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# Employers Seeking a Wage Exemption Under the FLSA Are Not Required to Meet a Heightened Standard of Proof

## *E.M.D. Sales, Inc. v. Carrera*, 145 S. Ct. 34 (Jan. 15, 2025)

In *E.M.D. Sales, Inc. v. Carrera*, the U.S. Supreme Court held that the "preponderance of the evidence" standard applies when an employer attempts to show that an employee is exempt from the minimum-wage and overtime pay requirements of the Fair Labor Standards Act (FLSA).

Several sales representatives for EMD—a company that distributes international food products in Washington, D.C.—sued EMD for failing to pay them overtime. EMD conceded that the sales representatives worked more than 40 hours per week without receiving overtime pay but argued they were exempt under the FLSA's "outside salesman" exemption.

The FLSA generally requires employers to pay employees a minimum wage and overtime compensation when they work more than 40 hours a week. However, it exempts many categories of employees from these requirements, including, as relevant here, those employed "in the capacity of outside salesman." Significantly, the burden is on the employer to show that an exemption applies.

At trial, the U.S. District Court for the District of Maryland held that EMD failed to establish by "clear and convincing evidence" that the employees were outside salesmen and thus exempt from the FLSA's overtime-pay requirement. EMD appealed, arguing that the correct standard of proof was the less demanding "preponderance of the evidence" standard. Although other federal circuit courts applied the preponderance standard, the Fourth Circuit upheld the use of the heightened "clear and convincing evidence" standard and denied further review.


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The Supreme Court reversed the appellate court's decision and remanded the case for further proceedings, holding that the appropriate standard of proof is the less stringent "preponderance of the evidence" standard. Writing for a unanimous Supreme Court, Justice Kavanaugh noted that, at the time Congress passed the FLSA in 1938, the default standard of proof in American civil litigation was the "preponderance of the evidence" standard, and it remains so today.

The Supreme Court further explained that a heightened standard of proof is generally applicable in only three circumstances. Those circumstances where a heightened standard of proof may apply are: (1) when so required by statute; (2) where so required by the Constitution, like in cases that involve a significant threat to liberty; and (3) in rare cases involving the government's attempt to take "unusual coercive action" against an individual, such as taking away a person's citizenship.

The Supreme Court found that none of these circumstances were present in this case. The FLSA does not impose a heightened standard, the case did not implicate constitutional rights requiring a heightened standard, and the dispute did not involve coercive government action. Moreover, the Supreme Court flatly rejected policy-based arguments for a heightened standard, stating that, "[r]ather 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."

EMD had further alleged that the employees would still qualify as outside salesmen, even when analyzed under the less-stringent preponderance standard. But the Supreme Court left that issue for remand, reversing the Fourth Circuit's judgment and remanding for further proceedings.

## Key Takeaways

- Employers asserting an exemption under the FLSA, such as the "outside salesman" exemption to overtime pay, must prove it by a preponderance of the evidence, rather than by the more stringent "clear and convincing evidence" standard.


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- The default standard of proof in civil cases is the "preponderance of the evidence" standard. A heightened standard, like clear and convincing evidence, applies only when Congress or the Constitution requires it, or in other narrow and rare circumstances such as "unusual coercive action" by the government against an individual.
- The unanimous opinion rejects policy-driven arguments about the appropriate standard of proof, instead making clear that the standard of proof is informed by the applicable statute and longstanding default rules.

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