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Supreme Court Holds That A Title VII Plaintiff Challenging A Work Transfer Need Not Show "Significant" Harm

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***Muldrow v. City of St. Louis*, No. 22-193** – Decided April 17, 2024 **Today, the Supreme Court held that a Title VII plaintiff challenging a forced job transfer as discriminatory must show some harm from the transfer, but need not show that the harm was "significant," "material," or "serious."**

> *"Although an employee must show some harm from a forced transfer to prevail in a Title VII suit, she need not show that the injury satisfies a significance test."*

Justice Kagan, writing for the Court

Background:

The Civil Rights Act of 1964 ("Title VII") prohibits discrimination in the "terms, conditions, or privileges of employment" because of an individual's race, religion, sex, or national origin. 42 U.S.C. § 2000e-2(a)(1). In 2017, following a change in leadership in the St. Louis Police Department, Sergeant Jatonya Muldrow was transferred from the Intelligence Division to another unit. The transfer did not affect Muldrow's regular pay or rank, but she was allegedly "moved from a plainclothes job in a prestigious specialized division giving her substantial responsibility over priority investigations and frequent opportunity to work with police commanders . . . to a uniformed job supervising one district's patrol officers, in which she was less involved in high-visibility matters and primarily performed administrative work. Her schedule became less regular, often requiring her to work weekends; and she lost her take-home car." She alleged that no male sergeants were transferred out of the Intelligence Division and that she was replaced with a male sergeant. Muldrow brought a Title VII claim against the Department, alleging that the transfer was discriminatory because of her sex. The district court and the Eighth Circuit held that the transfer was not an adverse employment action because it did not result in a "materially significant disadvantage" to Muldrow.

Issue:

Does Title VII prohibit discrimination in transfer decisions where the transfer does not result in a "materially significant disadvantage"?

Court's Holding:

To prevail on a Title VII claim challenging a forced job transfer, a plaintiff must show some harm from the transfer, but need not show that the harm was "significant," "material," or "serious."

What It Means:

- The Court's decision is a win for Title VII plaintiffs who challenge employers' job-transfer decisions as discriminatory based on race, sex, or some other protected characteristic. According to the six Justices who joined the Court's decision, "this

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decision changes the legal standard used in any circuit that has previously required 'significant,' 'material' or 'serious' injury. It lowers the bar Title VII plaintiffs must meet." Majority op. 7 n.2.

- At the same time, the Court noted that there is "reason to doubt that the floodgates will open" for new Title VII claims, and that lower courts "retain multiple ways to dispose of meritless Title VII claims challenging transfer decisions." Majority op. 9, 10. Most significantly, Title VII plaintiffs must show "some harm respecting an identifiable term or condition of employment," such as hiring, firing, or transferring employees. *Id.* at 6. Justice Alito, concurring in the Court's judgment, predicted that this requirement will mean that "careful lower court judges will mind the words they use but will continue to do pretty much just what they have done for years." Alito op. 2.
- The Court also held that a Title VII plaintiff still must show that her employer acted with discriminatory intent and the internal transfer was made on the basis of a protected characteristic such as race, color, religion, sex, or national origin. Employers should document the business reasons for an internal transfer, which will assist in defeating allegations that a transfer was based on a protected characteristic.
- The Court also noted that lower courts "may consider whether a less harmful act is, in a given context, less suggestive of intentional discrimination." Majority op. 10. Thus, lower courts appear to retain latitude to consider whether the facts alleged in a Title VII complaint are more suggestive of lawful conduct than unlawful conduct, consistent with ordinary pleading standards.
- The Court emphasized that its holding did not reach Title VII retaliation claims, for which the "materially adverse" standard still applies. Majority op. 9. Nor did the Court's decision address hostile work environment claims, or the application of ordinary pleading standards at the motion to dismiss stage.
- Finally, the Court did not address how its new standard might apply to corporate Diversity, Equity, and Inclusion ("DEI") programs. Plaintiffs challenging DEI programs under Title VII must still show that such programs caused them some harm because of a protected characteristic and with respect to a term or condition of employment.

Gibson Dunn represented the Chamber of Commerce of the United States of America, National Federation of Independent Business Small Business Legal Center, Inc., Restaurant Law Center, Inc., and National Retail Federation **as Amici Supporting Respondent.**

The Court's opinion is available here. Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

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Related Practice: Labor and Employment

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