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Supreme Court Upends Regulatory Law – Potential Major Impact on Employers!

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For the past 40 years, federal administrative agencies have enjoyed broad latitude in interpreting statutes passed by Congress. Known as "*Chevron* deference," courts have routinely deferred to the agencies' often politically motivated and even self-empowering interpretation of an otherwise ambiguous statute. This has led to a significant delegation (indeed, some would say surrender) of authority by the legislative and judicial branches to the executive branch, which has resulted in a kudzu-like growth of administrative regulations affecting all aspects of American society.

This phenomenon came to an abrupt end last Friday, when the Supreme Court overruled its own opinion in *Chevron* and struck a major blow to executive agency power in a 6-3 decision in *Loper Bright Enterprises v. Raimondo*. Writing for the majority, Chief Justice John Roberts noted that "…agencies have no special competence in resolving statutory ambiguities. Courts do." Thus, courts (not administrative agencies) must be the final authority when it comes to statutory construction.

Although *Loper Bright* involved a relatively niche dispute regarding regulation of Atlantic herring fishermen, the practical and political implications of the decision are breathtaking. Wresting power away from the executive branch in favor of the judiciary, *Loper Bright* exposes many agency regulations to a panoply of potential legal challenges. Given the extent to which *Chevron* deference has played a role in constructing the modern administrative state, it is impossible to say exactly how many of the hundreds of thousands of pages of federal regulations may ultimately be impacted by the *Loper Bright* decision.

From an employment perspective, the federal government has in recent years propounded numerous regulations regarding COVID-19 leave, overtime pay, and non-compete agreements, to name just a few examples. (For more on *Loper Bright*'s impact on the National Labor Relations Board and its oversight of union-management relations, see our related blog post here.) Inasmuch as federal agencies have asserted control over nearly every aspect of American life, other regulations potentially implicated by this case include those governing food and drugs, banking and finance, health care, environmental regulation, taxes—and the list stretches out as far as the imagination can carry it.

Although this new "*Loper Bright* Doctrine" (remember its name!) may leave existing federal regulations vulnerable, it does not automatically overrule any of them. Potential attacks on the validity of different regulations will only arise if and when litigants interested in challenging their treatment by federal regulatory agencies take legal action, as did the fishermen in *Loper Bright*.

Notably, in a back-to-back decision with *Loper Bright*, earlier today, the Supreme Court ruled in *Corner Post v. Board of Governors of the Federal Reserve System* that plaintiffs injured by a federal regulation may bring a lawsuit challenging that regulation's validity up to six years after the plaintiff experiences the injury. Previously, the statute of limitations to bring a lawsuit challenging a federal regulation was six years after the rule was issued—regardless of whether the rule actually caused any injury on that date.

The *Corner Post* ruling also has huge implications for employers and other businesses seeking to challenge administrative regulations, as it now opens up the window to do so for entities that did not exist at the time that a rule was promulgated but nonetheless have been injured by that rule in the time since. Given the relative litigiousness of modern American society, it should not take long for challengers to begin the process of seeking to dismantle and potentially rewrite broad swaths of administrative law affecting nearly every aspect of the economy and society.

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