

SCOTUS SCRAPS EXTRA HURDLE IN MAJORITY-GROUP BIAS CLAIMS: 5 WAYS THAT THINGS WILL CHANGE FOR EMPLOYERS

Insights

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The US Supreme Court just unanimously ruled that plaintiffs alleging workplace discrimination under Title VII are not required to meet a heightened evidentiary standard just because they have “majority-group” status. Today’s landmark decision in *Ames v. Ohio Department of Youth Services* eliminates the additional requirements previously imposed by several federal appellate courts that made it harder for majority-group plaintiffs, such as heterosexual or White workers, to prove discrimination. This significant decision, which does away with extra steps for so-called “reverse” discrimination claims, will most likely result in an increase in workplace bias claims in many parts of the country. What are the five ways that things will change in this new era of discrimination litigation?

Allegations in a Nutshell

- Marlean Ames, a heterosexual woman, was employed for roughly 15 years by the Ohio Department of Youth Services (DYS), the state’s juvenile corrections system.
- In 2019, Ames applied for a promotion, but DYS instead hired a gay woman for the role.
- DYS also demoted her and reduced her wages by nearly \$20 per hour, replacing her with a gay man.
- Both of these decisions were made by heterosexual individuals.

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Sheila M. Abron

Partner

803.740.7676



Raymond W. Perez

Of Counsel

- After filing a discrimination charge with the Equal Employment Opportunity Commission, Ames filed a Title VII lawsuit against the Ohio DYS, alleging discrimination based on sexual orientation.

What Do You Need to Know About Title VII?

- You probably already know that Title VII bars discrimination against workers because of race, color, religion, national origin, and sex. The Supreme Court's [2020 decision in *Bostock v. Clayton County*](#) held that “because of . . . sex” includes discrimination based on an individual’s sexual orientation or gender identity.
- Typically, workers only need to show the following four steps to advance the ball in a Title VII claim: (1) they are a member of a **protected class**, (2) they were subject to an **adverse employment decision**, (3) they were **qualified** for the relevant position, and (4) their employer **treated more favorably a similarly qualified person who was not a member of the same protected class**.
- But some federal appellate courts (the 6th, 7th, 8th, 10th, and D.C. Circuits) required majority-group plaintiffs – those advancing what some call “reverse” discrimination claims – to jump over an additional hurdle. In those circuits, such plaintiffs must also show “background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority.”

SCOTUS Scraps Additional Hurdle, Opens Door for More Litigation

Both the lower court and the 6th Circuit Court of Appeals dismissed Ames’s claim, citing her failure to demonstrate those “background circumstances” that would have suggested that DYS was an unusual employer that discriminated against majority-group members.

Justice Ketanji Brown Jackson, [writing for a unanimous Court](#), overturned the 6th Circuit’s decision.

- The Court held that Title VII’s text does not support imposing a higher burden on majority-group plaintiffs. “Congress left no room for courts to impose special requirements on majority-group plaintiffs alone,” Jackson wrote.



Regina A. Petty

Partner and Chief Diversity Officer

213.330.4500



Emily E. Town

Of Counsel

412.822.6638

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- SCOTUS emphasized that the “background circumstances” requirement is inconsistent with the language of the statute and the Court’s prior precedents, which caution against inflexible applications of the legal standard. “Our case law thus makes clear that the standard for proving disparate treatment under Title VII does not vary based on whether or not the plaintiff is a member of a majority group. ... The ‘background circumstances’ rule flouts that basic principle.”
- Title VII prohibits discrimination against “any individual” based on protected characteristics, without distinction between majority and minority groups. “We conclude that Title VII does not impose such a heightened standard on majority-group plaintiffs,” said the Court.

How’d We Do With Our Predictions?

Both of our case preview authors predicted a unanimous 9-0 decision scrapping the heightened burden standard for majority-group plaintiffs. Neither expected Justice Jackson to author the unanimous opinion, however.

Our authors also predicted that the Court may tackle a long-simmering issue concerning the proper use and application of the decades-old *McDonnell-Douglas* standard created by the Supreme Court to analyze Title VII claims. The majority did not do so, but Justice Thomas’ concurring opinion, joined by Justice Gorsuch, was focused precisely on that issue. The Court denied certiorari in the other case to present an opportunity to opine on *McDonnell-Douglas* (with Justice Thomas dissenting in that decision), so Justices Thomas and Gorsuch will have to wait for an appropriate case to persuade their colleagues that it is time to revisit that more than 50-year-old precedent.

Implications for Employers

This decision has significant implications for employers nationwide, but the change in the 6th, 7th, 8th, 10th, and D.C. Circuits is especially pronounced.

- **States That Will See a Change:** Employers with operations in states falling within those circuit jurisdictions will now see a new standard – Arkansas, Colorado, D.C., Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio,

Oklahoma, South Dakota, Tennessee, Utah, Wisconsin, and Wyoming.

- **Increased Litigation Risk:** We expect to see an uptick in discrimination claims from majority-group members, given that the bar for bringing such claims has been lowered.
- **Amplified Attention:** Even if you operate in jurisdictions that didn't have the additional hurdles present for majority-group plaintiffs, this case will draw significant media attention and could educate workers about the possibility of claims that they didn't realize existed.
- **Uniform Standard:** All US employees, regardless of majority or minority status, are now subject to the same evidentiary standards when bringing Title VII discrimination claims.
- **Policy Review:** You should review your employment policies and practices to ensure they are applied consistently and do not inadvertently disadvantage any group. Using transparent qualification standards and legal review for major decisions such as promotions, demotions, and involuntary transfers are keys to reducing risk.
- **DEI in Focus:** You should pay particular attention to your diversity, equity, and inclusion practices in light of this ruling. In his concurring opinion, Justice Thomas took aim squarely at such programs, highlighting what he described as prominent businesses' "obsession" with DEI.
- **Training and Compliance:** It's crucial to provide training to HR personnel and management on unbiased decision-making and to reinforce compliance with equal employment opportunity laws for *all employees*.

Conclusion

We will continue to monitor developments related to this issue and provide an update when SCOTUS issues further workplace-related opinions, 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.