Supreme Court Approves Treatment of Pharmaceutical Sales Reps as Exempt from Overtime Under the FLSA

Emily S. Miller • 215.665.2142 • esmiller@cozen.com

The U.S. Supreme Court has issued its much-anticipated opinion on whether pharmaceutical sales representatives can properly be treated as exempt from overtime under the Fair Labor Standard Act’s “outside salesman” exemption. In Christopher v. SmithKline Beecham, the Court affirmed the 9th Circuit’s ruling that the exemption applies, and that pharmaceutical sales representatives therefore are not entitled to overtime compensation under federal law. The opinion can be found here.

The dispute centered on the argument that pharmaceutical sales representatives do not actually “sell” a product. Rather, they encourage physicians to prescribe certain medications, which are then dispensed by retail pharmacies. The plaintiffs argued that this framework removed them from the category of salespeople covered by the exemption. The Court disagreed, holding that a “sale” can occur even in the absence of a firm agreement or commitment to buy a particular good.

The Court emphasized the “unique regulatory environment within which pharmaceutical companies must operate” in concluding that obtaining a nonbinding commitment from a physician to prescribe a certain drug constitutes a sale for purposes of the exemption. Also key to the Court’s decision were the facts that pharmaceutical sales representatives are hired for their sales experience, are trained to obtain the maximum commitment possible from each physician upon whom they call, work away from the office with minimal supervision, and are “rewarded for their efforts with incentive compensation."

This ruling comes as a relief to pharmaceutical companies, which have a long-standing practice of applying the outside sales exemption to the sales representatives they employ. The Court’s ruling in Christopher ends the debate for purposes of FLSA compliance, but companies still must remember to closely monitor all applicable state law requirements.

To discuss any questions you may have regarding the issues discussed in this alert, or how they may apply to your particular circumstances, please contact Emily S. Miller at 215.665.2142 or esmiller@cozen.com.