



U.S. Supreme Court Rejects Higher Standard of Proof in Overtime Exemption Cases

On Jan. 15, 2025, the U.S. Supreme Court issued a decision in [E.M.D. Sales Inc. v. Carrera](#), which decided what evidence an employer needs to show to prove it correctly classified employees as exempt from minimum wage and overtime pay under the Fair Labor Standards Act (FLSA). The Supreme Court held that the higher “clear and convincing” evidence standard does not apply to federal wage law and, instead, an employer only needs to meet the “preponderance of evidence” standard. The Court’s ruling addressed a disagreement among federal appeals courts on the issue.

Background

Under the FLSA, covered employers must pay employees at least the federal minimum wage for all hours worked and overtime at a rate of 1.5 times their regular rate of pay for all hours worked over 40 hours in a work week. However, the FLSA provides several exemptions from minimum wage and overtime pay requirements. The most common are “white-collar” exemptions, which mainly apply to executive, administrative and professional employees, but also include outside sales personnel as well as certain computer and highly compensated employees. Employers carry the burden of proving proper employee classification under the FLSA.

In *E.M.D. Sales Inc.*, employees of a grocery distribution company argued they were misclassified as exempt outside sales employees and, as a result, were owed overtime pay. The company argued before the District Court that the employees were exempt from overtime because they were outside sales personnel. The District Court rejected the company’s argument, holding that the company had failed to establish that the employees’ primary duty was making sales. On appeal, the company argued that the District Court erred in requiring it to establish the employees’ primary duty by “clear and convincing” evidence rather than a “preponderance of the evidence.” The 4th Circuit Court of Appeals affirmed the District Court’s decision.

Under the preponderance of evidence standard, employers must show that it is more likely than not that an employee is exempt under the FLSA. This is a lower evidentiary standard than the “clear and convincing” evidence standard, which requires employers to show more substantive evidence (e.g., that is far more likely) to prove that an employee is exempt. In *E.M.D. Sales, Inc.*, the employer argued that the “clear and convincing” standard is an unusually heavy burden reserved for weighty matters, such as civil commitment, termination of parental rights and deportation, and not for determining FLSA exemptions. However, the 4th Circuit applied the “clear and convincing” standard. In doing so, it is the sole federal appeals court to apply this standard. The 5th, 6th, 7th, 9th, 10th and 11th Circuits have applied the “preponderance of evidence standard.”

Supreme Court Ruling

The Supreme Court held that the “preponderance of evidence” standard applies when an employer is attempting to prove that it properly classified an employee as exempt under the FLSA’s minimum wage and overtime pay provisions. The Court noted that this was the default standard in civil litigation when the FLSA was enacted in 1938, and the higher standard of proof only applies in limited situations (e.g., when mandated by the U.S. Constitution, when a statute calls for a heightened standard and in situations involving coercive government action). The Court reversed the decision and remanded it to the Court of Appeals to apply the preponderance of evidence standard to decide whether the employees were properly classified as outside sales personnel.

Impact on Employers

The holding in *E.M.D. Sales Inc.* establishes a consistent standard for FLSA exemption cases. By adopting the preponderance of evidence standard, the Court has eased the burden on employers to establish an FLSA exemption. However, although the Court’s decision makes it easier for employers to prove FLSA exemptions, proper employee classification will remain a compliance burden for employers. Improper classification can result in significant penalties and costly litigation. To mitigate the risk of employee misclassification, covered employers should consider reviewing the FLSA’s duties tests for all exemptions to ensure employees are properly classified, promptly correct any errors, and update job descriptions to reflect employees’ roles and responsibilities accurately.

This information is not meant to be legal advice and is for consultative purposes only. Please contact Valerie Bruce Hovland, Salus Group's V.P. of Compliance at vbrucehovland@thesalusgroup.com if you need additional information.