



High Court Ruling On FLSA Evidence Standards Brings Clarity

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The U.S. Supreme Court's ruling that the Fair Labor Standards Act's exemptions do not warrant higher evidence standards than what is typical of civil litigation brought clarity and showed the court's commitment to textualism, attorneys say.

In a unanimous decision, the Supreme Court on Wednesday reversed and remanded a Fourth Circuit ruling finding that employers need to prove workers' exempt status through "clear and convincing evidence" rather than the default "preponderance of the evidence" standard.

Justice Brett Kavanaugh, who authored the opinion, said the court wasn't persuaded by "policy-laden arguments for a heightened standard" by the workers who argued that they were misclassified under the outside sales exemption and owed overtime wages by food distributor EMD Sales Inc.

Even prior to November's oral arguments, it seemed understood that the high court took this case on to correct the circuit split created by the Fourth Circuit's decision, said Robert Pritchard, co-chair of the wage and hour practice group with management-side firm Littler Mendelson PC.

"The Supreme Court was just cleaning up a simple issue that needed to be addressed," he said. "This is an example of the Supreme Court taking a case not because it was a high-profile, controversial issue, but simply the routine part of the court's jurisprudence, which is correcting circuit splits and installing a unified national decision."

One point of interest in the opinion is a "subtle shift" in the way the court discusses the purposes of the FLSA, said Corey Devine, a partner with Muskat Devine who represents employers.

In the past, the FLSA has been talked about as a remedial statute that should be construed broadly to provide relief for workers, Devine said, but Justice Kavanaugh wrote that "the public interest in Fair Labor Standards Act cases does not fall entirely on the side of employees."

Devine said it is interesting to see the FLSA described as a balance between employee and employer rights as opposed to how it has traditionally been viewed, primarily to protect employees.

"Here we see Kavanaugh saying it's true that the FLSA touches important public policy considerations, but those considerations are not a one-way ratchet in favor of employees," he said.

While the high court's decision was not "earth-shattering" or unexpected, it brought welcome clarity on which standard of proof applies, and it was consistent with the court's prior ruling in

Encino Motorcars LLC v. Navarro et al., said Jason Tremblay, the labor and employment practice vice chair with employer-side firm Saul Ewing LLP.

In that case, the court rejected the principle that the exemptions should be construed narrowly against the employer and instead said the FLSA exemptions should be given a fair reading.

The burden of proof an employer has to establish to prove an exemption is a different concept than how a court should interpret a statute, but the two are related on this issue, Tremblay said.

"If you're going to give a fair reading to something, a fair reading would mean that you're going to read the statute and not deviate too far from it," he said. "Where it's consistent is, the FLSA doesn't specifically outline what that burden of proof is, and typically when statutes don't include that ... the default is preponderance of the evidence."

A key argument in the opinion to use the preponderance of the evidence standard for FLSA exemptions was that that is the standard for Title VII cases.

"After all, other workplace protections that vindicate important public interests remain subject to the preponderance standard," Justice Kavanaugh wrote. "Eradicating discrimination from the workplace is undoubtedly important. Yet ... this court has held that a preponderance standard is appropriate for Title VII cases."

But this analogy to Title VII is imperfect, said Andrew Melzer, co-chair of the wage and hour practice group with worker-side firm Sanford Heisler Sharp McKnight LLP. The justices adopted the idea that there is nothing special or distinct about the FLSA, but Melzer said he takes issue with that.

"On Title VII, the employee has to prove that they were discriminated against," he said, "whereas under the FLSA, if you're not paid minimum wage and overtime, that's presumptively unlawful conduct already, and the employer has to prove that they're entitled to one of these exemptions, which are supposed to be just narrow carveouts."

Devine also said the comparison didn't track. "The FLSA is its own beast. It doesn't share a lot with Title VII in terms of statutory structure," he said. "I guess the broader point is, 'Hey, Title VII protects very important rights, and we only apply a preponderance of the evidence standard in Title VII.'"

The case shows that it's important for companies to carefully consider their exemption determinations to ensure they could meet the burden of proof in a future potential challenge, Pritchard said.

That's not anything particularly due to this case, but cases like this do present opportunities for employers to reevaluate their exemption decisions and to make sure that they are still defensible," he said.

Justice Neil Gorsuch contributed a brief concurring opinion, joined by Justice Clarence Thomas, effectively echoing the main opinion, which attorneys said was peculiar.

"The courts apply the default standard unless Congress alters it or the Constitution forbids it," the concurring opinion said.

Devine said he chalked it up to Justice Gorsuch doubling down on strict textualism.

"I think he's like, 'Look Congress, we are going to apply statutes as you write them, and if you want some other outcome, you're going to have to write the statute a different way,'" he said.

"Increasingly, I think we see employment statutes treated at the Supreme Court exactly how we would expect the Supreme Court to treat them, just in a strictly textual fashion."

--Editing by Bruce Goldman and Emma Brauer.