

Breaking News: U.S. Supreme Court Finds Pharmaceutical Sales Reps Exempt as Outside Salespersons Under FLSA

2 min read

Jun 19, 2012

This morning the U.S. Supreme Court issued its decision in *Christopher et al. v. SmithKline Beecham*, finding that *SmithKline* properly classified its pharmaceutical sales representatives as “outside salespersons” and thus exempt under the wage and hour requirements set forth in the Fair Labor Standards Act.

The Department of Labor (“DOL”) filed amicus briefs urging that the Court interpret the term “sale” for the purposes of the outside sales exemption to require a consummated transaction directly involving the employee for whom the exemption is sought. Later, the DOL argued that “[a]n employee does not make a ‘sale’ . . . unless he actually transfers title to the property at issue.” The Court found both positions to be unpersuasive and refused to defer to these interpretations.

The Court ultimately looked to traditional tools of interpretation, reasoning that:

“...it follows that petitioners made sales under the FLSA and thus are exempt outside salesman within the meaning of the DOL’s regulations. Petitioners obtain nonbinding commitments from physicians to prescribe respondent’s drugs. This kind of arrangement, in the unique regulatory environment within which pharmaceutical companies operate, comfortably falls within the catchall category of “other disposition.” That petitioners bear all of the external indicia of salesmen provides further support for this conclusion. And this holding also comports with the apparent purpose of the FLSA’s exemption. The exemption is premised on the belief that exempt employees normally earn salaries well above the minimum wage and

perform a kind of work that is difficult to standardize to a particular time frame and that cannot easily be spread to other workers.

Petitioners—each of whom earned an average of more than \$70,000 per year and spent 10 to 20 hours outside normal business hours each week performing work related to his assigned portfolio of drugs in his assigned sales territory—are hardly the kind of employees that the FLSA was intended to protect.” (emphasis added)

Also, interesting is the fact that Justice Alioto, writing for the 5-4 majority, reasoned that to adopt the DOL’s interpretation would bring about an “unfair surprise” on the industry, which was wholly improper given that the DOL had never stepped in and filed any enforcement actions against such companies, despite the decades-long practice of classifying these employees as exempt.

You can read the Court’s opinion here: [Christopher et al. v. SmithKline Beecham Corp.](#)

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Topics

FLSA, Exemption