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The U.S. Supreme Court Rejects “Significant Harm” Standard for Claims of Workplace Discrimination; Adopts More Employee-Friendly “Some Harm” Standard

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The Supreme Court of the United States issued an opinion on Wednesday, April 17, 2024, that will make it easier for employees to pursue discrimination claims against their employers based on job transfers or other non-pecuniary personnel decisions. In *Muldrow v. City of St. Louis*, Muldrow, a female police officer, alleged that she was transferred to a less desirable unit because a new supervisor preferred a male officer for the role. The City of St. Louis countered that such transfers were routine and that Muldrow's supervisor had reassigned over 20 officers.

Title VII of the Civil Rights Act of 1964 prohibits workplace discrimination based on various factors including sex, race, and religion, concerning any aspect of employment. The crux of the case was whether Title VII requires employees to demonstrate significant harm resulting from discrimination, such as a decrease in pay, demotion, or termination. "Today, we reject that notion," wrote Justice Elena Kagan on behalf of the court. "While an employee must exhibit some detriment from a forced transfer to succeed in a Title VII lawsuit, she is not obligated to meet a threshold of substantial harm. Title VII does not impose such a stringent requirement." Kagan's opinion garnered support from five other justices, while Justices Clarence Thomas, Samuel Alito, and Brett Kavanaugh issued separate concurring opinions.

Numerous bias lawsuits, including Muldrow's, involve contentions of transfers, schedule alterations, or other forms of discrimination short of termination or loss of income. Prior to the *Muldrow* decision, U.S. appellate courts were divided on whether such cases are permissible for litigation.

What the *Muldrow* opinion means for employers: Employers can no longer rely on a lack of pecuniary or other “significant harm” to an employee as a defense to a claim of discrimination. So long as the employee can show “some harm” with respect to an identifiable term or condition of employment, the employee’s initial burden is satisfied. This means that employers will need to scrutinize job transfers and other employment actions to ensure that there is a business need or justification for the action and to assess the impact of the transfer or action on the employee. Employers should also carefully document and maintain the reason(s) for the action.

If you have any questions, please feel free to contact the attorneys listed below:

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