

## What's Next After Justices Clarify FLSA Evidence Standard

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The US Supreme Court's January 15 decision in *EMD Sales Inc. v. Carrera* addressed the standard of proof required for employers to demonstrate that an employee is exempt from the minimum wage and overtime pay requirements of the Fair Labor Standards Act.

In this case, three commission-based sales representatives challenged their employer's classification of them as exempt outside sales employees, leading to a dispute over the proper standard of proof required to establish the exemption.

Specifically, the court ruled that the preponderance of the evidence standard applies. In doing so, it rejected a more stringent clear and convincing evidence standard adopted by the US Court of Appeals for the Fourth Circuit, as established in *Carrera v. EMD Sales* in 2023. This means an employer must only prove it is more likely than not that an employee is exempt.

This decision has significant implications for employers navigating FLSA exemption claims, particularly regarding how evidence is evaluated in such cases.

### Impact on Employers

The decision makes it easier for employers to claim exemptions under the FLSA, as they now only need to meet the lower preponderance of the evidence standard.

However, it is important to note the court's decision does not change the substantive requirements for FLSA exemptions. Employers must still meet all necessary criteria to claim an exemption.

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Prior to the Supreme Court's ruling, the Fourth Circuit required a higher burden of proof, meaning employers had to show by clear and convincing evidence that an employee qualified for an exemption.

The Supreme Court's decision eliminates this higher standard, instead reaffirming that the standard most often applied in civil litigation — the preponderance of the evidence standard — should be used.

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## Preponderance of the Evidence Standard

The preponderance of the evidence standard is the default burden of proof in most civil litigation in the United States. Under this standard, a party must show that a claim is more likely than not to be true.

In the context of FLSA exemptions, it means employers must demonstrate that, based on the available evidence, it is more likely than not that the employee falls within one of the exempt categories under the FLSA, such as an outside salesperson.

The Supreme Court's decision in *EMD Sales* reaffirms the principle that when a statute is silent about the standard of proof, courts typically apply the preponderance of the evidence standard.

In doing so, the court dismissed arguments that the nature of FLSA protections — designed to ensure a fair economy and protect workers — necessitated a heightened standard. It emphasized that while the FLSA serves public interest, it does not require a special rule regarding proof.

The court noted that other employment-related statutes that also involve important public policy concerns, like Title VII of the Civil Rights Act, apply the preponderance of the evidence standard.

For employers, this clarification is crucial. It aligns the FLSA with the standard applied in most other civil litigation, and provides a more predictable framework for handling exemption claims. It also avoids the complexity and potential for inconsistent outcomes that could arise from certain federal circuit courts requiring a heightened standard of proof.

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## Clear and Convincing Evidence Standard

The central issue in *EMD Sales* was the application of the clear and convincing evidence standard, which had been adopted by the Fourth Circuit in this case and others like it. Under this standard, the evidence must show that a claim is highly probable or highly credible. This is a more demanding standard than

simply showing it is more likely than not, as the preponderance of the evidence standard requires.

The Fourth Circuit required employers to meet this higher standard when claiming that employees were exempt from the FLSA's overtime provisions, citing concerns that employers held significant control over the evidence in such cases. It argued that because employees were often in lower-paying roles and lacked access to the necessary documents, it would be unfair to let employers prove exemptions with a lesser standard of proof.

However, the Supreme Court rejected this argument. It found no compelling reason to apply a heightened standard in FLSA exemption cases, particularly because such cases are generally handled under the preponderance of the evidence standard in other civil litigation.

The court also noted that while FLSA exemptions are designed to benefit both employers and employees, there is no basis for concluding that a heightened standard is necessary to protect employees' interests.

By rejecting the clear and convincing evidence standard, the court leveled the playing field for employers, making it easier for them to demonstrate the applicability of exemptions when contested. This decision is especially significant for employers in jurisdictions where the Fourth Circuit's precedent required a higher standard of proof.

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## Conclusion

The Supreme Court's decision in *EMD Sales v. Carrera* provides much-needed clarity regarding the standard of proof for FLSA exemptions.

By reaffirming the preponderance of the evidence standard, the court has aligned the FLSA with the general approach to proof in civil litigation, making it easier for employers to defend against claims of unpaid overtime and minimum wage violations.

The decision also resolves a significant split among the federal circuits, as the Fourth Circuit was the only one to require the higher clear and convincing evidence standard.

Before this case, different courts had different standards for deciding FLSA exemption cases. This meant the outcome of a case could depend on where it was filed, creating inconsistency and unpredictability for employers operating in multiple jurisdictions.

Under the new standard, however, employers can more effectively understand their obligations, regardless of where a case might be brought. The decision should also help employers better predict the likely direction of potential litigation.

While employees now face a greater challenge in contesting their exempt status, as employers only need to meet the preponderance standard, instead of a higher burden of proof, this development does not eliminate employees' ability to challenge misclassification. Rather, it simply standardizes the evidentiary threshold across jurisdictions.

This decision is likely to have wide-ranging implications in employment litigation, particularly in the context of wage and hour disputes. As the case is remanded for further proceedings, employers need to be vigilant in preparing their defenses, ensuring they meet the now-standard preponderance of the evidence requirement.

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