Federal Judge Blocks DOL's "Farmworker Protection Rule" in 17 States: What Should Agricultural Employers Do Now?

Insights
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A federal judge in Georgia just blocked the Department of Labor's "Farmworker Protection Rule" for employers in 17 states, providing a measure of relief for many agricultural employers but throwing many others into a state of uncertainty. Judge Lisa Godbey Wood's decision yesterday casts serious doubt on whether the rule, set to take effect this Thursday, will take effect as scheduled. She concluded that the rule, which aims to amend the anti-retaliation provisions in the H-2A temporary agricultural visa program regulations to protect "activities related to self-organization, including any effort to form, join, or assist a labor organization," violates federal law by providing collective bargaining rights to agricultural workers. What do you need to know about this ruling, and what should employers outside of these 17 states do as the effective date approaches?

Quick Background on Farmworker Protection Rule

The DOL released a final rule this spring that aims to expand employment protections for farmworkers in the H-2A visa program and enhance the agency's capabilities to monitor and enforce program compliance. The DOL says that "Farmworker Protection Rule" targets abusive working conditions experienced by H-2A temporary agricultural workers. The rule technically took effect on June 28, but the DOL delayed full implementation until August 29 as part of this lawsuit. You can read more about the rule and our eight key takeaways here.

Controversy From the Start

Opponents lined up immediately once the agency released the rule. Specifically, the National Relations Act (NLRA) has always excluded agricultural workers from its definition of "employee" since it was enacted as part of the New Deal in the 1930s. The Georgia Fruit and Vegetable Association, and Republican Attorneys General from 17 states, filed suit and argued that the agency couldn't backdoor in agricultural workers to receive labor law protections when the exclusive federal statute covering labor relations excluded them.

Judge Slices Down Rule in 17 States

Judge Wood agreed and found that the Farmworker Protection Rule violated the NLRA and thus is unconstitutional. But her August 26 ruling only grants relief and blocks the rule from taking effect in the 17 states that lined up to attack it: **Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas**

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Post-*Chevron* Shockwaves

The decision is another example of the evolving power of courts to overrule agency actions now the Supreme Court has struck down the *Chevron* doctrine. For those unfamiliar, SCOTUS issued the groundbreaking *Loper Bright* ruling on June 28 tossing out a decades-old standard that had required courts to give substantial deference to agencies like the FTC. You can read about that decision here.

The new standard? Courts should instead exercise their independent judgment when deciding whether an agency's actions are proper exercises of power – essentially enabling courts to strike down agency rules more easily. Check out our Post-Chevron Employers' Resource Center here and get a sense for how that new standard will impact various aspects of workplace law and various industries.

And this decision is a perfect example of how this new standard will be deployed by courts to significant effect. Judge Wood's order states, "The Final Rule is an attempt by the DOL to play the sorcerer. The DOL may assist Congress, but may not become Congress."

What's Next?

Given the administrative cost and challenge of administering two separate H-2A rules on a state-by-state basis, we expect the DOL to issue a statement and pause the Farmworker Protection Rule entirely while the Georgia litigation and any potential appeals play out. Stay tuned for more information about this potential development in the coming days.

What Should You Do?

In the meantime, until the DOL signals that enforcement of the rule is put on hold in the remaining 33 states and Washington, D.C., you need to review your obligations and ensure you are familiar with compliance requirements that take effect for applications filed on or after August 29. You can review our full eight-step list of takeaways here.

Conclusion

We will provide updates as more information becomes available, so make sure you are subscribed to Fisher Phillips' Insight System to receive updates directly to your inbox. If you have any questions, contact your Fisher Phillips attorney, the author of this Insight, or any member of our Agriculture Team.

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