

LEGAL UPDATES

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## U.S. Supreme Court Establishes Lower Bar for Discriminatory Job Transfer Actions under Title VII

On April 17, 2024, the U.S. Supreme Court unanimously held that allegedly discriminatory job transfers are actionable under Title VII of the Civil Rights Act of 1964, as amended, so long as the transfer caused “some harm” to the plaintiff. The Court’s decision in *Muldrow v. City of St. Louis, Missouri* thus overturns precedent in several federal circuit courts, including the First, Second, Fourth, Seventh, Eighth, Tenth, and Eleventh Circuits, which held that discriminatory job transfer actions are only actionable if the transfer causes the plaintiff “serious” or “material” harm.

In *Muldrow*, the plaintiff alleged that her employer, the St. Louis Police Department, transferred her to a new unit because of her sex. While the plaintiff’s rank and pay remained unchanged in her new position, the position was viewed as less prestigious, resulted in the loss of her entitlement to a service vehicle, and left her with an irregular work schedule.

The District Court granted the City’s Motion for Summary Judgment, holding that the plaintiff failed to establish that her job transfer resulted in a “material employment disadvantage,” as required by Eighth Circuit precedent. The Eighth Circuit affirmed the District Court’s grant of summary judgment.

Before reviewing the Eighth Circuit’s decision in earnest, the Supreme Court first held that plaintiffs need only “show some harm respecting an identifiable term or condition of employment” to establish a Title VII claim based on a purportedly discriminatory job transfer. As the Court noted, this standard lowers the bar plaintiffs must meet to establish claims under Title VII in many federal circuits. To illustrate its point, the Court provided examples of transfers previously found lacking under the prior “material harm” standard which likely would have been decided differently under the new “some harm”

standard. These transfers include an engineering technician transferred to work in a 14x22-foot wind tunnel, a shipping worker transferred to a position involving only nighttime work, and a school principal transferred to a non-school-based administrative role.

After evaluating the facts of *Muldrow* through the lens of the “some harm” standard, the Court vacated the Eighth Circuit’s decision and remanded the case for further proceedings. As the Court noted, the plaintiff’s transfer left her “worse off,” which is all that she needed to establish under the “some harm” standard to survive summary judgment.

Although the Court’s decision to vacate the Eighth Circuit’s judgment was unanimous, Justices Thomas, Alito, and Kavanaugh each authored separate concurring opinions. In their concurrences, these justices agreed with the ultimate determination by the Court but raised concerns regarding the application of the “some harm” standard. Justice Thomas wrote that he was not convinced that the “material harm” standard employed by the Eighth Circuit is meaningfully different than the “some harm” standard employed by the Court. Justice Alito, on the other hand, wrote to describe his belief that the “some harm” standard is “unhelpful” and provides little clarity for lower courts. Finally, Justice Kavanaugh expressed his belief that all discriminatory transfers should be actionable under Title VII, even if they do not meet the “some harm” standard set by the Court.

### **What this means to you**

While the Supreme Court dismissed concerns that its decision would lead to a deluge of “insubstantial lawsuits,” it is unquestionable that *Muldrow* will make it more difficult for employers to successfully dispose of Title VII lawsuits based on employee job transfers. Further, the reasoning underlying *Muldrow* may be applicable to other types of employment decisions, such as project assignments and alterations to work schedules. As such, *Muldrow* may render the defense of Title VII claims unrelated to job transfers more difficult as well.

### **Contact us**

Should you have any questions, contact Julianne Story, Griffin Albaugh, Jenna Brofsky, or your Husch Blackwell attorney. Husch Blackwell will continue to monitor and provide the latest updates regarding decisions from the Supreme Court and other courts across the country.