

Employment Alert: Job Transfers May Qualify as Adverse Employment Actions Under Title VII

In a unanimous decision in *Muldrow v. City of St. Louis, Missouri*, the United States Supreme Court ruled that an employee challenging a job transfer under Title VII of the Civil Rights Act of 1964 (“Title VII”) must show that the transfer brought about *some harm* with respect to an identifiable term or condition of employment, but that harm need not be significant.

Title VII *prohibits employment discrimination based on race, color, religion, sex and national origin*. To succeed on a Title VII discrimination claim, a plaintiff needs to show that she was discriminated against because of a protected characteristic with respect to hiring, firing, compensation or the “terms, conditions or privileges of employment” – what has been called an “adverse employment action.”

In *Muldrow*, the plaintiff challenged her job transfer claiming that she had been discriminated against based on her sex with respect to the terms or conditions of her employment, even though the transfer did not result in a change in pay or rank, and she continued to have a supervisory role.

The district court granted the City summary judgment and the appeals court affirmed ruling that Muldrow was required to show that the transfer caused her a “materially significant disadvantage” and because the transfer did not result in a change in title, salary or benefits and only a “minor” change in working conditions, she could not succeed. The Supreme Court disagreed.

The Court explained: To make out a Title VII discrimination claim, a transferee must show some harm respecting an identifiable term or condition of employment but that the transferee does not have to show that the harm incurred was “significant” or otherwise exceeded some heightened bar. The Court emphasized Title VII’s anti-discrimination flatly “prevent[s] injury to individuals based on” protected status such as gender, without distinguishing between significant and less significant harms.

In vacating and remanding the case to the lower court, the Supreme Court instructed that the plaintiff need show only “*some injury* respecting her employment terms or conditions.”

As Judge Neil M. Gorsuch aptly stated at oral argument, “[w]hen you treat someone worse than another person because of race or sex, that’s kind of the end of it ... [a]nd there isn’t a further inquiry”

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We remind employers that any action taken against applicants or employees based on a protected characteristic is discrimination. Protected characteristics include:

- Race
- Color
- Religion
- Sex (including pregnancy, sexual orientation, or gender identity)
- National origin
- Age (40 or older)
- Disability
- Genetic information (including family medical history).

Employers must steer clear from using any of these characteristics in their decision-making process to minimize the risk of claims and lawsuits.

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