

## **CLIENT ALERT: U.S. Supreme Court Clarifies That Employers Are Not Required to Meet Heightened Standard of Proof to Establish an FLSA Exemption Applies**

Employers do not need to meet a heightened standard of proof to establish an exemption from the minimum wage and overtime requirements under the Fair Labor Standards Act (FLSA), the U.S. Supreme Court ruled in *E.M.D Sales, Inc. v. Carrera*, No. 23-217 (Jan. 15, 2025).

In a unanimous decision, the Supreme Court overturned a decision of the U.S. Court of Appeals for the Fourth Circuit that held employers to a higher standard of proof, requiring employers to establish by “clear and convincing” evidence that an employee was properly classified as exempt under the FLSA. In reversing the Fourth Circuit’s decision, the Supreme Court clarified that employers need only meet the “preponderance of evidence” standard, which is a lower standard used in most civil cases.

### **Case Background**

The FLSA generally requires employers to pay employees minimum wage for all hours worked and overtime for hours exceeding 40 in a given work week. In the underlying case, three sales representatives filed a lawsuit against their employer asserting that the employer failed to pay them overtime. The employer did not deny that the employees worked more than 40 hours, but instead claimed that the employees were not entitled to overtime because they met the FLSA’s outside sales exemption, which exempts salesmen who primarily work outside an employer’s place of business from the FLSA’s overtime pay requirements.

Following a bench trial, the trial court found in favor of the employees, concluding that the sales representatives primarily executed the terms of sales that had already been made rather than making new sales themselves. In doing so, the court applied the heightened “clear and convincing evidence” standard. On appeal, the employer argued that the trial court should have applied a “preponderance of the evidence” standard to its defense that the sales representatives were exempt under the FLSA. The Fourth Circuit rejected this argument, concluding that it was bound by Fourth Circuit precedent applying the “clear and convincing” standard. The employer appealed the Fourth Circuit’s ruling to the U.S. Supreme Court.

### **The Supreme Court’s Decision**

In an opinion written by Justice Brett Kavanaugh, the Supreme Court held that the “preponderance of evidence” standard, the default standard of proof that governs the majority of civil cases, should have been applied to the employees’ FLSA claims. Justice Kavanaugh reasoned that the rare instances in which the higher “clear and convincing standard” typically applies—including situations where the standard is expressly set forth in the applicable statute, where the constitution mandates a higher

standard, or where the case involves coercive government action—were not present and did not apply to cases brought under the FLSA.

In reaching its decision, the Supreme Court first rejected the employees' public policy argument that a heightened standard of proof should be applied to FLSA claims because it is in the "public's interest in a well-functioning economy where workers are guaranteed a fair wage." Justice Kavanaugh explained that even if this premise were accepted, it did not demand that a heightened standard of proof be applied to FLSA cases, especially where a heightened standard is not applied to similar statutes that provide workplace protections, including Title VII.

The Supreme Court also dispensed of the employees' argument that a higher standard of proof must be applied to their claims because rights conferred by the FLSA are not waivable and are therefore distinct from other rights that are subject to a preponderance of the evidence standard. Justice Kavanaugh explained that "the waivability (or lack thereof) does not dictate the applicable standard of proof."

Lastly, the Supreme Court rejected the employees' argument that an employer's control over most evidence in an FLSA case justifies a heightened standard. Once again, the Supreme Court explained that similar conditions exist for cases brought by employees under Title VII; therefore, the employer's purported control over evidence was not a legitimate basis for applying a higher standard of proof to FLSA claims.

While the Supreme Court held that the trial court and Fourth Circuit had applied the incorrect standard of proof, it did not address the central substantive issue of whether the outside sales exemption applied to the employees. Instead the Supreme Court remanded the case to determine whether the employer had established that the sales representatives were "outside salesmen" under the proper preponderance of the evidence standard.

## **Impact on Employers**

The Supreme Court's unanimous decision was not surprising to many observers, as the Fourth Circuit's decision was an outlier. Although the standard of proof has now been clarified, employers must continue to ensure that they conduct a thorough FLSA exemption analysis. Regardless of the standard of proof, it will still be the employer's burden to prove that an employee is properly treated as exempt under the FLSA. Employers should critically examine an employee's job duties against applicable FLSA tests and ensure they are paid on a salary basis. Additionally, employers should regularly update and maintain accurate job descriptions and other documents supporting their exemption decisions.

Employers who have questions about properly classifying employees under the FLSA are encouraged to consult with their MBJ attorney.

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