

Lowering the Legal Standard for Establishing Workplace Harassment Claims

Labor & Employment Law Update

By Kevin Kleine and Jeffrey Risch on April 10, 2025

In the wake of the U.S. Supreme Court's April 2024 decision in *Muldrow v. City of St. Louis*, some federal courts feel compelled or justified applying the same rationale to lower the standard to prove up workplace harassment claims. This will likely pave the way for more workplace harassment lawsuits to reach a jury, which in turn will lead to more harassment lawsuits being filed against employers.

Recent Caselaw Development for Human Resources to Know and Note

In *Muldrow*, the Supreme Court eliminated the “significant harm” standard that many federal courts applied for decades in Title VII disparate treatment cases, which required plaintiffs to show that they suffered “significant” harm respecting the terms or conditions of their employment in order to prove they were discriminated against because of a protected trait (i.e., race, color, religion, sex, or national origin). The Court reasoned that the statutory language of Title VII does not require plaintiffs to prove or show that they suffered significant harm in intentional discrimination cases. Rather, they only have to show that they suffered “some harm” with respect to an identifiable term or condition of employment. The Court thereby lowered the bar for employees to prove intentional discrimination because of a protected trait. Further, the Court stated that plaintiffs only have to show they were “**worse off**” because of the alleged adverse employment action.

Since *Muldrow*, some federal courts have applied the “some harm” standard to workplace harassment claims. In fact, the U.S. Court of Appeals for the Sixth Circuit held in *McNeal v. City of Blue Ash* that hostile work environment claims similarly do not require plaintiffs to show “significant harm.” More specifically, plaintiffs alleging a hostile work environment only have to prove the work environment produced “some harm” respecting an identifiable term or condition of employment. The Sixth Circuit further stated that plaintiffs only have to show that the work environment would reasonably be **perceived** as hostile or abusive. Importantly, the Sixth Circuit concluded:

McNeal does not need to show that “each incident of harassment standing alone is sufficient to sustain the cause of action,” but that the incidents, taken

together, make out such a case. Because the facts here present a close call regarding severity, we decline to do the jury's job for it: McNeal cites enough evidence for a reasonable juror to conclude he was subjected to a hostile work environment.

[T]he "totality of the circumstances" approach requires us to examine McNeal's treatment cumulatively to see whether it created an atmosphere of hostility that was more than the sum of its parts. McNeal can defeat summary judgment if the incidents and conduct he alleges, taken together, are pervasive enough to alter the conditions of his employment, even if each is only irritating in isolation.

Key Takeaways for Employers

These recent decisions are significant and their impact will likely change how employers manage the workplace and how employers consider litigation strategy when faced with legal challenges. It's imperative for employers to ensure employees—particularly managers and supervisors—are properly trained on anti-discrimination, anti-harassment, and anti-retaliation employment practices. In *McNeal*, the Sixth Circuit seized upon allegations that the plaintiff was subjected to increased scrutiny by his supervisor and that such scrutiny helped create a hostile work environment. Employers should also consult experienced labor and employment counsel to review the pros and cons of private arbitration agreements. If the federal courts are going to make dismissal through summary judgement more difficult, then arbitration could be a route employers may want to take in order to prevent the costs and risks associated with a jury trial.

Lowering the Legal Standard for Establishing Workplace Harassment Claims