

April 29, 2024

Supreme Court Ruling Will Affect Employer Decisions Regarding Mandatory Transfers



Hannah Batsche

Human Resources & Employment

The U.S. Supreme Court recently ruled that a mandatory job transfer might be considered an “adverse employment action” under federal anti-discrimination law. Following this decision, which creates a lesser standard for employees bringing discrimination claims, employers can expect more HR and legal involvement in job transfers so as to not run afoul of Title VII of the Civil Rights Act of 1964.

In *Muldrow v. City of St. Louis*, Ms. Muldrow claimed that her employer (the St. Louis Police Department) transferred her because she is a woman. Muldrow – who was not fired – was replaced with a male sergeant at the request of her superior, who believed that he would be better suited for the “very dangerous work” done by the department’s specialized Intelligence Division.

While the transfer did not affect Muldrow’s rank or pay, her responsibilities, schedule and certain perks were negatively affected. For example, instead of working with high-ranking officials on departmental priorities, she instead was tasked with supervising the daily activities of neighborhood patrol officers. Also, instead of working a regular Monday-Friday schedule, she was placed on a rotating schedule that often involved weekend shifts. She also lost her FBI status and the car she was given because of that ranking.

At the trial court level, the court found that the transfer did not effect a significant change in working conditions or produce a “material employment disadvantage.” The appellate court affirmed that decision, determining that Muldrow did not show that the transfer caused a “materially significant disadvantage.” The Supreme Court accepted the case to resolve a split of decisions from various appellate courts on whether the harm resulting from a Title VII claim of discrimination based on a transfer must be “significant,” “material” or “serious.”

In its decision, the Supreme Court adopted a “some harm” standard, which ostensibly lowers the bar for Title VII discrimination claims. The court lamented that many forced transfers leave workers worse off, which would cause them to experience some injury in the terms or conditions of their employment. If the transfer was based upon a protected characteristic (such as race or sex), then it would be prohibited by Title VII. The court cited several cases to support its position, including a shipping worker required to take a position involving only nighttime work and a school principal forced into a non-school-based administrative role supervising fewer employees. The Court found error in both of those cases and that the lower courts had attempted to “[rewrite] Title VII, compelling workers to make a showing that the statutory text does not require.”

While some may argue that the decision will lower the bar for all Title VII claims, thus flooding courts with lawsuits, it may turn out that the decision will be limited to the issue of job transfers (and that employees will still have to prove some harm to their terms or conditions of their employment to succeed).

At the very least, employers should carefully review decisions to transfer an employee to ensure it is not based upon a protected characteristic, document the legitimate, business-related and nondiscriminatory bases for the transfer decision, and promptly investigate any employee complaints of discrimination.

For employment law questions and guidance, please contact a member of Gould & Ratner's [Human Resources and Employment Law Practice](#).