

SCOTUS: Federal Agencies Can Change Interpretive Rules Without Formal Process

March 9, 2015

Federal agencies are not required to follow formal notice-and-comment rulemaking when making significant changes to interpretive rules, according to a unanimous U.S. Supreme Court. In *Perez v. Mortgage Bankers Association*, the Mortgage Bankers Association challenged the Department of Labor's (DOL) decision in 2010 to declare that mortgage loan officers are not exempt from the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA).

The DOL's 2010 shift reversed the agency's 2006 opinion letter finding the opposite: that the loan officers were exempt employees. The Mortgage Bankers Association filed suit, alleging that the DOL improperly revoked the 2006 opinion letter without a formal notice-and-comment period. The Supreme Court ruled that DOL was not required to follow a formal procedure in this instance, noting the difference between "legislative rules," which have the "force and effect of law," and "interpretive rules," which do not have the same effect. The Court held that formal rulemaking was not required because the 2010 guidance was an interpretive rule.

What does this case mean for employers and other regulated entities?

Perez makes it easier for a federal agency to reverse a prior interpretation. Therefore, employers and regulated entities will need to pay close attention to informal agency interpretations. Although informal interpretations may not technically have the force of law, judicial deference often means that employers who ignore such interpretations do so at their peril.

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