



HR Heads-up

U.S. Supreme Court Makes Employment Discrimination Claims Easier to Prove

STORM B. LARSON, JENNIFER S. MIRUS, DOUGLAS E. WITTE,
BRIAN P. GOODMAN | 04.22.24

All employers should take note of a decision released by the U.S. Supreme Court that will make it easier for employees to prove claims of discrimination under Title VII.

Previously, under federal law as applied in Wisconsin, the lateral transfer of an employee from one job to another that did not result in a loss of pay, benefits, or rank could not be the basis for a claim of discrimination under Title VII. However, the U.S. Supreme Court recently changed that rule in *Muldrow v. City of St. Louis* where it held that employees can now point to lateral transfers as discrimination if the transfer results in changes that cause “some harm” to the employee, and the employee can prove that the transfer was based on a protected trait, such as race, age, or gender.

The Case

This case involved Jatonya Muldrow who served as a plainclothes officer with the St. Louis Police Department in the specialized Intelligence Division and was assigned to work with the FBI on certain cases. Although Muldrow was by all accounts a well-performing employee, a new supervisor replaced her with a male employee.

Muldrow was transferred to a different job with the same pay and rank. However, other aspects of her job were changed or taken away from her. For example, she was now a uniformed officer, she was assigned more mundane tasks, she no longer had access to an unmarked take-home police vehicle, and she was now required to work weekends on a rotating schedule.

Muldrow sued and alleged that these changes constituted gender discrimination because she did not like the changes even though her pay and rank remained the same. She claimed that the transfer was discriminatory based on her gender because she was replaced with a male employee. Muldrow lost her case at both the trial court and appeals court levels. However, the U.S. Supreme Court ultimately ruled in her favor.

Moving forward, to prove discrimination under Title VII, an employee must only show that a complained-of action caused “some harm” to an employee’s identifiable terms and conditions of employment. The harm does not have to be significant. The Muldrow decision is a relatively sweeping ruling because (1) nearly anything related to the workplace could be classified as a term or condition of employment. The courts have long held that “terms and conditions” are not limited to economic or tangible matters, and (2) many actions taken by employers could be deemed to cause “some harm” to an employee. The Court held that if she could prove her allegations, she “was worse off several times over” with respect to certain terms and conditions of the job. This ruling is expected to make it easier for plaintiffs to prove discrimination claims and will likely lead to an increase in claims brought by employees against their employers.

Conclusion

While this case makes it easier for employees to allege that a given action by their employer was potentially discriminatory, employees still must prove that the reason for the employer’s action was the employee’s protected class. Employers can still prevail on discrimination cases if they have a valid non-discriminatory reason for

the change in the employee's terms and conditions of employment, such as having legitimate business reasons for a transfer.

We encourage employers to reach out to a member of the Boardman Clark [Labor & Employment Practice Group](#) with questions or concerns with respect to changes to an employee's position in their workforce.

Disclaimer: This information is not intended to be legal advice. Rather, it seeks to make recipients aware of certain legal developments that affect human resource issues. Recipients who want legal advice concerning a particular matter should consult with an attorney who is given a full understanding of the relevant facts pertaining to the particular matter.

Authors

Storm B. Larson

(608) 286-7207

Douglas E. Witte

(608) 283-7529

Jennifer S. Mirus

(608) 283-1799

**Brian P.
Goodman**

(608) 283-1722