Muldrow's Impact After Two Years: Adverse Action Forever Changed?

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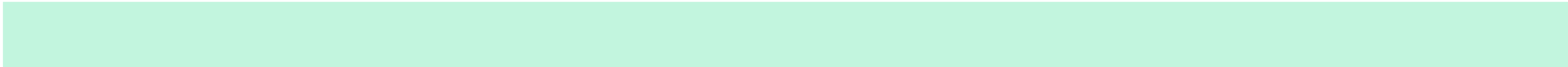

Glenn Duhl represents management in employment law and litigation. He is an experienced litigator who plans smart strategies to deliver a win to his clients in trials before federal and state court judges, juries and arbitrations. Representative matters include breach of contract, wrongful termination, discrimination, defamation, restrictive covenant claims, wage and hour, emotional distress, sexual harassment and class action litigation.

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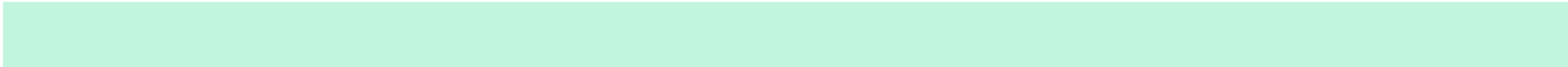
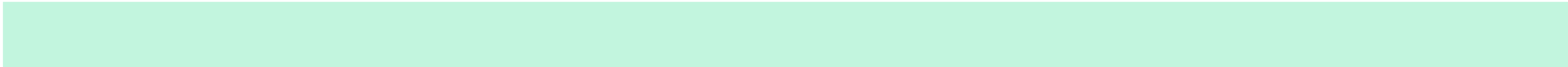
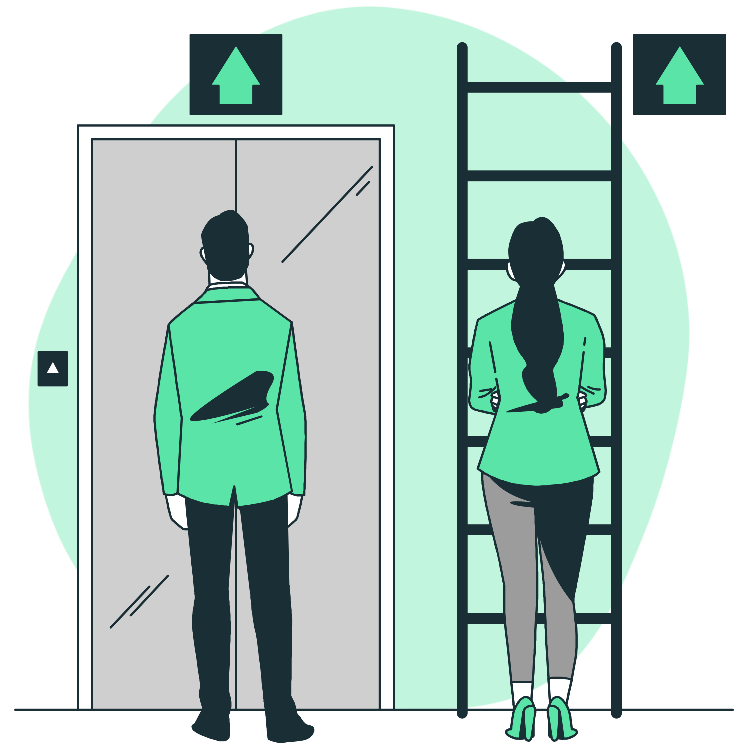


Holly Sutton is co-managing partner of Farella Braun + Martel. Holly guides businesses, compensation committees, and boards in managing critical employment matters. Holly helps her clients navigate reductions in force, realignment of workforces, mergers, acquisitions, and divestitures. She also defends clients in wrongful termination and employment discrimination actions, including claims for race, age, sex, disability, and pregnancy discrimination as well as trade secret, accommodation, and employee solicitation actions. Before becoming a co-managing partner at Farella, Holly served as chair of the Employment Practice Group.

Holly L. Sutton



Background: *Muldrow v. City of St. Louis*



Background: *Muldrow v. City of St. Louis*

- From 2008 to 2017, Sergeant Jatonya Clayborn Muldrow ("Sgt. Muldrow") served as a plain clothes officer in the St. Louis Police Department's Intelligence Division.

- In 2017, after becoming the Intelligence Division commander, Captain Michael Deeba asked the Department to transfer Sgt. Muldrow out of the unit. Against, Sgt. Muldrow's wishes, the Department granted her transfer.

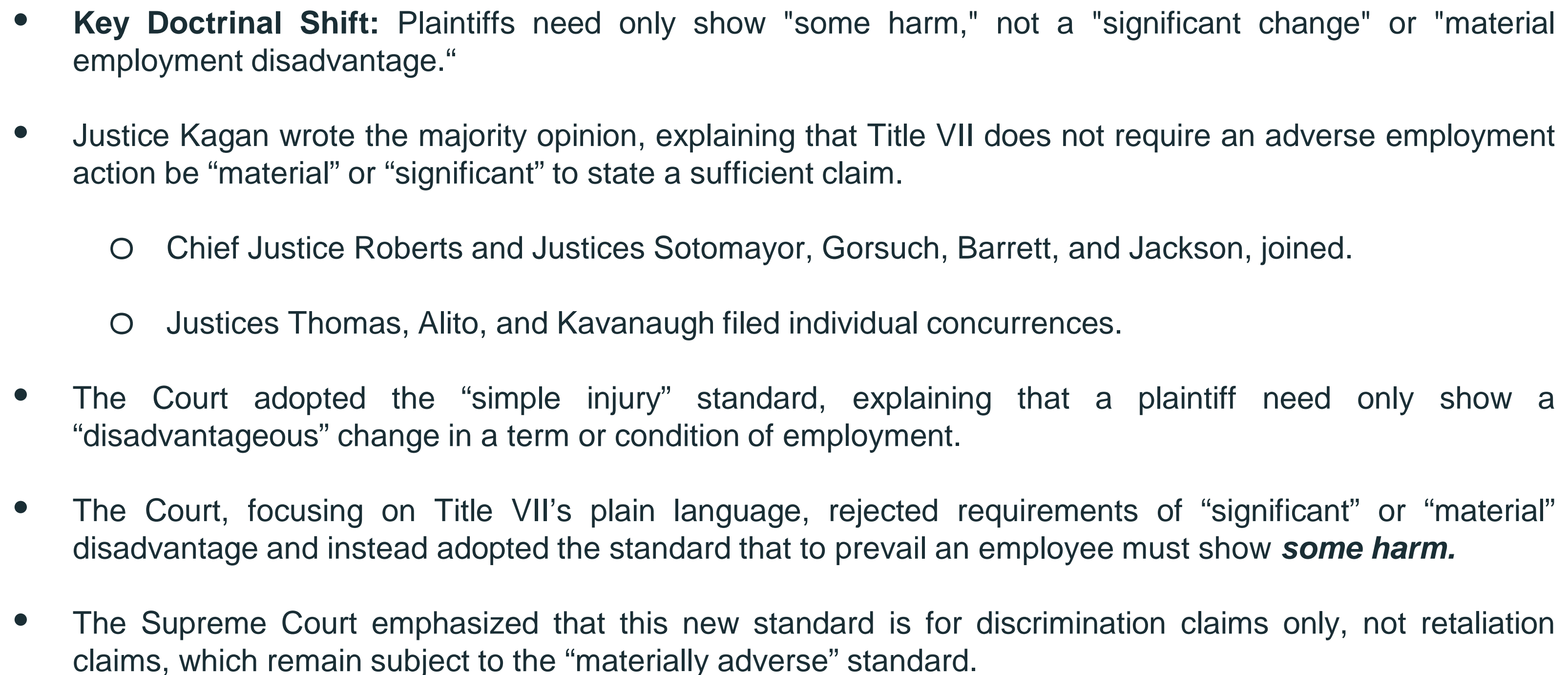
- The Department transferred Sgt. Muldrow to a lateral position, without loss in pay or rank, but to a less prestigious role with fewer supervisory duties and no take-home vehicle, allegedly due to sex discrimination.

- The District Court and Appeals Court dismissed her claim, citing the Eighth Circuit's requirement for a "significant" change in working conditions that she could not demonstrate under this standard.

    - The legal standard required proof of materially adverse employment action, involving economic impact or clear detriment to status or opportunity.

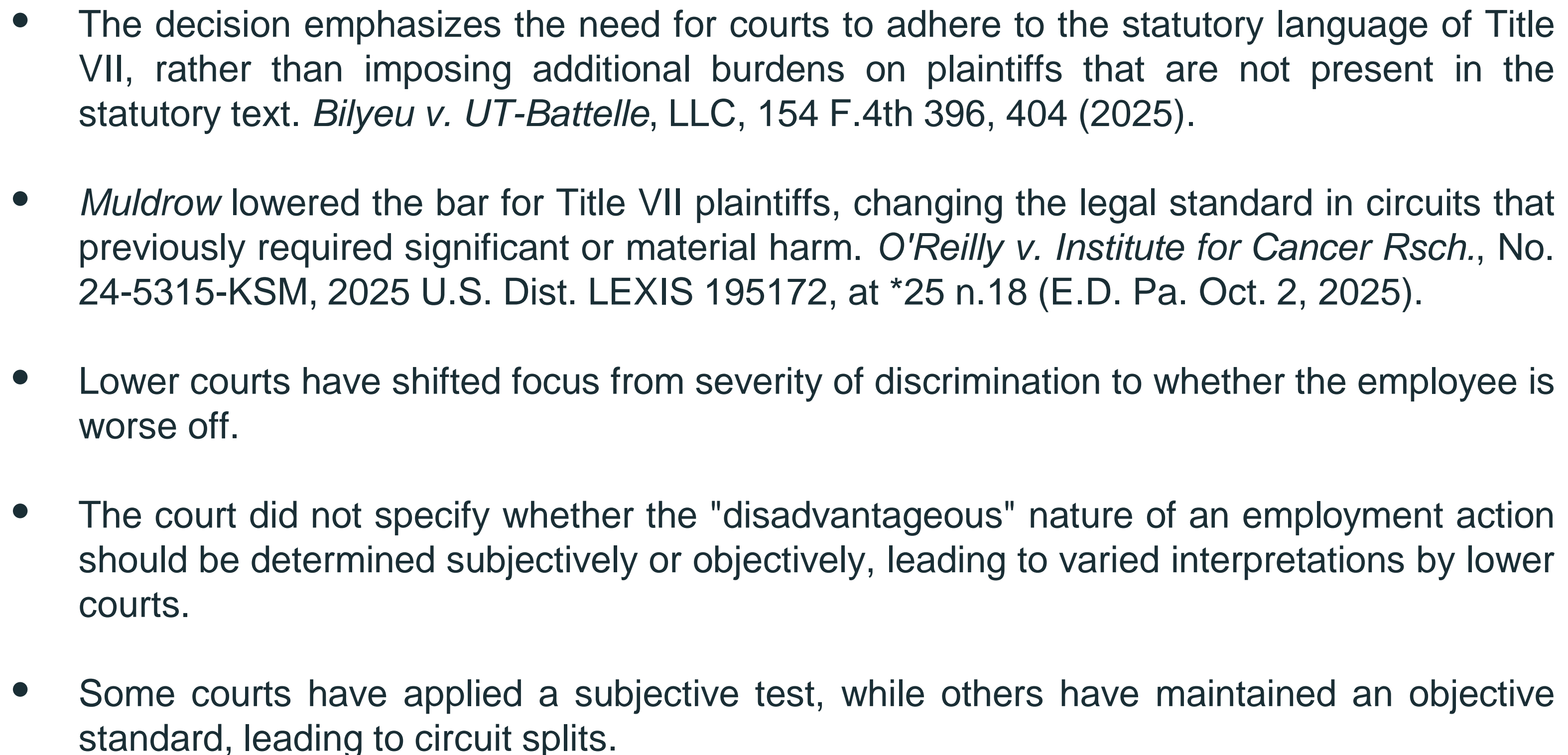
The Supreme Court's Decision in *Muldrow*

The Supreme Court's Decision in *Muldrow*



- **Key Doctrinal Shift:** Plaintiffs need only show "some harm," not a "significant change" or "material employment disadvantage."
- Justice Kagan wrote the majority opinion, explaining that Title VII does not require an adverse employment action be “material” or “significant” to state a sufficient claim.
  - Chief Justice Roberts and Justices Sotomayor, Gorsuch, Barrett, and Jackson, joined.
  - Justices Thomas, Alito, and Kavanaugh filed individual concurrences.
- The Court adopted the “simple injury” standard, explaining that a plaintiff need only show a “disadvantageous” change in a term or condition of employment.
- The Court, focusing on Title VII's plain language, rejected requirements of “significant” or “material” disadvantage and instead adopted the standard that to prevail an employee must show ***some harm.***
- The Supreme Court emphasized that this new standard is for discrimination claims only, not retaliation claims, which remain subject to the “materially adverse” standard.

The Supreme Court’s Decision in *Muldrow*



- The decision emphasizes the need for courts to adhere to the statutory language of Title VII, rather than imposing additional burdens on plaintiffs that are not present in the statutory text. *Bilyeu v. UT-Battelle*, LLC, 154 F.4th 396, 404 (2025).

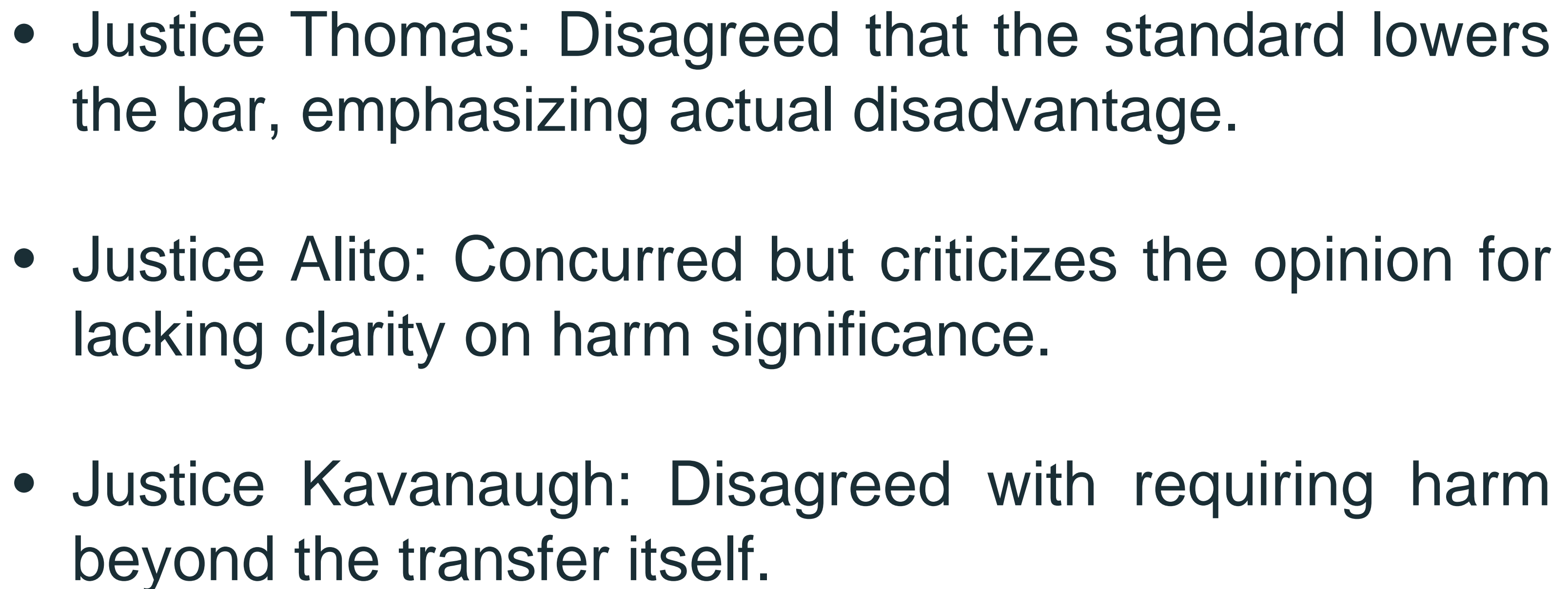
- *Muldrow* lowered the bar for Title VII plaintiffs, changing the legal standard in circuits that previously required significant or material harm. *O'Reilly v. Institute for Cancer Rsch.*, No. 24-5315-KSM, 2025 U.S. Dist. LEXIS 195172, at *25 n.18 (E.D. Pa. Oct. 2, 2025).

- Lower courts have shifted focus from severity of discrimination to whether the employee is worse off.

- The court did not specify whether the "disadvantageous" nature of an employment action should be determined subjectively or objectively, leading to varied interpretations by lower courts.

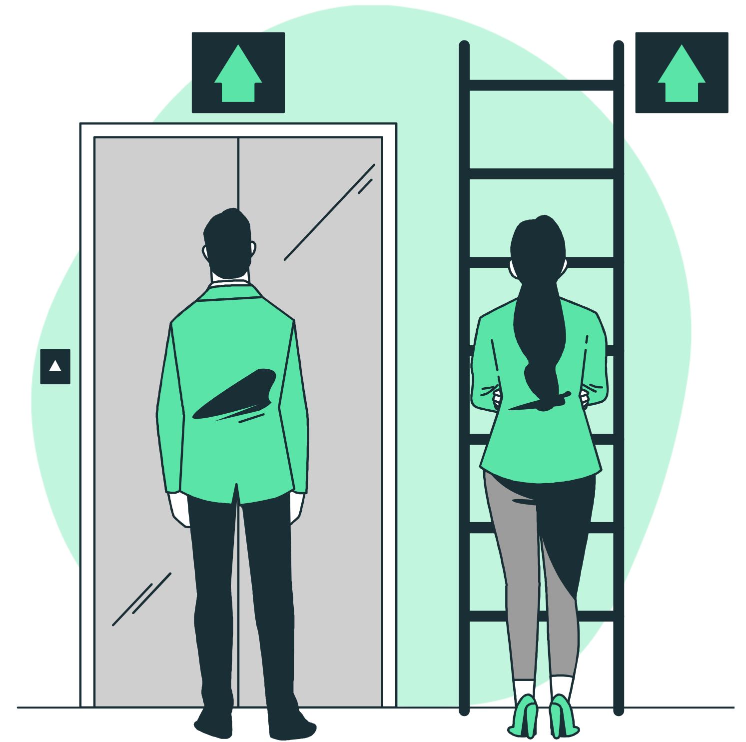
- Some courts have applied a subjective test, while others have maintained an objective standard, leading to circuit splits.

Concurrences in *Muldrow*



- Justice Thomas: Disagreed that the standard lowers the bar, emphasizing actual disadvantage.
- Justice Alito: Concurred but criticizes the opinion for lacking clarity on harm significance.
- Justice Kavanaugh: Disagreed with requiring harm beyond the transfer itself.

“Some Harm” Standard



From “Significant Harm” to “Some Harm”

- In the past, courts required "significant" or "material employment disadvantage.“
- Now, plaintiffs need only show "some harm" and a "disadvantageous" change to a term or condition of employment..
  - *Muldrow* holding: a Title VII plaintiff must show "some harm" as to an identifiable term or condition of employment; no need to show significant harm.
  - Effect: the decision changes any circuit standard requiring "significant," "material," or "serious" injury and lowers the bar for Title VII plaintiffs.
  - However, one thing that remains unchanged is that courts still require an "injury respecting . . . employment terms or conditions" and a change to the "what, where, or when" of work.

“Some Harm” Findings in Favor of Employers

Examples of court cases where the "some harm" standard was interpreted in favor of employers and courts ruled that complained-of actions did not constitute an adverse employment action:

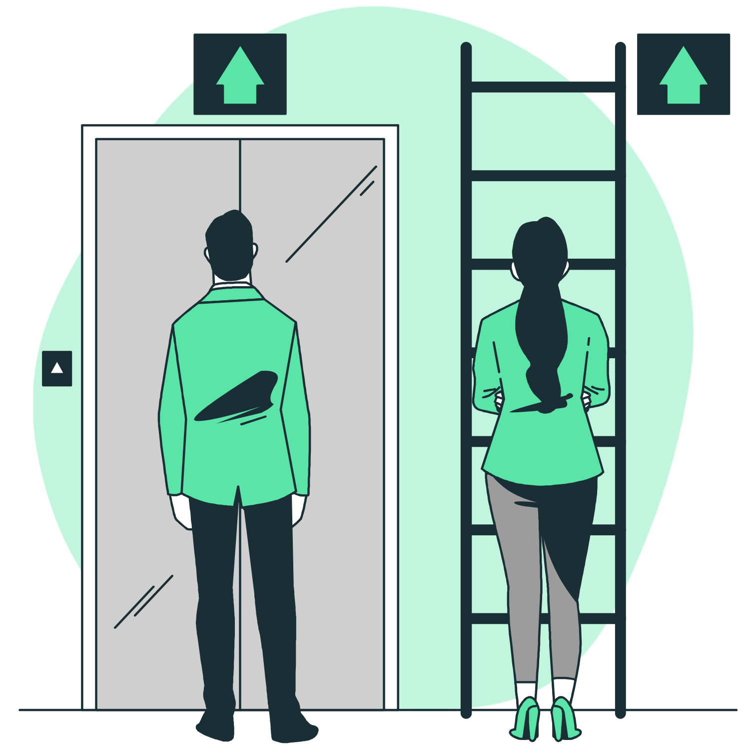
- *O'Horo v. Bos. Med. Ctr. Corp.*, 131 F.4th 1 (1st Cir. 2025).: Administrative error without actual adverse action.
- *Rios v. Centerra Grp. LLC*, 106 F.4th 101 (1st Cir. 2024).: Admonishment without formal consequences.
- *Budhan v. Brightworks Sustainability LLC*, 2025 U.S. Dist. LEXIS 56557 (S.D.N.Y. Mar. 26, 2025).: Undesirable work assignments.
- *Williams v. Memphis Light, Gas & Water*, No. 23-5616, 2024 U.S. App. LEXIS 17623 (6th Cir. July 16, 2024).: Temporary relocation pending investigation.

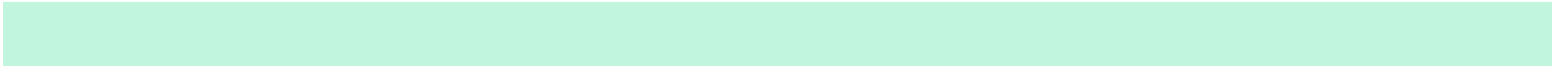
“Some Harm” Findings in Favor of Employees

Examples of court cases where the "some harm" standard was interpreted in favor of employees:

- *Riggs v. Akamai Technologies*, No. 1:23-CV-06463-LTS, 2024 U.S. Dist. LEXIS 119502 (S.D.N.Y. July 8, 2024).: Reassignment to less prestigious accounts and exclusion from networking opportunities.
- *Peifer v. Pennsylvania*, 106 F.4th 270 (3d Cir. 2024).: Denial of pregnancy accommodation.
- *Cole v. Grp. Health Plan, Inc.*, 105 F.4th 1110 (8th Cir. 2024).: Public scrutiny from vaccination requirements.
- *Ciotti v. City of New York*, No. 23 Civ. 10279 (ER), 2025 U.S. Dist. LEXIS 14260 (S.D.N.Y. Jan. 27, 2025).:Involuntary leave with conditions for reinstatement.
- *Herkert v. Bisignano*, 151 F.4th 157 (4th Cir. 2025).: Job reassignments may constitute an adverse employment action under the *Muldrow* standard in the Fourth Circuit.

Recommendations for Employers



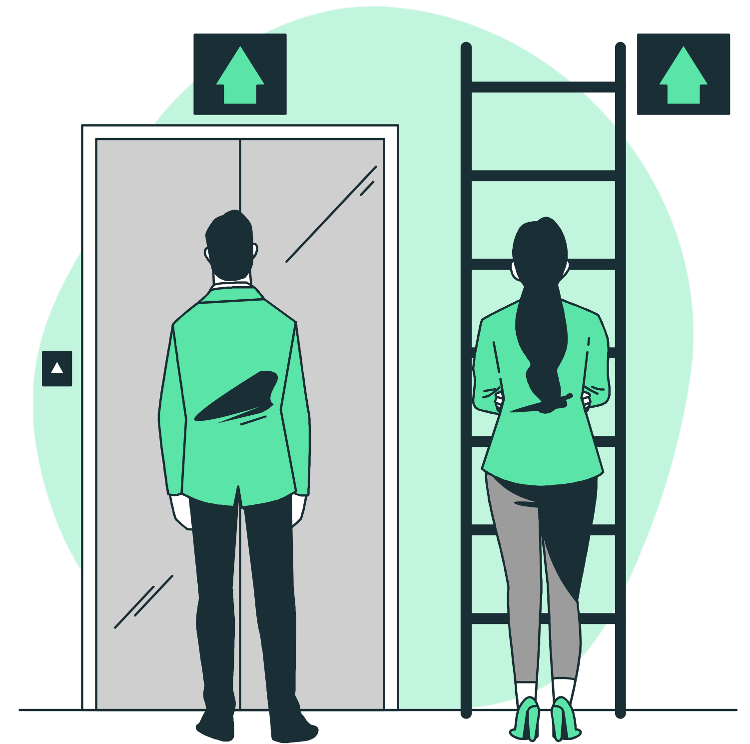


Recommendations for Employers

- In an article written for the American Bar Association's Labor and Employment Law News, author Carrie H. Grundmann recommends "[e]mployers . . . train their staff to ensure they have adequately documented and justified any change or difference in" including, but not limited to, "duties, tasks, [and] disciplinary actions." Carrie H. Grundmann, *The Impact of Muldrow v. St. Louis on Adverse Actions Under Federal Discrimination Laws,* American Bar Association, May 12, 2025, https://www.americanbar.org/groups/labor_law/resources/magazine/2025-winter/impact-muldrow-v-st-louis-actions-federal-discrimination-laws/.

- Employers will have to revisit their risk tolerance for litigation because cases that pre-*Muldrow* would not have survived a dispositive motion at an early stage of litigation are now more likely to survive. *Id*.

Recommendations for Employees



Recommendations for Employees

- District and Circuit Courts have extended the “some harm” standard to actions beyond job transfers. There, employees can argue that an employer’s failure to accommodate or the placement of an employee on involuntary leave constitutes an adverse action such that the employee is left “worse off.” Employees should explore whether they can successfully argue that an adverse action other than job transfer leaves them “worse off.”

- *Muldrow* requires that the employee’s alleged “harm” must still relate to a change in an identifiable term or condition of employment, and the employee must be “worse off” to meet the “some harm” standard. Employees should identify a change or changes to the "what, where, or when" to a term of their employment.

- Minor annoyances do not constitute adverse actions and are insufficient to demonstrate that employees are left worse off than before the complained-of action occurred. *See Gabriel v. DSM Biomedical, Inc.,* No. 24-4546, 2025 U.S. Dist. LEXIS 150865 (E.D. Pa. Aug. 6, 2025) (stress is not an actionable adverse employment action.).

Recent Decisions

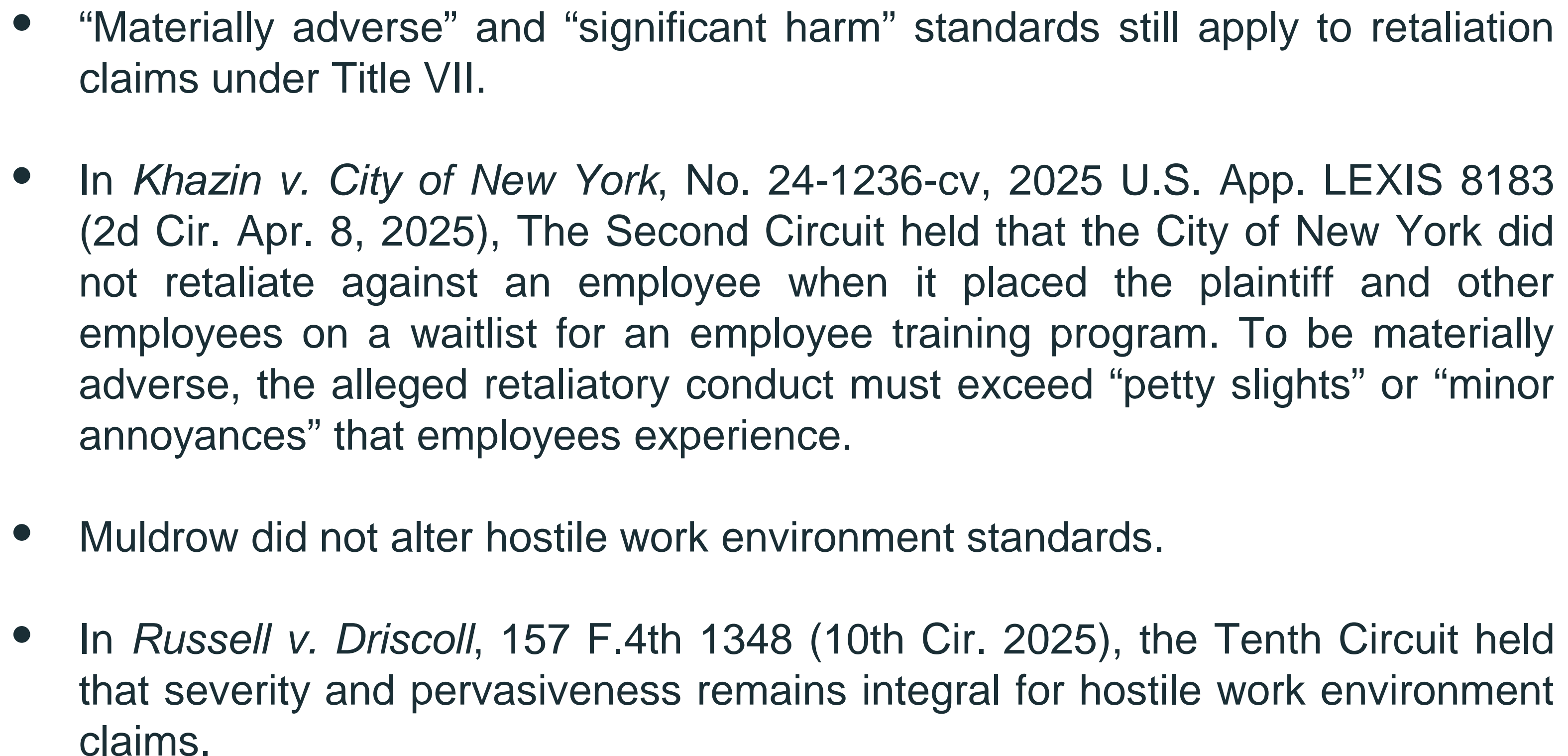
Examples of recent court cases continuing to expand the "some harm" standard:

- *Walker v. Baptist Health System, Inc.*, No. 3:25-cv-588-MMH-SJH, 2025 U.S. Dist. LEXIS 258711 (M.D. Fla. Dec. 15, 2025).: reprimands and write-ups not actionable. Forced "floating" between departments plausibly disadvantageous at pleading stage.

- *Gabriel v. DSM Biomedical, Inc.,* No. 24-4546, 2025 U.S. Dist. LEXIS 150865 (E.D. Pa. Aug. 6, 2025).: stress alone insufficient and counseling letter with no change to "what, where, or when" not adverse.

- *Martinez-Lopez v. Gfa Alabama Inc.*, 797 F. Sup. 3d 1309 (N.D. Ga. 2025).: mandatory overtime allegations may meet *Muldrow*'s “some harm.”

Retaliation & Hostile Work Environment



- "Materially adverse" and "significant harm" standards still apply to retaliation claims under Title VII.

- In *Khazin v. City of New York*, No. 24-1236-cv, 2025 U.S. App. LEXIS 8183 (2d Cir. Apr. 8, 2025), The Second Circuit held that the City of New York did not retaliate against an employee when it placed the plaintiff and other employees on a waitlist for an employee training program. To be materially adverse, the alleged retaliatory conduct must exceed "petty slights" or "minor annoyances" that employees experience.

- Muldrow did not alter hostile work environment standards.

- In *Russell v. Driscoll*, 157 F.4th 1348 (10th Cir. 2025), the Tenth Circuit held that severity and pervasiveness remains integral for hostile work environment claims.

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