

Alert | Labor & Employment



February 2025

Supreme Court Holds FLSA Exemptions Do Not Require Heightened Evidence Standards

The U. S. Supreme Court unanimously decided in *E.M.D. Sales, Inc. v. Carrera* that the standard of “preponderance of the evidence” is to be used in cases where an employer claims an employee is exempt from overtime eligibility under the Fair Labor Standards Act (FLSA).

As explained in a [September 2024 GT Alert](#), the plaintiffs in the case were sales representatives who alleged their employer, a food products distributor, failed to pay them overtime under the FLSA. The employer argued that based on a preponderance of the evidence, the employees qualified as outside salespeople and were thus exempt from FLSA overtime requirements. The Fourth Circuit found in the employees’ favor, holding that under Fourth Circuit precedent, the employer was required to prove applicability of the FLSA exemption by “clear and convincing evidence,” a higher standard than preponderance, and had failed to do so. The Fourth Circuit’s decision was an outlier among the circuits, which otherwise employ the “preponderance of the evidence” standard.

In its Jan. 15, 2025, decision authored by Justice Kavanaugh, the Supreme Court found no basis for applying the heightened “clear and convincing evidence” standard. The Court instructed that it strays from the presumptive “preponderance of the evidence” standard in civil litigation only in limited circumstances, and held that none of those circumstances existed here. The Court also rejected the employees’ argument that the strong public policy interest in guaranteeing workers’ a fair wage justifies a higher standard of proof. Thus, in cases where employers seek to prove that an employee is exempt under the FLSA, the “preponderance of the evidence” standard will apply.

Authors

This GT Alert was prepared by:

- [Michael J. Slocum](#) | +1 973.443.3509 | slocumm@gtlaw.com
- [Kristin Spallanzani](#) | +1 973.360.7900 | Kristin.Spallanzani@gtlaw.com

Albany. Amsterdam. Atlanta. Austin. Berlin[†]. Boston. Charlotte. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Houston. Kingdom of Saudi Arabia[¶]. Las Vegas. London^{*}. Long Island. Los Angeles. Mexico City⁺. Miami. Milan[»]. Minneapolis. Munich[–]. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Sacramento. Salt Lake City. San Diego. San Francisco. São Paulo[›]. Seoul[∞]. Shanghai. Silicon Valley. Singapore^ˆ. Tallahassee. Tampa. Tel Aviv[^]. Tokyo[»]. United Arab Emirates[‹]. Warsaw^ˆ. Washington, D.C. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. –Greenberg Traurig's Berlin and Munich offices are operated by Greenberg Traurig Germany, LLP, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. *Operates as a separate UK registered legal entity. †Greenberg Traurig operates in the Kingdom of Saudi Arabia through Greenberg Traurig Khalid Al-Thebity Law Firm, a professional limited liability company, licensed to practice law by the Ministry of Justice. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Studio Legal Associato, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ›Greenberg Traurig's São Paulo office is operated by Greenberg Traurig Brazil Consultores em Direito Estrangeiro – Direito Estadunidense, incorporated in Brazil as a foreign legal consulting firm. Attorneys in the São Paulo office do not practice Brazilian law. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ˆGreenberg Traurig's Singapore office is operated by Greenberg Traurig Singapore LLP which is licensed as a foreign law practice in Singapore. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. »Greenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimubengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ‹Greenberg Traurig's United Arab Emirates office is operated by Greenberg Traurig Limited. –Greenberg Traurig's Warsaw office is operated by GREENBERG TRAUIG Nowakowska-Zimoch Wysokiński sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in GREENBERG TRAUIG Nowakowska-Zimoch Wysokiński sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2025 Greenberg Traurig, LLP. All rights reserved.*