

The U.S. Supreme Court Says Only â€

OVERVIEW:

Last week, the United States Supreme Court clarified that Title VII of the Civil Rights Act of 1964 prohibits discriminatory job transfers even if not accompanied by a quantifiable loss in pay, seniority status, or some other tangible benefit.

The law. Title VII has long prohibited gender and other forms of discrimination. Since this landmark statutory protection, the law has understandably prohibited employers from treating one gender categorically more favorably than another. Title VII's protections most obviously protect discriminatory terminations, sexual harassment, hiring inequality, and more.

One area that led to different judicial interpretations involved transfers or other changes to the terms and conditions of employment without quantifiable harm. For context, employees must establish damages to succeed on a Title VII claim-that they were harmed and aggrieved by their employer's discriminatory decision. In cases where the alleged harm is unquantifiable, courts have varied for what is required. For example, some courts required that employees show that their alleged discriminatory job transfer resulted in a significant disadvantage.

The facts. *Muldrow v. City of St. Louis, Missouri*, presented the Supreme Court with perfect facts to address this issue. Muldrow claimed she worked in a prominent, specialized division in the St. Louis Police Department. She investigated corruption, human trafficking and gangs, and served as the leader of the gun crimes unit. By nature of her position, she worked with the FBI. Apparently, she very much enjoyed her job and responsibilities.

But in 2017, Muldrow was reassigned to a different department despite her objections, and a male later filled her vacancy. Her new job came with new responsibilities and a new work schedule. After the transfer, she was primarily tasked with reviewing other officers' arrests, reports, and other administrative matters. To her, it was lower-profile, less-prestigious work that she did not want. But, notably, her pay did not change, nor did her rank. She sued the St. Louis Police Department, alleging gender discrimination. The lower courts denied her claim, even before the need to address whether the department unlawfully considered her gender, because they found that she did not suffer a "materially significant disadvantage" to invoke Title VII's protections.

The ruling. The Supreme Court reversed the lower courts and found Muldrow's allegations surrounding her transfer was prohibited by Title VII even without quantifiable harm or monetary damages, if true and if done based on her gender. The Supreme Court clarified that Title VII's prohibition of gender discrimination is not just limited to economic discrimination; the law protects all forms of discrimination of any term or condition of employment. The Court said that to state a claim of discrimination, employees must only show "some harm" to a term or condition of employment. The Court rejected notions by lower courts that employees must show

"significant," "serious," "substantial," or "material" harm. Only "some harm" is required.

"Some harm" was not defined, but examples were provided: an engineering technician transferred to a new job site in a dangerous wind tunnel; a shipping worker transferred to a new job that only schedules night work; and a principal removed from a school and placed in a non-school-based administrative role. Justice Alito joined the opinion's decision but wrote separately to emphasize his confusion with the choice of the "some harm" term. He wrote, "I have no idea what this means." Justice Kavanaugh also joined the opinion's decision and wrote separately. He said, "the Court's new some-harm requirement appears to be a relatively low bar...whether in money, time, satisfaction, schedule, convenience, commuting costs or time, prestige, status, career prospects, interest level, perks, professional relationships, networking opportunities, effects on family obligations, or the like."

Practical implications. Keep in mind that these transfers are not unlawful unless gender is a determinative or motivating factor in the decision. Nothing in the Supreme Court's decision makes transfers or other adverse actions themselves unlawful. Instead, the Supreme Court brings uniformity across the country by establishing that only "some harm" (which will not be hard to show) is required to allege discrimination from adverse actions without easily quantifiable harm.

With this opinion, the Supreme Court made it easier for employees to sue their employer for gender discrimination, even when it is unclear what harm, if any, was suffered. Or, at the very least, the new standard makes it harder for employers to dismiss a Title VII claim early on in litigation. Judges will likely be more prone to allow juries to decide what "some harm" means. Keep in mind that employees who succeed in Title VII litigation receive reimbursement for attorneys' fees. Therefore, employees may file claims with no monetary damages with the goal of succeeding in litigation, acquiring or re-acquiring a certain term or condition of employment, and forcing the employer to pay his/her attorneys' fees.

Although Muldrow alleged potential gender discrimination, Title VII also prohibits discrimination based on an employee's race, color, national origin, and religion. Therefore, the practical implications of the decision will extend past gender discrimination to other protected classes. This will likely lead to an uptick in Title VII litigation.

If you have any questions regarding gender discrimination, Title VII, and lawful transfers or revocation of terms and conditions of employment, please contact [Caleb P. Setlock](#) or any member of the [Barley Snyder Employment Practice Group](#).

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