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Supreme Court Rejects Heightened "Unusual Employer" Evidentiary Standard, Paving the Way for Reverse Discrimination Claims Under Title VII

The Supreme Court recently revived a heterosexual woman's discrimination claim against her employer, rejecting the addition of a heightened "background circumstances" standard for members of majority groups to establish a prima facie case of discrimination under Title VII of the Civil Rights Act (Title VII). In its unanimous ruling on June 5 in *Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. ____ (2025), the Court resolved a split among federal circuit courts and made clear that all individuals, whether in a majority or minority status, are entitled to the same legal protections and have the same burdens of proof.

Background

The plaintiff in *Ames*, a straight woman, alleged that she experienced discrimination based on her sexual orientation while working for the Ohio Department of Youth Services (the agency). Ames claimed that the agency denied her a promotion and hired a less-qualified lesbian for the position. She also alleged that after she interviewed for the new position, the agency demoted her and then hired a less-qualified gay man to fill her prior role. Ames filed suit alleging that these employment decisions constituted discrimination based on her sexual orientation in violation of Title VII.

Generally, absent direct evidence of discrimination, plaintiffs must set forth a prima facie case of discrimination under the *McDonnell Douglas* burden-shifting framework. *McDonnell Douglas v. Green*, 411 U.S. 792 (1973). That non-onerous burden is met if a plaintiff satisfies various enumerated elements (including membership in a protected class, qualifications for a job and adverse action) and produces enough evidence to support an inference of discriminatory motive. If a plaintiff successfully demonstrates a prima facie case of discrimination, the burden shifts to the employer to articulate a non-discriminatory reason for its actions, and if the employer is able to do so, the plaintiff must show that the stated justification was in fact a pretext for discrimination.

The District Court granted summary judgment to the employer, finding that Ames did not meet her prima facie burden, and the Sixth Circuit affirmed that decision. The courts found that in addition to the typical prima facie elements, Ames needed to provide additional evidence of special background circumstances supporting the alleged discrimination—namely that her employer was the "unusual employer" that discriminates against the majority. The heightened burden followed by these courts required either a showing that a member of the relevant minority group (in this case, a homosexual individual) made the employment decision or statistical evidence demonstrating a pattern of discrimination against members of the majority group. Like the Sixth Circuit, the District of Columbia Circuit, the Seventh Circuit, the Eighth Circuit and the Tenth Circuit all required the heightened burden. The remaining circuits did not.

The Supreme Court held that the heightened background circumstances standard was inconsistent with Title VII, which prohibits discrimination against "any individual" based on protected categories. In the Court's written opinion, Justice Ketanji Brown Jackson stated that it was wrong to require workers in majority groups—including individuals who are white, male or heterosexual—to meet a more difficult test than others who have historically faced discrimination and that the standard for discrimination under federal law "does not vary based on whether or not the plaintiff is a member of a majority group."

In a concurring opinion, Justices Thomas and Gorsuch pointed out the difficulty in determining who is in the "majority," given the composition of employees in different industries or protected categories and argued that it was not the "unusual employer" that discriminated against the majority since some of the country's largest and most prestigious employers did so

under the guise of diversity and affirmative action. These justices also extensively questioned the propriety of using the *McDonnell Douglas* burden-shifting framework in summary judgment determinations and stated that lower courts and litigants are free to proceed without it. Rather, these Justices argued for the use of the Rule 56 summary judgment rule—namely that the movant show that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

Key Takeaways

As a result of the Supreme Court's decision, employers located in the circuits previously requiring the heightened standard are more vulnerable to lawsuits by majority-group members than they were before. It is now clear that Title VII applies broadly and equally to all employees and that the burden of proving a discrimination case for employees belonging to majority or minority groups is the same. However, it is important to note that state and local laws (e.g., New Jersey) may continue to require a heightened burden in matters alleging reverse discrimination.

Employers should confer with experienced employment counsel to ensure that their adverse employment actions, policies and DEI initiatives comply with the ever-changing federal, state and local laws governing employment discrimination.

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