

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

**American Tort Reform Ass'n v. Occupational Safety & Health
Administration**

407 U.S. App. D.C. 398 (D.C. Cir. 2013) · No. No. 12-1229 · Decided December 27, 2013

SUMMARY

The D.C. Circuit denied the American Tort Reform Association’s petition for review of OSHA’s revision to the preemption language in its Hazard Communication standard. The court held that OSHA lacked authority to issue a binding determination concerning the OSH Act’s preemptive effect, that the challenged language was merely interpretive and not subject to notice-and-comment rulemaking or judicial review, and that the challenge was unripe.

CASE DETAILS

COURT	United States Court of Appeals for the District of Columbia Circuit
WRITING FOR THE COURT	Edwards, Senior Circuit Judge; Griffith, Circuit Judge; Srinivasan, Circuit Judge
JURISDICTION	Federal
DECIDED	December 27, 2013
DOCKET	No. 12-1229
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Petition for review of OSHA's final rule amending paragraph (a)(2) of the Hazard Communication standard, 29 C.F.R. § 1910.1200.
STANDARD OF REVIEW	The court reviewed whether the challenged agency statement was a legislative rule subject to APA notice-and-comment procedures and judicial review, and whether the dispute was ripe under Article III.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	American Tort Reform Association v. Occupational Safety & Health Administration, Department of Labor

TOPICS

judicial review of agency action

ripeness

administrative procedure act

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether OSHA had authority to issue a rule carrying the force of law concerning the preemptive effect of the OSH Act.
2. Whether paragraph (a)(2), as modified, was a legislative rule subject to notice-and-comment rulemaking under the APA.
3. Whether paragraph (a)(2) was subject to judicial review as final agency action.
4. Whether ATRA's challenge to paragraph (a)(2) was ripe for judicial review.

HOLDINGS

1. OSHA lacks authority to issue a rule carrying the force of law determining the preemptive effect of the OSH Act; paragraph (a)(2) therefore does not establish a binding legal norm on preemption.
2. Paragraph (a)(2) was an interpretative statement and was not subject to notice-and-comment rulemaking under the APA.
3. Paragraph (a)(2) was not subject to judicial review because it was not final agency action and OSHA had not relied on or applied it to support an agency action in a particular case.
4. ATRA's challenge was not ripe for judicial review.

KEY QUOTATIONS

"Because Paragraph (a)(2) is merely interpretative, it is not subject to notice and comment rulemaking under the APA, id., and it is not subject to judicial review unless it is relied upon or applied to support an agency action in a particular case" (at 3)

"Paragraph (a)(2) does not carry the force of law on the preemptive effect of the OSH Act because OSHA lacks the legal authority to render dispositive decisions on preemption; Paragraph (a)(2) is subject to neither the requirements of notice and comment rulemaking nor judicial review because it is nothing more than an interpretative statement" (at 14)

FACTUAL BACKGROUND

OSHA's Hazard Communication standard establishes labeling and hazard-information requirements for workplace chemicals. In 2012, OSHA modified paragraph (a)(2) to state that the standard preempts state legislative and regulatory requirements concerning hazard communication while preserving state tort law. American Tort Reform Association challenged the modification, asserting that OSHA lacked authority to define the OSH Act's preemptive scope and that the modification required notice-and-comment rulemaking.

PROCEDURAL HISTORY

OSHA issued a final rule modifying the preemption language in paragraph (a)(2) of its Hazard Communication standard. American Tort Reform Association petitioned the D.C. Circuit for review, arguing that OSHA exceeded

its statutory authority and was required to use notice-and-comment rulemaking. The court denied the petition, concluding that the challenge was unripe and that the disputed language was merely interpretative.

DISPOSITION

writ_denied

CASES CITED

- *Shalala v. Guernsey Memorial Hospital*, 514 U.S. 87, 97, 99 (1995)
- *Texas v. United States*, 523 U.S. 296, 300, 302 (1998)
- *National Park Hospitality Ass'n v. Department of the Interior*, 538 U.S. 803, 806, 809 (2003)
- *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984)
- *Wyeth v. Levine*, 555 U.S. 555, 577 (2009)
- *United States v. Mead Corp.*, 533 U.S. 218, 228, 234-35 (2001)
- *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)
- *United Steelworkers of America, AFL-CIO-CLC v. Marshall*, 647 F.2d 1189, 1235-36 (D.C. Cir. 1980)
- *Lindsey v. Caterpillar, Inc.*, 480 F.3d 202, 209-11 (3d Cir. 2007)
- *Pedraza v. Shell Oil Co.*, 942 F.2d 48, 53-54 (1st Cir. 1991)
- *Barrick Goldstrike Mines Inc. v. Browner*, 215 F.3d 45, 48 (D.C. Cir. 2000)
- *General Electric Co. v. EPA*, 290 F.3d 377, 384-85 (D.C. Cir. 2002)
- *McLouth Steel Products Corp. v. Thomas*, 838 F.2d 1317, 1322 (D.C. Cir. 1988)
- *Lujan v. National Wildlife Federation*, 497 U.S. 871, 882 (1990)
- *Center for Auto Safety v. National Highway Traffic Safety Administration*, 452 F.3d 798, 800 (D.C. Cir. 2006)
- *Federal Express Corp. v. Holowecki*, 552 U.S. 389, 399 (2008)
- *Blanchette v. Connecticut General Insurance Corp. (Regional Rail Reorganization Act Cases)*, 419 U.S. 102, 138 (1974)
- *Truckers United for Safety v. Federal Highway Administration*, 139 F.3d 934, 938 (D.C. Cir. 1998)
- *Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967)
- *Toilet Goods Ass'n v. Gardner*, 387 U.S. 158, 163 (1967)