

Massachusetts High Court Rules That a Denial of a Lateral Transfer Could Constitute Actionable Discrimination

The case is Yee v. Mass. State Police, 481 Mass. 290 (2019).

The Massachusetts Supreme Judicial Court (“SJC”) ruled recently that the denial of a lateral transfer to a position that may have better opportunities for increased pay could constitute “adverse action” sufficient to support a claim of discrimination under state law.

WHAT YOU NEED TO KNOW

From 2008 to 2012, Plaintiff Warren Yee, an Asian-American lieutenant in the Massachusetts State police, repeatedly requested to transfer to a different troop station. He believed he would have better opportunities to work overtime and on details in the desired station. The State Police never granted him a lateral transfer, instead opting to nominate several white officers to the post that Yee had requested. He filed suit against the police station alleging he was discriminated against in violation of Ch. 151B, §4. The desired troop, he alleged, offered more opportunities for overtime and paid details, and therefore offered a greater opportunity to increase his overall compensation.

In Superior Court, Yee presented evidence that a coworker had a \$30,000 decrease in earnings when moving from Yee’s desired troop to Yee’s current troop. The Superior Court judge granted a motion for summary judgment in favor of the police, finding Yee had only presented anecdotal evidence, and no evidence that would permit a reasonable jury to conclude that Yee “would have worked the same paid details and just as much overtime” as the coworker.

However, the SJC vacated and remanded this decision, holding that denial of a transfer is “undoubtedly ‘adverse’ where it would deprive the employee of the potential to earn additional ‘compensation’ which – if motivated by discriminatory animus – Ch. 151B expressly forbids.” The SJC concluded that “where an employee can show that there are material differences between two positions in the opportunity for 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 under Ch.151B.”

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**WHAT YOU NEED
TO DO**

This decision presents a challenge to Massachusetts employers as it represents a broader view of “adverse action” in the workplace than historically contemplated. While ultimate employment actions such as termination, demotion or reduced pay are objective examples of “adverse action,” it becomes much more speculative to anticipate when and whether more subjective decisions like transfer and reassignment rise to the level of an adverse action. In any event, employers need to be aware that the net has widened and they should strongly consider consulting counsel when faced with whether to grant or deny a requested transfer or reassignment.

FOR MORE INFORMATION

If you have questions about these developments, please contact one of the following Labor, Employment and Benefits attorneys.

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