

# The Supreme Court Issues Narrow Ruling in Title VII Case, *Muldrow v. City of St. Louis*

## Client Alerts

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On April 17, 2024, the Supreme Court issued its decision in *Muldrow v. City of St. Louis*, a closely watched employment discrimination case.<sup>[1]</sup> In a unanimous opinion written by Justice Kagan, the Court reversed the Eighth Circuit, which had ruled in favor of the employer. The opinion holds that a Title VII plaintiff need not demonstrate that an employer’s discriminatory action caused a “significant” disadvantage within the workplace. Rather, to prevail under Title VII, a plaintiff merely must demonstrate they suffered “some harm” as regards a term or condition of their employment.<sup>[2]</sup> This ruling resolves a circuit split on the standard of harm required for a plaintiff to bring suit under Title VII, the statute that prohibits employment-discrimination on account of race, color, religion, sex (including sexual orientation and gender identity), and national origin.<sup>[3]</sup>

In the case, Jatonya Muldrow—a sergeant with the St. Louis Police Department—challenged her involuntary transfer from one division to another, arguing that she was transferred solely on the basis of sex. Though her compensation and formal rank remained unaffected, Muldrow claimed that her transfer led to altered scheduling and responsibilities. The Eighth Circuit held that the impact of this transfer was not “significant” and thus that the transfer was “insufficient to constitute an adverse employment action.”<sup>[4]</sup> Based on the plain text of the statute, the Supreme Court reversed that decision, finding that “[t]here is nothing in the provision to distinguish, as the courts below did, between transfers causing significant disadvantages and transfers causing not-so-significant ones. And there is nothing to otherwise establish an elevated threshold of harm.”<sup>[5]</sup> Because the Supreme Court found the Eighth Circuit applied the incorrect legal standard by requiring a showing of more significant harm, it vacated the opinion and remanded the case, instructing the lower courts to apply the correct legal standard.<sup>[6]</sup>

The most obvious result of the Supreme Court’s opinion is that it will reduce the threshold for bringing a Title VII action in the circuits that have, until now, required a heightened showing of harm.<sup>[7]</sup> However, by requiring the plaintiff to show *some* harm, the Supreme Court’s opinion is narrow. Indeed, Justice Kavanaugh in concurrence would have gone further—arguing that under Title VII “[t]he discrimination is harm” and thus nothing more than a discriminatory employment action need

be shown.<sup>[8]</sup> The distinction between what the majority held, and what Justice Kavanaugh would have held, is significant. Most important, because there need be showing of “some” harm as opposed to simply differential treatment, the case does not appear to give the green light to reverse discrimination claims seeking to challenge any number of employer diversity, equity, and inclusion (“DEI”) programs that do not result in harm or disadvantage to any employee. Andrea R. Lucas, an Equal Employment Opportunity Commission (“EEOC”) Commissioner, had publicly identified a large roster of DEI initiatives that *Muldrow* could implicate at the time the Court granted certiorari—“from providing race-restricted access to mentoring, sponsorship, or training programs; to selecting interviewees partially due to diverse candidate slate policies; to tying executive or employee compensation to the company achieving certain demographic targets; to offering race-restricted diversity internship programs or accelerated interview processes, sometimes paired with euphemistic diversity ‘scholarships’ that effectively provide more compensation for ‘diverse’ summer interns.”<sup>[9]</sup> The Supreme Court’s narrow ruling should not have this broad of an effect. The opinion notes that, even in the specific context of transfer decisions, “there is reason to doubt that the floodgates will open in the way feared.”<sup>[10]</sup> Employees must still show “some injury.”<sup>[11]</sup> The employer’s action must still “have left [the employee] worse off;” it just “need not have left her significantly so.”<sup>[12]</sup>

However, the Supreme Court’s adoption of an easier-to-satisfy level of harm for a Title VII claim, at a time when corporate DEI initiatives are under attack, cannot be ignored. Importantly, Title VII doctrine also informs the analysis of employment-discrimination claims under Section 1981, which prohibits racial discrimination in making and enforcing contracts (including between private entities).<sup>[13]</sup> Section 1981 has become a statute of choice for anti-DEI litigants. It contains a longer statute of limitations than Title VII—and unlike Title VII, there is no administrative exhaustion requirement and no cap on damages under Section 1981.<sup>[14]</sup> How *Muldrow*’s ruling will ultimately impact this, and other, contexts remains to be seen.

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## Footnotes

[1] No. 22-193, (April 17, 2024), [https://www.supremecourt.gov/opinions/23pdf/22-193\\_q86b.pdf](https://www.supremecourt.gov/opinions/23pdf/22-193_q86b.pdf). See Client Alert: The Supreme Court Grants Certiorari in *Muldrow v. City of St. Louis*: How the Case Could Bolster Attacks Against Corporate DEI Initiatives, <https://www.jenner.com/en/news-insights/publications/client-alert-the-supreme-court-grants-certiorari-in-muldrow-v-city-of-st-louis-how-the-case-could-bolster-attacks-against-corporate-dei-initiatives> (Jenner & Block’s prior client alert providing background on the case).

[2] *Muldrow v. City of St. Louis*, No. 22-193 at 1 (April 17, 2024), [https://www.supremecourt.gov/opinions/23pdf/22-193\\_q86b.pdf](https://www.supremecourt.gov/opinions/23pdf/22-193_q86b.pdf).

[3] Compare *Muldrow v. City of St. Louis*, 30 F.4th 680, 688-89 (8th Cir. 2022), with *Chambers v. District of Columbia*, 35 F.4th 870, 874-75 (D.C. Cir. 2022) (holding that the plain text of Title VII does not require any additional showings of harm beyond the discriminatory act itself), with *Thompson v. City of Waco*, 764 F.3d 500, 503 (5th Cir. 2014) (holding that transfers to less prestigious or interesting roles can be functionally equivalent to demotions and thus be “adverse employment actions” under Title VII).

[4] *Muldrow v. City of St. Louis*, 30 F.4th 680, 688-89 (8th Cir. 2022).

[5] *Muldrow v. City of St. Louis*, No. 22-193 at 6 (April 17, 2024), [https://www.supremecourt.gov/opinions/23pdf/22-193\\_q86b.pdf](https://www.supremecourt.gov/opinions/23pdf/22-193_q86b.pdf).

[6] *Id.* at 11.

[7] However, Justices Thomas and Alito, in separate writings, concurred in the judgment. They did so on the basis that the Court’s newly announced standard does not substantively differ from the standard applied by all the courts of the appeals, including the Eighth Circuit, despite the different ways in which courts have articulated the required level of harm. See *id.* (Thomas, J., concurring in the judgment); *id.* (Alito, J., concurring in the judgment).

[8] *Id.* at 2 (April 17, 2024) (Kavanaugh, J., concurring in the judgment).

[9] Andrea R. Lucas, *With Supreme Court Affirmative Action Ruling, It’s Time for Companies to Take a Hard Look at Their Corporate Diversity Programs*, Reuters (June 29, 2013), <https://www.reuters.com/legal/legalindustry/with-supreme-court-affirmative-action-ruling-its-time-companies-take-hard-look-2023-06-29>.

[10] *Muldrow v. City of St. Louis*, No. 22-193 at 9 (April 17, 2024), [https://www.supremecourt.gov/opinions/23pdf/22-193\\_q86b.pdf](https://www.supremecourt.gov/opinions/23pdf/22-193_q86b.pdf).

[11] *Id.*

[12] *Id.* at 10.

[13] See, e.g., *Body by Cook, Inc. v. State Farm Mut. Auto. Ins.*, 869 F.3d 381, 386 (5th Cir. 2017); *Bratton v. Roadway Package Sys., Inc.*, 77 F.3d 168, 176 (7th Cir. 1996); *Rodemaker v. Shumphard*, 859 F. App’x 450, 451-52 (11th Cir. 2021); *Haynes v. D.C. Water & Sewer Auth.*, 924 F.3d 519, 529 (D.C. Cir. 2019). Section 1981’s reach does not extend to the other protected classes covered under Title VII.

[14] However, Section 1981 requires that a plaintiff establish that race was a but-for cause of the asserted injury, a more demanding standard than Title VII’s requirement that a plaintiff establish that race was a “motivating factor” of the employment decision. See *Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 140 S. Ct. 1009, 1017-19 (2020).

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