

Supreme Court Mulls Over Meaning of Adverse Action under Title VII

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The United States Supreme Court recently heard oral arguments in a case involving a claim of sex discrimination by a sergeant from the St. Louis Metropolitan Police Department.

The sergeant claimed she suffered sex discrimination based on certain decisions regarding her transfer, or ability to transfer, to other positions. None of transfers at issue caused her a tangible loss in pay, rank, or benefits.

The case—*Muldrow v. City of St. Louis, Missouri*—reached the Supreme Court after the Eighth Circuit Court of Appeals agreed with the district court that the transfer decisions at issue did not constitute legally actionable adverse actions under Title VII.

The issue at the heart of the case is substantial: what does it mean to be discriminated against in relation to the “terms, conditions, or privileges of employment,” as stated in Title VII? Is a loss in pay or benefits required? Must there be some form of tangible harm? If not, what, if any, real limits are there on this broad phrase? Does it really include anything that can be said to relate to “terms, conditions, or privileges of employment”?

The parties in *Muldrow* have vehemently disagreed on whether there is any “materiality” or “tangible harm” requirement for an employer action to constitute an adverse action under Title VII. The Supreme Court will soon weigh in on this issue.

How the Supreme Court decides the issue will likely significantly impact employment discrimination litigation across the country. A ruling in favor of the plaintiff would undoubtedly have massive consequences for employers. Such a ruling would almost certainly result in significantly more charges of discrimination and litigation about a wide range of workplace disputes, issues, or perceived slights.

We remain hopeful the Supreme Court will issue a sensible opinion that does not open the flood gates to employment discrimination claims that are based upon minor workplace disputes or differences that do not involve material changes to pay, benefits, or rank, or other tangible harm.

However, employers should carefully track this case and understand the massive ramifications that may follow. Stay tuned for further developments.

