Muldrow v. City of St. Louis: Supreme Court Establishes New Harm Standard for Title VII Discrimination Claims

Apr 22, 2024

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Muldrow v. City of St. Louis, 144 S. Ct. 193 (Apr. 17, 2024)

The U.S. Supreme Court's recent opinion in *Muldrow v. City of St. Louis* lowered the bar for employees asserting workplace discrimination claims related to transfers or similar employment actions under Title VII. The *Muldrow* decision eliminates the longstanding requirement imposed by most federal courts that employees must show an employment action caused "substantial," "material," or "significant" harm in order to maintain a Title VII discrimination claim. Local government employers are therefore advised to act cautiously when transferring employees.

In *Muldrow v. City of St. Louis*, the Supreme Court considered whether a transfer of a police officer to a different position, allegedly based on sex, violated Title VII of the Civil Rights Act of 1964, even if the transfer did not "significantly" harm the employee. The court answered yes, finding that transferring an employee to a position with similar responsibilities and pay violates Title VII if the transfer is discriminatory and causes "some harm."

The Supreme Court's opinion explicitly states that the threshold for showing "some harm" is lower than the "substantial harm" or "material adversity" standard previously employed by federal courts, although it leaves some room for interpretation as to how much lower it is. Although this was a 9-0 decision, the majority opinion and concurring opinions revealed differing thoughts amongst the justices about how "some harm" will be interpreted by lower courts. Regardless, it is clear that more workplace actions will be brought within the scope of Title VII, and employers are well advised to carefully document and clearly articulate the reason for

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the transfer.

Background of Title VII and *Muldrow*

Title VII prohibits an employer from "discriminat[ing] against any individual with respect to h[er] compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." Plaintiff employees who challenge some employment action are usually required to show, among other things, that the employee experienced an adverse employment action, and that the action was taken because of the employee's membership in a protected class. In cases where employees allege discrimination related to some action by their employer that changes their working conditions but that does not involve hiring, firing, or compensation, courts have scrutinized whether the challenged action was actually an "adverse" employment action or merely a neutral (or even positive) change in the employee's working conditions.

Muldrow involves Police Sergeant Lisa Muldrow being involuntarily transferred to a position in a different district that had different duties but the same pay and comparable seniority and opportunities for advancement. Sergeant Muldrow sued the City of St. Louis Police Department, claiming that her transfer was an adverse employment action taken because of her sex, violating Title VII. Sergeant Muldrow alleged that the new position carried less prestige and required her to work weekends and wear a uniform rather than plain clothes. The city argued that it did not violate Title VII because Sergeant Muldrow's new role was similar to her prior one and provided the same pay and benefits. The city argued that to violate Title VII, the transfer must cause "material objective harm" or a "significant disadvantage" and Sergeant Muldrow's grievances failed to meet these heightened standards. The district court and circuit court agreed with the city and granted the city summary judgment.

The Supreme Court disagreed, however, finding that there was no basis in the text of Title VII for requiring a heightened level of harm, and thus an employee challenging an allegedly discriminatory job transfer under Title VII need only show "some harm" with respect to

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an identifiable "term or condition" of employment. This holding would apply to a range of employment decisions, including transfers that result in a different work location, work schedule, or different perks.

Justice Elena Kagan, the author of the majority opinion, cited a few prior circuit court cases and described how the new lower standard would alter their outcome. For example, in *Cole v. Wake County Board of Education,* a school principal was transferred into a non-school-based administrative role supervising fewer employees. Although the Fourth Circuit in *Cole* did not find this transfer to result in a "significant disadvantage," Justice Kagan stated that the transfer would violate Title VII under the "some harm" standard.

In summary, transfers based on an individual's race, color, religion, sex, or national origin violate Title VII if the transfer causes "some harm" to employees regarding the terms and conditions of their employment. This standard is lower and, unlike the objective material harm standard, it is not limited to changes in pay, benefits, or responsibilities.

What the Decision Means for Local Government Entities and How to Avoid Risk

This decision creates a new legal risk for government entities to consider when making transfer decisions. Moving forward, employers will be in a better position if evidence exists explaining the reason or reasons for transfer decisions that are not based on protected characteristics.

If you have any questions about how this case applies to your entity, please contact the authors or any attorney with the firm's Government Services Practice Group.

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