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January 22, 2025

The US Supreme Court Addresses the Standard of Proof for Exemptions Under the FLSA



The Supreme Court of the United States rejected a higher standard of proof for employers to demonstrate that an employee is exempt under the Fair Labor Standards Act (FLSA), providing clarity for FLSA disputes across the country on, January 15, 2025.

The Court held in *E.M.D. Sales, Inc. v. Carrera* that employers must demonstrate that an employee is exempt under the FLSA by a “preponderance of the evidence.” This decision creates a uniform standard nationwide, upholding the burden of proof used throughout most of the country and rejecting the heavier burden of proof—the clear and convincing evidence standard—that the U.S. Court of Appeals for the Fourth Circuit had applied.

### **Background**

Three E.M.D. sales representatives sued the company, alleging that they had been misclassified as exempt from overtime pay under the FLSA’s “outside sales” exemption and that E.M.D. failed to pay overtime wages. 29 C.F.R. § 541.500(a). The U.S. District Court for the District of Maryland found that the outside sales exemption did not apply to these employees, and the Fourth Circuit affirmed.

In reaching this decision, the lower courts required the employer to meet the “clear and convincing” evidentiary standard for its exemption defense. This standard requires the defendant to show that it is highly probable that the exemption applies. In contrast, the typical “preponderance of the evidence” standard requires only that it is more likely than not that the exemption applies.

Federal courts of appeals were split over the proper standard of proof for the FLSA exceptions, with the Fourth Circuit standing alone in requiring “clear and convincing” evidence to support an exemption and all other circuit courts applying the “preponderance of the evidence” standard.

## Supreme Court's Decision

The Supreme Court resolved this circuit split by holding that the standard of proof for an FLSA exemption is “preponderance of the evidence.” In a unanimous opinion written by Justice Brett Kavanaugh, the Court explained that this is the default standard of proof in civil litigation and that a higher standard applies in only three situations: when (1) a statute establishes or (2) the Constitution requires a heightened standard of proof, or (3) in other rare circumstances, such as when the government seeks to take “unusually coercive action” that is “more dramatic” than an award of money damages.

The statutory language of the FLSA does not specify a standard of proof for its exemptions, and the case did not implicate any constitutional rights triggering a higher burden of proof. In the Supreme Court's view, the government was not seeking to take “unusual coercive action” against an individual. The Court noted that FLSA cases are analogous to Title VII cases, in which the Court has already held that a preponderance-of-the-evidence standard applies.

## Key Takeaway

The Supreme Court's decision means that employers will not have to meet a higher burden of proof when defending their FLSA exemption classification decisions.

Employers with questions about the FLSA exemptions should contact experienced employment law counsel for guidance.

## Authors

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