



## Pharmaceutical Reps Not Exempt Under FLSA, says the Second Circuit

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In a decision that will surely cause headaches for drug companies nationwide, the Second Circuit Court of Appeals recently held that pharmaceutical sales representatives are not exempt from the Fair Labor Standard Act's ("FLSA") overtime pay requirements. *In re Novartis Wage and Hour Litig.*, 2010 U.S. App. LEXIS 13708 (2d Cir. July 6, 2010). This case is particularly noteworthy because the Department of Labor filed an *amicus* brief arguing that pharmaceutical sales representatives are entitled to overtime compensation. The Second Circuit of Appeals gave the Department of Labor's interpretation of the relevant FLSA regulations "controlling deference" and concluded that the pharmaceutical sales representatives were neither administrative employee nor "outside salespersons. Alarming, the Second Circuit's decision creates confusion for major drug companies and their attorneys because it is inconsistent with the decisions of several district courts as well as the Third Circuit Court of Appeals. See e.g., *Smith v. Johnson & Johnson*, 593 F.3d 280 (3d Cir. 2010) (pharmaceutical sales representatives are exempt administrative employees); *Christopher v. SmithKlein Beecham Corp.*, 2009 U.S. Dist. LEXIS 108992 (D. Ariz. Nov. 20, 2009)(pharmaceutical sales representatives are exempt "outside salespersons). With numerous FLSA cases involving pharmaceutical sales representatives flooding the courts, drug companies will have to keep a close on eye on whether courts throughout the country will follow the Second Circuit's reasoning.

For a fuller discussion, please follow the following link:

<http://www.williamsmullen.com/are-pharmaceutical-sales-representatives-exempt-from-the-flsa-overtime-pay-requirements-07-19-2010/>

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