

Supreme Court Issues Long-Awaited Decision In *Christopher v. SmithKline Beecham Corp.*

June 18, 2012 | [Traditional Labor, Currents - Employment Law](#)



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Today the U.S. Supreme Court issued a long-awaited decision in *Christopher v. SmithKline Beecham Corp.*, holding in a 5-4 decision that pharmaceutical sales employees are exempt outside salespeople. The decision may be [read here](#). The case is significant for several reasons.

The most obvious reason is that it represents our highest court interpreting the outside sales exemption, so any business relying on (or thinking of relying on) this exemption should review the decision with counsel to ensure ongoing compliance. The central issue in *Christopher* was whether the pharmaceutical sales representatives were actually involved in "sales." The U.S. Department of Labor in "friend of the court" briefs has taken the position in recent years that an employee is making a sale only where the employee is involved in the transfer of title to customers. Pharmaceutical reps are "only" obtaining informal commitments from doctors to prescribe certain drugs. The Court rejected the DOL's interpretation, finding it was not supported by the statute.

Second, the decision is significant in that it reminds employers that not every administrative decision will be supported by the courts. In a period where the National Labor Relations Board is scrutinizing social media policies, and the Equal Employment Opportunity Commission is attacking background checking procedures, it is worth remembering that these interpretations of federal agencies may not stand up to judicial scrutiny in the medium term. No employer wants to be the "test case," but employers should discuss this aspect of administrative guidance with counsel when formulating their compliance strategies. (Another example reported on last week is [here](#).)

Finally, both the closeness of the decision and the fact that the dispute arose from the DOL taking a more aggressive position with the change in administration in 2009 emphasize the significance of the upcoming Presidential election for how these issues are likely to play out in the next few years.

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