

No. 26-1378

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

DAVID LIN,
Plaintiff-Appellant,

v.

FRANCISCAN ALLIANCE, INC. and FRANCISCAN PHYSICIAN
NETWORK,
Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Indiana, No. 4:21-cv-00057
Hon. Philip P. Simon, United States District Judge

BRIEF OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
AS AMICUS CURIAE IN SUPPORT OF APPELLANT

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STATEMENT OF INTEREST

Congress charged the Equal Employment Opportunity Commission (“Commission”) with administering and enforcing Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* (“Title VII”). This appeal raises important questions about the correct standard for assessing whether an employer’s conduct was sufficiently adverse to the plaintiff to support a Title VII discrimination claim.

Here, the district court granted summary judgment to the defendant, concluding that its alleged discriminatory conduct was not sufficiently adverse to support the plaintiff’s claim because the conduct did not cause the plaintiff to suffer a “significant change in his employment status,” as this Court previously defined the relevant Title VII adversity standard. However, in *Muldrow v. City of St. Louis*, 601 U.S. 346 (2024), the Supreme Court rejected a heightened standard for measuring adversity in the context of Title VII discrimination claims, such as this Court’s “significant change” requirement. Accordingly, the district court’s approach here is contrary to *Muldrow* and this Court’s post-*Muldrow* precedent.

Given the importance of this issue to the Commission’s enforcement efforts, we respectfully offer our views to this Court. As a federal agency,

the Commission is authorized to participate as amicus curiae in the courts of appeals without consent of the parties or separate leave of this Court.

Fed. R. App. P. 29(a)(2).

STATEMENT OF THE ISSUE

1. Whether the district court applied an incorrect standard for determining whether an employer's conduct was sufficiently adverse for purposes of a Title VII discrimination claim.¹

STATEMENT OF THE CASE

A. Statement of the Facts²

In September 2014, Defendant Franciscan Alliance, Inc. ("Franciscan") hired Plaintiff David Lin, who is Taiwanese, as an infectious disease physician and as the Medical Director of its Infection Control Department. District Court Docket No. ("R.") 7 at 3-4; R.123-1 at 5. From the time he began working at Franciscan, Lin was "demeaned, bullied, and harassed" by Caucasian physicians. R.7 at 4; R.93-23 at 2. The harassment

¹ The Commission takes no position on any other issue in this appeal, including whether the Plaintiff can survive summary judgment under the correct legal standard.

² As this Court is reviewing the district court's grant of summary judgment to Franciscan, we present these facts in the light most favorable to Lin as the nonmovant. See *Rongere v. City of Rockford*, 99 F.4th 1095, 1102 (7th Cir. 2024).

increased in early 2020, after Lin told nurses and other staff members that N95 masks provided superior protection to surgical masks and suggested that Franciscan allow N95 mask usage by those members of its staff who had direct contact with COVID and suspected COVID-positive patients. R.93-23 at 3-6. Lin claims that he was yelled at for suggesting these precautions to Franciscan, and that Franciscan rejected his suggestions because of his race and national origin. R.7 at 5, 10; R.93-23 at 3.

Throughout 2020 and 2021, Franciscan's Medicine Standards Committee ("MSC") submitted several of Lin's cases to internal or external peer review. *See* R.155 at 4-6. The reviewers deemed Lin to have deviated from the standard of care in a subset of those cases. *See id.* (discussing results of peer review process). During this peer review process, Lin complained to Franciscan about the behavior of several different doctors. *See* R.93-4; R.93-21; R.93-22; *see also* R.155 at 7 (citing sealed exhibits). In April 2021, following the external peer review, the MSC requested that Lin complete ten hours of continuing medical education ("CME") related to antibiotic stewardship. R.82-14 at 10. Lin disputed the recommendation that he complete the CME hours. *See* R.82-14 at 10. Later, Lin attended Franciscan's August 2021 Medical Executive Committee ("MEC") meeting

to discuss concerns identified in relation to his prescription of antibiotics, and the MEC voted to suspend him. R.124-2 at 44. That same month, Lin filed suit against Franciscan alleging race and national origin discrimination and retaliation. R.1; R.7-4. In September 2021, Lin resigned from Franciscan. R.91-12; R.91-13.

In the district court, Franciscan moved for summary judgment on all of Lin's claims, arguing in relevant part that Lin had not suffered an adverse employment action. *See* R.83 at 9-14; R.133 at 1, 9. Lin countered that his constructive discharge qualified as an adverse employment action.³ *See* R.119 at 11-12, 17. Neither party addressed *Muldrow* and the changes it made to the adversity standard for certain Title VII discrimination claims. *See* R.83 at 9-14; R.119 at 11-12, 17; R.133 at 1, 9.

³ Although Lin's amended complaint alleged that Franciscan took a number of adverse employment actions against him, including failing to investigate his complaints, excessively scrutinizing his work, groundlessly questioning his professionalism, and subjecting him to sham review processes, *see* R.7 at 10, Lin's summary judgment briefing addressed these actions primarily in the context of his hostile work environment claim, *see* R.119 at 3-8.

B. District Court Decision

The district court granted summary judgment to Franciscan. R.155 at 35. After dispensing with Lin's hostile-work-environment claim on causation grounds, the court turned to his other national origin and race discrimination claims. *Id.* at 20. The court concluded that Lin could not make out a prima face case of discrimination because "he has no evidence that he was subjected to an adverse employment action." *Id.* at 22.

The court first stated that "[n]ot everything that makes an employee unhappy is an actionable adverse action." *Id.* (citing *Chi. Tchrs. Union, Loc. 1 v. Bd. of Educ. of City of Chi.*, 419 F. Supp. 3d 1038, 1046 (N.D. Ill. 2020) (quoting *Nichols v. S. Ill. Univ.-Edwardsville*, 510 F.3d 772, 780 (7th Cir. 2007))). It then defined "adverse employment action" as "typically 'a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibility, or a decision causing a significant change in benefits.'" *Id.* (quoting *Chi. Tchrs. Union*, 419 F. Supp. 3d at 1046). The court also cited *Sweeney v. West*, 149 F.3d 550, 556 (7th Cir. 1998), for the proposition that "discrimination under Title VII does not include instances of differential treatment that have little or no effect on an employee's job." *Id.* at 22-23. Later in its decision, the

court described the “dissuade a reasonable worker” standard applicable to retaliation claims as “an easier standard to satisfy” than the “adverse employment action” standard applicable to Title VII discrimination claims under the statute. *Id.* at 30 (quoting *Lesiv v. Ill. Cent. R.R. Co.*, 39 F.4th 903, 912 (7th Cir. 2022)).

The court addressed the instances of discrimination Lin alleged, beginning with Franciscan’s rejection of his PPE recommendations at the start of the COVID-19 pandemic in early 2020. *Id.* at 23. The court determined that since Lin “was never disciplined” by Franciscan regarding his PPE recommendations or related conversations or actions, Franciscan did not subject him to an adverse employment action, and thus “there was no Title VII violation.” *Id.*; *see id.* at 25-26 (“The record . . . is devoid of any evidence that Dr. Lin was subjected to an adverse employment action.”). Turning to Lin’s claim regarding peer reviews, the court assumed without deciding that such conduct could constitute adverse employment actions, but concluded that Lin failed to present sufficient evidence to show pretext. *Id.* at 24-25. The court also rejected his constructive discharge and retaliation claims. *Id.* at 25, 30.

ARGUMENT

The district court's adverse employment action analysis conflicts with the Supreme Court's decision in *Muldrow*.

Muldrow altered the standard for assessing the level of adversity required to sustain a Title VII discrimination claim. 601 U.S. at 354-55, 359. Rather than following *Muldrow*, the district court relied on outdated circuit authority employing an adverse action standard that is inconsistent with, and has been displaced by, *Muldrow*.

In relevant part, Title VII makes it unlawful for an employer to discriminate against any individual with respect to his “terms, conditions, or privileges of employment” because of his race or national origin. 42 U.S.C. § 2000e-2(a)(1). Prior to *Muldrow*, this Court required a plaintiff bringing a discrimination claim under that section to show that he had suffered a “materially adverse employment action,” which this Court defined as “one which visits upon a plaintiff ‘a significant change in employment status.’” *Boss v. Castro*, 816 F.3d 910, 917-18 (7th Cir. 2016). This Court further described the class of actionable adverse employment actions as “generally fall[ing] into three categories: (1) termination or reduction in compensation, fringe benefits, or other financial terms of

employment; (2) transfers or changes in job duties that cause an employee's skills to atrophy and reduce further career prospects; and (3) unbearable changes in job conditions, such as a hostile work environment or conditions amounting to constructive discharge." *Reives v. Ill. State Police*, 29 F.4th 887, 894 (7th Cir. 2022) (quoting *Barton v. Zimmer*, 662 F.3d 448, 453-54 (7th Cir. 2011)). This Court also excluded from its adverse employment action definition employer conduct that did not result in a "tangible job consequence" for the employee. *E.g. Robertson v. Dep't of Health Servs.*, 949 F.3d 371, 383 (7th Cir. 2020) (citing *Castro*, 816 F.3d at 919).

Muldrow rejected this heightened "significant change" standard. In *Muldrow*, the Supreme Court clarified that Title VII's "terms, conditions or privileges of employment" language requires a plaintiff to show only that her employer took an action that caused "some harm respecting an identifiable term or condition of employment." 601 U.S. at 354-55; *see also id.* at 359 (plaintiff "need only show some injury respecting her employment terms or conditions").

Under this "simple injury standard," the Supreme Court explained, a plaintiff "does not have to show . . . that the harm incurred was 'significant' . . . [o]r serious, or substantial, or any similar adjective suggesting that the

disadvantage to the employee must exceed a heightened bar.” *Id.* at 355-356 & n.2 (citation omitted); *see also Arnold v. United Airlines, Inc.*, 142 F.4th 460, 470 (7th Cir. 2025) (recognizing that after *Muldrow*, “[i]t is not necessary to meet a ‘heightened threshold of harm,’ such as demonstrating ‘significant harm’ or a ‘materially adverse’ action” (citing *Muldrow*, 601 U.S. at 353 & n.1)). Nor is that provision limited to “economic or tangible” harm. *Muldrow*, 601 U.S. at 354 (citation modified).

Muldrow explicitly recognized that, in adopting a “some harm” standard, it abrogated circuit precedent that imposed any more demanding standards for measuring actionable discriminatory conduct. As the Supreme Court stated, “this decision changes the legal standard used in any circuit that has previously required ‘significant,’ ‘material,’ or ‘serious’ injury,” and “[i]t lowers the bar Title VII plaintiffs must meet.” *Id.* at 356 n.2. That includes this Court’s pre-*Muldrow* adverse employment action standard. *See Thomas v. JBS Green Bay, Inc.*, 120 F.4th 1335, 1337 (7th Cir. 2024) (“Decisions requiring allegations of ‘significant’ or ‘material’ injury did not survive *Muldrow*.”).

Although *Muldrow* addressed a forced transfer, *see* 601 U.S. at 350, nothing in the decision suggests its holding is limited to such actions. To

the contrary, the Supreme Court “made clear that its interpretation stemmed from Title VII’s generally applicable statutory language.” *McNeal v. City of Blue Ash*, 117 F.4th 887, 900 (6th Cir. 2024) (citing *Muldrow*, 601 U.S. at 353 n.1). Consistent with that understanding of Title VII and *Muldrow*, this Court has already extended *Muldrow*’s holding to discrimination cases that do not involve transfers. *See Arnold*, 142 F.4th at 470 (rejecting the defendant’s argument that *Muldrow* is limited to transfer cases); *Thomas*, 120 F.4th at 1336-37 (applying *Muldrow* in a non-transfer context).

We also note that, contrary to the district court’s assertion that showing adversity is easier under Title VII in a retaliation suit than a discrimination suit, *see* R.155 at 30, *Muldrow* discussed the significant differences between those standards and did not hold that one is “easier” to satisfy than the other. *See* 601 U.S. at 357-58; *see also id.* (explaining the retaliation standard’s unique requirements as having been adopted “for reasons peculiar to the retaliation context” that are “beside the point” in the discrimination context); *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 63 (2006) (explaining that Title VII’s discrimination and retaliation provisions “differ not only in language but in purpose as well,” with the

former seeking to prevent status-based harms and the latter aiming to prevent harm due to an individual's conduct).

Here, the district court did not mention or apply *Muldrow's* "some harm" standard in assessing whether the conduct Lin challenged was actionable under Title VII. *See* R.155 at 20-23. Instead, the district court erroneously applied pre-*Muldrow* cases that imposed the discredited "significant change" requirement on Title VII plaintiffs. *See* R.155 at 22-23 (citing pre-*Muldrow* Seventh Circuit and district court decisions). Just as in *Arnold*, in this case "[t]here is no question that the district court incorrectly applied a pre-*Muldrow*" standard. 142 F.4th at 470. And the district court further erred in characterizing the standard required to establish a prima facie claim of retaliation as "easier . . . to satisfy" than the standard applying to discrimination. *See* R.155 at 30. Instead, as re-emphasized in *Muldrow*, the standards are simply different. *See Muldrow*, 601 U.S. at 357-58; *White*, 548 U.S. at 63.

We acknowledge that Lin's arguments on summary judgment focused primarily on his hostile work environment and constructive discharge claims, which the district court addressed without invoking the problematic "significant change" standard. *See* R.155 at 11-20, 25-27. But

the district court separately addressed the adverse employment action question in response to Lin’s assertions that Franciscan wrongly denied his recommendations about PPE and subjected him to excessive internal and external peer review. *See id.* at 20-25. It was in this context that the court applied the incorrect, pre-*Muldrow* standard. *Id.* at 22-23.

We further note that continued circuit court direction on *Muldrow* is necessary because, despite this Court’s recognition of *Muldrow*’s change to the adversity standard, lower courts continue to apply the outdated “significant change” standard. Indeed, even in the short time since the district court here issued its summary judgment decision, several other district courts within the circuit have issued opinions relying on the rejected Title VII discrimination standard, without any mention of *Muldrow* or its “some harm” standard. *See, e.g., Stephenson v. Champaign Cmty. Sch. Dist. No. 4*, No. 23-CV-2081, 2026 WL 1049188, at *11-12 (C.D. Ill. Mar. 9, 2026) (in Title VII discrimination suit, employing the “significant change in employment status” standard in concluding the plaintiff did not show an adverse action sufficient to survive summary judgment); *Peaster v. McDonald’s Corp.*, No. 22-CV-7037, 2025 WL 3470499, at *4 (N.D. Ill. Nov. 5, 2025) (in Title VII discrimination suit, employing the “significant change in

employment status” standard in concluding the plaintiff had shown an adverse action sufficient to survive summary judgment).

CONCLUSION

For the foregoing reasons, the Commission respectfully requests that this Court hold that the district court erred in its approach to analyzing whether Franciscan’s conduct was sufficiently adverse to Lin to support his Title VII discrimination claim.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Seventh Circuit Rule 29 because it contains 2,472 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

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CERTIFICATE OF SERVICE

I certify that on June 15, 2026, I electronically filed the foregoing brief in PDF format with the Clerk of Court via the appellate CM/ECF system. I certify that all counsel of record are registered CM/ECF users, and service will be accomplished via the appellate CM/ECF system.

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