

CLIENT ALERT



SCOTUS “Lowers the Bar” for Title VII Job Transfer Claims

APRIL 25, 2024

On April 17, 2024, the Supreme Court of the United States held that employees alleging they were subjected to discriminatory job transfers under Title VII need only show that they suffered some harm from the forced transfer, but, notably, the alleged harm need not be significant. In a unanimous decision, the Court in *Muldrow v. St. Louis* resolved a circuit split regarding the precise standard to be applied when a plaintiff alleges her job transfer amounted to an adverse employment action sufficient to support an unlawful discrimination claim.

MULDROW V. ST. LOUIS: THE BASICS

Muldrow centered on a female police sergeant who alleged that her forced transfer from her role as an officer in the St. Louis Police Department’s specialized Intelligence Division to a new position in a different unit constituted unlawful gender discrimination. While her rank and pay remained the same in the new role, Muldrow established that the new role was less “prestigious” and more “administrative” than her prior role, she no longer worked with high-ranking officials, she lost access to certain job perks, and she had a less-regular schedule involving new weekend shifts.

The lower court granted summary judgment for Muldrow’s employer and the Eighth Circuit affirmed, holding that Muldrow failed to show that the transfer caused her a “materially significant disadvantage” because the transfer did not result in diminution to her title, salary, or benefits, and caused only minor changes in her working conditions.

THE MAJORITY OPINION EXPLAINED

The Supreme Court vacated and remanded the Eighth Circuit’s decision, rejecting the “materially significant disadvantage” standard as inconsistent with the plain language of Title VII. Justice Kagan, writing for the majority, explained that the applicable statutory language “prohibits ‘discriminat[ing] against’ an individual ‘with respect’ to the ‘terms [or] conditions’ of employment because of that individual’s sex. That language requires [plaintiffs] to show that the transfer brought about some ‘disadvantageous’ change in an employment term or condition,” but does *not* require the heightened showing that the transfer caused a “materially significant disadvantage,” as such language appears nowhere in the statute.

Justice Kagan explained that the Court’s decision “changes the legal standard used in any circuit that has previously required [plaintiffs to show they suffered] ‘significant,’ ‘material,’ or ‘serious’ injury. It lowers the bar Title VII plaintiffs

must meet.”

CONCURRING OPINIONS ANTICIPATE MINIMAL FALLOUT

In a separate concurring opinion, Justice Thomas clarified that the Court was *not* eliminating the “harm” element altogether. Thus, the Court rejected *Muldrow*’s argument that a Title VII plaintiff could state a claim simply by proving they were transferred or denied a transfer based on a protected characteristic, with no additional evidence of harm. Instead, Justice Thomas explained the Court’s opinion still required employees to show they suffered “an actual disadvantage as compared to minor changes” to terms and conditions of employment in order to establish a Title VII claim related to a job transfer.

Justice Alito went one step further, anticipating the following impact of the Court’s decision: “I see little if any substantive difference between the terminology the Court approves and the terminology it doesn’t like. The predictable result of today’s decision is that careful lower court judges will mind the words they use but will continue to do pretty much just what they have done for years.”

POTENTIAL IMPLICATIONS

As a practical reality, the *Muldrow* decision is unlikely to prompt a substantial shift in federal courts’ adjudication of Title VII claims, but could lead to an uptick in Title VII cases generally.

The Court espoused the so-called “some harm” standard without providing substantive context or instruction as to how the standard should be applied moving forward. Justice Alito summarized the Court’s ruling as follows: “Title VII plaintiffs must show that the event they challenge constituted a ‘harm’ or ‘injury,’ but ... the event need not be ‘significant’ or ‘substantial.’” He went on to comment: “I have no idea what this means, and I can just imagine how this guidance will be greeted by lower court judges.”

Thus, judges across the country are left with the existing Title VII framework, whereby employees are still required to show 1) they suffered an adverse employment action “because of” a protected characteristic; and 2) they suffered actual harm to the “terms and conditions” of their employment, among other elements.

While the Court’s decision could embolden plaintiffs by ostensibly lowering their standard of proof, it will remain to be seen whether the decision enhances employers’ risk in any material way.

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