

What Would Overruling Chevron Mean for Labor and Employment Law?

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Littler[®]

Compliance **HR**

Today's Webinar Host:

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Who We Are



- Technology Platform
- Infrastructure enterprise

- Subject matter expertise
- Knowledge management team
- Case databases

What we do:
Deliver expert guidance in a fraction of time and cost vs traditional methods

Simplify the complexity of employment law



PolicySmart™

Create and maintain an up-to-date and legally compliant employee handbook



Navigator Independent Contractor

Remove risk in determining Independent Contractor status



Navigator Overtime

Determine if an employee is exempt or non-exempt



The Reference Center

A Comprehensive Solution for Employment Law and Common HR Compliance Questions



The Document Center

Efficiently generate state and federal compliant documents throughout the employee lifecycle

Compliance Essentials



Compliance HR
PolicySmart™
Changing the way companies create and maintain compliant handbooks

Creating and maintaining compliant handbooks is a daunting task. Your company's employee handbook is an invaluable tool that helps shape company culture, communicates operational policies, and minimizes the risk of employment-related legal liability. A well-written and legally compliant handbook is essential to keeping the HR process running smoothly, and most employers would agree that keeping up with federal, state, and local employment laws can seem overwhelming.

PolicySmart™ takes handbooks to the next level.
PolicySmart™ is an intuitive handbook compliance tool that provides employers with national and state-specific templates, a unique compliance timeline, and so much more.

Fueled by the subject matter expertise of Littler, the world's largest employment law firm and built on Next's AI-powered platform, PolicySmart™ allows users to easily create and maintain legally compliant handbooks that are cost-effective, up-to-date, and delivered on-demand.

- Federal and State Compliant Templates:** A comprehensive library of federal and state-specific templates, as well as policy templates that are fully customizable, depending on your workforce and operational needs.
- Innovative Compliance Timeline:** Provides an up-to-date timeline of important legal changes that will soon take effect in your selected jurisdictions, helping to ensure that policies are updated at the right time.
- Handbook Policy Checklists:** Gain access to jurisdiction-specific checklists that tell employers which policies are required by law to appear in their handbook and who is covered by each policy.
- Automated Monthly Emails:** Receive a summary and analysis of relevant legal developments that impact your workplace, with guidance on how to revise policy language.



Compliance HR
Reference Center
The Comprehensive Solution for Employment Law and Common Compliance Questions

Last year, thousands of employment law requirements were created and overhauled. Maintaining compliance across all jurisdictions is an incredibly difficult feat, but the Reference Center is here to help.

Answer your compliance questions with the Reference Center

ComplianceHR is committed to innovation. To better suit your workflow, we have created the Reference Center. This solution provides you with a simple way to answer your compliance questions, easily find content on several employment law topics, and even provide deeper content that bridges multiple employment law topics.

Your organization needs a proactive strategy instead of a reactive approach to compliance. The Reference Center provides state and local information for a variety of topics, such as final pay, FMLA, minimum wage, predictive scheduling, and workplace posters, among many others.

Fueled by the subject matter expertise of Littler, the world's largest employment law firm, the Reference Center is a critical tool for your HR and legal teams.

- Local, State and Federal Information:** A comprehensive library of state and national information that bridges a variety of compliance topics to ensure you're able to access important data.
- Wide Range of Compliance Topics:** From COVID-19 to final pay, FMLA to rate changes, pay frequency to an call, organizations of any size and in any sector can benefit from this information.
- Streamlined Workflow:** The Reference Center is designed to help people across your organization quickly find answers to their questions, whether they're on a centralized legal team or an HR team distributed across the country.

PolicySmart provides you with:

- Federal and state-compliant templates
- Innovative compliance timeline
- Handbook policy checklists
- Automated twice monthly legal update emails

The ComplianceHR Reference Center provides you with:

- Local, state and federal information
- Streamlined workflows
- Wide range of compliance topics
 - COVID-19, final pay, FMLA, rate changes, and more

When coupled, these two solutions provide you with comprehensive compliance program support

Sign Up for a Demo

Three ways to sign up for a demo:

1. Reply “Yes” to the on-screen poll
2. Click the link at the top of your screen
3. Visit the link in the Resources panel

Benefits of a custom demonstration:

- Discuss your organization’s requirements/challenges
- Review Navigator Suite Solutions
- Share compliance methodologies

ComplianceHR Demo & Free Trial:

<https://compliancehr.com/webinar-demo/>

Resources

[Compliance HR - Demo & Free Trial](#)

[State-by-State CLE Guide](#)

[BeaconLive - How to Access Certificates](#)

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What is Chevron Deference?



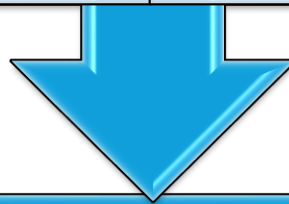
- *Chevron USA, Inc. v. National Resources Defense Council*
- Formally involved the EPA's interpretation of the Clean Air Act
- The EPA treated all pollution-emitting sources within a single industrial group as a single source
- The Supreme Court upheld the EPA's interpretation because the statute was ambiguous, and the agency's interpretation was reasonable

Chevron Two-Step

Chevron tells lower courts to ask two questions:

Is the statute ambiguous?

Is the agency's interpretation reasonable?



If so, the court accepts the agency's interpretation even if the court would have read the statute differently itself

Chevron's Importance

One of the most influential decisions of the twentieth century

Cited more than 15,000 times

Affects all kinds of law, including labor and employment law

Chevron's Effect on Labor and Employment Law

Much of labor and employment law is made by agencies

- NLRB
- EEOC
- Department of Labor
- OSHA

These agencies all issue rules and guidance that gets Chevron-style deference

Why is the Supreme Court Looking at Chevron Now?

Criticisms

- Shifted the balance of power to the president
- Accelerated growth of federal agencies
- Allows Congress delegate too much policymaking to unaccountable agencies
- Forces judges to punt legal questions to agencies
- Ignores the Administrative Procedure Act, which tells courts to decide all legal questions for themselves

Why is the Supreme Court Looking at Chevron Now?

Cases

- *Loper Bright Enterprises v. Raimondo*
- *Relentless, Inc. v. Raimondo*

Both involve a statute regulating federal fisheries

Question

- Can the Department of Commerce force fishing boats to pay for their own on-board monitors?
- The lower courts said yes; both applied Chevron

Is the Supreme Court Going to Rule Chevron?

- In both cases, the petitioners asked the court to overrule Chevron
- At oral argument, a majority of the Justices asked questions suggesting they were skeptical of Chevron
- Some justices have criticized Chevron in prior writings
- Bottom line: the Court is probably going to narrow Chevron, if not outright overrule it



How Would Overruling Chevron Affect Labor and Employment Law?

Potentially affected rules:

- NLRB joint-employer rule
- Department of Labor Independent Contractor rule
- Department of Labor proposed overtime rule

How Would Overruling Chevron Affect Labor and Employment Law? (cont'd)

Future rules:

- More modest rulemaking
- Fewer rules overall
- More policymaking by statute

How Would Overruling Chevron Affect Labor and Employment Law? (cont'd)

- Policies up for grabs
 - Joint employment (NLRB)
 - Standard for Determining Joint Employment, 88 Fed. Reg. 73946 (Oct. 27, 2023)
- Salary basis
 - Defining and Delimiting the Exemptions for Executive, Administrative, Professional, outside Sales, and Computer Employees, 88 Fed. Reg. 62152 (Sept. 8, 2023)
- Card check
 - Cemex Construction Materials Pacific, LLC, 327 N.L.R.B. No. 130 (Aug. 25, 2023)
- Union property access
 - Improving protections for Workers in Temporary Agricultural Employment in the United States, 88 Fed. Reg. 63750 (Sept. 15, 2023)

Predictions

- Chevron will be overruled or limited
- Agency rulemaking authority will be circumscribed
- Agencies will continue to issue rules, but less frequently
- Agencies will find other ways to advance policy goals



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Questions?

Please add any additional questions to the Q&A box

Thank you!

