CLIENT ALERT: United States Supreme Court Modifies Standard for Adverse Actions Under Title VII

On April 17, 2024, the United States Supreme Court announced its decision in *Muldrow v. City of St. Louis, Missouri, et al.,* in which the Court clarified the "adverse action" standard to be applied in discrimination cases under Title VII of the Civil Rights Act of 1964. In *Muldrow*, the Supreme Court held that an employee challenging a job transfer as discriminatory under Title VII is only required to show that the transfer brought about "some harm" with respect to a term or condition of employment. For decades, most lower courts have required employees to demonstrate a heightened showing of harm (i.e., "substantial" or "significant") in proving discrimination claims. The Supreme Court's new "some harm" standard lowers the burden on employees in proving discrimination claims under Title VII.

In *Muldrow*, a female sergeant was transferred from a position as a plainclothes officer in a specialized division of the police department to a uniformed position in another part of the department. Her rank and pay remained the same in the new position, but she alleged she gained more administrative work, lost access to an unmarked take-home vehicle, and had a less regular schedule involving weekend shifts. The plaintiff alleged the city discriminated against her on the basis of sex under Title VII as a result of this transfer. The District Court and the Eighth Circuit Court sided with the City, holding that the plaintiff could not demonstrate a "significant" change in working conditions that produced a "material employment disadvantage." Rather, the lower courts found that the changes alleged were "minor" alterations in employment.

The Supreme Court reversed, holding that an employee challenging a job transfer is not required to show the transfer caused a "significant" or "substantial" employment disadvantage. Rather, an employee only needs to show they experienced "some harm" as a result of a change in terms or conditions of employment. In its decision, the Supreme Court relied heavily on the text of Title VII and the absence of language requiring a heightened showing of harm that the words "significant" or "substantial" implied.

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In a concurring opinion, Justice Alito noted the uncertainty that lower courts will face in interpreting this new standard. Observing little, if any, substantive differences between the "some harm" standard and previous standards articulated by lower courts, Justice Alito anticipated lower courts will use a similar analysis under this revised standard as under heightened standards. In contrast, Justice Kavanaugh described the "some harm" standard as "a relatively low bar" in a separate concurring opinion. Nonetheless, the Supreme Court's "some harm" standard is new, and its results are yet to be seen. In any event, we would recommend that an employer realize that any articulable harm or inconvenient consequence to an employee could form the basis of a finding of "some harm" to support a valid discrimination claim.

Although *Muldrow* was in the job transfer context, the Supreme Court's opinion generally interprets Title VII's antidiscrimination provision and may be extended to employment actions beyond a job transfer. Should you have any questions about how the *Muldrow* decision impacts your business, please reach out to your MBJ attorney.

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This alert was prepared on April 25, 2024.

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