

Labor + Employment

The Supreme Court Lowers the Bar Employees Must Meet to Establish “Harm” for Discrimination Claims Under Title VII

The Bottom Line

- The U.S. Supreme Court clarified that, under Title VII, an employee challenging a discriminatory job transfer need only show that the transfer caused “some” harm to an identifiable term or condition of employment, rather than proving the harm was “significant.”
- The decision lowers the threshold for proving discrimination in job transfers, potentially increasing the number of successful claims under Title VII.
- Employers should closely monitor how this ruling plays out in the lower courts and consult with legal counsel to ensure that all personnel decisions are made without discriminatory reasons.

The Supreme Court of the United States recently addressed the standard to be applied to claims of discriminatory job transfers under Title VII, holding that an employee challenging a job transfer under Title VII must show that the transfer brought about *some harm* with respect to an identifiable term or condition of employment, but that harm need not be “significant.” The Court’s decision in [Muldrow v. City of St. Louis, Missouri](#) was unanimous, with Justices Thomas, Alito, and Kavanaugh each issuing concurring opinions.

The Lawsuit

In *Muldrow*, a sergeant with the St. Louis Police Department filed a lawsuit against the department, alleging that she was the victim of sex discrimination because she was involuntarily transferred from her position in the Intelligence Division to a uniformed patrol position and replaced by a man. Although the sergeant’s rank and pay remained the same after this transfer, her responsibilities, perks, and schedule did not. Instead of working with “high-ranking officials” from the Intelligence Division, she was now responsible for supervising the day-to-day activities of neighborhood patrol officers. She also no longer had a take-home vehicle and would now need to work occasional weekends, while the previous position had a traditional Monday-Friday schedule.

The lower courts sided with the police department, holding that Muldrow could not prevail on her claim of discrimination because she had not shown that her transfer, even if made for discriminatory reasons, had resulted in a “materially significant disadvantage” to her.

Ruling of the Supreme Court

In the judgment of the Supreme Court, the lower courts applied the wrong standard. As such, the Court set aside the lower courts’ rulings and sent the case back to the lower courts to apply the standard set forth in the Court’s opinion. As noted above, according to the Court, an employee challenging a job transfer under Title VII must show that the transfer brought about *some harm* with respect to an identifiable term or condition of employment, but that harm need not be “significant” or meet any other similar heightened threshold of harm.

The Court reasoned that the text of Title VII makes it unlawful to (1) subject a person to worse treatment (2) with respect to the terms and conditions of their employment (3) because of sex or any other protected trait. In *Muldrow*, the Court emphasized that this text does not support a reading that courts are meant to filter out cases where the worse treatment is not sufficiently bad. To do so, according to the Court, would be to “add words – and significant words, as it were – to the statute Congress enacted.”

The lower courts are now tasked with reassessing the sergeant’s case without applying the significant harm standard. To ultimately prevail on her claim, the sergeant will still have to establish – beyond the showing of “some harm” that was the focus of the Court’s opinion – that the transfer was discriminatory, *i.e.*, that she was transferred *because* of her sex.

Future Implications

The extent of the impact of the Supreme Court’s decision in this case remains to be seen, but as explicitly noted in the majority opinion, this decision “lowers the bar Title VII plaintiffs must meet” and “illustrate[s] how claims that failed under a significance standard should now succeed.” One key issue that will play out in future cases, which is noted in the concurring opinions of Justices Alito and Thomas, is what constitutes “terms and conditions of employment,” such that a showing of “some harm” can establish a Title VII claim.

While not a focus of the majority opinion, Justice Alito in particular observed that some “unwanted employment experience[s]” will not qualify as effects on “terms and conditions of employment,” and thus there will be no Title VII claim. For his part, Justice Thomas questioned whether the lower court had in fact applied a heightened standard in this case, but joined the Court in setting aside the lower courts’ judgments and sending the case back to ensure it is disposed of without application of any such standard.

Justice Kavanaugh, on the other hand, authored a concurring opinion to convey his belief that the Court did not go far enough.

- According to Justice Kavanaugh, the “some harm” standard imposes an additional requirement on plaintiffs, whereas the text of Title VII indicates that “[t]he discrimination is the harm.” (Emphasis added).
- However, Justice Kavanaugh speculated that his articulation of the law was likely to align with the standard set forth by the majority opinion in 99%, if not 100%, of cases, given the “relatively low bar” that the “some harm” requirement sets and that, ultimately, the question will be whether a change to “terms and conditions of employment” has been made because of someone’s sex, race, or any other protected characteristic.

Employers would be wise to monitor subsequent developments on this front. As always, employers should take steps to ensure that all personnel decisions are made for non-discriminatory reasons, and they should consult with counsel when sensitive issues or complex situations arise.

For More Information

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