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Employers Beware: Title VII Now Allows Employees to More Easily Challenge Your Decision to Transfer or Reassign Them

By Mark Ishu

On April 17, 2024, the United States Supreme Court issued an opinion in *Muldrow v. City of St. Louis, Missouri*, a case involving a St. Louis Police Department officer's claim that she was subject to a discriminatory job transfer based on her sex. The Supreme Court's decision significantly modified the standard for what constitutes an "adverse employment action," one of the elements required to prove employment discrimination under Title VII of the Civil Rights Act of 1964 ("Title VII"). Previously, federal courts had identified adverse employment actions to include termination, reduced compensation, and demotion. Although federal courts have examined whether job transfers were adverse employment actions, the high bar needed to prove that a job transfer was an adverse action was extremely difficult to overcome in most federal circuits. The *Muldrow* decision changed all of that. Overturning decades-long Federal Circuit Court precedent, the Supreme Court held:

To make out a Title VII discrimination claim [in the job transfer context], a transferee must show some harm respecting an identifiable term or condition of employment…[A] transferee does not have to show…that the harm incurred was 'significant'…serious, or substantial, or any similar adjective suggesting that the disadvantage to the employee must exceed a heightened bar.

Muldrow v. City of St. Louis, Missouri, 601 U.S. —, 144 S. Ct. 967, 974 (2024). Employers must now look much more closely at whether an employee job transfer may be construed as an adverse employment action which may give rise to a Title VII discrimination action.

In *Muldrow*, the officer challenged any definition of "adverse employment action" that required a plaintiff to suffer a materially significant employment disadvantage to prevail on a Title VII claim. Muldrow claimed that because of her sex, she was transferred from her more prestigious position in the St. Louis Police Department's Intelligence Division to one where she would be in a different department supervising the day-to-day activities of neighborhood patrol officers. The trial court found that after her transfer, Muldrow experienced no change in salary or rank; she continued to have a supervisory role; she had similarly important responsibilities; and she suffered no harm to future career prospects. The trial court and the Eighth Circuit Court of Appeals both

found that Muldrow suffered no "*material* employment disadvantage" from her transfer. Accordingly, both courts held that the transfer did not constitute an adverse employment action.

Before *Muldrow*, a Plaintiff who alleged a Title VII discrimination claim based on a discriminatory job transfer was required to show in most federal circuits that the transfer resulted in some sort of material, objective, or tangible harm to the Plaintiff.[1] In other words, the transfer had to be much more than a trivial or non-impactful alteration to one's working conditions. For example, in *Clegg v. Arkansas Department of Corrections*, the Eighth Circuit Court of Appeals, which is the same appellate court that decided the *Muldrow* case, held that "[a]n adverse employment action is a *tangible change* in working conditions that produces a *material* employment disadvantage." 496 F.3d 922, 926 (8th Cir. 2007) (emphasis added).

Importantly, the Supreme Court did not rule that the transfer gave rise to a Title VII claim solely on the basis that the decision to transfer Muldrow was based on her sex. Instead, the holding maintains that there still needs to be some identifiable employee harm or disadvantage suffered by the Plaintiff. What harm rises to that level should be evaluated on a case-by-case basis, but the Court made clear that the threshold is much lower than the one used by the Eighth Circuit Court of Appeals. The Court's new threshold also allows for a much more subjective interpretation of why an employee should be considered "worse off" or disadvantaged in some term or condition of employment. The Court stated:

> **Muldrow need show only some injury respecting her employment terms or conditions. Her allegations, if properly preserved and supported, meet that test with room to spare. Recall her principal allegations. She was 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. She was moved 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. If those allegations are proved, she was left worse off several times over. It does not matter, as the courts below thought (and Justice THOMAS echoes), that her rank and pay remained the same, or that she still could advance to other jobs.**

Muldrow, 144 S. Ct. 967, 974.

Now that it is much easier for employees to allege and prove Title VII discrimination claims based on transfers or reassignments, employers must be much more mindful in their decision to transfer or reassign employees. In addition to seeking legal counsel, employers need to more carefully evaluate and document the basis for their transfer decisions to better preserve a defense that there was a legitimate nondiscriminatory reason for the transfer. If you have questions about how the *Muldrow* decision affects your organization, please reach out to me or the Labor and Employment Practice Group at Conn Maciel Carey, LLP.

Footnotes

[1] *Compare Caraballo-Caraballo v. Correctional Admin.*, 892 F.3d 53 (1st Cir. 2018) ("materially changes" the

conditions of employment in a way that is "more disruptive than a mere inconvenience or an alteration of job responsibilities"); *Williams v. R.H. Donnelley, Corp.*, 368 F.3d 123 (2d Cir. 2004) ("materially significant disadvantage"); *James v. Booz-Allen & Hamilton, Inc.*, 368 F.3d 371 (4th Cir. 2004) ("significant detrimental effect"); *O'Neal v. Chicago*, 392 F.3d 909 (7th Cir. 2004) ("materially adverse"); *Sanchez v. Denver Public Schools*, 164 F. 3d 527 (10th Cir. 1998) ("significant change"); *and Webb-Edwards v. Orange Cty. Sheriff's Office*, 525 F.3d 1013 (11th Cir. 2008) ("serious and material change"), *with Chambers v. District of Columbia*, 35 F.4th 870, 872, 875-879, 881 (D.C. Cir. 2022) (en banc) (refusing to adopt "objectively tangible harm" standard and "material adversity" requirement).