

How does the Supreme Court's Muldrow Decision Affect Title VII Lawsuits?

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A U.S. Supreme Court with a conservative majority is still capable of surprising us. In *Muldrow v. St. Louis*, the Court lightened the burden on employment discrimination plaintiffs by lowering the legal 'bar' for an employee who has been transferred to bring a discrimination lawsuit. The Court has unanimously ruled that an employee challenging a job transfer under Title VII must show that the transfer brought about *some* harm connected to a term or condition of employment, rather than *significant* harm with respect to a term or condition.

Employers beware: The *Muldrow* decision makes it easier for employees to assert claims of discrimination, when the only adverse action they suffered was a transfer. Prior to this new ruling, employees bringing Title VII lawsuits over a transfer in some Circuits had to show "significant harm" - that the alleged discrimination impacted material terms of employment such as pay. Now, the Supreme Court has uniformly lightened this burden for plaintiffs across all federal Circuits, as they only have to show "harm" rather than "significant harm" to allege a Title VII claim. Accordingly, this new ruling may pave the way for more employees to bring Title VII lawsuits in cases where employees are transferred and there is arguably "some harm," but that harm is not significant. This change is crucial for employers, particularly those analyzing the risks of transferring employees, even where such transfers do not alter the employees' pay or benefits. Employers and their counsel must now determine whether these often-routine employment changes could be construed as causing any sort of "harm" to employees under this new standard.

What were the Key Facts of *Muldrow*?

Sergeant Jatonya Clayborn Muldrow commenced a lawsuit against her employer, the St. Louis Police Department, alleging that she was transferred because she is a woman. Muldrow was transferred from her position as a plainclothes officer in the Intelligence Division and replaced with a male officer. In her new position, her rank and pay remained the same, while her responsibilities, perks, and schedule changed. Her new role involved supervising the day-to-day activities of the neighborhood patrol officers rather than working with high-ranking officials on the priorities of the Intelligence Division. She also lost access to an unmarked take-home vehicle and had a less regular schedule involving weekend shifts.

The lower court granted summary judgment to the Police Department, and the Eighth Circuit affirmed, concluding that Muldrow had not met her burden to show that the transfer out of the Intelligence Division constituted a significant employment disadvantage.

What are the Highlights of the Supreme Court's decision?

The Court rejected the Eighth Circuit's standard for analyzing Title VII claims for transfers. The Court articulated the new standard as follows: "Muldraw need show only some injury respecting her employment terms or conditions. The transfer must have left her worse off, but it need not have left her significantly so." While Muldraw's rank and pay remained the same, other aspects of the transfer left her "worse off" such as being moved from a prestigious specialized division working on priority investigations and with police commanders to a role that primarily involved administrative work.

Pre-*Muldraw* and Post-*Muldraw* Analysis Under Title VII

Whether Muldraw changed the law in your circuit or not at this point does not matter; all employees now have a lower burden when suing under Title VII to challenge a transfer. We can look at jurisdictions that already had this lighter standard, akin to *Muldraw*, for guidance as to how Muldraw will be applied.

For example, in the Second Circuit, Courts have determined that cases where an employee is transferred and the transfer does not affect pay or benefits, the transfer can still violate Title VII as long as it alters the terms and conditions of employment in a "materially negative way." It remains to be seen how the Second Circuit and others will distinguish "worse off" from "materially negative."

What Do You Need to Do?

ALL employers would be well advised to take a closer look at transfers of employees and analyze whether employees can claim any type of harm from those transfers. It may be the case that even if the employee points to some kind of harm - such as an inferior schedule or more administrative work - that may be sufficient to carry a lawsuit forward under *Muldraw*, where before the employer may have had a shot at a dismissal.

If you have any questions about employee transfers or would like to discuss best practices in light of the *Muldraw* decision, please reach out to a member of Kelley Drye's labor and employment team.