

## Blog Post

# How Much Worse Off Must an Employee Be Post-Job Transfer to State a Title VII Claim?

May 21, 2024

By [Paige S. Newman](#)

In what may be considered a “win” for employees, the United States Supreme Court recently clarified that an employee challenging a job transfer as “discriminatory” need only prove that they sustained “some” harm due to the transfer, not “significant” harm, to assert a Title VII violation. Although the bar may appear to have been lowered, employers who remain agile in assessing the implications of a particular job transfer in advance may keep the employee from clearing this hurdle and getting to the finish line.

## Background Facts

The case is *Muldrow v. St. Louis*, and the plaintiff was a female plainclothes officer in the City of St. Louis Police Department’s Intelligence Division who alleged she was moved out to a uniformed patrol officer supervisory position so a male officer could take her place in what the new commanding officer deemed a “very dangerous” position. While Muldrow’s rank and pay remained the same after the transfer, she had a less regular schedule in the new position, which now rotated and included weekend shifts, and she lost her FBI status as a deputized task force officer, her unmarked take-home vehicle, networking opportunities with high-ranking officials, and other “perks” of the job. Muldrow

---

## Related People

[Paige S. Newman](#)

---

## Related Work

[Employment  
Administrative Claims  
Defense](#)  
[Employment Litigation](#)  
[Labor and Employment](#)

---

## Related Offices

[West Palm Beach](#)

---

## HR Defense

[Akerman Perspectives  
on the Latest  
Developments in Labor  
and Employment Law](#)

[Visit this Akerman blog](#)

alleged that in transferring her to the neighborhood uniformed patrol officer unit, the City had discriminated against her based on sex with respect to the terms and conditions of her employment.

The City initially prevailed on summary judgment below, when the district court rejected Muldrow's claim on the ground that the transfer did not cause her a significant employment disadvantage. In reaching its decision, the district court had explained that Muldrow could not "show that her transfer effected a significant change in working conditions producing material employment disadvantage," particularly because she experienced no change in salary or rank and she still held supervisory responsibilities, and the change to a rotating schedule and loss of a take-home vehicle were only minor alterations of employment as opposed to material harms.

In vacating the summary judgment, the Supreme Court disapproved of the "significant" harm or heightened threshold of harm standard in construing what Title VII requires. The Supreme Court held, instead, that Title VII only requires the employee to show some harm resulting from the forced transfer. The Supreme Court explained that Title VII targets practices that treat a person worse than someone else because of sex or other protected characteristic, but the statute does not define how much worse the person must be treated to state a claim. Accordingly, it was sufficient for Muldrow to show that the transfer left her worse off than before, but not significantly so.

## Employer Considerations

While employers may wonder if the *Muldrow* decision will lead to employees prevailing on more frivolous discrimination claims if there is no heightened injury standard to meet, the Supreme Court emphasized that Title VII, of course, still requires a showing that the employer took the adverse action against the employee for

discriminatory reasons. In addressing this issue, courts may consider whether a less harmful act is less suggestive of intentional discrimination. Thus, while the Supreme Court emphasized that there is no “significance” standard of harm required, courts may still weigh the level of harm that resulted from the challenged action in assessing whether the employer engaged in unlawful discrimination.

Employers should always carefully assess job transfers and changes in titles and/or responsibilities for any employee and consider whether the change will have any negative impact on the employee (with respect to any terms, conditions, or privileges of employment, and not only compensation). When making such a change, employers should carefully document the specific business reasons supporting the change and why it should apply to a given employee. This way, if the employee challenges the decision as discriminatory, the employer can better articulate the legitimate business reason for the decision to refute a potential claim.

For questions or concerns regarding the implications of the *Muldrow* decision, or for assistance evaluating whether a change to an employee’s position and/or transfer could potentially lead to liability under Title VII, please consult your Akerman Labor and Employment attorney.

---

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.