



# Ending *Chevron* Deference

## Impacts on Worker Protections

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Federal agencies established to protect the safety and economic rights of workers, such as the Occupational Safety and Health Administration (OSHA) and the National Labor Relations Board (NLRB), derive much of their power from *Chevron* deference. These include protections regarding workplace safety, overtime and wage benefits, and the right to organized labor. Any possible restriction upon agency expertise by eliminating *Chevron* would negatively affect workers across sectors. The following highlights some of the protections and benefits that workplace regulations provide to everyday Americans, and what the Supreme Court is putting at risk.

### **Worker protections and benefits from regulations and regulators:**

- In 2021, the NLRB recovered \$56 million on behalf of workers whose rights were violated and increased reinstatement offers for wrongfully terminated employees by 545 percent.<sup>1</sup>
- OSHA and the Mine Safety and Health Administration protect employees from workplace hazards,<sup>2</sup> but the deference given to them by the *Chevron* doctrine could be replaced by the undefined major questions doctrine,<sup>3</sup> allowing unelected judges to implement their policy preferences over career civil servants with expertise in such areas as mine safety, blood-borne pathogens in the workplace, fall prevention, etc.<sup>4</sup>
- The NLRB protects workers' right to democratically organize under the National Labor Relations Act (NLRA).<sup>5</sup> In 2022, 273,000 workers joined unions for a national total of 14.3 million unionized workers,<sup>6</sup> and petitions for union elections grew by 53 percent.<sup>7</sup> At the same time, employers are charged with violating the NLRA in 41.5 percent of union elections.<sup>8</sup> Maintaining the NLRB's rulemaking and regulatory authority under *Chevron* deference is critical to protecting American workers.

## Regulations at stake:

- **Minimum salary requirements for overtime:** The conservative U.S. District Court for the Western District of Texas recently applied *Chevron* deference to uphold the U.S. Department of Labor’s (DOL) ability to impose minimum salary requirements for employers to qualify for an exemption from paying overtime to employees classified as “executive, administrative, or professional”<sup>9</sup> workers. If *Chevron* did not apply, businesses would see a greater administrative burden by being forced to conduct a duties test<sup>10</sup> for each employee to determine their eligibility for overtime.
- **OSHA rules:** The Supreme Court has already substituted the undefined major questions doctrine<sup>11</sup> for *Chevron* deference in overturning the OSHA rule requiring workplace vaccinations, with the possibility of exceptions, during the COVID-19 pandemic; such vaccine requirements which would have prevented thousands of deaths and hundreds of thousands of hospitalizations.<sup>12</sup> Overturning *Chevron* would make it easier to challenge new or amended OSHA rules protecting employees from workplace harms.
- **Joint employment rules on wages and overtime:** In 2021, the DOL Wage and Hour Division and the NLRB issued rules about when workers can have “joint employers.”<sup>13</sup> These rules enhanced worker protections to prevent large companies from avoiding liability for mistreating workers; being subject to wage and overtime requirements;<sup>14</sup> or avoiding legal obligations to workers by creating complex business structures when negotiating with unions and through other sophisticated means. If *Chevron* is overturned, courts would have another, easier pathway to impose their policy preferences on minimum wage, overtime protections, and union bargaining power over workers.

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## Endnotes

- 1 Ihna Mangundayao and Celine McNicholas, "Congress should boost NLRB funding to protect workers' well-being," Economic Policy Institute, February 28, 2022, available at <https://www.epi.org/blog/congress-should-boost-nlrp-funding-to-protect-workers-well-being/>.
- 2 Alex Rowell, "Why Conservative Attacks on Federal Agencies Are at Odds with the Constitution," OnLabor, February 17, 2023, available at <https://onlabor.org/why-conservative-attacks-on-federal-agencies-are-at-odds-with-the-constitution/>; Ray Marshall, "Mine Safety and Health Administration (MSHA)," U.S. Department of Labor, January 14, 1981, available at <https://www.dol.gov/general/aboutdol/history/carter-msha>.
- 3 Elissa Philip Gentry and W. Kip Viscusi, "The Misapplication of the Major Questions Doctrine to Emerging Risks," *Houston Law Review* 61 (3) (2024), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4403411](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4403411).
- 4 Rowell, "Why Conservative Attacks on Federal Agencies Are at Odds with the Constitution"; Marshall, "Mine Safety and Health Administration (MSHA)."
- 5 National Labor Relations Board, "About NLRB," available at <https://www.nlrp.gov/about-nlrp/who-we-are/our-history> (last accessed January 2024).
- 6 U.S. Bureau of Labor Statistics, "Union Members – 2022," Press release, January 19, 2023, available at <https://www.bls.gov/news.release/pdf/union2.pdf>.
- 7 Jesse R. Dill, "NLRB Fiscal Year 2023 Data Shows Unfair Labor Practice Charges, Elections Continue to Increase," Ogletree Deakins, October 23, 2023, available at <https://ogletree.com/insights-resources/blog-posts/nlrp-fiscal-year-2023-data-shows-unfair-labor-practice-charges-elections-continue-to-increase/>.
- 8 Mangundayao and McNicholas, "Congress should boost NLRB funding to protect workers' well-being."
- 9 Robert Mayfield et. al v. U.S. Department of Labor et al, 1:22-cv-792-RP (September 20, 2023), available at <https://www.jacksonlewis.com/sites/default/files/2023-09/WDTex-Mayfield-v-DOL.pdf>.
- 10 U.S. Department of Labor Wage and Hour Division, "Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer and Outside Sales Employees Under the Fair Labor Standards Act (FLSA)," September 2019, available at <https://www.dol.gov/agencies/whd/fact-sheets/17a-overtime>.
- 11 Congressional Research Service, "The Major Questions Doctrine" (Washington: 2022), available at <https://crsreports.congress.gov/product/pdf/IF/IF12077>.
- 12 National Federation of Independent Business v. Department of Labor, Occupational Safety & Health Administration, 595 U.S. \_\_\_ (2022), available at [https://www.supremecourt.gov/opinions/21pdf/21a244\\_hgci.pdf](https://www.supremecourt.gov/opinions/21pdf/21a244_hgci.pdf).
- 13 U.S. Department of Labor Wage and Hour Division, "Rescission of Joint Employer Status Under the Fair Labor Standards Act Rule," *Federal Register* 86 (144) (2021): 40939–40967, available at <https://www.federalregister.gov/documents/2021/07/30/2021-15316/rescission-of-joint-employer-status-under-the-fair-labor-standards-act-rule>.
- 14 Ibid.