

Supreme Court: Employees Only Need to Show “Some” Harm under Title VII

AUTHOR: JAMES KEANEY

On April 17, 2024, the United States Supreme Court issued its decision in an employment case that arose out of the City of St. Louis that we previously covered [here](#).

Several months ago, we cautioned that “a ruling in favor of the plaintiff would undoubtedly have massive consequences for employers.” And that is what has happened: the Supreme Court unanimously sided with the plaintiffs in concluding that employees need not show “significant” harm to make out a claim of employment discrimination under Title VII. Instead, employees need only identify “some harm with respect to an identifiable term or condition of employment.”

Will this decision result in a flood of litigation as many anticipate? Well, the Supreme Court does not think so, but even if it did, the Court suggests Congress is to blame: “...there is reason to doubt the City’s prediction that employees will flood courts with litigation in the absence of a significant-injury requirement. Courts retain multiple ways to dispose of meritless Title VII claims challenging transfer decisions. But even supposing the City’s worst predictions come true, that would be the result of the statute Congress drafted.”

Three Supreme Court justices—that is, Justice Thomas, Justice Alito, and Justice Kavanaugh—filed concurring opinions whereby they shared their own individual views of the majority opinion and its potential impact.

Both Justice Alito and Justice Kavanaugh expressed doubt about the decision changing how courts will handle discriminatory transfer cases. Justice Alito concluded: “[t]he predictable result of today’s decision is that careful lower court judges will mind the words they use but will continue to do pretty much just what they have done for years.” Similarly, Justice Kavanaugh expects “the Court’s approach and [his] preferred approach will land in the same place and lead to the same result in 99 out of 100 discriminatory transfer cases, if not in all 100.”

Time will tell what impact the decision will have. However, in the meantime, employers should be aware that transfer decisions made in the workplace—even those that do not result in a loss of pay or benefits—could become the basis of an employment discrimination complaint. Stay tuned for further developments.