



Big Supreme Court Win For Pharmaceutical Industry

Insights

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The U.S. Supreme Court ruled today that pharmaceutical sales representatives employed by GlaxoSmithKline were exempt from overtime pay under the federal Fair Labor Standards Act's "outside salesman" exemption. The Court's decision in *Christopher v. Smithkline Beecham Corp.* resolves conflicting views expressed by a number of federal courts.

For a more-complete discussion of this development, read our [Legal Alert](#).

Ultimately, the Court's ruling dealt with whether a GSK sales representative was "making sales" within the meaning of the U.S. Labor Department's "outside salesman" exemption regulations. This necessitated the Court's interpretation of the term "sale" as it is used in the FLSA. The relevant Labor Department regulations contain *additional requirements* for exempt status, so employers should not take the Court's ruling to be broader than it is (especially those outside of the somewhat unique setting of the pharmaceutical industry).

Also, employers should keep in mind that the Court's decision did not involve the requirements or parameters of any sales- or selling-based exemptions under the wage-hour laws of states or other jurisdictions.

The Court refused to defer to USDOL's views expressed in a friend-of-the-Court brief to the effect that the sales representatives were not "making sales". The Court said that the pharmaceutical industry had had no "fair warning" of these views, and that accepting them now would cause "unfair surprise" and would impose potentially enormous liability for conduct that occurred before USDOL's position had been announced. The Court also observed that not until 2009 had USDOL ever challenged the decades-long, industry-wide practice of treating such employees as exempt. The only plausible explanation the Court could see for this was that USDOL had acquiesced in the industry's practice.

Much the same thing can be said about other USDOL pronouncements in recent times, especially its April 2011 [commentary](#) embracing unprecedented fluctuating-workweek "interpretations". Perhaps today's ruling will persuade the courts to reject those positions also.