



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](http://www.ulaw.com)

© 2025 Asher, Gittler & D’Alba, Ltd.  
All rights reserved.  
Dated. January 27, 2025

This release informs you of items of interest in the field of labor relations. It is not intended to be used as legal advice or opinion.

Best Lawyers’ Best Law Firms Designation is for Chicago Tier 1 rankings in Employment Law (Individuals), Labor Law (Union), and Litigation (Labor and Employment) and a National Tier 2 ranking in Litigation (Labor and Employment).

