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Supreme Court Holds That Pharmaceutical Sales Representatives Are Exempt From Overtime

The United States Supreme Court decided on Monday, June 18, that pharmaceutical sales representatives are exempt from the overtime pay requirements of the Fair Labor Standards Act (FLSA) because they satisfy the FLSA's "outside salesman" exemption. The case is *Christopher v. SmithKline Beecham Corp.*

Background of Case

Petitioners Michael Christopher and Frank Buchanan worked for respondent SmithKline Beecham as pharmaceutical sales representatives. In that role, the petitioners' primary duties were to meet with physicians, describe respondent's products and seek to obtain nonbinding commitments from the physicians to prescribe the respondent's drugs in appropriate cases. The petitioners alleged that they regularly worked more than 40 hours per week and that SmithKline Beecham violated the FLSA by failing to pay them overtime compensation.

Supreme Court's Decision

The case turned on whether pharmaceutical sales representatives are outside salesmen and thereby exempt from overtime under the FLSA and within the meaning of the regulations promulgated by the United States Department of Labor (DOL). In an amicus brief filed in the case, the DOL took the position for the first time that, in order to qualify for the outside salesman exemption, an employee must "actually transfer[] title to the property at issue" (which pharmaceutical sales representatives do not do). In a 5-to-4 decision, the Supreme Court concluded that the DOL's interpretation of its own regulations was not entitled to controlling deference, in part because the DOL's interpretation would impose potentially massive overtime pay liability for years of employment that occurred before the DOL ever announced its interpretation. The Court also noted that the pharmaceutical industry had classified its sales representatives as exempt employees for decades, and the DOL had never initiated any enforcement actions or suggested the employees were misclassified.

In the absence of controlling deference, the Court found the DOL's interpretation of its regulations - that a sale requires a transfer of title - unpersuasive. The Court then interpreted the FLSA itself to determine whether pharmaceutical sales representatives are exempt as outside salesmen. The FLSA's definition of "sale" includes the phrase "other disposition," which the Court interpreted to include arrangements that are tantamount, in a particular industry, to a "functional" sale of a commodity. Based on that interpretation, the Court concluded that pharmaceutical sales representatives make sales for purposes of the FLSA because they seek to obtain nonbinding commitments from physicians to prescribe specific medications. The Court also stated that pharmaceutical sales representatives bear all the external indicia of salesmen in that they are hired for their sales experience, are subject to minimal supervision and generally work in territories. In addition, the Court noted that the specific petitioners each received average compensation in excess of $70,000 per year, did not perform manual labor and are not the kind of employees that the FLSA was intended to protect.

In contrast, the four dissenting justices reasoned that pharmaceutical sales representatives should not be deemed outside salesmen under the FLSA because, within the ordinary meaning of the word, they do not actually "sell" anything to physicians. Instead, the dissenters viewed the representatives' work as promotional activities designed to stimulate sales made by someone else (i.e., the pharmacists who sell prescription drugs to patients).

Impact of Case

The *Christopher* decision is a significant victory for the pharmaceutical industry, which employs approximately 90,000 pharmaceutical sales representatives and which faced numerous misclassification/overtime pay lawsuits under the FLSA. More broadly, the Supreme Court's functional analysis of the outside salesman exemption, based on the employees' responsibilities in the context of the industry in which they work, is likely to make it easier for employers in a variety of industries to classify their sales employees as exempt.