

# What are the “Terms, Conditions, or Privileges of Employment” Referred to in Title VII and Why it Matters

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“Adverse employment action” is judicial shorthand for determining whether a plaintiff has demonstrated that an employer’s action sufficiently affected the employee’s “compensation, terms, conditions, or privileges of employment.” This is a crucial element to sustain a § 703 claim under Title VII of the Civil Rights Act of 1964. However, what does “adverse employment action” really mean and how much harm must be alleged to satisfy the § 703 harm element? Examples of employer actions that are clearly adverse include denying a position to an employee who meets the minimum qualifications, decreasing employee compensation or denying an employee a raise, or demoting an employee. Jurisdictions differ on the type of adverse employment action that must be shown to state a claim of discrimination under Title VII.

A writ of certiorari has been filed in *Peterson v. Linear Controls* asking the Supreme Court to rule on this issue: whether the “terms, conditions, or privileges of employment” covered by § 703(a)(1) of Title VII of the Civil Rights Act of 1964 are limited only to hiring, firing, promotions, compensation and leave. A ruling would provide clarity and consistency throughout the country on this critical issue.

In that case, *Peterson*, an African-American, brought suit against his former employer alleging, among other things, that he suffered racial discrimination when Linear Controls segregated the ten person work crew to which he was assigned. He claimed that the 5 black workers had to work outside and were denied water breaks, while the 5 white employees were assigned to work inside with air conditioning and were given water breaks. In keeping with its precedent, the Fifth Circuit affirmed the grant of summary judgment in favor of Linear Controls holding that to establish discrimination under Title VII, the conduct must impact an “ultimate employment decision,” limited only to those that concern hiring, leave, discharge, promotions and compensation. Because the complaint related only to an alleged discriminatory work assignment, the Court concluded that Peterson’s claim failed.

While it is plain that the “terms, conditions, or privileges of employment” do not include every employment decision that makes an employee unhappy, the Fifth Circuit, along with the Third and the Eleventh, have taken a restrictive approach to the issue, concluding that Title VII only reaches matters that affect the employee’s pocketbook. On the other hand, the Second, Sixth, Seventh, Eighth, Ninth and Tenth Circuits have interpreted the phrase more broadly. And the Second and Seventh Circuits have ruled that discriminatory work assignments are violations of Title VII, while the Third and Fifth Circuits have concluded that they are not.

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If the Supreme Court were to take the case and rule on the issue, it could potentially impact how the federal courts in all of the circuits interpret Title VII and provide a common understanding and uniform application of Title VII's prohibition on discrimination.

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