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SCOTUS: No Heightened Standard of Proof Required for FLSA Exemption Defense

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In *E.M.D. Sales, Inc. v. Cabrera*, issued on January 15, 2025, the Supreme Court held that the "preponderance of the evidence" standard—and *not* the more difficult-to-satisfy "clear and convincing evidence" standard—applies when an employer seeks to demonstrate that an employee is exempt from the minimum wage and/or overtime pay provisions of the Fair Labor Standards Act.

In an FLSA dispute, plaintiffs bear the burden to prove all elements of their claims. But if the employer is defending on the ground that an exemption applies, the employer has the burden of proof on the exemption. The issue before the Supreme Court in *Cabrera* was the level of proof required.

In 1938, when Congress passed and President Franklin D. Roosevelt signed the FLSA, the default standard of proof in American civil litigation was the "preponderance of the evidence" standard. That standard—which allows both parties to "share the risk of error in roughly equal fashion," in the Court's words—remains the default standard of proof in American civil litigation today.

In civil litigation, the Supreme Court has deviated from the default preponderance standard in three main circumstances:

- where a statute expressly requires a heightened standard of proof;
- where the Constitution requires a heightened standard of proof; and
- in "uncommon" cases where Supreme Court precedent holds that a heightened standard of proof is appropriate, including where the government seeks to take action "more dramatic than entering an award of money damages or other conventional relief" against an individual (*e.g.*, revocation of citizenship).

With none of these circumstances present, the Court held that the default preponderance standard governs when an employer seeks to prove that an employee is exempt under the FLSA. The Court quickly disposed of the plaintiff-employees' policy arguments, noting that "[i]f clear and convincing evidence is not required in Title VII cases, it is hard to see why it would be required in [FLSA] cases."

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