



Employment Law Note

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U.S. Supreme Court Settles Standard of Harm for Title VII Discriminatory Job Transfer Claims



By **Julian Cano**, jcano@sbj.law

In a unanimous decision issued on April 17, 2024, the United States Supreme Court in *Muldrow v. City of St. Louis* made it

easier for employees to demonstrate that they were subjected to an adverse action under Title VII of the Civil Rights Act. Before *Muldrow*, federal courts disagreed about the level of harm an employee must show when claiming an internal job transfer was discriminatory. Some courts had required a showing that the transfer caused “material” or “significant” harm. In *Muldrow*, however, the Supreme Court resolved the conflict by ruling that an employee must only show *some* harm from a forced job transfer—as opposed to a *heighted* level of harm—in order to maintain a Title VII discrimination claim.

Title VII Section 2000e-2(a)(1) and Position Transfers

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 his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin[.]” 42 U.S.C.S. § 2000e-2(a)(1).

When considering Title VII discrimination claims under section (a)(1), courts determine whether a member of a protected class is exposed to disadvantageous terms or conditions of employment to which the members of the non-protected class are not exposed. For position transfers, to make a *prima*

facie case of Title VII discrimination, the employee must show a disadvantageous change in compensation, employment privileges, employment terms, or employment conditions.

Muldrow v. City of St. Louis

In *Muldrow*, the plaintiff, Jatonya Muldrow, a female police sergeant, alleged that the St. Louis Police Department transferred her from one position to another because of her sex. After the transfer, Sergeant Muldrow’s rank and pay remained the same; however, she no longer worked for high-ranking officials and instead supervised the day-to-day activities of neighborhood patrol officers. As a result of the transfer, Sergeant Muldrow also lost access to an unmarked take-home vehicle, and she had a less regular schedule that included weekend shifts.

Sergeant Muldrow brought a Title VII lawsuit against the St. Louis Police Department alleging that the transfer was discriminatory based on her sex. The District Court dismissed Sergeant Muldrow’s case. The Eighth Circuit Court of Appeals affirmed that decision, reasoning that Sergeant Muldrow’s transfer did not reduce her rank, salary, or benefits and, thus, that she could not show that the transfer caused her a materially significant disadvantage.

The United States Supreme Court disagreed, rejecting the standard that the Eighth Circuit Court of Appeals had applied. The Supreme Court held instead that an employee alleging that a job transfer was discriminatory must only show “some harm respecting an identifiable term or condition of

employment” and that harm need not be limited to the “economic or tangible.” In other words, the Supreme Court clarified that an employee is not required to show that the harm incurred was significant or exceeded some heightened bar. The Supreme Court found that Sergeant Muldrow had met that standard, so the Supreme Court vacated and remanded the case to the lower court to address the proper Title VII standard.

Implications for Employers

The ramifications of *Muldrow* are significant for employers. Although the Ninth Circuit Court of Appeals—with appellate jurisdiction in Washington State—had not previously required the same heightened standard applied by the Eighth Circuit Court of Appeals in *Muldrow*, the United States Supreme Court’s opinion settles the applicable standard and eliminates any uncertainty. Under *Muldrow*, any perceived harm by an employee suffices for the employee to assert a Title VII discrimination claim. While it is yet unclear how courts will apply this new standard, employers should take proactive steps to reduce potential liability, including by: (1) reviewing internal transfer requests from/decisions by supervisors and managers to ensure that they are made for legitimate business reasons and not based on—or reasonably perceived to be based on—an

employee’s protected status(es); and (2) train supervisors, managers and human resources professionals in best practices for considering and approving employee job transfers.

Although having a significant impact on Title VII discrimination claims, the *Muldrow* decision does not directly impact claims made by employees under the Washington Law Against Discrimination (“WLAD”). While Washington courts look to federal antidiscrimination laws to construe the WLAD, Washington courts have not required a heightened “materially adverse” standard for WLAD discrimination claims.

Final Thoughts

The *Muldrow* decision provides uniformity in federal courts regarding the harm necessary for an employer action to qualify as an adverse employment action under Title VII and provides greater protection of employee rights. The decision also provides greater predictability for employers who operate in multiple federal districts.

Determining whether an employment action qualifies as an adverse employment action within a specific jurisdiction is a fact-intensive inquiry. Employers with questions regarding the implications of *Muldrow* are encouraged to contact Sebris Busto James.

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