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Alaska Supreme Court Cools Down Standard for Establishing State Law Wage & Hour Exemptions

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Answering the first of two certified questions from an Alaska federal court and overturning nearly 30-year-old precedent, the Alaska Supreme Court has held that an employer need only establish an exemption under the Alaska Wage and Hour Act by a “preponderance of the evidence,” rather than “beyond a reasonable doubt.” *Buntin v. 00073 Tmb Schlumberger Tech. Corp.*, 2021 Alas. LEXIS 74 (Alaska June 11, 2021). In answering the second certified question, the Court concluded that those exemptions “explicitly linked” in the State law to the comparable exemptions under the federal Fair Labor Standards Act (FLSA) should be given a “fair reading,” while those exemptions not so linked should continue to be “narrowly construed.”

Nearly three decades ago, the Alaska Supreme Court first held, in *Dayhoff v. Temsco Helicopters, Inc.*, 848 P.2d 1367 (Alaska 1993), that an employer must prove the existence of an exemption to the overtime requirements of the Alaska Wage and Hour Act (AWHA) “beyond a reasonable doubt.” Since then, the Court has reiterated that burden of proof on at least two other occasions. But no more.

In answering the first certified question, the Court acknowledged that, in *Dayhoff*, it had misconstrued the holding of the federal court of claims case on which it premised its conclusion that the reasonable-doubt standard applied to exemptions under the FLSA, and by extension to analogous claims under the AWHA. “It was error to take [the federal claims court holding] out of context in *Dayhoff*, and we should have adopted the preponderance of the evidence standard of proof. The [‘]beyond a reasonable doubt[’] standard of proof adopted in *Dayhoff* was originally erroneous.” The Court added, “Adopting a preponderance of evidence standard promotes consistency between Alaska and federal law and removes unnecessary confusion from the trial process.”

However, in answering the second certified question, the Court noted that the AWHA has not adopted the FLSA in all respects. Thus, while the U.S. Supreme Court recently held, in *Encino Motorcars v. Navarro*, 138 S. Ct. 1134 (2018), that exemptions under the FLSA should be given a ”fair reading,” only those exemptions under the AWHA that are directly tied to the same exemptions under the FLSA – notably, the Executive, Administrative, and Professional exemptions – likewise should be fairly interpreted. Otherwise, the longstanding, pre-*Encino Motorcars* standard of narrowly construing exemptions under the AWHA remains in place.

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