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SCOTUS Will Determine Employers' Burden of Proof to Establish FLSA Exemptions

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On June 17, 2024, the U.S. Supreme Court announced that it will tackle a 6-1 circuit split and decide an important wage and hour issue for employers: what burden of proof an employer must satisfy to demonstrate that its workers are exempt from the minimum wage and overtime requirements imposed by the Fair Labor Standards Act ("FLSA").

In civil cases, the burdens of proof typically are either one of the following: (1) the "preponderance of the evidence" standard, which requires a showing that the assertion in dispute is more likely to be true than false, or (2) the "clear and convincing" standard, which requires a showing that the assertion in dispute is ***far*** more likely to be true than false. In FLSA cases, an employer asserting that its workers are exempt from the FLSA's minimum wage and overtime requirements carries the burden of proving the exemption applies, and at least six Circuit courts have determined that employers must do so by a preponderance of the evidence standard. The Fourth Circuit, however, has repeatedly stood in contrast and held that employers must meet the higher clear and convincing evidence standard.

In *E.M.D. Sales, Inc. v. Carrera*, the petitioner-employer requested the high court's review of the Fourth Circuit's adoption of the higher clear and convincing evidence standard in exemption cases, given that the FLSA's exemptions are one of the most frequently litigated issues in federal employment law and consistency is needed among the Circuits. In its petition, the petitioner-employer has argued that the burden of proof is always crucial to—and frequently determinative of—an FLSA lawsuit's outcome, and has urged the Supreme Court to adopt the preponderance of the evidence standard

The employer in *E.M.D. Sales, Inc. v. Carrera* has support for its position. The federal goverhttps://www.lawandtheworkplace.com/2024/06/scotus-will-determine-employers-burden-of-proof-to-establish-flsa-exemptions/nment filed an amicus brief and asked the Court to summarily reverse the Fourth Circuit's decision, asserting that its adoption of the higher standard of proof is "unreasoned and inconsistent with" Supreme Court precedent and lacks "any valid rationale." The Chamber of Commerce, representing the interests of the business community, likewise filed an amicus brief and argued that a heightened standard both threatens employers headquartered within the Fourth Circuit's boundaries and raises the risk of forum shopping in cases against employers that operate nationwide.

The Supreme Court's decision will have a significant impact on the legal strategies for employers defending against FLSA claims and needing to meet their burden of proof that an exemption applies to its workers. The Court is expected to hear the case during its 2024-2025 term, which will begin in October. Subscribe to our wage and hour blog to stay current on the latest developments.

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