

U.S. Supreme Court Holds That A Unilateral Job Transfer Maintaining the Same Pay and Benefits Could Be Discrimination Under Title VII

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In *Muldrow v. City of St. Louis, Missouri* (Docket No. 22-193), the U.S. Supreme Court was asked to decide whether a unilateral job transfer could be challenged as discrimination under Title VII, where the position had the same pay and title but changed the employee's schedule, overtime opportunities, and other conditions of employment. In a unanimous decision, the Court held that an employee challenging a job transfer under Title VII must show that the transfer brought about some harm with respect to an identifiable term or condition of employment, but the harm need not be significant.

In this case, the St. Louis Police Department transferred a female police sergeant from a position as a plainclothes officer in the Specialized Intelligence Division, to a uniformed position elsewhere in the Department. While her rank and pay remained the same, she no longer worked with high ranking members of the Department. She lost access to an unmarked take-home vehicle and had a less regular work schedule that now included weekend shifts. She was replaced in the Specialized Intelligence Division by a male employee.

Muldrow challenged the transfer under Title VII alleging discrimination on the basis of sex. The District Court found for the City dismissing her claim. The Court of Appeals agreed with the District Court holding that the transfer "did not result in a diminution to her title, salary, or benefits" and had caused "only minor changes in work conditions".

In reviewing the degree of harm that must be demonstrated, the Supreme Court indicated that the lower court's requirement – that the claimant must demonstrate that the harm had to be "significant" – was too high a bar, and the word "significant" did not exist in language of Title VII. Again, the Court clarified that in order to make out a case under Title VII, a transferee must show some harm respecting an identifiable term or condition based on sex.

This case is now sent back to the lower court to analyze the facts under the clarified standard and further to analyze that if such harm is demonstrated, that the decision was in part based upon sex.

Important take-a-ways from the case:

- Providing transfers that maintain rank, salary and benefits alone is not sufficient to avoid a claim of discrimination. A claimant need only show that some harm has occurred.
- Yet, demonstrating some harm is not the end of the case or the end of unilateral transfers. A claimant always maintains the ultimate burden that the transfer was based upon a protected employment category, such as sex.
- Before making unilateral transfers, fully analyze the impact and outline appropriate business reasons for the transfer. Communicate those business reasons to the transferee.
- Avoid impact if possible and even consider adding pluses for the transfer if possible. Those pluses may not only avoid litigation, but might also change a reluctant, unhappy transferee into an appreciative, understanding employee.

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