



LEHR MIDDLEBROOKS  
VREELAND & THOMPSON, P.C.

LABOR • EMPLOYMENT • IMMIGRATION

April 17, 2024

### **Supreme Court Decision: Employees May Challenge Unwanted Job Transfers as Discriminatory, Even if Transfers Don't Involve *Significant* Disadvantage**

Earlier today, [the Supreme Court held](#) that a police sergeant's suit about her involuntary transfer to another division with less prestige and fewer perks was sufficiently injurious to allow her to sue for sex discrimination, even though her title and pay didn't change.

#### **The Facts of the Case**

Sergeant Muldrow worked for the Intelligence Division of the St. Louis Police Department. She handled high profile work, typically worked a regular Monday-Friday schedule, and, because of her position, was deputized as a Task Force Officer with the FBI and received an unmarked car and additional exciting work from that agency. When a new Division Commander reassigned her and replaced her with an officer he thought would be better suited to the “dangerous” work, and that officer was a man, she sued for sex discrimination. Even though her new assignment was at the same rank and pay, she argued she'd suffered losses of prestige (she was now a supervisor of regular patrol officers), perks (the FBI's car), and a regular schedule (she now had a rotating schedule and frequently had to work weekends). The trial court dismissed her case at summary judgment, because it found that because she still had her title, pay, and supervisory status, the other differences were not significant enough to litigate. The Eighth Circuit Court of Appeals agreed.

#### **The Supreme Court's Decision**

In a 9-0 decision (with six Justices joining the main opinion, and Justices Thomas, Alito, and Kavanaugh concurring separately), the Supreme Court overruled the lower courts, finding they'd been wrong to require Sergeant Muldrow to show the disadvantageous differences between jobs were *significant*.

As is typical for the Court, the analysis begins with a quote from the applicable statute: “Title VII makes it unlawful for an employer ‘to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.’” In what may be the most important sentence of this decision, the Court noted that ***both parties agreed that the transfer changed the terms and conditions of her employment***, “changing nothing less than the what, where, and when of her police work.” And, with that concession, the die was cast. Since words like *significance* and *materiality* aren't in the statute, it didn't matter if Sergeant Muldrow's transfer didn't rise above them. (I have to say “if” here, because, with all due respect to the district and appellate courts (and Justice Thomas, who found Sergeant Muldrow had failed to prove the changes were “nontrifling”), these changes were pretty darn material in my book).

### **What the Decision Didn't Do:**

- It didn't change the baseline legal concept that there can't be a lawsuit without an injury or harm to redress. (Though scholars should read Justice Kavanaugh's concurrence on this; it's just three pages long).
- It didn't set boundaries on what constitutes *terms*, *conditions*, and *privileges* of employment, other than to say that the terms are broader than their definitions under contractual law.
- Although it's clear that employees no longer need to demonstrate significance of injury to litigate all sorts of employment decisions, not just transfers, the Court cabined its examples and other analysis to involuntary transfers, only.
- Thus, except in pretty extreme cases, the decision doesn't provide predictive filters for how other sorts of employment decisions should be characterized.

If you would like to discuss this decision or the steps ahead, please contact Whitney Brown at 205-323-9274 or [wbrown@lehrmiddlebrooks.com](mailto:wbrown@lehrmiddlebrooks.com).