



## U.S. SUPREME COURT LOWERS BURDEN OF PROOF FOR PLAINTIFFS IN TITLE VII DISCRIMINATION CLAIMS

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### ***Court Issues Pro-Employee Decision That Will Impact How Organizations Manage Their Workers***

The United States Supreme Court recently issued a ruling that makes it much easier for employees to challenge perceived workplace discrimination with respect to the terms, conditions or privileges of employment (working conditions) under Title VII. Besides prohibiting discrimination with respect to hiring, firing, promotions and compensation, Title VII prohibits an employer from discriminating against an individual with respect to his working conditions because of the person's race, color, religion, sex or national origin. Prior to this decision most federal appellate courts considering the issue required an employee to show that a discriminatory employment decision involving working conditions caused the employee a materially significant or adverse disadvantage, such as a demotion, cut in pay or loss of benefits.

#### **What the Supreme Court Said**

In *Muldrow v. City of St. Louis*, the Supreme Court found – for the first time in its history – that Title VII does not require that an employment decision must cause a materially significant or adverse disadvantage to an employee before the employee has a cause of action for discrimination involving working conditions. Instead, it held that an employee need only show “some harm respecting an identifiable term or condition of employment.” The facts of the case show just how low that burden is.

#### **Muldrow’s Move to a New Job Position – Discrimination?**

Muldrow was a police officer for the City of St. Louis. She was transferred from a plainclothes job in a prestigious specialized division, in which she investigated corruption and human trafficking and served as a task force officer with the FBI, to a uniformed job with no loss of rank, salary or benefits, no significant change in working conditions or responsibilities and, by her own admission, no harm to her future career

prospects. Instead, she complained that the transfer removed her to a less prestigious and more administrative role that (a) required her to work less regular hours, including weekends, (b) gave her fewer opportunities to work on important investigations and to network with commanding officers, and (c) caused her to lose her take home car that was provided to her by the FBI and not the City. Finding that Muldrow suffered no significant change in working conditions, expressed "a mere preference for one position over another," and did not suffer a materially significant adverse employment action, the trial court dismissed her case. The Eighth Circuit Court of Appeals affirmed the trial court's decision.

### **Supreme Court Holds a Plaintiff Need Only Show a Change in Working Conditions Caused Some Harm to Assert Discrimination**

In a unanimous decision, the Supreme Court reversed the Eighth Circuit, concluding that "to discriminate against means treat worse...[b]ut neither that phrase nor any other says anything about how much worse." So, the Court found that while the plaintiff must show the challenged event caused her some harm, it need not be "significant" or "substantial." In other words, if the transfer caused Muldrow some disadvantage in her working conditions, she has a cause of action under Title VII. Unfortunately, the court gave no guidance on the level of harm. Indeed, in a concurring opinion, Justice Alito wrote "I have no idea what this means...." While a plaintiff still must show discrimination based on a protected category such as race or gender, the *Muldrow* decision has set low bar for proving an injury caused by that discrimination with respect to a change in working conditions. As a result, employers can expect to see more Title VII cases filed and more of them surviving summary dismissal.

### **Takeaway For Employers Going Forward**

This case has implications for far more employment actions than simple job transfers as was the case in *Muldrow*. It can apply to a wide range of workplace management decisions, such as denial of transfers, work reassignments, assignment of additional job duties, and assignment to different workplaces or spaces and of different work hours, all of which can be necessitated by numerous events, including expansion or contraction of business. What one employee finds desirable, another will find undesirable and perhaps demeaning. Therefore, employers must be vigilant in documenting their legitimate, non-discriminatory reasons for transfers to different jobs or workplaces, assignment of additional or different job duties or hours, and other job-related decisions.

## **Related Practices**

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Labor and Employment

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Jay M. Wallace

Thomas L. Case

