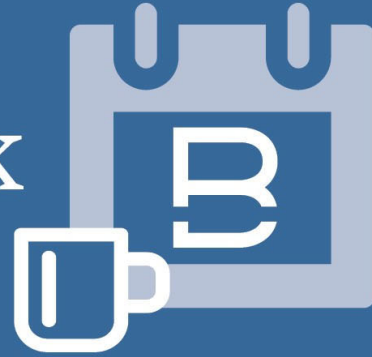


The Work Week

Bassford Remele Employment Practice Group



October 2, 2023

Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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Supreme Court Hears Two Pivotal Employment Law Cases

Leah J. Christenson

The U.S. Supreme Court is back in session today. The Court shall hear an array of cases ranging from free speech to student loans over the course of the next nine months. Among these cases are two employment law cases: *Muldrow v. City of St. Louis, U.S.* and *Murray v. UBS Securities LLC, U.S.*

Muldrow v. City of St. Louis, U.S.

In *Muldrow v. City of St. Louis, U.S.*, the issue before the Court is whether job transfers and denials of requests to change positions can constitute adverse-employment actions when there is not a “materially significant disadvantage” to the employees. Jatonya Clayburn Muldrow was a sergeant with the St. Louis Metropolitan Police Department. Muldrow worked in the Intelligence Division. In April 2017, the Department hired a new Captain who served as the Commander of Intelligence and Muldrow’s supervisor. Soon after, the new Captain transferred Muldrow out of the Intelligence Division and placed her on patrol. Muldrow’s replacement was a male officer who had previously worked with the new Captain. Muldrow filed suit under Title VII, alleging that the City of St. Louis discriminated against her on the basis of sex by transferring her out of the Intelligence Division.

The U.S. Court of Appeals for the Eight Circuit determined that Muldrow failed to establish a *prima facie* case of discrimination because her transfer out of the Intelligence Division was not an adverse employment action. The Eighth Circuit noted that the transfer resulted in the same position and pay, and also highlighted Muldrow’s admission that the transfer did not harm her future career prospects. The Court noted that it has “repeatedly found that an employee’s reassignment, absent proof of harm resulting from that reassignment, is insufficient to constitute an adverse employment action.”

Whichever way the Supreme Court rules, employees and employers alike will receive clarity on whether a position transfer or reassignment must also be accompanied by proof of harm to trigger protection under Title VII.

Murray v. UBS Securities LLC, U.S.

In *Murray v. UBS Securities LLC, U.S.*, the issue before the court is whether, under 18 U.S.C. § 1514A, a whistleblower must prove their employer acted with “retaliatory intent” to prevail. Trevor Murray was hired by UBS Securities as a strategist. Murray’s job was to research and report on commercial mortgage-backed securities products for current and potential clients. Murray’s reports, by federal regulation, were required to be entirely his own impressions and not connected to his pay. However, Murray felt pressured by two senior employees at UBS to write reports that would favor their business strategies. Murray complained about the same and after felt like he was being pushed out until he was eventually terminated.

The U.S. Court of Appeals for the Second Circuit held that Murray failed to show UBS had “retaliatory intent” in terminating Murray. Murray argues that the Second Circuit’s ruling essentially raised the burden of proof in whistleblower cases, and contradicts holdings in the Tenth, Ninth, Fifth and Fourth circuits.

If the Supreme Court affirms the Second Circuit, the result may be a higher burden of proof for future whistleblower plaintiffs. While the Supreme Court is analyzing a specific federal statute, often times federal decisions influence state court decisions, so such a ruling may have repercussions for Minnesota employers as well.

At Bassford Remele, we monitor, and regularly advise employers on, important changes in case law and legislation. You can look for the outcomes of *Muldrow* and *Murray* to be covered in future editions of *The Work Week*.

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