

U.S. Supreme Court Rejects Higher Standard of Proof for Overtime Exemptions

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In a win for employers, the U.S. Supreme Court ruled this week in *E.M.D. Sales, Inc. v. Carrera* that employers need only prove an exemption from overtime under the Fair Labor Standards Act (FLSA) by a “preponderance of the evidence” rather than the higher standard of “clear and convincing evidence.”

Why Does the Standard of Proof Matter to Employers?

The FLSA requires most employers to pay employees minimum wage (currently \$13.00/hour -- and \$9.98/hour for tipped employees -- in Florida) for the first 40 hours worked and overtime at the rate of 1.5 times their regular rate of pay for all hours worked in excess of 40 in any given workweek unless the employee qualifies for one or more specific exemptions. The most well-known exemptions are the executive, administrative, and professional exemptions, but there are others, including the outside sales exemption, which is the exemption at issue in the *E.M.D. Sales* case.

Misclassification occurs when an employer classifies an employee as exempt from overtime, but the employee does not qualify for the exemption under the regulations adopted by the U.S. Department of Labor (DOL), summarized here. Misclassification exposes employers to liability for unpaid overtime for up to three years, liquidated damages in an amount equal to the unpaid overtime, and attorneys’ fees and costs, in addition to the employer’s own attorneys’ fees and costs to defend against individual, class, and collective actions for unpaid overtime. Employers have the burden to prove an exemption from overtime, and a higher standard of proof makes it more difficult for an employer to defeat an employee’s lawsuit for unpaid overtime based on misclassification.

Background

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E.M.D. Sales is a food distributor that classified certain employees as “outside sales” representatives, which is one of the exemptions from the minimum wage and overtime requirements of the FLSA. The employees sued E.M.D. Sales for unpaid overtime, liquidated damages, and attorneys’ fees and costs, claiming that they were misclassified because their job duties did not qualify for the outside sales exemption.

E.M.D. Sales did not dispute that these employees worked more than 40 hours per week but argued that they fell within the FLSA’s “outside sales” exemption. The District Court (trial court) ruled against E.M.D. Sales, finding that the company failed to prove that the employees qualified for the “outside sales” exemption by “clear and convincing evidence.” E.M.D. Sales appealed to U.S. Court of Appeals for the Fourth Circuit and argued that the District Court should have applied the less stringent preponderance of the evidence standard, but the Fourth Circuit disagreed and affirmed the District Court judgment in favor of the employees and against the company.

Circuit Split

The Fourth Circuit was the sole federal appellate court to apply the higher “clear and convincing evidence” standard. The Sixth, Seventh, Ninth, Tenth, and Eleventh Circuits, the last of which has jurisdiction over Florida, have applied the “preponderance of the evidence” standard in similar cases. E.M.D. Sales appealed to the U.S. Supreme Court, which accepted the case and resolved the disagreement amongst the circuits in favor of the less stringent standard.

The Court noted that, in previous cases, it had deviated from the “preponderance of the evidence” standard in three main circumstances:

- Courts must apply a heightened standard of proof if a statute establishes one, such as whistleblower/retaliation claims under the FLSA.
- Courts must apply a heightened standard of proof when the Constitution requires one, such as in certain First Amendment and Due Process cases.
- A heightened standard of proof may be appropriate in certain other “uncommon” cases, usually when the government is taking unusual coercive action against an individual, such as taking away a person’s citizenship.

The Court generally does not use a heightened standard of proof in civil matters and specifically referred to the Court’s application of the “preponderance of the evidence” standard in Title VII employment discrimination cases.

The Court rejected the employees’ “policy laden” arguments that the heightened “clear and convincing evidence” standard of proof was appropriate and concluded that the “preponderance of the evidence” standard applies when an employer is seeking to prove an exemption under the FLSA.

The Court’s ruling is good news for employers but serves as a reminder that the burden of proof for overtime exemptions remains on the employer. Indeed, the E.M.D. Sales case is not over. The company could still lose the misclassification case if the lower court determines that the company did not satisfy the less stringent “preponderance of the evidence” standard to prove that the employees qualified for the “outside sales” exemption.

Next Steps for Employers

All employers should be prepared to support and defend their employees' exempt classifications in the event of a pre-suit demand, lawsuit, or investigation by the DOL. Tips for this task include the following:

- Be sure that every position is designated as exempt or non-exempt from the minimum wage and overtime provisions of the FLSA.
- For exempt employees, designate the specific exemption(s) that apply.
- Review the qualifications for the exemptions (in most cases, payment on a salary basis and passing the so-called "duties test").
- Review and update job descriptions.
- Review state and local laws that may impose greater obligations to prove an exemption.

Please contact any Lowndes Labor and Employment Law attorney should you have any questions about the FLSA, the U.S. Supreme Court's decision, or any other employment law issues impacting your business.