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Supreme Court Clarifies FLSA Exemption Burden

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Practices: Litigation

The Supreme Court's recent decision in *E.M.D. Sales, Inc. v. Carrera*, No. 23-217, 604 U.S. ____ (2025) carries significant implications for employers regarding the evidentiary standard required to assert an exemption under the Fair Labor Standards Act (FLSA). This case centers on the standard of proof that an employer must meet to demonstrate that an exemption applies to the FLSA's general overtime requirement under 29 U.S.C. §207(a)(1).

In *E.M.D.*, a food distributor argued that several of its sales representatives were exempt from overtime pay because they qualified as "outside salesmen" under 29 U.S.C. §213(a)(1). The Fourth Circuit affirmed the district court ruling against *E.M.D. Sales* on the basis that the company failed to prove its exemption claim by clear and convincing evidence—a standard that imposes a much higher burden than the preponderance-of-the-evidence (i.e., more likely than not) standard typically applied in civil litigation.

In a unanimous opinion authored by Justice Kavanaugh, the Supreme Court reversed the Fourth Circuit decision, ruling that employers are required only to meet the preponderance-of-the-evidence standard—not the higher clear and convincing evidence standard—when asserting an exemption from the FLSA's overtime or minimum wage provisions. Absent an explicit statutory or constitutional mandate for a higher standard, the lower standard automatically applies. The Supreme Court remanded the case to the Fourth Circuit to determine whether the employer is able to meet this less stringent standard.

For employers, this ruling is a welcome clarification. When employers assert an FLSA exemption, such as the "outside salesman" exemption, they are only required to demonstrate that it is more likely than not that the employee satisfies the exemption criteria. The Supreme Court noted that this decision aligns FLSA exemption cases with other areas of employment law—like Title VII claims—where the preponderance-of-the-evidence standard is the norm.

Although the less-stringent standard is favorable to employers, companies should continue to review and, if necessary, update their internal policies and documentation practices. Maintaining thorough records that clearly delineate employee roles, responsibilities, and work locations is essential. These records not only help substantiate exemption claims but also serve as critical evidence in any potential litigation.

Please reach out to your Masuda Funai relationship attorney or one of the attorneys in the Firm's Commercial Litigation or Employment, Labor & Benefits Departments for more information on these topics or any other litigation or employment issues.

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