Legal Update Article

OSHA Standards and Manufacturers: Key Post-*Loper* Considerations

By Pamela B. Linberg & Ashton P. Hoffman

September 23, 2024

Meet the Authors

Pamela B. Linberg

(She/Her • Pam)
Principal
713-650-0404
Pamela.Linberg@jacksonlewis.com

Ashton P. Hoffman

Associate
(713) 568-7853
Ashton.Hoffman@jacksonlewis.com

Related Services

Manufacturing
Workplace Law After 'Loper'
Workplace Safety and Health

The U.S. Supreme Court's *Loper Bright* decision overturned the decades-old *Chevron* doctrine of judicial deference to a federal agency's interpretation of an ambiguous statute. This change in how courts review federal agencies' interpretation of statutes is important for the manufacturing industry, which is heavily regulated by the Occupational Safety and Health Administration (OSHA). For example, a large portion of the manufacturing workforce is covered by OSHA's safety rules. The rules encompass many categories, including equipment safety, protective attire, and warning signage. According to OSHA, 130 million employees are subject to its regulations and protections.

Now that courts may independently considerchallenges to agency rules, if they deem the agency rule to be inconsistent with the text of legislation, they may strike the rule without deferring to the agency's determination.

OSHA's Regulatory Nature

Congress enacted the Occupational Safety and Health Act of 1970 in response to decades of strikes and tension due to poor or dangerous working conditions nationally and across nearly every industry. The legislative text of the Act is thin, covering only 27 sections of the U.S. Code. The Act creates enforcement bodies, provides for penalties and remedies, and gives overarching policy goals aimed at creating safer workplaces. The Act lacks specific workplace directives or safety measures and leaves that large body of rulemaking to the Department of Labor (DOL). Since the Act's enactment, the DOL has promulgated more than 1,000 standards or workplace regulations. Because of this, OSHA's structure is mostly governed by regulations, every one of which is subject to change in light of *Loper Bright.*

Potential Impact of *Loper Bright* on OSHA

Although *Loper Bright* will not immediately change OSHA regulations and standards, legal challenges are likely. For manufacturing employers, the rules around the most common sources of OSHA citations such as fall protection, lockout/tagout, and respiratory protection could come under challenge. Individual states may also begin to promulgate their own rules to fill in any gaps created by a less impactful OSHA. Manufacturing employers should be prepared to review and address varying legal regimes, both on the federal and a state-by-state level.

Manufacturing employers need to be mindful that the safety risks for which the OSHA regulations were created remain. Employers should continue to operate as usual, without regard to possible future weakened or changed standards.

Loper Bright's impacts are already being felt. For example, a federal court in Texas has indicated the DOL rule increasing the minimum salary level for exempt employees would not survive under *Loper Bright* as applied to Texas employees. It is only a matter of time before *Loper Bright* affects OSHA's workplace safety standards and, thus,

manufacturing employers.

Whether instituting policies to account for gaps or changes in OSHA's safety standards or surveying changing state laws in the wake of evolving standards, manufacturing employers are well-served to develop strategies in response to *Loper Bright* and its potential effects on business models.

Please contact a Jackson Lewis attorney with any questions.