

June 21, 2012 [www.mcvpr.com](http://www.mcvpr.com)

## LABOR & EMPLOYMENT LAW ALERT

### *Recent Developments in Labor and Employment Law*

#### *U.S. Supreme Court Holds that Pharmaceutical Sales Representatives are “Outside Salesmen” and Exempt from Overtime Payments under the Fair Labor Standards Act*

On June 18, 2012, the Supreme Court of the United States issued its opinion in Christopher v. Smithkline Beecham. In this 5-4 opinion, the Court held that pharmaceutical sales representatives qualify as “outside salesmen” and, as such, are exempt employees under the Fair Labor Standards Act (“FLSA”).

The Court reasoned that the FLSA exempts anyone “employed . . . in the capacity of [an] outside salesman.” The Court further reasoned, based on U.S. Department of Labor (“DOL”) regulations, that a pharmaceutical sales representative’s primary duty was “making sales.” The Court explained that the word “sale” included transactions that might not be considered sales in the technical sense. With respect to the pharmaceutical industry, the Court held that the promotion of the prescription of a particular medication by pharmaceutical sales representatives is considered a “sale” under the FLSA.

With its decision in Christopher v. Smithkline Beecham, the Court resolves the issue regarding the exempt status of pharmaceutical sales representatives. In holding that these employees are “outside salesmen,” the Court confirms their status as exempt employees under the FLSA, meaning they are not entitled to minimum wages or overtime pay guaranteed to non-exempt employees. **It should be noted, however, that under local law, “outside salespersons” are entitled to the statutory benefits of vacation and sick leaves since they are not exempt from the provisions of Puerto Rico Act No. 180 of July 27, 1998.**

#### *Administrative Order from the Puerto Rico State Insurance Fund Makes Effective the 50% Amnesty on Debts Owed by Employers*

On June 6, 2012, the Puerto Rico State Insurance Fund (“SIF”) issued an Administrative Order (“the Order”) regarding the Incentive Plan to all employers who have outstanding indebtedness with the SIF. This Incentive Plan will be in force for a total of **six months** from June 6, 2012. Under this Incentive Plan, employers will receive a 50% amnesty on the total amount owed to the SIF, subject to certain conditions.

Please refer to our January 24, 2012 [Labor & Employment Alert](#) for more details regarding this Incentive Plan.

If you have any questions or comments, or wish additional information regarding the above matters, please contact any of the following attorneys:

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