10 Biggest Takeaways for Employers as Federal Appeals Court Expands Scope of Anti-Bias Law

Insights
8.21.23

One of the nation's most conservative federal appeals just opened the door for plaintiffs to file more discrimination charges and lawsuits by expanding the scope of the nation's primary workplace anti-bias law. The full 5th Circuit Court of Appeals – which oversees cases arising out of Texas, Louisiana, and Mississippi – ruled that employees are not limited to bringing Title VII claims only when subjected to "ultimate employment decisions" like terminations or applicant rejections. Instead, the court said workers can bring Title VII claims against employers for all sorts of alleged bad behavior. Friday's ruling jettisons one of the strictest standards in the country and follows the recent trend set by several other appeals courts. The decision serves as a good reminder for employers to ensure your anti-bias policies and practices are up to date and effectively administered. What are your 10 biggest takeaways from the August 18 *Hamilton v. Dallas County* decision?

1. **End of "Ultimate Employment Decision" Limitation:** The key point from this decision and your main takeaway: the "ultimate employment decision" test is no longer valid in cases arising in Texas, Louisiana, and Mississippi. Previously, this test limited actionable adverse employment actions in Title VII cases to major workplace decisions like hiring, granting leave, compensation adjustments, promotions, and firing.
2. **All Employment Terms Are Relevant:** An *en banc* (full) panel of the 5th Circuit instead ruled that all terms, conditions, or privileges of employment should be protected under Title VII. The court concluded that discrimination in any of these aspects could lead to actionable claims.
3. **Paternalistic Policies Could Be Significant:** The case involved allegations from a group of female correctional officers who were displeased when the County implemented a gender-based scheduling policy. The officers alleged their supervisors told them that it would be unsafe for all male officers to be off at the same time during the week and that it was safer for the men to take days off on the weekends, and thus created a policy that only male officers could be given full weekends off. Regardless of the rationale behind the decision, the court noted that days and hours of work, including shift schedules, are essential terms or conditions of employment. Changing these, especially based on a protected characteristic like gender, could be seen as discrimination.
4. **Restrictive Standard Gave Rise to Absurd Results:** One of the reasons the court scrapped the restrictive standard is that it "thwarted legitimate claims of workplace bias," providing examples

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from the past to demonstrate the absurd results that could occur. One such example: a 2019 case where the court was forced to dismiss a claim from a Black plaintiff who alleged he was required to work outside in the heat without access to water while his white coworkers enjoyed working inside with air conditioning.

5. **No Need for Economic Harm:** Discrimination doesn't have to cause economic harm to be actionable, said the 5th Circuit. Non-economic actions, like changes in work schedules or even issuance of written disciplinary notices, can still be discriminatory and form the basis for valid Title VII claims.
6. **There are Limits – But Tread Carefully:** The court said that there is a floor for determining the proper Title VII standard and the anti-bias law doesn't cover "trivial" actions. However, employers should tread cautiously when building policies or making employment decisions relying on this defense. Until federal district courts further define the contours of where this standard lies, you will want to work with your employment counsel to ensure you don't run afoul of federal law.
7. **Trending: In Line With Other Courts**: Friday's decision is another example of how courts across the country are moving toward a broader interpretation of Title VII, focusing more on the statute's text rather than relying on past, narrower precedents. The 6th Circuit (handling cases arising out of Ohio, Tennessee, Michigan, and Kentucky) and the D.C. Circuit have both recently gone down the same road and issued similar rulings in the past two years. They join the 2nd, 4th, 9th, and 11th Circuits, which have all explicitly held that Title VII claims can be brought even if the alleged discrimination does not involve an ultimate employment decision.
8. **Not Just Race:** Remember that Title VII doesn't just bar discrimination based on race. Workers can bring claims under the statute for allegations related to race, color, religion, national origin, and sex (which has been interpreted by the Supreme Court to include sexual orientation and gender identity).
9. **Self-Review and Compliance:** In light of this ruling, it would be prudent to review your policies and practices to ensure they are not inadvertently discriminating, even in non-ultimate employment decisions. You may also want to reinforce this new standard in managerial training sessions so your leaders understand the broad scope of these protections and adjust their practices accordingly. And of course, ensure your general training sessions with all your workforce emphasize the importance of professionalism and fair treatment of all co-workers.
10. **Judicial Trends Matter:** This decision underscores the importance for employers to stay updated on recent judicial trends. Relying on older precedents may not be a safe defense against modern interpretations of Title VII. For example, in the coming year, the Supreme Court will issue a ruling examining whether Title VII bars only adverse employment actions that result in a materially significant disadvantage for the employee in a case involving a lateral transfer. A decision in that case could once again upend these types of cases, so you'll want to follow that case with interest and adjust as necessary.

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