

Updated: Supreme Court to hear Arguments on Outside Salesperson Exemption

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Today, the U.S. Supreme Court will hear oral arguments on whether GlaxoSmithKline PLC's offsite and travelling drug sales representatives are entitled to overtime pay. In the past, these representatives have been deemed "exempt" as outside salespeople and not eligible for overtime. Specifically, the Court is presently considering:

The outside sales exemption of the Fair Labor Standards Act exempts from the overtime requirements of the Act "any employee employed ... in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary ...)." 29 U.S.C. § 213(a)(1). The Secretary of Labor has implemented various regulations that "define and delimit" the outside sales exemption and, filing as amici in this and other related matters, has interpreted these regulations to find the exemption inapplicable to pharmaceutical sales representatives. A split exists between the Second and Ninth Circuits concerning whether this interpretation is owed deference and whether the outside sales exemption of the Fair Labor Standards Act applies to pharmaceutical sales representatives.

The questions presented are:

(1) Whether deference is owed to the Secretary's interpretation of the Fair Labor Standards Act's outside sales exemption and related regulations; and

(2) Whether the Fair Labor Standards Act’s outside sales exemption applies to pharmaceutical sales representatives.

The decision in this case could have both significant financial ramifications to the drug industry and will take under consideration how much weight courts must give to regulators’ opinions in FLSA disputes. If you would like to hear the parties’ oral arguments on this issue, you can find them [here](#).

Improperly classifying employees can prove costly.

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Topics

FLSA, Overtime, Exemption