

THE LOWERED BAR OF “SOME HARM” IN TITLE VII DISCRIMINATION CLAIMS: THE U.S. SUPREME COURT’S MULDROW DECISION

As most employers know, if a Plaintiff brings a civil rights lawsuit under Title VII of the Civil Rights Act, the Plaintiff must prove that the employer’s job actions were based on the Plaintiff’s protected class status and, as a result, the Plaintiff suffered some form of harm. Most employers would readily recognize that actions such as a demotion or a reduction in pay could constitute actionable harm if the Plaintiff can prove their prima facie case of discrimination. But what happens when an employer makes a decision to simply transfer an employee from one position to another, and there is no loss of salary or benefits?

In a recent, unanimous United States Supreme Court decision, the Court resolved a Circuit Court split over whether an employee challenging a transfer under Title VII must meet a heightened threshold of harm such that it would be characterized as significant, serious, or something similar. In a case with serious implications for employers, the Court found that the text of Title VII imposes no such requirement. *See Muldrow v. City of St. Louis, Missouri* (601 U.S. ___, 144 S.Ct. 967 (2024)).

Plaintiff Muldrow was a female Sergeant who worked as a plainclothes officer in the Department’s Specialized Intelligence Division from 2008 through 2017. During her tenure there, she investigated public corruption and human trafficking cases, oversaw the Gang Unit, and served as head of the Gun Crimes Unit. By virtue of her Division position, Muldrow was also deputized as a Task Force Officer with the Federal Bureau of Investigation—a status granting her, among other things, FBI credentials, an unmarked take-home vehicle, and the authority to pursue investigations outside St. Louis.

In 2017, a new Captain was appointed to oversee the Intelligence Division. The new Captain transferred Muldrow against her wishes and replaced her with a male police officer.

While Muldrow's rank and pay remained the same in the new position, her responsibilities, perks, and schedule did not. Instead of working with high-ranking officials on the departmental priorities lodged in the Intelligence Division, Muldrow now supervised the day-to-day activities of neighborhood patrol officers. Her new duties included approving their arrests, reviewing their reports, and handling other administrative matters; she also did some patrol work herself.

Because she no longer served in the Intelligence Division, she lost her FBI status and the car that came with it. The change of jobs also made Muldrow's workweek less regular. She had worked a traditional Monday-through-Friday week in the Intelligence Division. Now, she was placed on a "rotating schedule" that often involved weekend shifts.

Muldrow brought suit against the City under Title VII for discrimination based on sex to challenge the transfer. Her complaint alleged that the City, in ousting her from the Intelligence Division, had discriminated against her based on sex with respect to the "terms or conditions" of her employment. The District Court granted the City's motion for summary judgment. The District Court explained that Muldrow needed to show that her transfer effected a "significant" change in working conditions producing a "material employment disadvantage." Muldrow, the court held, could not meet that heightened-injury standard. She experienced no change in salary or rank. Her loss of "the networking opportunities available in Intelligence" was immaterial because she had not provided evidence that it had harmed her "career prospects." And, given her continued supervisory role, she had not suffered "a significant alteration to her work responsibilities." Additionally, the District Court concluded that the switch to a rotating schedule (including weekend work) and the loss of a take-home vehicle could not fill the gap. Finally, the Court stated, these "appear to be minor alterations of employment, rather than material harms."

On appeal to the Eighth Circuit Court of Appeals, the decision of the District Court was upheld. The Eighth Circuit agreed that Muldrow had to—but could not—show that the transfer caused a “materially significant disadvantage.” Like the District Court, the Eighth Circuit emphasized that the transfer “did not result in a diminution to her title, salary, or benefits.” And the Eighth Circuit also maintained that the change in her job responsibilities was “insufficient” to support a Title VII claim. Overall, the Circuit Court of Appeals held that Muldrow's claim could not proceed because she had experienced “only minor changes in working conditions.”

Plaintiff appealed to the United States Supreme Court who agreed to hear the case to decide whether Plaintiffs must meet some level of a heightened, serious, or significant threshold of harm to prove a violation of Title VII claims. The Supreme Court unanimously dismissed any requirements of a significant, serious, or heightened threshold of harm stating simply, “the text of Title VII imposes no such requirement.”

Initially, the Court pointed out that, with respect to terms or conditions of employment, it covers more than the “economic or tangible.” The Court stated that to make out a Title VII discrimination claim, a transferee must show some harm respecting an identifiable term or condition of employment. However, the Court then pointed out that what the transferee does not have to show, according to the relevant text, is that the harm incurred was “significant.” Or even serious, substantial, or any similar adjective suggesting that the disadvantage to the employee must exceed a heightened bar. The Supreme Court was very direct about the plain language in the Act as enacted by Congress, saying:

“There is nothing in the provision to distinguish, as the courts below did, between transfers causing significant disadvantages and transfers causing not-so-significant ones. And there is nothing to otherwise establish an elevated threshold of harm. To demand “significance” is to add words—and significant words, as it were—to the statute Congress enacted. It is to impose a new requirement on a Title VII claimant, so that the law as applied demands something more of her than the law as written.”

The Supreme Court pointed to several examples where lower Courts had ruled that job transfers did not cause significant harm. One example included an engineering technician assigned to work at a new job site which was a 14-by-22-foot wind tunnel. Another example was a shipping worker being required to take a position involving only nighttime work. And finally, a school principal was forced into a non-school-based administrative role supervising fewer employees. The Supreme Court pointed out that all of these Plaintiffs failed because the lower courts rewrote Title VII by compelling the Plaintiffs to make a showing that the statutory text did not require.

The City of St. Louis advanced an argument that by lowering the level of harm for Plaintiffs, the Courts would become swamped with insubstantial lawsuits requiring burdensome discovery and trials. The Supreme Court was skeptical of this argument, but added that even if the City were right, such a result would be because of the statute that Congress drafted. The Court went on to state:

“...we will not “add words to the law” to achieve what some employers might think “a desirable result.” Had Congress wanted to limit liability for job transfers to those causing a significant disadvantage, it could have done so.”

Pivoting back to the actionable factors of salary, benefits or job titles, the Supreme Court stated that they simply do not matter. In the case of Plaintiff Muldrow, the Court was not concerned that her rank and pay remained the same, or that she could still be promoted within the department. Those are not the proper standards under Title VII. The harm suffered by Plaintiff Muldrow did not need to be significant. She just needed to demonstrate that she suffered some harm.

In his concurring opinion, Justice Kavanaugh provided some insightful language that demonstrated how simply the Court views the language of Title VII:

“As I see it ... the issue here is not complicated. Suppose that an employer says to an employee in the Columbus office: “We are transferring you to the Cincinnati office because you are black. But your compensation will not change.” Does that violate Title VII? Of course it does. To begin with, the employer has treated the employee differently because of race.”

Given the lowered level of harm that Plaintiffs need to prove, Justice Kavanaugh provided a lengthy list of examples that Plaintiffs could use to establish “some harm,” to include money, time, satisfaction, schedule, convenience, commuting costs or time, prestige, status, career prospects, interest level, perks, professional relationships, networking opportunities or effects on family obligations. Some of these enumerated “harms” are clearly not economic or tangible, but purely subjective. Employers will likely face difficulties in trying to disprove them.

Employers should be aware that the *Muldrow* decision has changed the legal standard that Plaintiffs need to prove harm from “significant or serious” to simply “some harm.” The bar has clearly been lowered. Plaintiffs do not have to show that they lost something tangible such as wages or that they suffered a demotion. While Plaintiffs still have to demonstrate that the employer discriminated against them in a job transfer, assuming they can demonstrate that factor, there is not much more they will need to prove in terms of harm.

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