

# U.S. Supreme Court Lowers Burden to Bring Title VII Lawsuits

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The United States Supreme Court has issued a unanimous ruling in *Muldrow v. City of St. Louis*, 143 S.Ct.2686 (April 17, 2024) 22-193 Muldrow v. St. Louis (04-17-2024), which will make it easier for employees to bring discrimination lawsuits against their employers under Title VII of the Civil Rights Act. Title VII bars discrimination against employees and applicants on the basis of race, color, religion, sex (including pregnancy, childbirth, and related conditions, sexual orientation, and gender identity), and national origin.

Prior to the Supreme Court's ruling, most courts had required an employee to prove that she/he had suffered a significant employment disadvantage by some form of discrimination based on a prohibited factor in order to prevail. However, the requirement of proving a significant employment disadvantage was challenged by Sergeant Jatonya Clayborn Muldrow who alleged that she suffered some harm because her employer, the St. Louis Police Department, transferred her from one job to another because of her sex in violation of Title VII.

Muldrow had worked as a plainclothes officer in the Department's specialized Intelligence Division and was transferred against her wishes to a uniformed position elsewhere in the Department. While her rank and pay stayed the same after the transfer, Muldrow's responsibilities, perks, and schedule did not. After the transfer, Muldrow no longer worked with high-ranking officials on the departmental priorities lodged in the Intelligence Division, instead, she was required to supervise the day-to-day activities of neighborhood patrol officers. She also lost access to an unmarked take-home vehicle, had an irregular schedule, and had to work some weekend shifts.

Muldrow sued the City of St. Louis alleging sex discrimination, but the trial court and the Eighth Circuit Court of Appeals dismissed her case ruling that even if her transfer was because of sex, she did not have a valid claim because she failed to show that her transfer caused her a "materially significant disadvantage" noting that the transfer "did not result in a diminution to her title, salary, or benefits" and had caused "only minor changes in working conditions."

The Supreme Court reversed the lower courts and ruled that Muldrow only had to show that the transfer brought about some harm with respect to an identifiable term or condition of employment, and that harm need not be significant or otherwise exceed some heightened bar. The nation's highest court went on to say that Title VII prohibits discrimination (i.e., worse treatment) with respect to employment terms or conditions. Both parties had agreed that the lateral transfer was a term and condition of employment.

The Supreme Court's ruling in *Muldrow* clearly means that employers who make involuntary lateral transfers that cause some harm to the employee and are perceived by the employee to be based on sex (or another ground prohibited by Title VII) may be open to discrimination lawsuits.

There is some ambiguity in the decision, and there are several issues that were left open by the ruling in *Muldrow*. *Will the decision be limited to job transfers or will it be extended to any term or condition of employment?* Since 1982, the EEOC has broadly defined "terms, conditions, and privileges of employment" to encompass someone's work environment, duration of work, work rules, job

assignments, duties, and job advancement. It is uncertain if courts will allow, for example, a lawsuit because an employee claims she was denied training, was not selected for a particular job assignment, or was denied overtime based on sex or another factor prohibited by Title VII.

Other issues left unanswered are *what constitutes a “harm” or “injury” and how much will this ruling change the outcome of cases?* In concurring opinions, Justices Alito and Thomas indicate that they do not think the *Muldrow* ruling will change the outcome of many cases. However, the majority opinion authored by Justice Kagan states that because of the new lower standard, “many cases will come out differently.”

## Conclusion

While we will have to wait for lower court decisions to know the full impact of the *Muldrow* ruling, we expect an uptick in Title VII lawsuits where an employee is forced into a lateral transfer that the employee does not want or where the employee feels that she/he has suffered some harm because of a change in a term or condition of employment or denial of some requested change in a term or condition of employment. The safest course of action is to be able to justify all your employment actions based on non-discriminatory business needs and seek legal advice when appropriate, especially if an employee complains of some kind of unfair treatment or discriminatory treatment in a term or condition of employment even though the employee’s pay, title, or benefits have not changed.

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