



Supreme Court Ruling Expands Plaintiffs' Chances of Success in Title VII Cases

On April 17, 2024, the Supreme Court decided the case of *Muldrow v. The City of St. Louis, Missouri, et. al.* In a nutshell, Muldrow complained when she was transferred from a particular unit in the St. Louis Police Department to another unit. She contended it was because of her gender. Her rank and pay remained the same but her responsibilities, perks and schedules did not.

She brought a claim under Title VII claiming she was discriminated against based upon her sex with respect to the “terms and conditions” of her employment. The lower court dismissed her claim, stating that the transfer had not “materially or significantly disadvantaged” her in her employment—particularly focusing on the fact that it did not diminish her title, salary or benefits—causing only minor changes in working conditions. The decision was upheld by the 8th Circuit Court of appeal.

Prior to this case, employers always had a defense by arguing that—whatever change may have affected a plaintiff—even assuming it was based on any protected category: race, gender, et al.—the adverse employment that occurred, had to be “materially adverse” even if it implicated the “terms” and “conditions” of the plaintiff’s employ-

ment. Therefore, minor inconveniences that may have occurred based on a claimed discriminatory motive would not be enough to allow the case to go forward, giving employers a fighting chance of succeeding on summary judgment and thus avoiding a trial.

What the Supreme Court did here—by unanimous vote—was to determine that the employee does not have to show that the adverse employment action caused a harm that was “‘significant’ or otherwise exceeded some heightened bar” stating no such requirement is contained in the statute. It determined that “‘discriminated against’ means to treat worse here based on sex” such that if the action brings about “some harm,” the matter can still go forward.

There is no question this lowers the bar to maintain a Title VII claim. Such that, where summary judgment was available, with the employer arguing that the effect of the employment action itself was not so significant as to change the terms and conditions of employment, now it is most likely a fact question. Accordingly, the adverse change does not have to be significant or material but rather the test is whether it caused some harm.

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In my view, this opens the door to even petty modifications associated with employment duties i.e., schedules, transfer and the like, as being sufficient employment action to survive summary judgment provided the plaintiff makes an even colorable argument that the employer's action caused "some harm." While Title VII actions remain defensible, summary judgment will be less available, and it may be up to a jury to determine whether the action caused "some harm." Considering the broad nature of what one considers harm and debate over what the word "some" means, it is even more important for employers to take stock before they alter any aspect of the terms and conditions of an employee's employment and, of course, have the proper legitimate business reason to do so that has nothing to do with any of the plaintiff's protected characteristics under Title VII.

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