

# Employers Do Not Need To Meet A Heightened Standard Of Proof To Establish That An FLSA Exemption Applies

By Michelle De Oliveira on February 12, 2025



In a unanimous decision, the United States Supreme Court held, in *E.M.D. Sales, Inc. v. Carrera*, that employers are not required to meet a heightened standard of proof to establish that a Fair Labor Standards Act (FLSA) exemption applies. Rather, employers need to meet a lower preponderance of the evidence standard, the default standard of proof in most cases.

## FLSA: General Background

The FLSA generally creates an employee right to a minimum wage and overtime pay when the employee works over 40 hours in a workweek. It extends to employees engaged in interstate commerce or employed by an enterprise engaged in commerce or in the production of goods for *commerce-unless* the employee is exempt.

The FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees; and certain computer employees may also fall under an exemption. To qualify for an exemption, an employee must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$684 per week.

## U.S. Supreme Court Decision

In *EMO. Sales, Inc. v. Carrera*, three sales representatives sued their employer for not paying them overtime. The employer did not deny that the employees worked more than 40 hours in a workweek and were not paid overtime. The employer, a distributor of food products to grocery stores in the Washington D.C. area, argued that the employees fell under the FLSA's outside-salesman exemption. The sales representatives were assigned routes to certain stores, spending most of their time servicing grocery stores. Their duties included restocking shelves, managing inventory, and submitting orders for the employer's products.

To decide whether an FLSA exemption applied, the lower court had to determine whether the employees' primary duties were making sales or if their work was primarily incidental to sales made by others. When making the determination, the lower court applied a heightened *clear and convincing evidence* standard and held that the employer did not prove by *clear and convincing evidence* that the employees were exempt. The employees prevailed, and the court awarded them the unpaid overtime. On appeal, the decision was affirmed.

The United States Supreme Court, however, disagreed. In a unanimous decision, the United States Supreme Court held that a lower *preponderance of the evidence standard* applies to employers when establishing that an employee falls under an FLSA exemption, and is

PROFESSIONALS

Michelle De Oliveira

PRACTICES

Employment Law

therefore, exempt from the FLSA's overtime and minimum wage requirements. The case was then reversed and remanded back to the lower court for further proceedings.

### **Key Takeaways**

This case clarified the applicable standard and burden of proof-but it does not change the fact that the burden of proof rests with the employer. In other words, when classifying an employee as exempt from minimum wage and overtime pay, the employer has the burden of proof and must establish that the classification is proper. To that end, employers are encouraged to: (a) closely review their employees' job descriptions and job duties to ensure that they can meet the primary duty test, and (b) review the FLSA's salary basis tests to ensure that exemptions are proper.

***Michelle De Oliveira** is a shareholder of the firm and a member of the **Employment Law Group**. A significant aspect of Michelle's practice is devoted to providing businesses and human resources professionals with day-to-day employment law counsel and advice on issues such as, wage and hour, hiring practices, employee discipline, employee terminations, leaves of absence, allegations of discrimination or harassment, reasonable accommodation requests, and any other personnel-related issue that may arise. You can reach Michelle at [mmd@riw.com](mailto:mmd@riw.com) or (617) 570-3533.*

POSTED IN: **EMPLOYMENT LAW**