



Apr 19, 2024

US Supreme Court Holds Lateral Job Transfers Can Be Discriminatory Under Title VII

Topics: [Court Decisions](#), [Discrimination, Harassment & Retaliation](#), [Personnel Policies and Procedures](#)

By: [Dan M. Forman](#), [Charanjit Singh](#)

On April 17, 2024, the United States Supreme Court delivered a win to employees holding that a lateral job transfer can be discriminatory under Title VII when the transfer brought some harm to the employee. The Supreme Court rejected caselaw requiring employees to show a “materially significant disadvantage” to the employee or meet other heightened standards demonstrating harm to the employee from the job transfer. Employers may expect a new wave of Title VII discrimination claims. Here’s what employers need to know:

The Ruling

In *Muldrow v. City of St. Louis*, No. 22-193, a police Sergeant argued that she was adversely harmed when her employer, the St. Louis Police Department, transferred her to another position against her wishes even though the transfer did not decrease her pay or benefits. Muldrow worked as a plainclothes officer in the Department's Specialized Intelligence Division from 2008 to 2017. In 2017, the division's new commander transferred Muldrow to another position and replaced her with a male police officer. Muldrow's rank, pay, and benefits remained the same, and she continued to have a supervisory role in her new position. Muldrow, however, no longer worked with high-ranking officials as in the past. Muldrow also lost access to an unmarked take-home vehicle and was scheduled for weekend shifts.

Muldrow sued under Title VII to challenge the transfer as discrimination based on her sex. The City moved for summary judgment, and the District Court granted summary judgment because Muldrow failed to show a **material** change in employment from an adverse employment action. The Eight Circuit affirmed the holding that Muldrow failed to have shown the transfer caused her a "materially significant disadvantage" because there was no "diminution to her title, salary, or benefits" and caused her only minor changes in working conditions.

Muldrow argued to the Supreme Court that the text of Title VII § 703(a)(1) did not require that an employee show a "significant disadvantage" or meet a heightened harm standard in order to show she was discriminated against. Therefore, the Eight Circuit's requirement of a heightened harm standard was at odds with the text of Title VII. The City argued that absent significant meaningful harm, an employee had no claim.

The Supreme Court held that an employee challenging a job transfer under Title VII must show the transfer "brought about **some harm with respect to an identifiable term** or condition of employment, but that harm need not be significant." In making this ruling, the Supreme Court analyzed the language of Title VII and reasoned that the text does not require significant harm. Justice Elena Kagan, writing the Court's opinion, held "what the transferee does not have to show ... is that the harm incurred was 'significant,' ... [o]r serious, or substantial, or any similar adjective suggesting that the disadvantage to the employee must exceed a heightened bar." As such, an employee needs only to show they have been harmed in some way. The Court held that to demand "significance" is to add words to the statute Congress enacted, but not what Congress intended and remanded the case back to the Eight Circuit.

Warning for Employers

With this new ruling, the Supreme Court has once again shifted the landscape of employment law. Employers must now be aware that employees falling into a protected class may have viable discrimination claims under Title VII if an employee suffers **any** harm when subjected to a lateral transfer.

Steps to Reduce Exposure

Employers must proactively review their policies and practices regarding lateral transfers to ensure compliance with the recent Supreme Court ruling. Some key steps employers should consider:

- Training and Awareness: Conduct training sessions for HR personnel and managers to ensure they

understand the implications of the ruling. Emphasize the importance of fair treatment in lateral transfers and the potential for discrimination claims.

- Review Transfer Processes: Evaluate existing transfer processes to identify any potential areas of bias or discrimination. Consider implementing objective criteria for making transfer decisions to minimize the risk of discriminatory practices.
- Documentation: Thorough documentation of all transfer decisions, including the reasons for the transfer, can help defend against potential discrimination claims.
- Consultation with Legal Counsel: Seek guidance from legal counsel on the best practices for handling lateral transfers and minimizing legal risks.

If you have any further questions on this new ruling and how it may impact your policies and procedures about lateral transfers, please consult the authors of this article, [Dan Forman](#) or [Charanjit Singh](#), or your favorite [CDF lawyer](#).