

PUBLICATION

Supreme Court Issues Decisive Blow to the Department of Labor in Pharmaceutical Sales Representative Overtime Case – A Win for the Companies and the Employees

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Monday, the United States Supreme Court ruled in favor of the pharmaceutical drug industry and held that pharmaceutical sales representatives are exempt under the Fair Labor Standards Act (FLSA). The Court was faced with the decision of whether a sale included obtaining non-binding commitments from physicians to prescribe drugs or whether a sale required an exchange of title. In holding the former, Justice Samuel Alito delivered the opinion of the Court's 5-4 majority and concluded the sales representatives were "outside salespersons." You can read our initial alert on the case [here](#).

In 2009, the Department of Labor (DOL) first argued in an amicus brief that the outside sales exemption did not apply to pharmaceutical sales representatives. Usually, the DOL's interpretation of its regulations is entitled to deference by courts. But in *Christopher v. SmithKline Beecham Corp.*, the Supreme Court refused to defer to the DOL's interpretation. In so doing, the Court found persuasive the DOL's failure to provide warning of their interpretation before its 2009 brief. Instead, the DOL acquiesced in the pharmaceutical drug industry's sales practice for over 70 years. The Supreme Court recognized, like the Seventh Circuit Court of Appeals, that the DOL's 2009 position placed an entire industry, including 90,000 representatives, in violation of the FLSA. Furthermore, contrary to the DOL's argument, the Court determined the regulations included language supporting that a sale included more than just a transfer of title. Therefore, the Court refused to defer to the Department's interpretation of its regulations.

After refusing to accord the DOL's interpretation deference, the Court turned its attention to the DOL's regulations, one of which defines an outside salesman as "any employee whose primary duty is making sales" which includes "any exchange, contract to sell, consignment for sale, shipment for sale or other disposition." The slim majority held the regulations were broader than the interpretation argued by the DOL and that sales included obtaining non-binding commitments from a physician to prescribe drugs. The Court also reviewed other factors to confirm the employees were in fact salespersons. Specifically, the Court noted that salespersons were hired for their sales experience, were trained to close sales, worked away from the office with minimal supervision, received incentive compensation and earned well above minimum wage.

The decision is significant and deals a death blow to numerous FLSA lawsuits filed around the country against pharmaceutical companies. The factors reviewed by the Supreme Court provide important guidance for all employers with sales forces. It also potentially expands the "outside salesperson" exemption to include those who sell to intermediaries and not directly to the consumer. Interestingly, it is a win for the pharmaceutical sales representatives – a predominately female workforce - who will continue to be paid their high salaries. Plaintiffs' attorneys and the Department of Labor were the ultimate losers in this closely-watched case.

To learn more about the impact of this decision on your company or for guidance on the FLSA in general, please contact your Baker Donelson attorney, a member of Drug, Device & Life Science Industry Service Team or one of our more than 70 Labor & Employment attorneys.

