

Redefining Harm: Did SCOTUS Expand Title VII Protections in ‘*Muldrow v. City of St. Louis*’?

The U.S. Supreme Court’s *Muldrow* decision is a transformative shift in employment discrimination law under federal discrimination statutes (and corresponding state and local discrimination statutes). For attorneys on both sides, *Muldrow* demands a recalibration of litigation strategy, evidentiary standards, and risk assessment, particularly in determining whether summary judgment is possible and which “adverse” actions are going to be presented to a jury.

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On April 17, 2024, the U.S. Supreme Court made waves among labor and employment practitioners when it decided *Muldrow v. City of St. Louis*, 601 U.S. 346_(2024). The issue before the court was whether Title VII prohibits discriminatory job transfer decisions even when the employee does not suffer a “significant” or “material” disadvantage in terms of compensation and benefits. Writing for a unanimous court, Justice Elena Kagan emphasized a textualist interpretation of Title VII, rejecting lower courts’ use of the “substantial harm” standard to establish an “adverse action.” The court found no basis in the statute for requiring a “heightened threshold” of harm and provided that plaintiffs need only identify “some harm” regarding the impact of an adverse action on the “terms and conditions” of their employment. The court’s *Muldrow* decision has already impacted pending cases in the U.S. Court of Appeals for the Third Circuit.

The *Muldrow* case presented an interesting, but not unusual, fact pattern. Sgt. Jatonya Clayborn Muldrow had long served as a plain clothes officer in the St. Louis Police Department’s Intelligence Division. She had risen through the ranks until she was involuntarily transferred from her position when a new commander took over the Intelligence Division. Her replacement was a male officer. As consequence of her transfer: Muldrow lost access to an unmarked take-home vehicle; she was no longer deputized with FBI credentials; her schedule became less predictable, including weekend shifts; and she was removed from working on high-profile investigations with senior officials. After her transfer, Muldrow was responsible for supervising street patrols of uniformed officers and handling “routine” police work rather than more complex investigations she had performed in the Intelligence Division. However, Muldrow suffered no loss in pay or benefits as part of the transfer.

Muldrow filed a Title VII sex discrimination claim, arguing that the transfer constituted an adverse employment action based on her sex. The district court granted summary judgment to the City, and the Eighth Circuit affirmed, holding that Muldrow failed to show a “materially significant disadvantage.” Indeed, a touchstone of evaluating an “adverse action” requires examining the impact of an employer’s action on the employee’s “terms and conditions” of employment—commonly associated with an impact on compensation or benefits.

For example, in *Durham Life Insurance v. Evans*, 166 F.3d 139 (3d Cir. 1999), the Third Circuit held that an adverse employment action under Title VII must be “serious and tangible enough to alter an employee’s compensation, terms, conditions, or privileges of employment.” This case is often cited for the proposition that not every workplace grievance or alteration in job responsibilities constitutes an adverse employment action.

However, in *Muldrow* the court ruled that: “an employee challenging a job transfer under Title VII must show that the transfer brought about *some harm* with respect to an identifiable term or condition of employment, but that harm need not be significant.” The court clarified that a “transfer must leave the employee worse off, but not necessarily materially worse off.” The harm can be noneconomic, such as loss of prestige, schedule changes or diminished responsibilities. The decision applies broadly to any employment action affecting terms or conditions—not just transfers. This new standard effectively lowers the bar for plaintiffs and will likely allow more cases to survive motions to dismiss or summary judgment.

Third Circuit litigants have already felt the impact of *Muldrow*. Notably, the Third Circuit Court of Appeals remanded two cases, *Peifer v. Pennsylvania Board of Probation & Parole*, 106 F.4th 270 (3d Cir. 2024) and *McCrorey v. City of Philadelphia*, No. 23-2539, 106 F.4th 312 (3d Cir. 2025), respectively, in light of the *Muldrow* decision. In *Peifer*, the Third Circuit vacated summary judgment, in part, holding that denials of light-duty accommodation requests for Title VII and Pregnancy Discrimination Act claims could support a *prima facie* case under a failure-to-accommodate theory and remanded for reconsideration under the new *Muldrow* standard.

Similarly, in *McCrorey*, the Third Circuit vacated summary judgment on an age discrimination claim under the ADEA and PHRA where the plaintiff, a police lieutenant, was reassigned shortly before retirement. The court applied the Supreme Court’s *Muldrow* standard and held that reassignment to a less prestigious division with fewer overtime opportunities could constitute an adverse employment action despite no change in title or base pay. In both *Peifer* and *McCrorey*, we see the Third Circuit addressing noneconomic damages, such as “loss of prestige” in a transfer, at least, in part, defeating summary judgment.

The implication of the new “some harm” standard announced in *Muldrow* cannot be understated. For management-side attorneys, there is a troublesome likelihood of increased litigation and compliance costs. Indeed, *Muldrow* broadens liability for routine employment decisions, such as transfers, reassignments or other organizational restructuring. Further, noneconomic benefits (e.g., mentorships, networking) may now be scrutinized under Title VII. In addition to

increased litigation risks, employers must now invest in additional training to ensure business decisions, even those previously considered minor decisions, are extensively evaluated and documented.

Plaintiffs-side attorneys and civil rights advocates, in contrast, view *Muldrow* as a major victory. The decision recognizes the real-world impact of noneconomic harms, such as loss of prestige or networking opportunities. *Muldrow* also removes decades of judicially imposed extra-statutory burdens for plaintiffs pursuing claims against their employers. Plaintiffs may now be able to challenge a wider range of employment actions and may find it easier to survive early dismissals at summary judgment.

In conclusion, the Supreme Court's *Muldrow* decision is a transformative shift in employment discrimination law under federal discrimination statutes (and corresponding state and local discrimination statutes). By rejecting the "significant harm" standard and adopting a more inclusive

"some harm" threshold, the Court has expanded the scope of actionable employment practices. The ruling empowers employees to challenge discriminatory transfers and other workplace decisions that previously fell below the legal radar.

The Third Circuit's adoption of this standard, in cases like *Peifer* and *McCrorey*, signals a potentially broader judicial trend toward recognizing the real-world impact of noneconomic harms. For attorneys on both sides, *Muldrow* demands a recalibration of litigation strategy, evidentiary standards, and risk assessment, particularly in determining whether summary judgment is possible and which "adverse" actions are going to be presented to a jury.



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