

Client Alert | April 25, 2024

U.S. Supreme Court Eases Threshold for Employees to Prove Title VII Discrimination in Claims Relating to Job Transfers

Given the general direction in which recent decisions of the United States Supreme Court have moved, its recent decision in *Muldrow v. St. Louis*, No. 22-193, 2024 WL 1642826 (U.S. Apr. 17, 2024), surprisingly, moves in the opposite direction. Employers should take notice that in *Muldrow*, the Court eased the threshold for employees to prove Title VII discrimination claims. Holding that, for a plaintiff-employee to make out a claim of discrimination under Title VII of the Civil Rights Act of 1964 (“Title VII”) based on a job transfer, the transferee does not have to show that the harm incurred as a result of the transfer was significant, serious or substantial.

As employers are likely aware, Title VII makes it unlawful for an employer “to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the individual’s compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” Prior to the *Muldrow* decision, federal courts were split on whether a heightened injury standard was required to prove that an employee had experienced an adverse employment action. Thus, while the D.C. Circuit Court of Appeals had held that a plaintiff need only show that the transfer was based on a protected characteristic with no requirement of objectively tangible harm, Circuit Courts in the First, Second, Fourth, Seventh, Tenth and Eleventh Courts of Appeals have held that employees have to demonstrate a material disadvantage with respect to the terms and conditions of their employment in order successfully to prove entitlement to relief, while decisions of the Fifth and Sixth Circuits have imposed a somewhat more lenient standard requiring some showing of harm. The Supreme Court’s decision in *Muldrow* has now clarified that the appropriate standard does not require significant, serious or substantial harm in order to violate Title VII and provide a transferee a potential remedy.

In *Muldrow*, a police officer, Sergeant Jatonya Clayborn *Muldrow*, was transferred from a plainclothes officer position in the St. Louis Police Department’s specialized Intelligence Division to a uniformed job supervising the day-to-day activities of neighborhood patrol officers, although neither her title nor her salary and benefits were altered. Sgt. *Muldrow* alleged that by effecting this transfer, her employer discriminated against her on the basis of her gender.

The District Court, relying on the “significant” harm standard, granted summary judgment in favor of the City of St. Louis and dismissed the claim. It determined that the plaintiff needed to, but did not, show that her transfer resulted in a “significant” change in her terms and conditions of employment producing a material employment disadvantage. That court found that the plaintiff’s cited changes to her terms and conditions of employment were merely “minor alterations.” The Eighth Circuit Court of Appeals relied as well on the “significant” harm standard and affirmed the lower court’s decision because the plaintiff’s transfer “did not result in a diminution to her title, salary, or benefits.”

The Supreme Court, however, found that, while the transfer did not affect the plaintiff’s rank and pay or harm her future career prospects, there were several alterations to her terms and conditions of employment that, if proven at trial, left her worse off than she was in her pre-transfer role. Specifically, in her new role, the plaintiff was theoretically less involved in high-visibility matters and primarily performed administrative work. She also alleged that her schedule became less regular, which required her to work weekends. Additionally, she lost her status as a deputized task force officer with the FBI and the take-home car that came as part of her former investigative duties. The Court determined that change to “the what, where, and when of her police work,” even if not a “significant” change, could be sufficient for establishing a Title VII discrimination claim.

In its decision in *Muldrow*, the Court distinguished its new holding from its prior holding in *Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53 (2006), in which it addressed Title VII’s anti-retaliation provision. In *White*, the Supreme Court established that the anti-retaliation provision of Title VII only applies when the retaliatory action is “materially adverse” or, in other words, causes significant harm. The Court explained that the separate standard adopted in *White* was specific to the retaliation context, whereas the *Muldrow* case involved Title VII’s prohibition on discrimination.

Employers should take specific and particular note of the lower threshold now in place for an employee to establish a discrimination claim under Title VII, which for other than those within the DC Circuit likely represents a new, less stringent standard. While employees alleging discrimination must show some harm as a result of a transfer in position of employment, they are no longer required to show that such harm is “significant.” As such, a transfer that does not change an employee’s rank and compensation may still be deemed an adverse employment action where the employee’s responsibilities, job perks, and/or schedule are affected in some adverse manner.

When transferring employees from one role to another, employers may want to consider first providing them with information regarding the decision for the transfer and/or obtaining consent from employees in order to mitigate against potential discrimination claims. Employers may also want to consult with counsel regarding employee transfer decisions, in ways that are similar to consultations regarding employee termination decisions, to discuss whether a potential transfer could be viewed as creating adverse consequences for the employee, which may translate into claims of discriminatory treatment based on any protected class under applicable law.

Key Contacts

Our Labor & Employment Law team is available to assist employers navigate full compliance with Title VII (as the standards for such compliance may change) and other anti-discrimination and anti-retaliation laws, and to assist employers in managing their employer-employee relations and defending against discrimination and all other workplace claims.

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