

What Job Assignments Are Materially Adverse?

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Practice Area: Labor and Employment

Employers must deal with the perennial question of whether job changes are so significant that they constitute an adverse job action under state or federal employment discrimination law. In *McQueen v. City of Chicago*, the Northern District of Illinois reviewed this issue and found that a change in job duties will not be so materially adverse as to raise liability under employment discrimination laws if the position is neither intolerable nor a significantly negative alteration in the work environment.

In *McQueen*, four Chicago aviation police officers brought numerous state and federal employment claims against the City and several supervisors. In order to support many of their claims, the plaintiffs alleged that recent changes in their job assignments were "materially adverse". Specifically, the plaintiffs claimed that they were not treated as well as other police officers not in their respective protected classes when they received the following job assignments:

- An assignment deemed "the least desirable" because it was "busy" and police officers previously had been hit by cars while on duty;
- Checking cars in inclement weather;
- A location that contained dust from crushed limestone;
- A location that was "filthy, broken down, has rodents";
- A position with a high volume of traffic;
- A location that exposed officers to fumes; and
- A location in a construction area with "all types of dirt, rocks, and porta-potties".

The plaintiffs claimed that because these assignments were not "favorable" and were materially adverse and, therefore, constituted adverse job actions. The court disagreed.

In its decision, the court reviewed the standard for materially adverse employment actions: (1) cases in which compensation, benefits, or other financial terms of employment are diminished, including employment termination; (2) cases in which a nominally lateral transfer without a change in financial terms significantly reduces the employee's career prospects by preventing him from using the skills in which he is trained and experienced; and (3) cases in which the employee is not moved to a different job or the skills of his present job altered, but instead the *conditions* in which he works are changed in a way that subjects him to "humiliating, degrading, unsafe, unhealthful, or otherwise significantly negative alterations in his work environment", which can fairly be characterized as objectively creating a hardship. The court found that although the positions at issue were not desirable to all, some officers actually preferred these positions because they were more interesting than other positions. The court found that the job assignments were neither intolerable nor a significantly negative alteration in the work environment. As a result, the court dismissed the claims related to alleged adverse job actions.

When evaluating exposure to a potential employment claim, employers should consider whether the employee has experienced a materially adverse change in their job. Usually it is fairly simple to determine whether the terms or conditions of a position have recently changed. It takes slightly more analysis to determine whether an employee has been transferred to a position where he or she might not flourish. However, employers will need to take the most care when evaluating whether an employee's position is a "significantly negative alteration in his workplace environment." This evaluation requires an objective analysis as to whether the assignment is humiliating, degrading, unsafe, unhealthful, or otherwise creates a hardship to the employee. When reviewing these situations, employers should consider not just how the specific employee would feel about the change, but how the position is viewed by employees generally, whether some additional benefit is provided as a "trade-off" for the less desirable position, and how the position has been staffed in the past.

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