

On January 15, 2025, the U.S. Supreme Court issued a ruling in the case of *E.M.D. Sales, Inc. v. Carrera*. The case centered around the appropriate standard of proof for establishing that an employee is exempt from overtime pay under the Fair Labor Standards Act ("FLSA"). This decision resolved a circuit split between the Fourth Circuit, which had historically applied the "clear and convincing evidence" standard, and the rest of the circuits, which applied the more lenient "preponderance of the evidence" standard. The Supreme Court unanimously sided with the employer, holding that a dispute over an employee's right to overtime pay under the FLSA does not fall under any of the categories of claims which are entitled to a heightened standard of proof. Instead, the Supreme Court ruled that an employer must merely establish prove the exemption by a preponderance of the evidence, as is the default in civil litigation.

The defendant in this case, E.M.D. Sales, Inc., is a food distributor operating in the Washington, D.C., area. The lawsuit was brought by a group of salespeople employed by E.M.D., whose job duties included managing inventory and taking orders at grocery stores. The plaintiffs alleged that E.M.D. had violated the FLSA by failing to pay them overtime, while E.M.D. claimed that the plaintiffs constituted "outside salesmen" and were therefore exempt from overtime pay under Section 213(a)(1) of the FLSA. This exemption applies to employees whose primary job duties are making sales and who regularly work away from their employer's place of business. However, the employer bears the burden of proving that any such exemption applies.

The plaintiffs brought their case in the District of Maryland, which is in the Fourth Circuit. Applying the standard established under Fourth Circuit precedent, the District Court found that E.M.D. had failed to prove the employees' exempt status by clear and convincing evidence. Because the employer has the burden of proof on this issue, the court held the employer liable for paying the overtime compensation at issue. E.M.D. appealed, but the Fourth Circuit Court of Appeals applied the same standard, under which it affirmed the trial court's decision.

E.M.D. appealed the case again, this time to the U.S. Supreme Court. The Supreme Court granted certiorari, intending to resolve the circuit split concerning the appropriate standard of proof. In a unanimous opinion authored by Justice Kavanaugh, the Court reversed the Fourth Circuit's judgment and remanded the case to be decided under the preponderance of the evidence standard. The Supreme Court found that an employee's overtime-exempt status under the FLSA does not fall into any of the three scenarios in which a heightened evidentiary standard might apply, namely: (1) when specified by statute; (2) when mandated by constitutional protections; and (3) in rare cases involving coercive government action, such as denaturalization or involuntary civil commitment.

The Court also rejected the plaintiffs' policy arguments for a heightened standard of proof. The Court noted that other claims that implicate similar public policy objectives, such as Title VII employment-discrimination claims, operate under the preponderance of the evidence standard. As a result, the Court opined

that applying a heightened standard of proof to the issue of FLSA overtime exemptions would give rise to an unwarranted inconsistency in the law.

On remand, the Fourth Circuit will be tasked with reevaluating E.M.D.'s argument that the plaintiffs constitute "outside salesmen" exempt from overtime under the FLSA. This determination must be made under the now-universal preponderance of the evidence standard.

Although the Supreme Court's ruling in *E.M.D. v. Carrera* established a common standard of proof with regard to overtime-exempt status under the FLSA, the impact will likely be minimal outside of the Fourth Circuit. In the rest of the Circuits that already applied the preponderance of the evidence standard in such cases – including the Seventh Circuit in Chicago – the ruling will merely prevent courts from adopting a stricter standard in the future. Additionally, employers will still bear the burden of proving that an employee is exempt from overtime pay under the FLSA; this ruling simply lowers the standard for doing so in the Fourth Circuit.

ASHER, GITTLER & D'ALBA, LTD. 200 West Jackson Boulevard, Suite 720 Chicago, IL 60606 – 312.263.1500 www.ulaw.com

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