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US Supreme Court Clarifies That FLSA Worker Exemption Disputes Should Be Determined on a Preponderance-of-the-Evidence Evidentiary Standard

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On January 15, 2025, the U.S. Supreme Court rejected the Fourth Circuit's attempt to require an employer to meet a higher evidentiary standard to establish that its workers fell under one of the Fair Labor Standards Act (FLSA) overtime exemptions. Instead, the Supreme Court ruled in favor of an employer, EMD Sales Inc., on a certiorari bid that courts should use the standard preponderance-of-the-evidence burden of proof, rather than the more onerous clear-and-convincing-evidence burden of proof, when determining FLSA overtime exemption status of workers.

EMD Sales Inc. v. Carrera involved a group of sales representatives who sued their employer on the grounds that the employer had improperly classified them as exempt from overtime pay under the FLSA. The FLSA requires all employers to pay its workers time-and-a-half overtime premiums, unless the worker qualifies for an exemption based on salary and other factors. In *EMD Sales Inc.,* the employer classified workers as exempt under the "outside sales exemption," an exemption that applies to workers who primarily make sales and work away from the employer's place of business.

The Fourth Circuit upheld a lower court's ruling that employers are required to use a *heightened* standard of proof-that of clear-and-convincing-evidence-to show FLSA exemption status. In American civil litigation, the baseline burden of proof is that of a "preponderance-of-the-evidence," meaning that *more likely than not*, the evidence would prove the claim at issue. A clear-and-convincing-evidence standard, in contrast, would mean that it is *highly and substantially more likely than not* that the evidence would prove the claim at issue, in other words highly probable. In *EMD Sales Inc.*, the Fourth Circuit's ruling would require the employer to provide evidence showing a high probability that the disputed employees fell under the outside sales exemption. This was a departure from other circuit courts.

The Supreme Court decided unanimously that the "preponderance-of-evidence" standard is sufficient for determining FLSA worker classification disputes. The higher evidentiary standard is only used when a statute requires it, when the Constitution requires it, or in rare situations "involving coercive Government action." The FLSA does not provide for this higher standard. The Supreme Court reasoned that, even if it were to accept the premise that the FLSA's focus is to uphold the public interest in an economy that guarantees workers fair wages, this does not warrant a clear and convincing standard, especially given that the preponderance of evidence standard applies in Title VII cases. Thus, it rejected the Fourth Circuit's attempt to institute a higher standard for employers.

For more information, contact an attorney in Benesch's Labor & Employment Practice Group.

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