The Work Week

Bassford Remele Employment Practice Group

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Welcome to another edition of *The Work Week with Bassford Remele.* Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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The Reversal of *Chevron* and its Effects on Employment Law

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Last Friday, June 28, 2024, the United States Supreme Court issued its decision in *Loper Bright v. Raimondo* and *Relentless v. Department of Commerce*, two consolidated cases which asked the Court to reverse its position in *Chevron*. The Court took the invitation and reversed *Chevron* in a 6-3 decision. Supplanting the *Chevron*-doctrine, the majority wrote, "Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA [Administrative Procedure Act] requires."

For more than four decades, judicial review of agency interpretation of statutes has been guided by *Chevron*'s two-step analysis. First, a court analyzed whether the underlying statute was clear and unambiguous. If so, the inquiry ended. If the statute was ambiguous or was silent on the issue in question, the court then considered whether the agency's interpretation in the regulation was a "reasonable" one. If the court determined that the agency's interpretation was reasonable, the court was required to uphold the interpretation—even if the court might conclude there is another, more-apt interpretation. Now, courts are no longer required to afford agency regulations this considerable deference.

The Court's holding in *Loper Bright* signals the start of fresh litigation challenging agency decisions, but its precise impact remains to be seen. Aware of this potential waving of the checkered flag, the majority stressed that "holdings [in] cases that specific agency actions are lawful . . . are still subject to statutory stare decisis despite our change in interpretative methodology," and that "[m]ere reliance on *Chevron*" is not a reason for overruling a precedent.

However, the *Chevron* reversal will immediately affect ongoing litigation, including lawsuits that have been filed to challenge the DOL's independent-contractor rule and the Davis-Bacon Act reform rule. Challenges are also expected regarding the DOL's proposed "white collar" salary rules. Similar challenges

should be expected to the EEOC's myriad guidance and interpretations. In each instance, agencies either have relied on or were going to rely on *Chevron* in their defense of the rules. With the *Loper-Bright* decision, agencies will have to look elsewhere for support.

So how does the *Loper Bright* decision affect already established agency rules and regulations? In short, it doesn't – yet. For now, agency rules and regulations remain unchanged, but employers should begin monitoring ongoing litigation for impactful changes to the employment law landscape. The employment team at Bassford Remele is available to help employers navigate these new changes as agency decisions are challenged. Feel free to reach out for assistance!

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