Special Report

The Year Ahead 2025: Agency Authority and the SCOTUS Paradigm Shift

January 16, 2025

The recent Supreme Court decisions in *Loper Bright*, *Jarkesy*, *Corner Post* and *Muldrow* will continue to impact employers and the landscape in which they operate. These rulings — and the way agencies and employers seek to comply with them — may reshape agency authority, regulatory enforcement and the workplace.

Takeaways

- Based on *Loper Bright*, courts must independently interpret statutes and not simply defer and adopt agency regulations.
- *Jarkesy* essentially ended the SEC's long running use of in-house tribunals led by ALJs and is reshaping the landscape of administrative enforcement actions, requiring more cases to be heard in federal courts with jury trials.
- Expect more conflicting court decisions interpreting federal regulations in the short term. Keep an eye on federal courts in Texas as more challenges to agency authority are likely to be filed there in the short term.
- Trend of limiting agency authority will continue; next up: nondelegation doctrine.
- Post-*Muldrow*, plaintiffs still need to show harm, but courts may have widely differing views on what harm is sufficient.

Loper Bright Ripple Effects

Expand All

▸ Challenges are not a slam dunk.

Recent rules (or rules that routinely flip-flop) are most vulnerable.

Longstanding regulations are less vulnerable.

It's too soon to tell the overall impact.

Post-*Jarkesy*: Administrative Adjudication on the Rocks

The U.S. Supreme Court's 6 – 3 *SEC v. Jarkesy* decision essentially ended the SEC's long-running use of in-house tribunals led by administrative law judges to adjudicate fraud actions. Following *Jarkesy*, many lawsuits have been filed in federal court — particularly in Texas — making both 7th Amendment and separation of powers arguments challenging different agencies' ability to adjudicate matters through an administrative process when civil penalties are sought.

DOJ

Multinational retailer successful in obtaining injunction in SD Ga. preventing the ALJs in the DOJ's Office of the Chief Administrative Hearing Officer (OCAHO) from continuing proceedings to determine administrative penalties for immigration-related recordkeeping requirements.

FDIC and FTC

Challenge in DDC to FDIC's use of ALJs by individuals accused of engaging in a pattern of misconduct in connection with a loan referral program.

Complaint against the FTC in the ND Texas challenging the FTC's ability to adjudicate unfair sales practices and discrimination claims in an administrative proceeding.

FCC

Three separate actions pending in the Second, Fifth and DC Circuits arguing the FCC lacked the ability to assess a total of $184+ million in fines related to location data sharing.

NLRB

Challenges to NLRB administrative proceedings in the 5th Circuit.

OFCCP

Injunction issued by SD Texas halting DOL's administrative enforcement proceedings against a government contractor regarding mandatory contractual language concerning discrimination.

OSHA

Complaint filed in ED Va. against the DOL challenging the DOL's ability to adjudicate Sarbanes-Oxley claims via ALJs. The DOL's motion to dismiss is pending.

Muldrow in Motion: The Fallout

Despite concern among justices that this Title VII discrimination case involving a transfer would open the floodgates of litigation by re-setting the standard for adverse action, the U.S. Supreme Court held plaintiff Muldrow was not required to show that the harm experienced was "significant," "serious," "substantial" or "any similar adjective suggesting that the disadvantage to the employee must exceed a heightened bar." Since *Muldrow* was decided in April 2024, 200+ cases have dealt with the decision in some fashion:

1. Consensus of the decisions is that an adverse employment action need not cause significant, material or serious injury to be actionable, but there must be some disadvantageous change in a term or condition of employment. See e.g., *Harris v. Sec'y of VA* (D Kan., June 14, 2024).
2. Courts still require the plaintiff to identify an objective, non-speculative harm they have suffered as a result of the alleged conduct. See *Bonaffini v. City Univ. of New York* (EDNY, Sept. 25, 2024).
3. Analysis of adverse actions now frequently involves examination of the alleged adverse action in terms of the causal connection to the alleged discrimination and/or the damage allegedly incurred by the plaintiff.

Workplace Law After ‘Loper’: What’s Next?

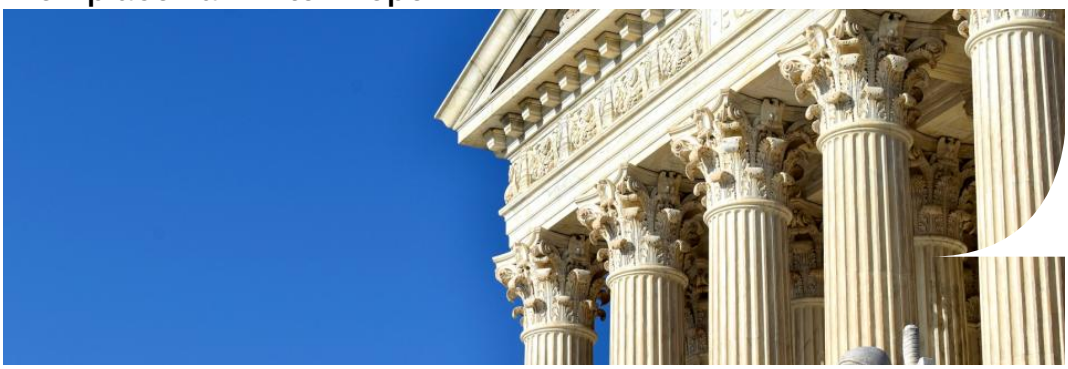
Hosts: **Stephanie L. Adler-Paindiris**, Principal and Litigation National Practice Head, and **Patricia Anderson Pryor**, Principal and Emerging and Cross-Disciplinary Issues National Head

“Of course, there’s still going to be so many appeals still to be had. We’re literally at the tip of the iceberg. So much more to uncover in terms of where any of these cases are taking us in the future — and where the future of administrative agencies is under the new administration. I just think there’s so much more to uncover here as we go forward.”

Listen to the podcast

Related resources

Workplace Law After ‘Loper’



Workplace Law After ‘Loper’ Audio Guide

U.S. Supreme Court: Alleging Discriminatory Transfer Is Sufficient Harm to Bring Title VII Claim

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