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CLIENT ALERT: U.S. Supreme Court Decision Eliminating Deference to Federal Agencies Expected to Create Challenges to Rules Impacting Employers

On June 28, 2024, by a 6-2 majority, the United States Supreme Court issued a landmark ruling in *Loper Bright Enterprises, et al. v. Raimondo* ("*Loper Bright*") that is expected to fundamentally change the course of administrative law and have a significant downstream effect on employers.

Background

Prior to the Supreme Court's recent decision in *Loper Bright*, federal agencies exercising rulemaking authority relied upon judicial deference provided to them by the Supreme Court in *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984) ("*Chevron*"). Long known as the "*Chevron* doctrine" or "*Chevron* deference," courts tasked with analyzing a challenge to a federal agency's interpretation of statutes administered by that agency applied a two-part test. First, courts were required to assess whether Congress had directly spoken to the precise question at issue or, conversely, whether the statute was ambiguous. If Congressional intent was clear, the inquiry ended. However, if it was determined that the statute was silent or ambiguous with respect to the question at issue, courts were required to defer to the agency if it offered a reasonable interpretation and permissible construction of the ambiguous statutory wording.

Loper Bright

In overturning *Chevron*, the *Loper Bright* Court reasoned that the *Chevron* doctrine – and *Chevron* deference – is not in harmony with the Administrative Procedures Act ("APA"), which governs the process by which federal agencies develop and issue regulations. According to the majority, the APA provides that agency interpretations of statutes are *not* entitled to deference. Rather, it is the court's responsibility to decide whether a law's meaning exists in harmony with an agency's interpretation.

In overruling 40 years of precedent, the Supreme Court's decision in *Loper Bright* represents a sea change in the world of administrative law, and it provides courts with a road map for assessing statutory interpretation by federal agencies. Rather than defer to agency interpretations simply because a statute is ambiguous, courts are now required to exercise independent judgment in determining whether an agency has acted within its statutory authority. Although the Supreme Court assured that its overturning of *Chevron* did not call into question prior judicial holdings decided under the *Chevron* framework, *Loper Bright* is expected to impact agency actions that have not been examined and future regulatory action.

Fallout

For employers, the fallout from *Loper Bright* is already beginning. Just two weeks prior to the *Loper Bright* decision, a federal district court in Arkansas denied a request from 17 state attorneys general

to block the U.S. Equal Employment Opportunity Commission's ("EEOC") Pregnant Workers Fairness Act ("PWFA") regulations – offering broader protections for pregnant employees – in part based on *Chevron* deference to the EEOC's interpretation of the statute. These attorneys general are now asking the Eighth Circuit to revive their challenge to the expanded PWFA regulations in light of *Loper Bright*.

The *Loper Bright* decision can also be expected to impact other agencies regulating the workplace. For example, the National Labor Relations Board ("NLRB") has developed a large and frequently changing body of law interpreting the National Labor Relations Act ("NLRA"). Although the NLRB has often relied on *Chevron* deference to withstand challenges, courts are expected to review NLRB activity with considerably more independence and less deference in light of *Loper Bright*.

Other agencies whose rules and regulations may be subjected to increased scrutiny in a post-*Loper Bright* world include, but are not limited to: the U.S. Department of Labor, which is currently defending against requests for a nationwide injunction on its recent implementation of its overtime regulations; the Federal Trade Commission, whose rule voiding non-compete agreements is also under review for a potential nationwide injunction; and the Occupational Safety and Health Administration, which recently issued a rule allowing union representatives to accompany inspectors during inspections.

In the short-term, employers should continue to follow existing agency regulations and guidance, but at the same time be cognizant that the landscape could change at any moment. MBJ will continue to monitor these developments and provide updates as they occur. Employers with questions about the impact of the *Loper Bright* decision should contact their MBJ attorney.

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