

# U.S. Supreme Court to Hear Whether Title VII Protects Employees Contending Discriminatory Transfer

By Stephanie L. Adler-Paindiris & Stephanie E. Satterfield

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## Meet the Authors



### Stephanie L. Adler-Paindiris

(Pain-DEAR-is • She/Her)

Principal

(407) 246-8409

Stephanie.Adler-

Paindiris@jacksonlewis.com



### Stephanie E. Satterfield

(She/Her)

Principal

(864) 672-8048

Stephanie.Satterfield@jacksonlewis.com

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The U.S. Supreme Court will decide whether Title VII of the Civil Rights Act prohibits discrimination in forced transfer decisions without also requiring a showing that the transfer decision caused the employee a materially significant disadvantage in *Muldrow v. City of St. Louis, Mo.*, No. 22-193.

The Court granted review to address a split in the circuits on the issue of whether a forced transfer alone rises to the level of an adverse employment action. The U.S. Courts of Appeals for the D.C. Circuit and the Ninth Circuit both held that a purely lateral transfer is an adverse employment action whether or not the employee can show additional injury as a result. The remaining circuits impose standards requiring proof of harm, although with varying burdens to successfully demonstrate the harm.

### Facts

Jatonya Muldrow worked as a sergeant with the St. Louis Police Department in the Intelligence Division. She managed cases about public corruption and human trafficking and oversaw the gun crimes and gang units. The Federal Bureau of Investigation deputized Muldrow as a “task officer” in its human trafficking unit, which entitled Muldrow to significant overtime pay and access to an FBI-issued vehicle.

Department leadership changed in 2017, and the new commander transferred Muldrow to a different district. Her responsibilities included supervising officers on patrol, reviewing and approving arrests, and responding to calls about violent crimes. As she was no longer eligible to work as an FBI task officer, in accordance with FBI and Department policy, she surrendered her credentials and FBI-issued vehicle. Muldrow lost the opportunity to earn overtime pay from the FBI, but her new role offered opportunities to earn equivalent overtime pay in other areas.

In June 2017, Muldrow filed a charge with the Missouri Commission on Human Rights alleging the new commander transferred her for discriminatory reasons related to her gender. She received a right-to-sue letter from the state agency.

Meanwhile, Muldrow sought alternate roles within the Department. She informally sought to work as an administrative aide to a captain. She also applied for detective sergeant and internal affairs investigator positions.

While Muldrow’s official transfer requests were pending, the same commander transferred Muldrow back to the Intelligence Division. She resumed her previous duties, including as an FBI task officer. Muldrow withdrew the two formal transfer requests, then filed a lawsuit based on her Missouri Commission on Human Rights

charge. In her suit, she alleged that her 2017 transfer from the Intelligence Division was an adverse employment action rooted in gender discrimination and that the Department retaliated against her when it did not approve the transfers she requested.

### Lower Courts' Analyses

Central to the lower courts' holdings is their interpretation of Title VII, which prohibits an employer from "discriminat[ing] 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."

The U.S. Court of Appeals for the Eighth Circuit explained that, without direct evidence of gender discrimination, a claimant must "show that she was a member of a protected class, she was qualified to perform the job, she experienced an adverse employment action, and this treatment was different from that of similarly situated males." *Muldrow v. City of St. Louis*, 30 F.4th 680, 687 (8th Cir. 2022).

Muldrow argued that the transfer alone constituted an adverse employment action, whether or not it diminished her earnings, benefits, or future career prospects or caused other materially significant harm.

The district court and the Eighth Circuit rejected Muldrow's argument and granted summary judgment to the defendants. The Eighth Circuit affirmed its stance "that an employee's reassignment, absent proof of harm resulting from that reassignment, is insufficient to constitute an adverse employment action."

### Arguments

In her petition to the U.S. Supreme Court, Muldrow argues that any forced transfer constitutes an adverse employment action even when, as the parties both admit here, the transfer involved minor changes in working conditions and no reduction in pay or benefits. At the Court's request, the Biden Administration filed a brief supporting Muldrow's position, in which the Administration argued that the Eighth Circuit decision had "no foundation in Title VII's text, structure or purpose."

The defendants insist that there is no true split in the circuits. Rather, they attribute the different outcomes among the circuits to different factual circumstances, not to materially different legal standards.

### Potential Impact on Employers

Whatever the outcome, the Court's decision will clarify the types of employer decisions that constitute adverse employment actions.

Jackson Lewis attorneys are available to answer questions about the potential impact of the Court's decision and help develop effective policies and procedures around lateral transfers.

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