

## SUPREME COURT OPENS THE DOOR TO MORE CLAIMS OF DISCRIMINATORY TRANSFER

An April 17 decision of the Supreme Court leaves employers more exposed than before to claims of discrimination based on workplace transfers, holding that employees suing for discrimination in connection with a transfer, need not show that the transfer caused them “significant” harm. The Court’s decision in Muldrow v. City of St. Louis resolved confusion among federal appeals courts as to how much harm an employee had to experience as a result of a transfer in order to sue for discrimination under Title VII but—in doing so—paved the way for such claims to dramatically increase.

Muldrow featured a female St. Louis police sergeant assigned to the city police department’s Intelligence Division where, as part of her duties and responsibilities, the sergeant participated in high-profile investigations; served as a departmental Task Force officer to the FBI in St. Louis (a status that gave her FBI credentials along with her own police credentials); an unmarked take-home vehicle; and a Monday-Friday schedule. After a new commander took over the Intelligence Division, Muldrow was transferred away from the Division and to a more conventional job, where she supervised the day-to-day activities of normal patrol officers—in the process, losing her FBI credentials, take-home vehicle, and normal work schedule in

favor of a “rotating” schedule that required some weekend work. Muldrow’s replacement in the Intelligence Division was a male police officer.

Muldrow sued the police department, alleging that her transfer and reassignment were the result of sex discrimination. The federal district court that heard her lawsuit, however, dismissed Muldrow’s action on summary judgment, based largely on St. Louis’ argument, and the court’s conclusion, that Muldrow had not shown that the transfer was a “significant” change in her working environment that produced a “material employment disadvantage.” The lower court noted that Muldrow’s rank, pay, and employment benefits had all remained the same; that she continued to work in a supervisory role, overseeing other officers; and that there was no evidence that the loss of the chance to “network” with high-ranking officers in the Intelligence Division had harmed her career at all. A federal appeals court affirmed the grant of summary judgment.

The Supreme Court, however, reversed the lower courts’ decisions. Relying on a literal reading of the text of Title VII, the Court concluded that the law against discrimination required a complainant to be harmed, but that nothing in the statute was meant to require significant harm, suggesting that as long as *some*



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aspect of Muldrow’s transfer “left her worse off,” the sergeant could bring a claim under Title VII. The Court found that a number of aspects of her transfer, including moving from a prestigious plainclothes unit to a uniformed patrol unit, the change in her work schedule, the loss of her take-home car, and the loss of opportunity to work alongside high-ranking commanders, met the test for adversity “with room to spare.” In doing so, the Court rejected the long-standing interpretations of many federal appeals courts that the changes resulting from a transfer had to be “significant” in order to be actionable under Title VII, and which had rejected claims based on negative changes that were minor or incidental.

The Court responded to St. Louis’ argument that a relaxed injury requirement would “swamp courts and employers” with lawsuits stemming from involuntary transfers by washing its hands: noting that, even if this predication came true, “that would be the result of the statute Congress drafted” and that the Court’s place was not to “add words to the law” to help employers.

The Muldrow decision requires employers to think carefully about the potential implications of an involuntary workplace transfer. Going forward, an employer considering an involuntary transfer should assess whether the perks, benefits, and responsibilities of the new position are equivalent to the old position, to try to eliminate claims of “harm” arising from the transferred employee’s new circumstances. More importantly, the decision highlights the

need for employers to carefully document the reasons for an involuntary transfer with ironclad legitimate, non-discriminatory explanations, in order to defend against potential lawsuits on their merits if a disgruntled transferee chooses to file a discrimination suit. Employers should consider reaching out to their labor and employment counsel for additional guidance on incorporating this important Court decision into their day-to-day employee moves.