

# SCOTUS SAYS FORCED LATERAL JOB TRANSFERS CAN SUPPORT DISCRIMINATION CLAIMS IN SOME CIRCUMSTANCES: KEY EMPLOYER TAKEAWAYS

Insights  
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An employer's decision to transfer an employee to a lateral job – with no change in pay or benefits – may violate federal civil rights law in some situations if it's based on discriminatory reasons. According to a SCOTUS ruling today, an employee who claims a mandatory job transfer is unlawfully biased – in this case based on sex – must show they suffered some harm regarding an identifiable term or condition of employment. But the harm does not have to be significant. As we predicted earlier this year, even though the Court sided with the employee in this case, the ruling is narrow and leaves the door open for further clarification in the future. Here's what you need to know about the ruling and what it means for employers.

## Dispute Over Level of Harm Employee Needed to Show

**Sex Discrimination Claim:** In [the Muldrow case](#), a female police sergeant brought a sex discrimination suit claiming she was transferred to a lateral position in a different division because new leadership wanted to hire a man for her current role.

**Nuances of the Law:** Title VII of the Civil Rights Act bars employers from discriminating against employees based on race, color, national origin, religion, and sex. But what if an employee was allegedly forced to accept a lateral transfer – with the same pay and benefits – for a discriminatory reason? Is it still unlawful, even if the employee fails to show the transfer caused them a significant disadvantage?

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**The Facts:** Sergeant Muldrow was transferred from the Intelligence Division to a role in the Fifth District when a new commander made a number of personnel changes, including transferring 22 officers (17 of whom were male) into various other positions.

Muldrow alleged the transfer constituted an adverse employment action that could sustain a Title VII claim because her Fifth District work was more administrative and less prestigious than that of the Intelligence Division, and more akin to basic entry level work. Her prior position carried perks, including the opportunity to work in plain clothes, keep a strict Monday-to-Friday schedule, and access an unmarked FBI vehicle.

**Appellate Court Sided with Employer:** The district court and the 8th U.S. Circuit Court of Appeals sided with the police department, finding that Title VII bars only adverse employment actions that result in a materially significant disadvantage for the employee. Specifically, her pay and rank remained the same, she was given a supervisory role, she was responsible for investigating important crimes such as homicides, and her time in the Fifth District did not harm her future career prospects. As the 8th Circuit said, “an employee’s reassignment, absent proof of harm resulting from that reassignment, is insufficient to constitute an adverse employment action.”

Several other appellate courts, however, have found that a forced lateral transfer is an adverse action even if the employee fails to show that the move caused any additional injury.

**The Question for SCOTUS to Answer:** Does Title VII prohibit discrimination in transfer decisions absent a separate court determination that the transfer decision caused a significant disadvantage? Notably, the employee posed a broader question in her petition to the Supreme Court, and her attorney spent considerable time at oral argument discussing the ways the transfer actually caused her harm. But the Justices limited the question before the Court to the narrow issue above – which led us to correctly predict that they would similarly issue a narrow ruling.

### **SCOTUS Says Employee Must Show “Some” Harm**

“To make out a Title VII discrimination claim, a transferee must show some harm respecting an identifiable term or



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condition of employment," Justice Kagan wrote for the Court. "What the transferee does not have to show is that the harm incurred was 'significant' or otherwise exceeded some heightened bar."

Requiring the harm to be "significant" would add to the statute and impose a new requirement under Title VII -- which "can make a real difference for complaining transferees," Kagan wrote. The Court noted that a transfer is not usually forced when it leaves the employee better off.

In this case, the employee's claims (if properly preserved and supported) "meet that test with room to spare," the Court said, highlighting the following facts:

- She was moved from a plainclothes job in a prestigious specialized division;
- She was moved to a uniformed job supervising one district's patrol officers, in which she was less involved in high visibility matters and primarily performed administrative work;
- Her schedule became less regular, often requiring her to work weekends; and
- She lost her take-home car.

When considering these points, the Court said, it does not matter that her rank and pay remained the same or that she still could advance to other jobs. Thus, SCOTUS vacated the 8th Circuit's judgment and remanded the case for further proceedings.

You should note that the Court did not go so far as to hold that all mandatory lateral transfers are adverse actions – instead, transferees must always show at least some harm beyond the harm of being transferred for allegedly discriminatory reasons. This is good news for employers, since the SCOTUS decision leaves some mechanism for weeding out complaints that truly don't show sufficient injury to justify bringing a lawsuit. But we might continue to see federal court disagreements on precisely what "some" harm means — and we anticipate seeing a wealth of cases at the district court and appeals court level on this issue in the coming years.

## **What Should Employers Do?**

The *Muldrow* case serves as a reminder to employers to ensure your policies and practices align with federal, state, and local anti-discrimination laws. Consider taking the following steps in light of the ruling:

- Review your HR policies for compliance with equal employment opportunity (EEO) laws, including your processes for handling day-to-day workplace matters, such as work assignments, meeting attendance, travel decisions, performance issues, discipline and performance improvement plans, and other actions that are short of terminations or demotions.
- Update your EEO training for managers and supervisors to cover the nuances of lateral transfers and other actions that might support bias claims.
- Stay informed on court decisions in the aftermath of the *Muldrow* case to see how this issue continues to evolve and impact workplace compliance.

## Conclusion

We will continue to monitor workplace law developments and provide updates as warranted, so make sure you subscribe to [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney or the authors of this Insight.