U.S. Supreme Court Decision Expands Grounds for Discrimination Claims to Include Job Transfers and Other Employment Actions

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In a unanimous April 2024 ruling in *Muldrow v. City of St. Louis*, the U.S. Supreme Court has made it easier for employees to bring job discrimination claims related to lateral transfers and similar employment actions under Title VII of the Civil Rights Act. The Court rejected the heightened standard requiring employees to show a "significant disadvantage" from an employment action adopted by the Fourth Circuit and other federal appeals courts. Instead, it held that an employee only needs to demonstrate they suffered "some harm" with respect to the terms and conditions of employment to bring a Title VII lawsuit. This more expansive interpretation of what employment actions are prohibited under Title VII is likely to increase discrimination lawsuits over lateral transfers and other employment actions falling short of termination or demotion.

Muldrow v. City of St. Louis: The Background Story

Jatonya Muldrow, a sergeant with the St. Louis Police Department, worked in the intelligence division for 9 years before being transferred by a new commander. The commander wanted to bring in a male officer he had previously supervised. While transfers were common when leadership changed, Muldrow's new assignment was not as desirable to her as her work in intelligence.

Although her rank and salary stayed the same, other aspects of her job changed:

- Instead of supervising intelligence work, she oversaw patrol officers' day-to-day activities.
- She no longer worked with high-ranking officials or held FBI credentials for joint operations.
- Her schedule switched from a standard Monday-Friday daytime shift to a rotating schedule including weekends.
- She lost the department vehicle that came with FBI status.

Muldrow filed a Title VII sex discrimination suit against the department, alleging that it had transferred her because she was a woman.

The federal district court granted summary judgment to the city, ruling Muldrow failed to show the transfer produced a "material employment disadvantage." The Eighth Circuit Court of Appeals agreed, describing changes to Muldrow's employment as "minor."

The U.S. Supreme Court, however, disagreed on the key issue – whether an employee must show a "significant" or "serious" change to job terms and conditions for an employment decision to qualify as an adverse employment action under Title VII. The Court's ruling did not determine if Muldrow actually faced discrimination, only the legal standard for what counts as an adverse action. See here (https://www.supremecourt.gov/opinions/23pdf/22-193_q86b.pdf) and here (https://www.govinfo.gov/app/details/USCOURTS-moed-4_18-cv-02150) for further details about the facts surrounding the transfer.

The Supreme Court's Ruling

The Supreme Court began by noting that Title VII prohibits employers from discriminating "against any individual with respect to his compensation, terms, conditions, or privileges of employment," based on protected characteristics like race or sex. The parties and the Court agreed that Muldrow's transfer implicated the terms and conditions of her employment.

Where the Court broke new ground was in ruling that for a Title VII discrimination claim, an employee like Muldrow who is being transferred only needs to show they suffered "some harm" related to an "identifiable term or condition of employment:"

> What the transferee does not have to show . . . is that the harm incurred was "significant." Or serious, or substantial, or any similar adjective suggesting that the disadvantage to the employee must exceed a heightened bar. "Discriminate against" means treat worse, here based on sex. But neither that phrase nor any other says anything about how much worse . . . . 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. (See here (https://www.supremecourt.gov/opinions/23pdf/22-193_q86b.pdf) at pp. 5 – 6; internal citations omitted)

The Supreme Court vacated the Eighth Circuit's decision against Muldrow and sent the case back to the district court to evaluate under the new "some harm" standard.

Although *Muldrow*, the case before the Court, involved only an involuntary transfer, the decision does not limit the types of employment actions to which it applies. To bring a claim of employment discrimination under Title VII, an employee must allege only some harm or injury with respect to the terms and conditions of the their employment.

This ruling overturns prior decisions of the Fourth Circuit holding that a harm must be significant to give rise to a Title VII discrimination case. *See e.g.*, *Cole v. Wake Cnty. Bd. of Educ. (https://caselaw.findlaw.com/court/us-4th-circuit/2110330.html)* (school principal's reassignment to a smaller school not actionable without a decrease in compensation, job title, level of responsibility, or opportunity for promotion); *Melendez v. Bd. of Educ. for Montgomery Cnty. (https://law.justia.com/cases/federal/appellate-courts/ca4/17-1116/17-1116-2017-10-10.html)* (schedule change and slight increase in transportation costs not material enough to form basis of Title VII claim); *James v. Booz-Allen & Hamilton, Inc. (https://caselaw.findlaw.com/court/us-4th-circuit/1122460.html)* (schedule change without a decrease in compensation, job title, level of responsibility, or opportunity for promotion not actionable under Title VII); *Boone v. Goldin (https://caselaw.findlaw.com/court/us-4th-circuit/1390445.html)* (affirming summary judgment in favor of NASA where stress in reassignment position did not constitute adverse employment action without any decrease in compensation, job title, level of responsibility, or opportunity for promotion).

Conclusion: Practical Steps for Local Governments

Local government employers should respond to the *Muldrow* decision by doubling-down on anti-discrimination training. Department heads and supervisors need to understand that lateral transfers, as well as other small, but unwanted changes to the conditions of an employee's employment could potentially violate Title VII if based on

race, color, sex, religion or national origin. They should scrutinize their own and their subordinates' decisions to double-check that no employment decision, however small, is based on an employee's Title VII protected class status.

Human resources departments should review transfers and reassignments, as well as any requested changes to job descriptions, for any suggestion that a switch or a change is being made for an impermissible reason. HR should ensure that the manager, department head or supervisor puts the legitimate, non-discriminatory reason for any such changes – insignificant as they may seem– in writing at the time they are made. Creating a clear contemporaneous record can provide crucial evidence if employment actions are later challenged as unlawful discrimination under *Muldrow's* new, expansive interpretation of "adverse action."