

Supreme Court Rules Discriminatory Job Transfers Need Not Produce “Significant” Harm to be Actionable Under Title VII

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On April 17, 2024, the United States Supreme Court ruled on the standard under which a plaintiff can proceed with a claim for a discriminatory job transfer under Title VII of the Civil Rights Act of 1964 (“Title VII”), holding that a plaintiff need only show that the transfer brought about “some” harm with respect to an identifiable term or condition of employment, but that the harm need not be “significant.” The [decision](#) in *Muldrow v. City of St. Louis*, 601 U.S. ___ (2024), now supersedes the heightened harm threshold tests that some Circuits, such as the Eighth and Third, have used to determine whether a job-related action is harmful enough to sustain a claim.

In *Muldrow*, the plaintiff, Sergeant Jatonya Clayborn Muldrow, worked as a plainclothes officer in the Intelligence Division of the St. Louis Police Department from 2008 through 2017 until she was reassigned to a uniformed job elsewhere in the Department and replaced with a male officer. Although Muldrow’s rank and pay remained the same, her responsibilities, perks, and schedule did not. Muldrow no longer worked with the high-ranking officials in the Department’s Intelligence Division—instead supervising the day-to-day activities of neighborhood patrol officers—and she lost access to an unmarked take-home vehicle and had a less regular schedule involving weekend shifts. Muldrow brought suit under Title VII, challenging the transfer as a discriminatory action based on her sex.

The District Court for the Eastern District of Missouri granted summary judgment to the City, and the Eighth Circuit affirmed, holding that Muldrow had to, but could not, show that the transfer caused her a “materially significant disadvantage.” The Circuit Court explained that the transfer “did not result in a diminution to her title, salary, or benefits” and had caused “only minor changes in working conditions.”

The Supreme Court rejected the standard employed by the Eight Circuit, explaining that to make out a Title VII discrimination claim, a transferee must show some harm with respect to an identifiable term or condition of employment, but what the transferee does not have to show is that the harm incurred was “significant” or otherwise exceeded some heightened bar. Title VII prohibits employers from “discriminat[ing] against” an individual with respect to the “terms [or] conditions” of employment because of that individual’s sex. Citing the Court’s own precedent in *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998) and *Bostock v. Clayton County*, 590 U.S. 644 (2020), the Court explained that to “discriminate against” means to “treat worse.” Since there is no statutory language that establishes an elevated threshold of harm, “to demand ‘significance,’” the Court went on, “is to add words...to the statute Congress enacted” and “impose a new requirement...so that the law as applied demands something more of [a Title VII claimant] than the law as written.” Rather, according to the Court, the statutory language merely requires a plaintiff to show that a transfer brought about some “disadvantageous” change in an employment term or condition. Noting that Muldrow’s allegations easily met the appropriate standard, the Court vacated and remanded the case.

Justices Thomas, Alito, and Kavanaugh each filed an opinion concurring in the judgment. Of particular interest is Justice Alito’s concurrence, in which he determined that the plaintiff could prevail on her claim if she could prove that she was transferred because of her sex because, assuming the facts as true, plaintiff’s transfer altered the “terms” or “conditions” of her employment. Justice Alito, however, refused to join the Court’s “unhelpful opinion,” which, as he described it, instructs Title VII plaintiffs that they must show that the event they challenge constituted a “harm” or “injury,” but that the event need not be “significant” or “substantial.” Justice Alito indicated that he sees “little if any substantive difference between the terminology the Court approves and the terminology it doesn’t like,” predicting that lower courts will merely word their opinions more carefully in the future but continue to analyze Title VII claims in the same way they have done for years.

Justice Thomas noted his agreement with Justice Alito’s concurrence and added that the Court may have mischaracterized the Eighth Circuit’s decision as imposing a heightened-harm requirement when, in fact, the standard the Circuit actually applied aligned with the one announced by the Court.

Finally, Justice Kavanaugh agreed with the Court that a transfer need not cause “significant” employment disadvantage to be prohibited by Title VII, but he disagreed with the Court’s holding that a plaintiff must show “some harm.” Rather, for Justice Kavanaugh, the analysis is simple: a transfer changes the terms, conditions, or privileges of employment, and if an employee was transferred on the basis of a protected characteristic, that employee has been treated differently because of that characteristic and therefore has been discriminated against. Thus, a discriminatory transfer, without a separate showing of harm, violates the statute.

Takeaways:

The Court’s ruling will lower the burden that a plaintiff will need to meet in order to sustain a claim under Title VII. And while the Court’s decision here focused solely on discriminatory job transfers, it remains to be seen whether lower courts will apply the same reasoning when considering other allegedly harmful or injurious employment actions in Title VII cases.

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