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Supreme Court Reverses Fourth Circuit Outlier And Holds That Preponderance-Of-The-Evidence Standard Applies To FLSA Exemptions

***E.M.D. Sales, Inc. v. Carrera*, No. 23-217** – Decided January 15, 2025

Today, the Supreme Court unanimously held that the preponderance-of-the-evidence standard, rather than the more demanding clear-and-convincing-evidence standard, governs Fair Labor Standards Act exemptions.

"[T]he public interest in Fair Labor Standards Act cases does not fall entirely on the side of employees. Most legislation reflects a balance of competing interests. So it is here. Rather than choose sides in a policy debate, this Court must apply the statute as written and as informed by the longstanding default rule regarding the standard of proof."

JUSTICE KAVANAUGH, WRITING FOR THE COURT

Background:

The Fair Labor Standards Act (FLSA) generally requires employers to pay employees a minimum hourly rate, 29 U.S.C. § 206(a), and overtime to employees who work over 40 hours per week, *id.* § 207(a). But the Act exempts many classes of workers from these requirements. *Id.* § 213.

Sales representatives for E.M.D. Sales Inc., a food-distribution company that delivers to grocery stores, sued E.M.D. under the FLSA, claiming that they were entitled to overtime pay. In response, E.M.D. argued that the plaintiffs were exempt from the FLSA because they were "employed . . . in the capacity of outside salesm[e]n." 29 U.S.C. § 213(a)(1). The district court, applying Fourth Circuit precedent, ruled that E.M.D. had not shown by clear and convincing evidence that the plaintiffs were outside salesmen. After the Fourth Circuit affirmed, E.M.D. successfully petitioned for a writ of certiorari, explaining that the Fourth Circuit's approach conflicted with decisions from the Fifth, Sixth, Seventh, Ninth, Tenth, and Eleventh Circuits.

Issue:

Does the FLSA require employers to prove by clear and convincing evidence, or merely by a preponderance of the evidence, that employees are exempt from the Act's minimum-wage or overtime-pay requirements?

Court's Holding:

Employers invoking a FLSA exemption need satisfy only the ordinary preponderance-of-the-evidence standard, not the more demanding clear-and-convincing-evidence standard.

What It Means:

- The Court's holding brings the Fourth Circuit, which had been alone in requiring proof by clear and convincing evidence, in line with other circuits, and will make it far easier for employers to prove that employees are exempt from the FLSA's overtime-pay or minimum-wage requirements.
- By correcting course, the Court's opinion not only changes the likely outcome of FLSA cases turning on whether their employees are exempt, but also relieves employers of the chill of costly litigation and encourages productive use of exempt employees.
- The Court rejected the policy arguments in favor of a more demanding standard of proof. As the Court explained, the FLSA is no more significant, in terms of public policy, than any number of other important statutes under which the preponderance standard applies.
- More broadly, the Court emphasized that the preponderance-of-the-evidence standard is the presumptive standard of proof for all civil statutes. A more demanding standard applies only where (1) Congress speaks clearly to displace that presumption, (2) the Constitution requires it, or (3) the government seeks to take unusual coercive action against an individual.

Gibson Dunn Appellate Honors

The Court's opinion is available here.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the U.S. Supreme Court. Please feel free to contact the following practice group leaders:

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