



BASSFORD REMELE

SCOTUS HEARS ORAL ARGUMENT ON LANDMARK EMPLOYMENT LAW CASE¹

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INTRODUCTION

On December 6, 2023, the U.S. Supreme Court heard arguments in *Muldrow v. City of St. Louis*. The question presented was whether Title VII of the Civil Rights Act of 1964 prohibits discrimination in transfer decisions absent a separate court determination that the transfer decision caused a significant disadvantage in employment.

Background

Under Title VII of the Civil Rights Act of 1964, employers cannot discriminate against workers with respect to their compensation, terms, conditions or privileges of employment because of their race, color, sex, religion, or national origin. Plaintiffs alleging discrimination must generally show they suffered an adverse employment action, such as being fired, suspended or demoted with less pay or fewer benefits.

In June 2017, a sergeant with the St. Louis Police Department was transferred from her position in the department's intelligence division, where she worked a traditional 9-to-5 schedule and had permission to work in plain clothes. Later she was deputized as a task-force officer by the FBI's human-trafficking unit, which provided her additional privileges, such as access to an unmarked FBI vehicle. She also had the opportunity to earn up to \$17,500 in annual overtime pay. She was then transferred to the City's Fifth District, where she supervised police officers on patrol, was required to wear a police uniform and worked a rotating schedule, including weekends. She earned the same salary but was no longer eligible for the FBI's \$17,500 annual overtime pay. The officer was ultimately reassigned to the Intelligence Division and regained her status as a task force officer on February 5, 2018.

The United States District Court for the Eastern District of Missouri granted a summary judgment for the City on her claims for gender discrimination and retaliation for reporting acts of discrimination under Title VII. The district court focused on whether the transfer to the Fifth District damaged the officer's financial standing or career and concluded that the eight months spent in the Fifth District did not harm her. The district court also determined that denying her

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transfer requests did not constitute harm to her and that the City was not accountable for the FBI's decision to revoke her task force officer status.

The Eighth Circuit Court of Appeals affirmed the district court holding that the officer did not show that her transfer or denied transfer request was an “adverse employment action.” First, the Court noted that an employee's reassignment, absent proof of harm resulting from that reassignment, is insufficient to constitute an adverse employment action. Next, the Court held that the officer did not demonstrate how the sought-after transfer would have resulted in a material, beneficial change to her employment, and absent such showing, it found that the City’s failure to transfer her was not an adverse employment action.

At the Supreme Court, the officer’s counsel argued that it was enough to prove that the decision to transfer her had been made for a discriminatory reason, whether or not she had suffered tangible harm as a consequence. The City’s attorney argued that there must be “significant, material, objective harm.”

Possible Effects on Construction Industry

The Supreme Court’s ruling could greatly impact employment discrimination claims, particularly the prima facie elements that a plaintiff must establish. Currently, plaintiffs are generally required to establish an adverse employment action, but the Supreme Court’s ruling could significantly alter this standard, making it easier for plaintiffs to establish employment discrimination claims.

For example, if an employee was transferred from one job site to another, that employee may no longer have to establish that the transfer was an adverse employment action if the employee alleges the transfer was due to discrimination. In the dynamic landscape of the construction industry, the transfer of employees between job sites is a common practice that demands a vigilant approach to ensure fairness and eliminate discrimination. Implementing certain policies can help curb potential discrimination claims.

CONCLUSION

The Bassford Remele [Construction](#) and [Employment](#) Law practice groups are following this landmark decision and will provide an update as soon as the Supreme Court issues its decision.

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