

U.S. Supreme Court Makes Clear There Is No Heightened Standard for Employers to Establish an FLSA Exemption Applies

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Takeaways

- Employers need only establish that an exemption applies through a “preponderance of evidence,” not the higher “clear and convincing evidence” standard.
- An outlier decision by the Fourth Circuit is reversed, easing the burden of proof for employers in Maryland, North Carolina, South Carolina, Virginia, and West Virginia.
- While this case involved application of the FLSA’s outside sales exemption, the reasoning applies to all statutory exemptions.

Related links

- [Fourth Circuit Panel Questions Validity of Court’s Burden of Proof for FLSA Overtime Exemptions](#)
- [U.S. Supreme Court to Consider Evidentiary Standard for Proving FLSA Exemption](#)
- [U.S. Supreme Court considers standard for proving an FLSA exemption applies](#)

Article

Employers do not have to meet a heightened standard of proof to establish that an employee is exempt from the minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA), the U.S. Supreme Court held in *E.M.D. Sales, Inc. v. Carrera*, No. 23-217 (Jan. 15, 2025). In a unanimous decision, the Court reversed a decision of the U.S. Court of Appeals for the Fourth Circuit that found a higher standard applies.

The Court’s decision makes clear that the default “preponderance of the evidence” burden of proof applicable in civil cases controls when employers seek to establish that an exemption applies as an affirmative defense in FLSA cases. There is no statutory or policy basis to hold employers to a more rigorous “clear and convincing” standard. The Fourth Circuit’s standard was an outlier, as every other circuit to address the issue held a preponderance of the evidence standard applies.

Background

Three sales representatives filed suit against their employer, a food distribution company, contending the employer failed to pay them overtime. The employer countered that the plaintiffs were exempt from overtime under the FLSA’s “outside sales” exemption. The case went to a bench trial in the federal court in Maryland. The court ruled in favor of the employees. It rejected the employer’s exemption defense, concluding the employer did not prove by “clear and convincing evidence” that the exemption applied to the plaintiffs.

The employer filed an appeal with the Fourth Circuit, arguing that the district court

should have applied the less stringent preponderance of the evidence standard when determining whether the employer made the required showing that the outside sales exemption applied. The Fourth Circuit affirmed, concluding that it was bound by circuit precedent. The appellate panel rejected the employer's argument that the Supreme Court's intervening decision in *Encino Motorcars, LLC v. Navarro*, 138 S. Ct. 1134 (2018), which rebuffed the notion that FLSA exemptions should be narrowly construed, required the appellate court to abandon its precedent. The panel concluded that overturning circuit precedent would be a matter for the court to consider *en banc*; however, the *en banc* court later denied review.

The decision had cast the Fourth Circuit as the outlier among circuit courts to have considered the proper burden of proof for FLSA exemptions. It was the only circuit to impose the higher burden.

Supreme Court's Decision

In holding that the preponderance of evidence standard applies, the opinion written by Justice Brett Kavanaugh noted this is the default standard of proof that governs in civil cases. It is the rare instance, the Court said, when the higher clear and convincing standard has been applied, such as when the standard is expressly set forth in the statute or where important constitutional liberties are at stake. These circumstances do not apply here.

The Court rejected the employees' policy rationales for applying a heightened standard in FLSA cases, including their allusion to "the public's interest in a well-functioning economy where workers are guaranteed a fair wage." The Court pointed out that other workplace statutes are meant to protect equally important public interests but do not impose a higher burden. "If clear and convincing evidence is not required in Title VII cases, it is hard to see why it would be required in Fair Labor Standards Act cases," Justice Kavanaugh wrote. Further, the Court explained, the FLSA is intended to further a balance of competing interests that "do not fall entirely on the side of employees."

The Court also rejected the employees' contention that a heightened burden to prove an exemption applies because FLSA rights cannot be waived. Waivability has no bearing on the standard of proof; at any rate, the Court pointed out, the preponderance of evidence standard applies to other rights that are nonwaivable, including rights under the National Labor Relations Act. Finally, the Court explained, the fact that the employer is in control of the evidence related to establishing an FLSA violation does not warrant a heightened standard of proof.

The Supreme Court did not address the merits question of whether the outside sales exemption applies under the facts of the case.

Takeaway

The Supreme Court's decision was not surprising. Most observers anticipated that the justices would reverse the Fourth Circuit's decision without hesitation. The federal government appeared as amicus in support of the employer, urging the Supreme Court to adopt the lower preponderance of the evidence standard.

The decision has important implications for employers. In *Encino Motorcars*, the Supreme Court explained that FLSA exemptions are to be given a "fair reading" rather than an unduly restrictive interpretation. The Fourth Circuit had found its higher evidentiary

burden did not conflict with this directive. The *E.M.D. Sales* opinion underscores that employers do not face a greater burden when justifying the basis for identifying certain employees as FLSA-exempt.

Contact your Jackson Lewis attorney if you have questions about Court's decision and its impact on your business.

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