

Supreme Court Ruling Clarifies Evidence Standard for FLSA Overtime Exemption Disputes

January 22, 2025 Laura O'Donnell, Michael Lombardino, Chelby Sterling

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On Jan. 15, 2025, the U.S. Supreme Court issued a unanimous decision clarifying the evidentiary standard for companies to show that their employees qualify for an exemption from the FLSA's minimum wage and overtime requirements. In *EMD Sales Inc. v. Carrera*, the Court ruled that employers do not need to meet a heightened "clear and convincing" evidence standard to prove their employees are exempt from minimum wage and overtime pay. To qualify for an FLSA exemption, the Court held employers instead need only meet the "preponderance of the evidence" standard traditionally applicable in civil litigation.

Case Background: A Dispute Over the FLSA's "Outside Sales Exemption"

The case involved a group of sales representatives employed by EMD Sales Inc. ("EMD"), a food distribution company. The employees sued EMD claiming they had been misclassified as exempt and were therefore entitled to overtime pay under the FLSA. The employees argued EMD failed to prove they qualified for the "outside sales exemption," which exempts employees who primarily make sales and regularly work outside the employer's place of business.

Faced with conflicting evidence regarding how often the sales representatives made sales versus carried out the terms of sales that had already been made, the District Court held that EMD did not carry its burden to prove by "clear and convincing evidence" that the employees qualified for the outside sales exemption. EMD appealed, arguing the District Court should have applied the lower "preponderance of the evidence" standard to the exemption analysis. The Fourth Circuit Court of Appeals affirmed the District Court opinion. EMD appealed.

The Supreme Court's Reasoning and Holding

The central legal issue before the Court was whether an employer must prove by "clear and convincing" evidence that employees qualify for the asserted FLSA exemption. This "clear and convincing" standard would require employers to prove exemptions with a much greater degree of certainty than the "preponderance of the evidence" standard applied in most civil litigation.

Justice Brett Kavanaugh, who authored the opinion for the Court, firmly rejected the employees' arguments for application of the heightened "clear and convincing" evidence standard. The Court held that proof of FLSA exemptions claims should instead be governed by the "preponderance of the evidence" standard.

The Court emphasized that courts should apply the preponderance standard unless the statute explicitly requires otherwise, the Constitution dictates a higher threshold, or in the "uncommon case" where the government pursues an "unusual coercive action," such as seeking to take away a person's citizenship status. The employees argued that "the public's interest" in an economy where workers are paid fairly warranted application of a heightened standard. The Court disagreed. Justice Kavanaugh observed that other civil rights protections, such as those under Title VII of the

Civil Rights Act (which prohibits discrimination), also utilize the preponderance standard despite the important public interests at stake in those cases.

Key Takeaways for Employers

- **Evidentiary Standard:** The Supreme Court's decision confirms that employers need only meet the preponderance of the evidence standard in defending overtime exemption claims, a lower threshold than the "clear and convincing" standard the plaintiffs wanted to apply to this case. Employers should emphasize the important distinctions between the two standards when litigating exemption cases.
- **Outside Sales Exemption:** Employers seeking to apply the outside sales exemption should confirm that the employees **(1)** primary duties involve sales activities, and **(2)** regularly work away from the employer's business locations. Conflicting testimony over whether EMD's sales representatives made sales as opposed to carrying out the terms of sales that had already been made by others contributed to the District Court's ruling.
- **Continued Vigilance:** While this decision simplifies the evidentiary standard in overtime exemption cases, employers must continue to properly classify their employees under the FLSA. Even under the preponderance standard, the burden of proof is still on *employers* to establish their employees properly qualify for an exemption from the FLSA's minimum wage and overtime requirements. Misclassification risks significant liabilities.

Please contact any member of the Haynes Boone [labor and employment team](#) if you have questions about the FLSA exemptions or need guidance with FLSA compliance.