

# THE JOURNAL RECORD

## Gavel to Gavel: Supreme Courts lowers the bar for employees to bring discrimination suits

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For years, courts have dismissed employment discrimination claims where employees cannot show alleged discrimination caused a “serious,” “significant,” or “substantial” change in the “terms and conditions” of their employment.

That era looks to have ended with the United States Supreme Court’s decision in *Muldrow v. City of St. Louis*. *Muldrow* involved a female sergeant who worked in the St. Louis Police Department’s prestigious “Intelligence Division.” There, Sgt. Muldrow was deputized by the FBI, had a take-home vehicle, could pursue investigations outside St. Louis, and worked a regular schedule.

But a new, male commander transferred Sgt. Muldrow out of the Division—over her objections—and replaced her with a man. While Muldrow’s reassignment did not affect her rank or pay, it caused her to lose the perks that came with her prior position. Muldrow sued under Title VII of the federal Civil Rights Act, alleging she was transferred because she is a woman.

The Department argued it could not be sued because Muldrow’s transfer did not “significantly” injure her (essentially because her rank and pay were unchanged).

The district and appeals courts agreed with the Department, but the Supreme Court reversed. While it acknowledged a Title VII claim still requires “some harm” to the employee, the Court clarified the focus of a Title VII claim is on whether an employee was treated worse because of a protected characteristic—not *how much* worse. And the Court ultimately held Title VII does not require an employee to show alleged discrimination “seriously” or “significantly” affected the “terms and conditions” of her employment.

*Muldrow* overturned circuit precedent across the country, and the decision makes its more likely discrimination claims will evade dispositive motions and reach trial. Employers should be especially mindful of the decision’s ramifications and proactively engage legal counsel.

Companies should establish clear policies, encourage internal reporting and promote intra-office training and open lines of communication—so alleged discriminatory conduct can be investigated and addressed early, before it escalates. *Muldrow* may also augur increased use

of arbitration agreements and class action waivers by employers, in an effort to keep these types of disputes out of court.

Time will tell how “significant” or “substantial” *Muldrow*’s impact is. Until then, employers should take *Muldrow* “seriously” and work to eliminate discriminatory conduct in the workplace and address employee concerns—before they reach litigation.

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