

SCOTUS DELIVERS WIN TO EMPLOYERS IN OVERTIME EXEMPTION CASES BY REJECTING HIGHER STANDARD OF PROOF: KEY TAKEAWAYS

Insights
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The Supreme Court just handed businesses a win when it weighed in on how much evidence an employer needs to show a court to prove it correctly classified employees as exempt from minimum wage and overtime pay. As we correctly predicted after oral argument, the Justices agreed with the employer that an unusually high “clear and convincing” evidence standard **does not** apply to federal wage law. Rather, an employer needs only show its position is more likely than not correct under the “preponderance of the evidence” standard that is typically applied in civil lawsuits. Today’s unanimous decision sets a consistent national standard under the Fair Labor Standards Act (FLSA) and will reduce litigation risks by making it easier to show that employees are properly classified. Here are the key points you should know about the ruling and what it means for your workplace.

How Did We Get Here?

Exempt Classification Challenged: In [*E.M.D. Sales Inc. v. Carrera*](#), several employees of a grocery distribution company claimed they were misclassified as outside sales employees and therefore owed overtime pay. Under the FLSA, employees generally must be paid an overtime premium of 1.5 times their regular rate of pay for all hours worked beyond 40 in a workweek — unless they fall under an exemption.

While the executive, administrative, and professional exemptions – collectively known as the “white-collar” exemptions – may be the most familiar to employers, this

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case focuses on the outside sales exemption. Under this exemption, the employee's primary duties must involve making sales, and the employee must be customarily and regularly engaged away from the employer's place of business. You should note, however, that the Supreme Court's ruling will impact all 34 of the FLSA's exemptions.

Why It Matters to Employers: Misclassifying employees based on their exemption status is a key compliance issue, particularly as the cost of potential class and collective actions skyrockets. The default under the federal FLSA is that an employee is non-exempt – and when exempt status is questioned, the employer has the burden of proving that it properly classified an employee as exempt.

Disagreement Among Courts: In FLSA misclassification claims, there was a split among the federal appeals courts as to what standard of proof the employer must meet:

- A **"preponderance of the evidence"** standard, which is a lower threshold (that some scholars say means a 51% chance the employer is correct); or
- A more-stringent **"clear and convincing"** standard (that some scholars translate to an 80-90% chance the employer is correct).

In *E.M.D. Sales*, the 4th U.S. Circuit Court of Appeals applied the higher **clear and convincing standard**, making it the sole federal appeals court to do so. In contrast, six other federal appeals courts (the 5th, 6th, 7th, 9th, 10th, and 11th) applied the **preponderance of evidence** standard. Thus, SCOTUS accepted the case to address this disagreement and has now set a consistent standard nationwide.

What Are the Key Takeaways from the SCOTUS Ruling?

Preponderance of the Evidence Standard Prevails: The Supreme Court [held on January 15](#) that the preponderance of the evidence standard applies when an employer is trying to prove that an employee is properly classified as exempt from the FLSA's minimum wage and overtime pay provisions. This standard was the default in American civil litigation when the FLSA was enacted in 1938 and remains so today, the Court noted.

No Exception Applies: SCOTUS has deviated from this standard – and applied a higher standard of proof – in three

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main situations:

- When the applicable statute calls for a heightened standard (but the FLSA does not);
- When the Constitution mandates a heightened standard (but this case does not involve constitutional rights); or
- In rare situations involving coercive government action, such as taking away a person's citizenship (which does not apply here).

"Importantly, the Court has not otherwise used a heightened standard in civil matters," Justice Kavanaugh noted in the opinion.

Employees' Argument Rejected: The employees argued that the clear and convincing standard of proof is necessary to carry out the FLSA's public purpose. The statute is designed to quickly eliminate labor conditions that fall below a minimum standard of living, they argued. "The preponderance of the evidence standard falls short of that purpose because it allocates the risk of factual error equally between employers and workers," their attorney said during oral argument.

But the Justices were "not persuaded by the employees' policy-laden arguments for a heightened standard." Justice Kavanaugh explained that "the 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."

Reversed and Remanded: The Justices sent the case back down to the lower courts to apply the preponderance of the evidence standard when deciding whether the employees in this case were properly classified as exempt under the outside sales exemption.

How Did We Do with Our Predictions?

Our FP attorneys [Sarah Wieselthier](#) and [Patrick Dalin](#) correctly **predicted** that the SCOTUS majority would apply the preponderance of the evidence standard, not the higher clear and convincing standard. The issues in this case echo [the Supreme Court's 2018 Encino Motors decision](#),

where the Court rejected arguments that the FLSA's exemptions should be narrowly construed. The majority followed the same logic here. There is no constitutional or statutory basis to apply a higher burden of proof to employers under the FLSA, and there is also no important liberty interest at stake.

- Sarah accurately called a 9-0 SCOTUS ruling in favor of the employer, reversing the 4th Circuit and remanding the case for the lower courts to determine whether the exemption's duties test is satisfied by the lower preponderance standard.
- Our authors thought Chief Justice Roberts or Justice Alito would write the opinion given that they pressed the most at oral argument on why a heightened standard should be used when it's not used in cases under other important employment statutes. Even though Justice Kavanaugh penned the actual opinion, we'll still call that a win.

What Should Employers Do Now?

Employers can breathe a sigh of relief knowing that SCOTUS has set a consistent standard for FLSA exemption cases, easing the burden on businesses. But wage and hour compliance should be top of mind since errors can result in significant penalties and hefty litigation costs. Keep these tips in mind:

- The best way to avoid misclassification claims is to ensure you **regularly review your practices** and ensure **job descriptions are accurate and updated**.
- When a job falls within a gray area, you will want to **evaluate the risk** associated with continuing to classify the position as exempt.
- Don't forget that **states and localities** can have higher, stricter, or different wage and hour requirements.
- Be sure to check out our [Wage and Hour Insights](#) page for the latest **compliance tips**.

Conclusion

We will continue to monitor developments from SCOTUS and the DOL's Wage and Hour Division, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. For further information, contact your

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