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Client News Brief

U.S. Supreme Court Lowers Threshold for Proving Harm in Title VII Employment Discrimination Cases

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Written by:
Gabriela D. Flowers
Partner
Sacramento

Juliane S. Rossiter
Senior Counsel
Walnut Creek

On April 17, 2024, the United States Supreme Court unanimously held, in *Muldrow v. City of St. Louis, Missouri* (2024) 601 U.S. __ [144 S.Ct. 967], that an aggrieved employee who was transferred to another position need only suffer "some harm" in an employment discrimination case brought under Title VII of the federal Civil Rights Act of 1964. The Court's holding departs from prior legal precedent holding that to be actionable under Title VII, the employee needed to show that the adverse employment action had a significant or material impact on the "terms, conditions, or privileges" of employment. This new lowered threshold will impact employers nationwide.

In *Muldrow*, a female police offer was transferred from her administrative position and replaced by a male police officer. Muldrow's title, salary, and benefits did not change when she was transferred to her new administrative position. However, she no longer worked with high-ranking officials, she lost her FBI status and a car that came with that status, and her workweek changed from a Monday through Friday workweek to a rotating schedule that included weekend shifts.

Ms. Muldrow filed a lawsuit under Title VII against her employer claiming discrimination based on sex. Title VII makes it unlawful for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin."

The lower courts held that Ms. Muldrow could not proceed with her discrimination claim under Title VII because she could not establish that the transfer constituted a "significant" change in her working conditions that caused a "material employment disadvantage."

The Supreme Court reversed, holding that when determining whether a job transfer is discriminatory, the employee must merely show "some harm" resulted from the transfer. The Court specifically rejected any requirement that

the employee needs to establish the job transfer caused a "significant" or "material" change to the terms, conditions, or privileges of employment.

While public employers in California are subject to Title VII, California also has its own set of anti-discrimination laws for employees, set forth in the Fair Employment and Housing Act (FEHA). Under FEHA, it is an unlawful employment practice for an employer "to discriminate against [an employee based on a protected class] in compensation or in terms, conditions, or privileges of employment."

California case law has applied a "materiality" standard in determining whether a job transfer results in an actionable change in the "terms, conditions, or privileges of employment" under FEHA. Specifically, an employee seeking recovery in California on a theory of unlawful discrimination must demonstrate that they have been subjected to "an adverse employment action that materially affects the terms, conditions, or privileges of employment." (*McRae v. Department of Corrections & Rehabilitation* (2006) 142 Cal.App.4th 377, 386.)

The Supreme Court's holding in *Muldrow* specifically rejects a "materiality" standard in the context of Title VII cases. Therefore, unless California modifies this threshold under FEHA, employers should expect to see an uptick in discrimination claims under Title VII and a drop in claims brought under FEHA, as the former offers a lower burden for aggrieved employees.

Takeaways

While the Supreme Court in *Muldrow* brushed aside the concerns expressed by the employer that this lower standard would open the floodgates to litigation by employees subject to forced job transfers, California employers should be aware that such transfers—or other seemingly minor employment decisions—may lead to increased litigation if the employee can show some change in the terms, conditions, or privileges of employment resulting from the action, even if those changes are neither substantial nor material. In addition, employers may need to update their antidiscrimination policies to ensure consistency with *Muldrow*.

If you have any questions about *Muldrow v. City of St. Louis, Missouri* or need guidance related to employment discrimination, please contact the authors of this Client News Brief or any attorney at one of our eight offices located statewide. You can also subscribe to our podcasts, follow us on Facebook, Twitter and LinkedIn or download our mobile app.