Employment Law Update
Oct. 2024
Expanded Scope of Title VII

Vanessa A. Gonzalez

Board Certified Labor & Employment Law

vgonzalez@bickerstaff.com

Bickerstaff
Heath Delgado Acosta LLP

Section 703(a) Title VII of the Civil Rights Act of 1964 makes it an unlawful employment practice from employer:

(1) 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; or

(1) To limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Old Rule - *Peterson v. Linear Controls, Inc.*, 757 Fed. Appx. 370 (5th Cir. 2019), abrogated by *Hamilton v. Dallas Cnty.*, 79 F.4th 494 (5th Cir. 2023).

Claims: Title VII Race Discrimination

Facts: Plaintiff was on a team of five white employees and five black employees, and the black employees had to work outside and were not permitted water breaks, while the white employees worked inside with air conditioning and were given water breaks.

Holding on Assignment Issue: These working conditions are not adverse employment actions because they do not concern ultimate employment decisions.

Hamilton v. Dallas Cnty., 79 F.4th 494 (5th Cir. 2023)

Claims: Title VII Sex Discrimination

Facts: Plaintiff one of nine female detention officers. Dallas County adopted a sex-based scheduling policy:

- Male officers can get full weekends off
- Female employees *cannot* get full weekends off; only get weekdays and/or partial weekends off.

Holding: Plaintiff plausibly alleges a disparate treatment claim if she pleads discrimination in hiring, firing, compensation, or the "terms, conditions, or privileges" of her employment. **She need not also show an "ultimate employment decision."** County's admittedly sex-based policy of giving men full weekends off while denying the same to women states a plausible claim under Title VII.

Justice Ho Concurring Opinion: "[O]ur decision today will help restore federal civil rights protections for anyone harmed by divisive workplace policies that allocate professional opportunities to employees based on their sex or skin color, under the guise of furthering diversity, equity, and inclusion."

Harrison v. Brookhaven Sch. Dist., 82 F.4th 427 (5th Cir. 2023)

Claims: Title VII and §1981 Race and Sex Discrimination

Facts: Plaintiff is a teacher and school administrator. School district initially agreed to pay $2,000 for female to attend a Leadership Academy for prospective superintendents, but later refused. They then agreed to and paid for similarly situated white males to attend.

Holding: Plaintiff plausibly allege facts to satisfy the adverse employment action prong. The Complaint alleges more than a *de minimis* injury inflicted on her by the School District's adverse action: the personal expenditure of approximately $2,000. That is not a *de minimis* out-of-pocket injury, particularly when that expense was originally promised to be paid by someone else. Harrison's injury clears the *de minimis* threshold.

Fleming v. Methodist Healthcare Sys., No. SA-21-CV-01234- XR, 2024 WL 1055120 (W.D. Tex. Mar. 11, 2024)

Claims: §1981 Race Discrimination and Retaliation

Facts: Physical Therapist claimed that reassignment of her liaison and scheduling duties during COVID-19 qualified as an adverse employment action. The reassignment:

- Did not affect her job title or compensation
- Plaintiff was still able to perform the role, but just less frequently

Holding: The reassignment changes were not an adverse action because she did not explain how the loss of those duties negatively impacted the terms or conditions of her employment in any way. She also still was able to perform the role from time to time. Example of "***de minimus* workplace trifles**" not covered by employment laws.

Muldrow v. City of St. Louis, Missouri., 601 US 346 (2024)

Claims: Title VII Sex Discrimination

Facts: Plaintiff was transferred out of the Specialized Intelligence Division and replaced by male Officer. In addition:

- Same rank and pay
- No longer worked with high-ranking officials
- Lost access to unmarked take-home vehicle
- Less regular schedule, involving weekend shifts

Procedure: 8th Circuit affirmed summary judgment, finding Plaintiff had to, but could not, show that the transfer caused her a "materially significant disadvantage." SCOTUS granted cert on requirement for "materially significant disadvantage" to be actionable.

Muldrow v. City of St. Louis, Missouri., 601 US 346 (2024)

- **Supreme Court squarely *rejected the notion that Title VII requires*** a plaintiff to show that an allegedly discriminatory act result in ***an injury*** that is "***significant…serious, or substantia*l, or any similar adjective**."

- The Supreme Court joined the D.C. and Fifth Circuits, which had recently reached the same essential conclusion. As the Supreme Court explained, **"the text of Title VII imposes no such requirement**."

- The majority, however, then went further and proclaimed that, while **plaintiffs** are not required to show "significant" harm, they **must nevertheless show that they suffered "some" harm**. "Some harm" not defined.

- Justice Alito Concurring opinion, "I have no idea what this [new standard] means..."

Yates v. Spring Indep. Sch. Dist. No. 23-20441, 2024 WL 3928095 (5th Cir. Aug. 26, 2024)

Claims: ADEA, Title VII, ADA

Facts: Plaintiff transferred from being a lead 8th grade math teacher to a 'push-in' role for the classroom of a 6th grade math teacher for performance management purposes.

- Plaintiff was no longer a lead teacher responsible for his own classroom.
- Frequently called out of classroom to monitor metal detectors and restrooms or to cover other teachers' classrooms.

Holding on Assignment Issue: Reassignment to the "push- in" position constituted an adverse employment action under ADEA, Title VII, and ADA.

Preciado v. Recon Sec. Corp., No. EP-23-CV-00052-RFC, 2024 WL 3512081 (W.D. Tex. July 23, 2024)

Claims: TLC Sexual Harassment / Hostile Work Environment

Facts: Plaintiff alleged the company owner sexually harassed her at work.

Holding: Plaintiff argued *Hamilton* and *Muldrow* no longer require sexual harassment claims to contain evidence of severe or pervasive harassment to be actionable. Court disagreed. HWE claims do not have a required element of an adverse employment action, and therefore, the question of whether the alleged employment action affected a term, condition, or privilege of employment still exists. This requires an analysis of whether the alleged incidents of sexual harassment were "adequately severe or pervasive" to alter the terms, conditions, or privileges of employment

Employment Law Update
10-10-24
Expanded Scope of Title VII

Vanessa A. Gonzalez

Board Certified Labor & Employment Law

vgonzalez@bickerstaff.com

Bickerstaff
Heath Delgado Acosta LLP