CLIENT ALERTS & INSIGHTS

Supreme Court Lowers Plaintiffs' Burden for Title VII Discriminatory Transfer Claims

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On April 17, 2024, the U.S. Supreme Court unanimously lowered the burden applicable to discriminatory transfer claims brought under Title VII. According to the Court, a showing of some harm-rather than significant or some other heightened level of harm-to the terms and conditions of a plaintiff's employment is all that is required to support a discriminatory transfer claim.

The case-*Muldrow v. City of St. Louis*-concerned the transfer of Jatonya Muldrow, a sergeant within the St. Louis Police Department. Muldrow was transferred from her plainclothes position in the Department's specialized Intelligence Division to a uniformed position, both against Muldrow's wishes and despite Muldrow's strong performance history. Her prior position was filled by a male officer. Although her rank and salary were unchanged, Muldrow claimed that her new position lacked the same authority and benefits found in her prior role. As a result, Muldrow sued for sex discrimination.

The City moved for summary judgment, arguing that Muldrow failed to demonstrate that her transfer caused a "significant" change in her working conditions that resulted in any "material employment disadvantage." The Eastern District of Missouri agreed and granted the City's motion. Muldrow appealed to the Eighth Circuit, which affirmed the Eastern District's ruling. The Eighth Circuit reasoned that Muldrow only demonstrated "minor changes in working conditions," noting that she suffered no change in rank or salary and retained a supervisory role within the Department.

Undeterred, Muldrow petitioned the Supreme Court. In overturning the lower courts, the Supreme Court explained that Muldrow's transfer fell squarely within Title VII's framework because it directly impacted the "what, where, and when of [Muldrow's] police work." Further, the Court opined that Muldrow need only show that her transfer resulted in some harm, rather than some heightened level of harm. Justice Elena Kagan wrote: "To make out a Title VII discrimination claim, a transferee must show some harm respecting an identifiable term or condition of employment. What the transferee does not have to show, according to the relevant text, is that the harm incurred was 'significant.' Or serious, or substantial, or any similar adjective suggesting that the disadvantage to the employee must exceed a heightened bar." Accordingly, the Court remanded the case for further proceedings.

Impact on Employers

While the Court specifically noted that *Muldrow* "lowers the bar Title VII plaintiffs must meet" and, therefore, "many cases will come out differently," it did not provide employers with clear guidelines as to this new, lowered, bar. But the ramifications are clear - even job changes without a tangible "loss" can still meet the "some harm" burden and be actionable under Title VII.

For more information or to learn how this can affect your business, contact a member of Benesch's Labor & Employment Practice Group.

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