

BLOGS

Discrimination

## Title VII & Lateral Transfers – Treacherous Territory after United States Supreme Court Ruling

The United States Supreme Court recently settled a circuit split concerning when an involuntary lateral transfer may violate Title VII of the Civil Rights Act of 1964. The Court's opinion in *Muldrow v. City of St. Louis Missouri*, 601 U.S. – (2024) offers lessons for employers nationwide.

**Case Facts:** Plaintiff Muldrow worked as a plainclothes officer in the St. Louis Police Department's Intelligence Division, investigating public corruption and human trafficking cases, overseeing the Gang Unit and serving as head of the Gun Crimes Unit. The position afforded her the status of a Task Force Officer with the Federal Bureau of Investigation, which entitled her to FBI credentials, an unmarked take-home vehicle and authority to investigate cases outside of St. Louis. Muldrow's new supervisor asked the Division to transfer Muldrow out of the position and replaced her with a male police officer – despite having been informed by his predecessor that Muldrow was a "workhorse" and that "if there was one sergeant he could count on in the Division," it was Muldrow. Muldrow was transferred, without modifications of her rank and pay. However, her responsibilities, perks and schedule did not remain the same in the new position. She no longer worked with high-ranking officials on departmental priorities, instead supervising day-to-day activities of neighborhood patrol officers and performing some patrol work herself. She lost her FBI status and use of the unmarked take-home vehicle and the new position required her to work a rotating shift (including weekends) instead of the traditional Monday-Friday schedule associated with the prior position.

**Court's Ruling:** The Court interpreted Title VII to require a transferred employee asserting a discrimination claim "to show that the transfer brought about some 'disadvantageous' change in an employment term or condition." The Court noted that Title VII "targets practices that 'treat[] a person worse' because of sex or other protected trait." Thus, "To make out a Title VII discrimination claim, a transferee must show some harm respecting an identifiable term or condition of employment." Importantly, the Court held, "What the transferee does not have to show, according to the relevant text, is that the harm incurred was 'significant.' Or serious, or substantial, or any similar adjective suggesting that the disadvantage to the employee must exceed a heightened bar."

**Take Aways:** To state the obvious, forced transfers should not be based on the employee's sex, race, color, religion, national origin or any other legally protected

### Related People

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characteristic or activity. In addition, while most employees are at-will, an employer should consider if a particular employee may have a contract right to their position under a collective bargaining agreement or individual contract. Whenever possible, get an employee's buy-in when a transfer (to a new position or a new location) is necessary to meet the employer's objectives. In cases where employees are resistant to (or flat out reject) the idea of a transfer, ensure that there is a legitimate business case for the move.

To minimize discrimination and retaliation claims, evaluate whether transferring the employee will cause the employee to be "worse off" with respect to some term or condition of employment. In addition to keeping the employee's pay and rank the same (or better), making every effort to afford the employee the same schedule, perks and "status" in the new position will help. It's also a good idea to consider how you'd respond to an argument that the new position is less prestigious; negatively impacts the employee's networking opportunities, and/or potential for promotions; or involves less challenging job duties. Considering these factors on the front end may avoid the time and expense associated with litigation or, if necessary, provide evidence that the involuntary transfer to a new position or new location was in good faith and ultimately not injurious to the employee.