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Supreme Court Green Lights “Reverse Discrimination” Complaint

On June 5, the U.S. Supreme Court unanimously held that a claimant in Ohio, Marlean Ames, can move forward with her complaint alleging that her employer discriminated against her because she is heterosexual.

In a 9-0 decision authored by Justice Ketanji Brown Jackson, the court ruled that a “majority-group” plaintiff is not required to meet a higher burden of proof to establish a discrimination claim than is a “minority-group” plaintiff.

Ames initially sued the Ohio Department of Youth Services in November 2020, alleging that she was wrongfully denied a promotion in favor of a lesbian who was not qualified for the role and was then demoted from her position and replaced with a gay man who should not have been eligible to take over her job.

In dismissing the case, the Sixth Circuit Court of Appeals concluded that as a heterosexual woman, Ames needed to provide additional “background circumstances” as evidence that she was a victim of an “unusual employer who discriminates against the majority.” The Sixth Circuit decision further indicated that Ames would have prevailed on her claims of discrimination if she was a lesbian, but because of her lack of minority status, the standard necessary to maintain the discrimination action is higher.

The Supreme Court reversed, noting that the “background circumstances” rule at issue in this case is a judicially created rule applied by the Sixth Circuit, which is also held or suggested to apply in alleged discrimination cases by the Seventh, Eighth, Tenth, and D.C. Circuit Courts of Appeals. The rule has not been applied in all federal circuits when considering alleged discrimination claims. When reversing

the Sixth Circuit’s decision, Justice Brown Jackson pointed to the text of Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, ethnicity, sex, religion, and nation of origin, as the basis for the majority opinion, stating, “As a textual matter, Title VII’s disparate-treatment provision draws no distinctions between majority-group plaintiffs and minority-group plaintiffs.” She went on to say that “Congress left no room for courts to impose special requirements on majority-group plaintiffs alone.” In short, the plain text of Title VII does not require a higher burden of proof for anyone to maintain a discrimination action.

Justices Clarence Thomas and Neil Gorsuch wrote separately calling for the court to examine the broader discrimination framework established in *McDonnell Douglas Corp. v. Green*, a 1973 decision that sets forth the process by which courts are to evaluate employment discrimination claims. The justices warned that the framework may not be a “workable and useful evidentiary tool.”

In sum, the *Ames* decision provides two key takeaways for employers moving forward:

- The decision will make it easier for majority-group employees and applicants to maintain discrimination actions against employers, which may further stimulate the recent spike in “reverse discrimination” cases.
- If the Supreme Court eventually eliminates the broader framework set forth in *McDonnell Douglas*, all precedent and guidance from cases decided after *McDonnell Douglas* will be less relevant. Many questions related to the analysis of discrimination claims will need to be resolved before employers have a sense of clear guidance.

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