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In Massachusetts, Denial of Lateral Transfer Can Support Discrimination Claim

Massachusetts just identified a new way for employees to assert discrimination claims against their employers. To state a discrimination claim under Massachusetts law, an employee must have been subjected to an adverse employment action, such as termination of employment or denial of a promotion. The Supreme Judicial Court recently ruled that, in appropriate circumstances, the denial of a requested lateral transfer may constitute an adverse employment action.

The case is *Yee v. Massachusetts State Police*, and the plaintiff is Warren Yee, a lieutenant in the Massachusetts State Police. Yee requested a transfer from one police troop to another. He would have earned the same base pay and benefits in either troop, but he testified that the troop to which he sought a transfer had more opportunities for overtime and paid details. The state police denied Yee's transfer request.

Yee sued the state police, alleging that he was denied a transfer based on his age, race, or national origin. The state police moved for summary judgment, and the Superior Court dismissed the case based on its conclusion that Yee had requested a lateral transfer, the denial of which was not an adverse employment action. On appeal, the Supreme Judicial Court vacated that decision and held that where there are material differences between two positions in the opportunity to earn compensation, or in the terms, conditions, or privileges of employment, the failure to grant a lateral transfer to the preferred position may constitute an adverse employment action. An action taken by an employer is an adverse employment action if it is substantial enough to have materially disadvantaged an employee. Such material disadvantage must be objectively apparent to a reasonable person in the employee's position; subjective feelings of disappointment are not enough.

The Supreme Judicial Court held that Yee had offered adequate evidence that he would have had greater opportunities to earn overtime and obtain paid details in the troop to which he sought a transfer, which was enough to satisfy his prima facie burden of showing an adverse employment action. The court remanded the case to the Superior Court to determine whether Yee had presented sufficient evidence that discrimination was the motivating reason for the denial of his transfer request, an issue the Superior Court had not addressed in its initial decision.

By expanding the universe of potential adverse employment actions, the Supreme Judicial Court's *Yee* ruling expands the universe of potential employment discrimination claims. Whether any particular action is an adverse employment action is determined on a case-by-case basis, making it difficult to know in advance whether a particular action will qualify. As always, employers should be careful not to base any decisions on prohibited characteristics, and to document the non-discriminatory reasons for their employment actions.

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