

# Supreme Court Clarifies Burden of Proof Standard for FLSA Claims

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This week, in a highly anticipated ruling, the U.S. Supreme Court issued its decision in *EMD Sales Inc. v. Carrera*, [Case No. 23-217](#), concluding that a preponderance-of-the-evidence standard applies when an employer seeks to demonstrate that an employee is exempt from the minimum-wage and overtime provisions of the Fair Labor Standards Act (FLSA).

In *EMD Sales*, several sales representatives filed suit against their employer (EMD) in the U.S. District Court for the District of Maryland. They alleged that EMD violated the FLSA by failing to pay them overtime. EMD did not deny that the sales representatives worked more than 40 hours in a workweek or that it did not pay them overtime. However, it claimed that the employees were properly classified as exempt under the FLSA's outside sales employee exemption (see [29 C.F.R. § 541.500](#))—and thus, that it was not required to provide overtime pay.

The case proceeded to bench trial, at which time the burden was on EMD to prove that the employees qualified as outside salesmen. Applying the heightened “clear-and-convincing-evidence” standard of proof, the District Court concluded that EMD failed to meet its burden and ordered EMD to pay unpaid overtime wages and liquidated damages.

EMD appealed the decision to the U.S. Court of Appeals for the Fourth Circuit. EMD argued that the District Court erred in applying the clear-and-convincing evidence standard instead of the of less stringent preponderance-of-the-evidence standard. But the Fourth Circuit followed its precedent requiring employers to prove by clear and convincing evidence that an FLSA exemption applies, and affirmed. At the time, the Fourth Circuit was the only Circuit that required the heightened standard of proof. All other Courts of Appeals to address the issue had held that the preponderance-of-the-evidence standard applied.

The Supreme Court granted certiorari to resolve the Circuit split. In reversing the Fourth Circuit's decision and finding that the “default” preponderance-of-the-evidence standard applies, the Supreme Court noted that it departs from the default standard in only three main circumstances: (1) if a statute establishes a heightened standard; (2) if the Constitution requires a heightened standard; and (3) in certain other “uncommon” cases, such as when determining whether to take away a person's citizenship. And according to the Court, none of those circumstances is applicable to claims brought under the FLSA. Additionally, the Court rejected the employees' public policy-related arguments, explaining that FLSA claims are akin to employment claims brought under Title VII, to which the Court has held that a preponderance standard applies, and the Court must apply the statute as written, which reflects a balance of competing interests—those of employees against those of employers.

This decision is important because it clarifies that employers in all jurisdictions are required to prove only “by a preponderance of the evidence” that an FLSA exemption applies. However, to what extent that uniform standard will affect actual exemption determinations (or FLSA litigation generally) remains to be seen.

Only the Fourth Circuit previously applied the heightened standard, so the ruling's effect in other jurisdictions is, at most, minimal. The ultimate burden to prove an FLSA exemption applies remains with the employer, and employers should continue to carefully scrutinize any employee-classification decisions.

Indeed, whether a particular FLSA exemption applies is usually a fact-intensive question, and employees and employers typically argue that the evidence supporting their position is overwhelming regardless of the other side's evidence or which

party bears the burden of proof. For instance, the employees in *EMD Sales* argued in the alternative that the applicable standard was immaterial given the evidence at trial, so the Supreme Court should affirm either way. The Court declined to do so, however, stating that its “usual practice is to leave matters of that sort for remand” and it saw “no persuasive reason to stray from that usual practice.” Thus, the ultimate outcome in the case—and whether EMD is able to satisfy the lower standard—is still to be determined.

If you have any questions about the topics discussed in this article, please contact **James P. Looby** at [jlooby@vedderprice.com](mailto:jlooby@vedderprice.com) or any Vedder Price attorney with whom you have worked.

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