

# The Supreme Court Rules: Pharmaceutical Representatives Qualify as Outside Salespersons

Article By:

Helen E. Tuttle

---

The **Supreme Court** recently handed down a decision clarifying the contours of the “**outside sales**” exemption to the **Fair Labor Standards Act (“FLSA”)** and settled a split between the **U.S. Court of Appeals for the Second and Ninth Circuits**. The Court rejected the attempt by the **Department of Labor (“DOL”)** to reverse the longstanding industry practice of classifying pharmaceutical sales representatives as exempt employees based on its finding that the DOL had never suggested that the industry practice was improper and had never taken legal action to stop the practice. The Court observed that to reverse the longstanding practice in that circumstance would be an improper “unfair surprise” to the industry.

In *Christopher v. SmithKline Beecham Corp.*, two pharmaceutical representatives claimed that their employer failed to pay them overtime wages based on an improper classification as exempt outside sales employees. The representatives’ work consisted mainly of visiting doctors’ offices and encouraging them to prescribe SmithKline drugs. Each week, the employees worked about 40 hours calling on physicians, and spent another 10 to 20 hours on other miscellaneous tasks. Although the employees were well-compensated, they were not paid overtime wages for hours they worked in excess of 40 hours per week.

The Supreme Court considered whether these employees were “employed . . . in the capacity of outside salesman” and therefore exempt from overtime wages under the FLSA. Congress did not define the term “outside salesman” but delegated that authority to the DOL by regulation. The statute nevertheless provides that “‘sale’ or ‘sell’ includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.”

In reaching its decision, the Court first determined that the DOL’s interpretation of the statute was not entitled to deference because it had never been formally promulgated as a regulation. Instead, after years of silence, the DOL presented its interpretation in amicus briefs filed in related litigation in the Second and Ninth Circuits, and then presented a completely different interpretation in its submission to the Supreme Court in the Christopher appeal.

Having determined that there was no basis to defer to the Agency’s interpretation, the Court used the traditional tools of statutory interpretation to determine whether the pharmaceutical representatives were exempt outside salespersons. Under that analysis, the Court found that

pharmaceutical representatives make sales for purposes of the FLSA, and therefore are exempt, even though they do not technically “sell” anything to the physicians they visit, because the “other disposition” catchall category in the statute’s definition of “sale” should be understood to include the sales representatives’ practice of obtaining nonbinding commitments from physicians to prescribe the employer’s drugs. The Court was also convinced that pharmaceutical sales representatives are “outside salespersons” under the statute because they act like salespersons, are paid like salespersons, and receive training to close sales like salespersons.

A cautionary note: this Supreme Court decision is limited to pharmaceutical industry representatives only. While the “outside sales” exemption may continue to be litigated, this decision has provided much guidance on a previously undefined term under the FLSA. And, of course, the decision has no impact on state wage and hour laws that do not track the FLSA.

© 2025 Faegre Drinker Biddle & Reath LLP. All Rights Reserved.

---

National Law Review, Volume II, Number 191

Source URL: <https://natlawreview.com/article/supreme-court-rules-pharmaceutical-representatives-qualify-outside-salespersons>