Is the Post-Chevron Era All It's Cracked Up to Be? 4 Reasons Businesses Might Not Celebrate the New Normal

Insights
7.19.24

Many business leaders celebrated the Supreme Court's recent landmark ruling that offers a powerful new tool to fight back against regulatory agencies – but are hidden dangers lurking beneath this apparent victory? While the *Loper Bright* decision will no doubt have a broad impact on business operations and especially workplace law, the end of the decades-old *Chevron* doctrine could come at a cost. Here are four reasons this victory might fall short of the hype for employers.

Quick Background: SCOTUS Strips Power From Federal Agencies

For 40 years, the Supreme Court required courts to routinely defer to an agency's "reasonable" interpretation of ambiguous provisions in federal law, providing federal agencies (and the White House) a powerful instrument to shape the law as they saw fit. This deference allowed agencies to issue rules, regulations, and guidance that carved new paths that were not always anticipated by congress or the general public.

But the 2024 Supreme Court term saw SCOTUS toss out that so-called *Chevron* deference and tip the scales of power away from the executive branch. Instead, SCOTUS's *Loper Bright* decision empowers federal courts across the country with a burst of newfound freedom and power by ruling that the courts are the ultimate arbiters of what federal law is. Judges now can use their independent judgment to decide if an agency has stepped out of bounds, casting aside any hint of deference. Read more about this game-changing decision and how it could impact your workplace.

4 Reasons Why the Victory May Be Costly

While many employers celebrated this day after decades of frustration over bureaucratic red tape, businesses may one day look back at the *Loper Bright* decision as a costly victory. Here are four reasons why.

1. Agencies Might Be Too Tied Up in Court to Perform Crucial Services

- In addition to developing and enforcing regulations, federal agencies also carry out valuable services that businesses and the general public might rely upon (such as performing reviews, granting approvals, issuing permits, etc.).

- We are already seeing a stream of lawsuits and legal filings from business groups and others challenging all kinds of regulations, which means that many agency leaders are now tied up in litigation and distracted from their everyday work. Since each agency only has so many resources, businesses might suffer from long delays in crucial services.

2. Fewer Regulations Could Allow for Greater Enforcement

- Rather than "making new law" through the tiresome (and perhaps fruitless) process of passing new regulations, it would not be surprising to see agencies turn their attention to pushing their priorities through enforcement and litigation.
- Agencies might shift their resources to enforce existing regulations and crack down on industries more aggressively. Fewer regulations to focus on also means that investigators could place more attention on those that remain.

3. Businesses May See Helpful Regulations Thrown Aside

- Many business advocates know they can attack what they perceive as troublesome rules by running to a business-friendly jurisdiction (somewhere in Texas, for example) and filing a challenge to the rule. Oftentimes these suits seek to challenge a regulation's enforcement nationwide. Now that *Chevron* is gone, forum shopping has already become even more fruitful.
- On the other hand, worker advocacy groups and unions may do the same and run to worker-friendly jurisdictions (such as D.C., New York, or Washington state) to challenge agency regulations they don't like, which could result in courts more easily striking down more business-friendly rules.

4. New State of Uncertainty Can Be Bad for Business

- Within a week of *Chevron* being overturned, employers were plunged into a state of limbo in two separate cases. A judge in Texas blocked the Department of Labor's "overtime rule" that aims to significantly increase the number of workers entitled to OT pay – but only as it pertains to Texas state employees. And days later, another judge in Texas blocked the Federal Trade Commission's rule that seeks to ban most non-compete agreements – but only for the small group of employers who filed the underlying litigation.
- You can expect to see this same pattern in case after case for the foreseeable future. Judges who now have greater authority to make their own decisions when it comes to the fate of federal regulations will unwittingly create a patchwork of varying obligations for multistate employers – and confusion for anyone trying to keep up with the inevitable shifting sands.
- 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 – meaning each agency has a different amount of discretion to act on their own. It will be harder and harder to guess what each individual judge will decide when it comes to each specific regulation at issue.

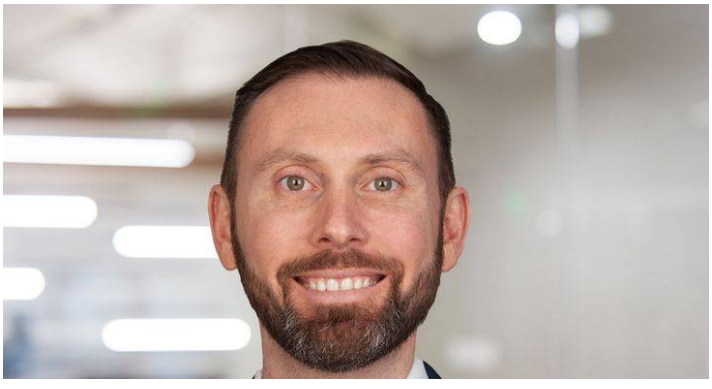
- And this uncertainty will only be exacerbated by a companion SCOTUS case that says the six-year statute of limitations to contest regulatory actions doesn't start ticking until a party is actually injured by the regulation. This gives groups on both sides yet another weapon to fight back against rules they don't like. Essentially, anyone can start a new business or trade association and claim that a long-established regulation (one which businesses may have grown to rely upon for many years) is fair game for challenge through litigation.
- As any business leader knows, it becomes infinitely more difficult to proceed with business plans, invest in new ventures, and create long-term strategies if the entire landscape one builds around is constantly at risk of changing.

Conclusion

This development will be worth tracking in the coming months and years, so make sure you subscribe to Fisher Phillips' Insight System to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney or the authors of this Insight.

Related People

Terri R. Stewart
Regional Managing Partner
404.240.4247
Email



Ashton M. Riley
Partner
949.798.2186
Email

Jeffrey D. Smith
Partner
440.838.8800
Email

Service Focus

Litigation and Trials

Counseling and Advice

Wage and Hour

Employee Defection and Trade Secrets