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High Court Muldrow Opinion Tops 2024's Biggest Bias Rulings

By **Vin Gurrieri**

Law360 (December 17, 2024, 1:56 PM EST) -- In 2024, the U.S. Supreme Court lowered the bar for workers looking to pursue bias suits over job transfers while appeals courts tackled charged topics like diversity training seminars and the use of racial slurs at work.

Here, Law360 looks at four decisions from the past year that will leave a lasting imprint on antidiscrimination law.

Justices Enshrine Worker-Friendly Take on "Adverse Action"

The U.S. Supreme Court said in its Muldrow decision in April that workers need only show "some injury" and that they were left "worse off" by a job transfer to press a Title VII claim. (Francis Chung/Politico via AP Images)

At the top of the list of notable decisions in discrimination cases in 2024 was the Supreme Court's unanimous ruling in April that endorsed a broad view of the types of adverse actions against workers that can spur viable discrimination claims under Title VII of the Civil Rights Act.

In an opinion written by Justice Elena Kagan, the high court said St. Louis police officer Jatonya Muldrow could pursue Title VII claims stemming from a discriminatory departmental transfer to a less prestigious position, even though the move wasn't accompanied by a loss in pay and benefits.

Workers who are transferred need only show "some injury" and that they were left "worse off" by a job transfer to press a Title VII claim, according to the justices, rather than reach a higher standard some courts had applied.

The Muldrow decision not only effectively resolved splits in appellate circuits about the level of harm plaintiffs have to show to have an actionable Title VII case but will likely reverberate across other anti-bias statutes, according to Ruth Vafek, a partner at Berger Singerman LLP.

"Because courts have adopted the standards of Title VII in evaluating claims brought under other antidiscrimination laws like the [Americans with Disabilities Act] and [the Age Discrimination in Employment Act], Muldrow is likely to have an impact in those areas as well," Vafek said.

The ruling also made clear to employers that a variety of actions against employees could potentially open up a company to legal action.

"What's the takeaway for employers? I think [it's] just to be aware that an employee doesn't need to be demoted or disciplined or fired to plausibly allege that they've been impermissibly discriminated against," Vafek said.

The case is Muldrow v. St. Louis, case number 22-193, in the Supreme Court of the United States.

7th Circ. Clarifies Parameters for Work Training Protests

An increasingly contentious issue in employment discrimination law in recent years has been the extent to which employers can legally structure diversity, equity and inclusion programs, including training seminars, without running afoul of antidiscrimination laws.

In July, the Seventh Circuit delved into the topic when it upheld Honeywell International Inc.'s win in a Title VII suit lodged by Charles Vavra, a white former employee who alleged he was illegally fired for skipping a mandatory training tied to the company's DEI program.

A three-judge panel rejected Vavra's bid to reopen his suit alleging the company committed race discrimination and retaliation in violation of Title VII and Illinois state law when it fired him in 2021 for protesting an unconscious bias training and other DEI-related communications from higher-ups that he believed were biased against white workers.

The mandatory unconscious bias training Vavra targeted was an approximately 30-minute web-based session that included videos and concluded with a quiz. It was part of a broader bias awareness initiative implemented by Honeywell's DEI office, according to the Seventh Circuit's ruling.

In upholding Honeywell's August 2023 trial court victory, the Seventh Circuit said a worker must have an "objectively reasonable belief" that an employer's action is unlawful for their opposition to it to be protected under Title VII.

Vavra, a former principal engineer at Honeywell, couldn't oppose the seminar based on its content since he never actually attended it, the panel held.

"I think for employers, the big picture takeaway here is, for all discrimination and retaliation cases, the standard is whether [an] employee brings forward a complaint that is objectively reasonable," said Jonathan R. Ksiazek, a partner at Neal Gerber & Eisenberg LLP in Chicago.

Any type of diversity training, as well as various antidiscrimination or sexual harassment trainings, "are not going to be objectively discriminatory, at least based on this case," and employers need to meticulously record when and why workers object to workplace trainings, he added.

"Any time an employee comes forward with a complaint, it's important for employers to document what the complaint is actually about to make sure that the employee's complaint is fleshed out such that the basis for [it] is understood, and the belief of why there is or is not discrimination is documented," Ksiazek said. "If it does result in litigation, the company can point to the fact that either the belief wasn't reasonable, or the training itself complied with the law, and, therefore, there wasn't any reasonable basis to believe or claim that was discriminatory."

Chicago-based Duane Morris LLP partner Gerald Maatman said the Seventh Circuit's ruling was "based on

the common sense notion that an employee cannot advance a viable retaliation claim — in this instance, protesting a requirement to participate in a training program and being fired for refusing to do so — where the employee made assumptions about what the training was about but had no actual knowledge of the content of the actual training."

"In other words, the employee's beliefs were speculative, and one cannot mount a viable retaliation claim based on speculation," Maatman added.

But the appeals court didn't address whether adverse employment actions like terminations that stem from a person's sincere objections to unconscious bias training or a variant of DEI training can give rise to a viable claim of retaliation in certain circumstances, he said.

"This question would present the much more difficult issue of whether such objections might be objectively reasonable when measured against the content of the training," Maatman said. "The Seventh Circuit's ruling leaves that issue for another day and another case. So the key takeaway is that a worker's complaint of discrimination is also dependent on the objective reasonableness of the circumstances at issue."

The case is Vavra v. Honeywell International Inc., case number 23-2823, in the U.S. Court of Appeals for the Seventh Circuit.

11th Circ. Calls Fla. Work Training Rules "First Amendment Sin"

Another noteworthy appeals court decision involving workplace training seminars was issued by the Eleventh Circuit in March**,** when the court **r**efused to lift a block on employment-related aspects of Florida's so-called Stop WOKE Act.

Calling the state's policy a "First Amendment sin," a three-judge panel **upheld a preliminary injunction** that barred the state from enforcing parts of the Individual Freedom Act, known colloquially as the **Stop WOKE Act**. The provisions of the law at issue prevented businesses from holding mandatory training that endorses an enumerated set of race- and sex-based ideas that state lawmakers had deemed discriminatory and offensive.

The panel, which consisted of two Trump-era appointees and one Clinton-era pick, rejected Florida's argument that the First Amendment didn't apply since the law targeted employers' conduct — requiring attendance at seminars containing objectionable concepts — rather than their speech. While the appeals court acknowledged that the concepts targeted by the Stop WOKE Act are "embraced in some communities and despised in others," it said the First Amendment "keeps the government from putting its thumb on the scale."

A few months after the Eleventh Circuit's ruling, U.S. District Judge Mark Walker **converted** the preliminary injunction into a permanent one, putting the legislation on ice for good. The judge had **separately blocked** portions of the law that applied in academic settings.

The law, which Florida Gov. Ron DeSantis signed in 2022, listed eight categories of race- and sex-based concepts that were deemed illegal discrimination if taught to workers as a condition of employment or for professional licensing.

Those concepts included any teaching that a person is "morally superior" to another because of their race, sex, color or national origin or that a person is "inherently racist, sexist, or oppressive, whether consciously or unconsciously" based on any of those four characteristics.

The law included a provision clarifying that those concepts could be discussed as part of a training course so long as it is done in "an objective manner without endorsement of the concepts."

Two employers — Honeyfund.com Inc. and Primo Tampa LLC — along with a DEI consultant and her company subsequently challenged the law, arguing that it was an unconstitutional effort to stifle government-disapproved speech and improperly restricted employers' ability to run their businesses as they saw fit.

The Eleventh Circuit said the only way for courts to determine if the content of a mandatory workplace training program is prohibited under the law would be to "find out whether the speaker disagrees with Florida," something the panel called "a classic — and disallowed — regulation of speech."

The Eleventh Circuit case, according to Ksiazek, differed from Vavra because it raised a First Amendment issue, with the appeals court's determining that the state couldn't meet the high legal standard required for restricting speech.

"This was, this was more of a speech issue in the workplace, and what employers could or couldn't tell their employees," Ksiazek said. "And the court determined ultimately that Florida was putting its thumb on the scale on what employers could or could not do with regard to training their employees."

Vafek of Berger Singerman, whose practice is based in Tallahassee, Florida, said the Eleventh Circuit's decision clarified what had been a growing amount of uncertainty among employers in Florida about what exactly they could say to employees as part of training seminars while still meeting their compliance obligations under existing anti-bias statutes.

"We have, obviously, Florida law itself via the Florida Civil Rights Act, and federal laws which apply to many private employers in Florida, and we have to make sure that we comply with those and practically speaking show that we've conducted sufficient training that our employees, particularly supervisors and managers, have been educated on how to comply," Vafek said. "So, it was ... the tension between those two, or at least a perceived tension, that I think created a lot of uncertainty for employers."

While the Honeyfund case is effectively over and the portion of the law pertaining to what private employers can say to employees is unenforceable, what happens next in Florida remains to be seen, she added.

"I will be a little bit surprised if this is the end of this particular type of experiment," Vafek said.

The case is Honeyfund.com Inc. et al. v. Governor, State of Florida et al., case number 22-13135, in the U.S. Court of Appeals for the Eleventh Circuit.

Calif. High Court Says Single Slur Can Spur Suits

In July, the California Supreme Court ruled that a single racial slur by a nonsupervisor can be a valid basis for a harassment suit under the California Fair Employment and Housing Act.

The **unanimous decision** gave new life to a lawsuit by Twanda Bailey, a Black former investigative assistant at the San Francisco District Attorney's Office, who alleged that a co-worker's use of the N-word one time violated FEHA.

The state high court, in a ruling authored by Associate Justice Kelli M. Evans, concluded that an isolated act of harassment can spur claims under FEHA if it is severe enough "in light of the totality of the circumstances" and that a single use of an "unambiguous racial epithet" can clear that legal bar.

"We join the chorus of other courts in acknowledging the odious and injurious nature of the N-word in particular, as well as other unambiguous racial epithets," the justices said. "The N-word carries with it, not just the stab of present insult, but the stinging barbs of history, which catch and tear at the psyche the way thorns tear at the skin."

But in its July 29 ruling, the California Supreme Court said there is "no question that conduct by co-workers may give rise to a claim of harassment," and there is no "magic number of slurs that creates a hostile work environment."

The severity of harassment, the justices said, should be judged "from the perspective of a reasonable person in the plaintiff's position."

Bryan Schwartz of Bryan Schwartz Law PC, a Bay Area firm that represents employees, said the state high court's decision is a landmark ruling, noting that it "gives a big boost" to workers in a **certified harassment class action** he is litigating against Tesla that involves thousands of Black workers at a California factory.

"Bailey was the first decision to hold that a single co-worker N-word usage can suffice for a hostile work environment claim," Schwartz said. "Given the unique, horrific nature of the term, it is not dispositive whether the term is used by a supervisor or nonsupervisor."

The case is Bailey v. San Francisco District Attorney's Office et al., case number S265223, in the Supreme Court of California.

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