FLSA Interpretation Patterns Emerge 1 Year After Loper Bright

By **Gigi O'Hara and Jason Stitt** (June 27, 2025)

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With June 28 marking the one-year anniversary of the U.S. Supreme Court's **monumental decision** in Loper Bright Enterprises v. Raimondo[1] — which rejected the Chevron doctrine that required courts to give deference to agencies' statutory interpretation — it's time to take inventory of how lower courts are responding to their newfound freedom in interpreting the Fair Labor Standards Act through U.S. Department of Labor regulations.

As to regulations interpreting provisions of the FLSA that do not expressly delegate authority to the DOL, courts have deployed their freedom liberally in either wholly rejecting disagreeable regulations or citing agreeable regulations as persuasive, but not controlling, authority.

However, where regulations have flowed from express statutory delegations of authority to the DOL — regulations that Loper Bright did not address — courts continue deferring to regulations that constitute a permissible choice for interpreting the FLSA, while striking down regulations that exceed the DOL's statutory authority.

The FLSA spends but two words — "bona fide" — giving meaning to the executive, administrative and professional exemptions from paying overtime, commonly called the EAP exemptions, that are claimed by almost all major employers in the U.S.

In contrast, Title 29 of the Code of Federal Regulations, Part 541, which was promulgated by the DOL, spends more than 15,000 words interpreting the meaning of the EAP exemptions. It also creates elements that employers must satisfy to claim each exemption, extensively elaborates on those elements, and even imposes an extrastatutory salary basis pay requirement and a minimum salary threshold for exempt employees.[2]

The elements of the EAP exemptions and the salary basis requirements are not the only important wage and hour concepts that find very little or no treatment within the statutory text of the FLSA.

For instance, while the FLSA itself defines "employ" as "to suffer or permit to work,"[3] Title 29 of the Code of Federal Regulations, Part 795, determines employment based on the economic realities test.[4]

The economic realities test is a listing of nonexclusive factors that aim to ultimately explore not whether a putative employer permits work, but rather whether a putative employee is economically dependent on being paid for such work.

In short, many of the important, everyday parts of federal wage and hour law have been based on federal regulations that the DOL has promulgated.

In June 2024, the U.S. Supreme Court decided Loper Bright, which expressly prohibits courts from affording

Chevron deference to agency regulations and interpretations,[5] instead requiring courts to exercise independent judgment in determining the meaning of statutory provisions.[6]

Before we throw our copies of the Code of Federal Regulations into the nearest (very large) dumpster, however, it is important to understand what Loper Bright does not do.

First, Loper Bright does not prohibit courts from being persuaded by regulations if they wish to be persuaded by them.[7]

Second, it does not prohibit courts from deferring to regulations that were passed in accordance with the statutory authority that has been delegated to an agency. In fact, it does the very opposite.

Loper Bright explains that "the statute's meaning may well be that the agency is authorized to exercise a degree of discretion," and "when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it."[8]

So while Loper Bright may prohibit automatic judicial deference to mine-run federal regulations — instead requiring courts to independently determine the law — it requires courts to respect regulations that are consistent with statutory delegations of authority.

A number of FLSA provisions expressly delegate authority to the secretary of labor to interpret the statutory text of those provisions.

Most notably, Title 29 of the U.S. Code, Section 213(a)(1), which codifies the EAP exemptions, provides an exemption for "any employee employed in a bona fide executive, administrative, or professional capacity … as such terms are defined and delimited from time to time by regulations of the Secretary [of Labor]."

By way of further example, in the context of child labor, the FLSA gives the secretary of labor discretion to both identify prohibited occupations that are "particularly hazardous for the employment of children between the ages of sixteen and eighteen,"[9] and to require employers to obtain proof of employees' ages.[10]

The FLSA also gives the secretary of labor broad discretion to establish apprenticeship programs, and it provides that learners and apprentices may be exempt from the FLSA's protections.[11]

Finally, the FLSA's companionship services exemption empowers the secretary of labor to define and delimit its statutory terms.[12]

Again, Loper Bright instructs courts to respect the authority of the DOL to issue regulations that interpret these particular statutory provisions while ensuring that such regulations are within the DOL's given authority.

While the DOL has certainly issued regulations that flow from the FLSA's statutory provisions that expressly delegate authority, a number of DOL regulations don't.

Before Loper Bright, judges often felt constrained by Chevron deference to follow permissible DOL regulations when interpreting any provision of the FLSA.[13] In the wake of Loper Bright, four general patterns

of judicial decision-making have emerged.

The first such pattern is the simplest: Where a judge disagrees with a regulation interpreting a statutory provision that does not delegate authority to the DOL to issue such regulation, the world is the judge's oyster.

The judge owes deference to nothing, other than controlling precedent from a higher court, so the judge may decide the law however they desire.

In these cases, courts have relied on Loper Bright to, for instance, disregard DOL regulations that add extrastatutory categories of payments that may be excluded from the regular rate for purposes of overtime calculation;[14] to overrule the DOL's 80/20 rule, applicable to determining when restaurant employers may apply a tip credit to satisfy minimum wage obligations;[15] and to find that an employer's knowing violation of DOL regulations cannot be the basis for a finding of willfulness.[16]

The second pattern of judicial decision-making is slightly more complicated, although perhaps needlessly so: A judge agrees with a regulation interpreting a statutory provision that, again, does not delegate authority to the DOL.

In these circumstances, the world is still the judge's oyster, and nothing would prevent the judge from simply deciding the law however they see fit, which would happen to be consistent with the regulation the judge finds agreeable.

Instead, too often judges apply a different sort of deference — called Skidmore deference — which gives a judge discretion to defer to a regulation that the judge finds persuasive.[17]

Loper Bright arguably approved of the continued viability of at least some measure of Skidmore deference when it explained that "although an agency's interpretation of a statute 'cannot bind a court,' it may be especially informative 'to the extent it rests on factual premises within [the agency's] expertise.'"[18]

In many cases, however, Skidmore deference after Loper Bright has not consisted of a judge merely being informed of, or persuaded by, a regulation when satisfying the court's ultimate duty to interpret the law.

In December, in Green v. Perry's Restaurants Ltd.,[19] for instance, the U.S. District Court for the District of Colorado began by **setting forth** the traditional formulation of Skidmore: "a reviewing court 'accord[s] the [agency's] interpretation a measure of deference proportional to the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade.'"[20]

Applying these Skidmore factors, the court in Green then deferred to a provision of the DOL field operations handbook applying the 80/20 rule in the tip credit context because it was reasonable and had the power to persuade.[21]

What the court in Green failed to say, however, was that the court itself was actually persuaded by the field operations handbook in the court's independent interpretation of the law required by Loper Bright.[22]

Opinions that rely on Skidmore deference alone, and find that a regulation merely might persuade, seem difficult to square with Loper Bright's command that courts independently interpret the law.

The third pattern of post-Loper Bright decision-making involves DOL regulations that interpret provisions of the FLSA that delegate interpretive authority to the DOL — cases in which a court should respect the DOL's authority while ensuring that the DOL acted within it.

In September, in Mayfield v. DOL,[23] the U.S. Court of Appeals for the Fifth Circuit **provided guidance** on how courts should evaluate these types of regulations.

Noting that a court's duty is to determine the best reading of a statute, Mayfield held that when a statute's best reading evinces a delegation of authority, "the question is whether the [DOL regulation] is within the outer boundaries of that delegation."[24]

After engaging in this outer boundaries analysis, a court may find that the DOL's regulation either was or was not within the scope of the DOL's statutory authority.

Mayfield ultimately found that the FLSA's salary basis test — found in DOL regulations, but not in the FLSA itself — was a permissible choice in interpreting the EAP exemptions because salary may be a reasonable proxy for employee status.[25]

Mayfield therefore held that the salary basis test is within the outer boundaries of the FLSA's delegation to the DOL to define and delimit the EAP exemptions.

Other cases evaluating regulations interpreting FLSA provisions that expressly delegate authority to the DOL have also upheld DOL regulations, although often without conducting the outer boundaries or permissible choice analysis described in Mayfield.[26]

The final pattern of post-Loper Bright decision-making demonstrates that the DOL's authority is not unbounded when issuing regulations interpreting FLSA provisions that delegate authority to it.

In November, in Texas v. DOL,[27] the U.S. District Court for the Eastern District of Texas **found** that the DOL's 2024 rule, which increased the minimum salary thresholds for the EAP exemptions, increased required salary levels so high that salary predominated over duties in contravention of the FLSA's statutory text.[28]

Indeed, DOL regulations do not define and delimit statutory terms by contradicting them, and the decision in Texas is consistent with Loper Bright's command that courts ensure that agencies act within the scope of their delegated authority.

As we arrive at a year post-Loper Bright, one thing is clear: DOL regulations interpreting the FLSA continue to hold a place in the legal world.

The regulations that were issued pursuant to the statutory authority that is expressly delegated by the FLSA still command respect and guide judges' rulings within limits.

Of the DOL regulations that are not squarely seated in the FLSA, recent legal decisions have found that they may very well persuade judges, but under Loper Bright, that's now up to the judge.

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[1] Loper Bright Enterprises v. Raimondo, 603 U.S. 369, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024).

[2] See 29 C.F.R. Part 541.

[3] 29 U.S.C. § 203(g).

[4] 29 C.F.R. Part 795.

[5] See Chevron U. S. A. Inc. v. Natural Resources Defense Council Inc., 467 U. S. 837 (1984).

[6] 603 U.S. at 394.

[7] Id. at 402.

[8] Id. at 413.

[9] 29 U.S.C. § 203(l).

[10] 29 U.S.C. § 212(d).

[11] 29 U.S.C. § 213(a)(7); 29 U.S.C. § 214.

[12] 29 U.S.C. § 213(a)(15). This statutory provision was cited in Loper Bright as an example of a statute that "'expressly delegate[s]' to an agency the authority to give meaning to a particular statutory term."

[13] Loper Bright, 603 U.S. at 377-78.

[14] Oliverio-Still v. AVMAC LLC, No. 24-CV-0870-L-DEB, 2025 WL 674552, at *5 (S.D. Cal. Mar. 3, 2025).

[15] Restaurant Law Center v. United States Dep't of Lab., 120 F. 4th 163, 174-75 (5th Cir. 2024).

[16] Sec'y United States Dep't of Lab. v. Nursing Home Care Mgmt. Inc., 128 F.4th 146, 159 (3d Cir. 2025).

[17] See Skidmore v. Swift & Co., 323 U. S. 134, 140 (1944).

[18] 603 U.S. at 402; see also 603 U.S. at 476 (Kagan, dissenting) ("[T]he majority makes clear that what is usually called Skidmore deference continues to apply").

[19] No. 21-CV-0023-WJM-NRN, 2024 WL 4993356 (D. Colo. Dec. 5, 2024).

[20] Id., 2024 WL 4993356, at *8.

[21] Id.

[22] Other opinions have deployed Skidmore deference in a similar manner despite Loper Bright. See, e.g., Barnett v. City of San Jose, No. 18-CV-01383-JD, 2025 WL 354375, at *11 (N.D. Cal. Jan. 31, 2025); Harding v. Steak N Shake Inc., 745 F. Supp. 3d 571, 584 (N.D. Ohio 2024). Some opinions have not, however, and have cited regulations to support, but not replace, the court's independent determination of the law. See, e.g., Karonka v. Asuka Blue Inv. LLC, No. 4:23-CV-02891, 2024 WL 4905985, at *3 (S.D. Tex. Nov. 27, 2024); Houtz v. Paxos Restaurants, No. 5:23-CV-00844-JMG, 2024 WL 4336738, at *3-5 (E.D. Pa. Sept. 27, 2024).

[23] Mayfield v. United States Department of Labor, 117 F. 4th 611 (5th Cir. 2024).

[24] Id. at 617.

[25] Id. at 618.

[26] See, e.g., Su v. WiCare Home Care Agency LLC, No. 1:22-CV-00224, 2024 WL 3598826, at *15 (M.D. Pa. July 31, 2024); Barnes v. Res. for Hum. Dev., Inc., No. CV 24-757, 2024 WL 4566113, at *2 (E.D. Pa. Oct. 24, 2024); see also Dep't of Lab. v. Americare Healthcare Servs. LLC, No. 2:21-cv-5076, 2025 WL 71671, at *10 (S.D. Ohio Jan. 9, 2025) (upholding DOL regulation interpreting companionship exemption as a "fair reading" of the statute).

[27] Texas v. United States Department of Labor, No. 4:24-CV-468-SDJ, 2024 WL 4806268, at *17 (E.D. Tex. Nov. 15, 2024).

[28] Id., 2024 WL 4806268, at *17.