference,” which required courts to defer to federal agencies’ reasonable interpretations of ambiguous statutes that they administer even if the courts disagreed with the agencies. The Court’s *Loper Bright* decision, which addresses the two consolidated cases of *Loper Bright Enterprises v. Raimondo* and *Relentless Inc. v. U.S. Department of Commerce*, shifts power from federal agencies in the executive branch, with their often politically motivated interpretations of otherwise ambiguous statutes, to the judiciary. Courts now will use their own judgment to interpret statutes rather than defer to agency interpretations when ambiguities exist. The Court’s decision marks a significant shift that will impact countless regulations, including those related to labor and employment.

### The *Chevron* Deference

The *Chevron* Deference was established by the Supreme Court in its 1984 decision in *Chevron U.S.A. v. Natural Resources Defense Council, Inc.*, and required courts to defer to a federal agency’s “reasonable” interpretation of a federal statute if the statute was silent or ambiguous. The *Chevron* Deference principle assumed that agencies, having expertise in their respective fields, were better equipped than courts to interpret ambiguous statutes. The *Chevron* Deference resulted in the executive branch’s interpretations of legal requirements generally controlling judicial decisions, regardless of whether the court hearing a particular issue agreed with the federal agency, because the President appointed the head of the agencies. Opponents of the *Chevron* Deference have argued that agencies are politicized and simply carry out the orders of whichever political party is in power. A majority of current Supreme Court justices agree with *Chevron*’s opponents.

### The Supreme Court’s *Loper Bright* Decision

In two separate cases, commercial fishing groups claimed that a federal agency had exceeded its authority by forcing their fishing vessels to pay the salaries of observers on board. The lower federal courts upheld the agency regulation based on the *Chevron* Deference. The fishing companies then appealed to the Supreme Court, seeking to overrule or narrow the *Chevron* Deference.

That is what happened. In *Loper Bright*, the Supreme Court soundly rejected the *Chevron* Deference, calling it “fundamentally misguided.” The Court noted that “agencies have no special competence in resolving statutory ambiguities” and that federal judges should exercise judgment free from the influence of the political branches. The Court indicated that, as a result of misplacing power in federal agencies, *Chevron* had wrongly enabled each presidential administration to change regulations without enduring the legislative process, causing instability in the law. “By its sheer breadth, *Chevron* fosters unwarranted instability in the law, leaving those attempting to plan around agency action in an eternal fog of uncertainty.”

In overruling *Chevron*, the Supreme Court declared that judges must exercise their independent judgment in deciding whether an agency has acted within its statutory authority in interpreting statutes and that courts may not defer to an agency’s interpretation of the law simply because a statute is ambiguous. The U.S. Constitution had delegated the power to interpret laws to the judiciary. The Court reasoned that *Chevron* conflicted with the requirements of the Administrative Procedure Act because it allowed agencies to change positions as they pleased without being authorized by Congress to do so. Thus, with each change in presidential administrations, agencies often changed their interpretation of statutes to reflect the party

with whom they were affiliated. While judges can consider an agency's expertise and consistency, they are no longer bound to accept the agency's interpretation. Courts will still need to defer to federal agencies if they find a statute is a "clear" congressional delegation of authority; however, the Court's decision does not define the meaning of "clear."

Although the Supreme Court indicated that prior decisions relying on the *Chevron* framework are not overturned, its ruling leaves the door wide open for ongoing litigation and new legal challenges to administrative authority.

## Impact on Employers

Although the underlying cases did not deal with workplace law, the Supreme Court's decision will undoubtedly affect employers because of the many regulations issued by federal agencies such as the Department of Labor (DOL), Equal Employment Opportunity Commission (EEOC), National Labor Relations Board (NLRB), Federal Trade Commission (FTC), and Occupational Safety and Health Administration (OSHA) that affect workplaces every day. Over the years, these agencies' interpretations of employment-related laws have greatly fluctuated depending on the current occupant of the White House.

Because of these fluctuations, businesses have been regularly subjected to changing regulations from federal agencies. Many of these regulations currently face legal challenges, and additional challenges will likely follow. Examples of such regulations impacting employers include the DOL's independent contractor rule and Fair Labor Standards Act overtime rule, the FTC's rule banning non-competes, the EEOC's Pregnant Workers Fairness Act

regulations, the National Labor Relations Act's joint-employer rule, and OSHA's walkthrough rule permitting union representatives to accompany safety inspectors during facility walkarounds, even in non-union settings. With the overturning of *Chevron*, these regulations will be easier to challenge.

Employers currently facing litigation arising from alleged violations of agency rules will also have a stronger chance of defending their claims in court. Additionally, the Court's decision will provide employers the opportunity to push back against agency interpretations that shift with changes in the White House and Congress.

However, the Supreme Court's decision will also create uncertainty for employers since employers have regularly relied on agency regulations and informal guidance to ensure compliance with federal law and to conform to workplace best practices. In addition, employers will be subject to potentially inconsistent court rulings across different jurisdictions that could complicate workplace compliance.

While the *Loper Bright* decision is unlikely to affect Washington courts' deference to Washington agencies, it gives employers greater opportunity to successfully challenge federal-agency rulemaking in court. However, given the decreased power of federal agencies, state lawmakers and regulators may push for increased state regulation.

For now, employers should continue to comply with existing agency regulations until a court explicitly overturns the interpretations.

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