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Supreme Court lowers the bar for Title VII employment claims

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Key points

- The U.S. Supreme Court's decision in *Muldrow v. City of St. Louis* lowered the standard for the degree of harm an employee must experience to claim discrimination under Title VII of the Civil Rights Act. The employee must show "some" harm, not necessarily "material" or "significant" harm.
- The plaintiff was a woman police officer who was transferred against her wishes from a prestigious position to a uniformed job with the same rank and pay because her commanding officer purportedly wanted to replace her with a man.
- The *Muldrow* decision is expected to have broad implications beyond Title VII, potentially affecting DEI initiatives. It has already been cited in an Age Discrimination in Employment Act case.

Equal Employment Opportunity Commission Commissioner Andrea Lucas cautioned that the holding in Muldrow *implicates a wide range of diversity, equity and inclusion initiatives.*

Title VII of the Civil Rights Act requires employees alleging employment discrimination to show they suffered an adverse employment action as a result of their membership in a protected class.

On April 17, 2024, the U.S. Supreme Court issued its highly anticipated opinion in *Muldrow v. City of St. Louis*. In a unanimous decision, the Court held that an employee challenging a job transfer as discriminatory under Title VII must show some harm with respect to an identifiable term or condition of employment, but that the harm need not be significant or otherwise satisfy a significance test.

The *Muldrow* decision establishes a lower standard for the degree of harm an employee must experience to demonstrate they suffered an adverse employment action — "some" rather than "material" or "significant."

Prior to *Muldrow*, courts evaluating Title VII suits more closely scrutinized employment actions that did not affect economic or tangible employment actions (such as hiring, firing, promotions and compensation) to determine whether such actions were sufficiently "adverse" to support an employee's claim.

Implications

The *Muldrow* decision is likely to have wide-ranging implications beyond the confines of Title VII. At least one court has already cited *Muldrow*'s "some" harm standard in a discrimination case brought under the Age Discrimination in Employment Act.

And Equal Employment Opportunity Commission Commissioner Andrea Lucas cautioned that the holding in *Muldrow* implicates a wide range of diversity, equity and inclusion (DEI) initiatives, "from providing race-restricted access to mentoring, sponsorship, or training programs; to selecting interviewees partially due to diverse candidate slate policies; to typing executive or employee compensation to the company achieving certain demographic targets; to offering race-restricted diversity internship programs or accelerated interview processes, sometimes paired with euphemistic diversity 'scholarships' that effectively provide more compensation for 'diverse' summer interns."

In light of *Muldrow* and the Court's June 2023 decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* and *Students for Fair Admissions, Inc. v. University of North Carolina* (together, *SFFA*),[1] employers should continue to ensure their DEI programs are consistent with existing law and race-neutral, both as written and as applied.

Background

Jatonya Clayborn Muldrow, a sergeant in the St. Louis Police Department, brought the suit after she was transferred against her wishes from a plainclothes position in the prestigious and specialized Intelligence Division to a uniformed job in the department's Fifth District.

Despite receiving positive feedback about Muldrow from the outgoing commander of the Intelligence Division, the incoming commander requested that Muldrow be transferred out of the unit and replaced by a male police officer because, as he later testified, a male police officer "seemed a better fit for the Department's 'very dangerous' work." Her rank and pay remained the same in the new position, but according to Muldrow, her responsibilities, perks and schedule did not.

Muldrow claimed that Title VII prevented the city from making those changes to her employment because of her sex. The Court agreed, reversing the decisions of the district court and the U.S. Court of Appeals for the Eighth Circuit.

The Supreme Court took a textualist approach. It highlighted the language of Title VII, which makes it unlawful for an employer "to fail or refuse to hire or to discharge an individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's ... sex."

The Court reasoned that "discriminate against" simply means to treat worse, and nothing in Title VII requires the distinction "between transfers causing significant disadvantages and transfers causing not-so-significant ones" or "otherwise establish[es] a threshold of harm."

Potential impact to DEI programs

The *Muldrow* decision may increase the number of challenges to workplace DEI programs and initiatives, which have shown no signs of slowing following the *SFFA* decision.

Indeed, as previously discussed (see our March 2024[2] and December 2023[3] articles on the topic), although *SFFA*'s ruling that universities could no longer consider race as part of its admissions process was limited to the education context, the decision has emboldened plaintiffs — including nonprofit groups and individuals — to challenge workplace DEI programs.

Since *SFFA*, companies across the country have expanded their DEI programs and initiatives to be open to all employees and job applicants, regardless of demographic backgrounds.

In some instances, companies have also broadened their definition of "diverse" to include race-neutral elements such as socioeconomic status, geographic location and first-generation college graduate status, among others. Companies should continue to do so, particularly for the additional reason that *Muldrow* makes it easier to challenge certain DEI efforts.

Notes:

[1] Lara Flath and Amy Van Gelder represented the University of North Carolina at Chapel Hill in the SFFA litigation.

[2] https://bit.ly/3RHyecn

[3] https://bit.ly/4ckmKUv

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