

The Supreme Court Seemingly Lowers the Bar for Finding an Adverse Action under Title VII

By Elizabeth N. Hall and Fernanda Contreras

April 24, 2024

On April 17, 2024, the Supreme Court announced its unanimous decision in *Muldrow v. City of St. Louis, Missouri*, No. 22-193. In *Muldrow*, the Court held that while an employee challenging a job transfer under Title VII of the Civil Rights Act of 1964 (“Title VII”) must show that the transfer harmed the employee with respect to an identifiable term or condition of employment, that harm need not be “significant” to be actionable. (See [here](#).)

In *Muldrow*, Sergeant Jatonya Muldrow (“Muldrow”) of the St. Louis Police Department (the “Department”), worked for the Department’s Intelligence Division for approximately nine (9) years before she was transferred to the Department’s Fifth District. Although her salary did not change, Muldrow alleged that “her schedule, responsibilities, supervisor, work environment, and other job requirements and benefits changed wholesale,” and that the decision to transfer her to a “more peripheral position” constituted sex discrimination. In affirming the district court’s decision against Muldrow, the U.S. Court of Appeals for the Eighth Circuit held that Muldrow had to establish that the transfer caused a “significant” change in her working conditions and caused a “materially significant disadvantage,” and because the transfer did not diminish her title, salary or benefits and was merely less prestigious in Muldrow’s eyes, she had not satisfied her burden under Title VII. *Id.* at 4.

The Supreme Court disagreed. In its opinion, the Court found that it is sufficient under Title VII and at summary judgment for a transferee to show that the transfer caused “some harm respecting an identifiable term or condition of employment,” as opposed to harm that was “significant[,] [o]r serious, or substantial, or any similar adjective” suggesting that the disadvantage exceeded a “heightened bar.” *Id.* at 6. In overturning the Eighth Circuit’s opinion the Court further confirmed that Muldrow needed only to show “some injury” in relation to her employment terms and conditions and not that she had been left “significantly” worse off. *Id.*

The Supreme Court’s decision has the potential to broaden the scope of actions employees may successfully argue constitute actionable discrimination by their employers. Employers are encouraged to consult with their legal counsel regarding any such employment actions.

If you have any questions regarding the topics discussed in this article, please contact **Elizabeth N. Hall** at ehall@vedderprice.com, **Fernanda Contreras** at fcontreras@vedderprice.com or any Vedder Price attorney with whom you have worked.

vedderprice.com