United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
September 21, 2023
Lyle W. Cayce
Clerk

No. 21-60771

LaRenda J. Harrison, Ed. D.,

Plaintiff—Appellant,

versus

Brookhaven School District, City of Brookhaven,

Defendant—Appellee.

Appeal from the United States District Court
For the Southern District of Mississippi
USDC No. 5:20-CV-136

Before Willett, Engelhardt, and Wilson, *Circuit Judges*.

Per Curiam:

Until August of 2023, LaRenda Harrison's complained-of acts in this case would not have stated a Title VII claim because they did not concern an "ultimate employment decision" under our older (and narrower) Title VII precedent. But our recent en banc case, *Hamilton v. Dallas Cnty.*, No. 21-10133, —F.4th—, 2023 WL 5316716 at *1 (5th Cir. Aug. 18, 2023), made clear that Title VII requires a broader reading than our "ultimate employment decision" line of cases permitted and thus "end[ed] that interpretive incongruity" by removing that requirement. We thus

REVERSE the District Court's judgment for the reasons discussed below and REMAND for further proceedings consistent with this opinion.

I[1]

LaRenda Harrison is a black female educator and school administrator who works for the Brookhaven School District (the "School District"). Harrison worked as the Director of Alternative Education Services for the School District but aspired to serve as a superintendent. To that end, Harrison sought to attend the Mississippi School Board Association Prospective Superintendent's Leadership Academy, a training program for prospective superintendents. According to Harrison, the School District "established a precedent of paying for every employee's fees after the employee was accepted to attend the program." Harrison asked Roderick Henderson, the Deputy Superintendent, if the School District would pay for her to attend the Leadership Academy. Henderson responded that it would, which her application reflects. But once the program accepted Harrison, the School District's Superintendent, Ray Carlock, reneged and refused to pay for her to attend at that time, instead offering to pay for her to attend in two years. But Harrison's spot was for the upcoming class, so she paid the fees herself.

Harrison sued, alleging that the School District violated Title VII and 42 U.S.C. § 1981 by refusing to pay for her to attend the Leadership Academy, but agreeing to pay for similarly situated white males to attend.[2]

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[1] Our recitation of the facts comes from Harrison's complaint, which we must take as true given that our review is of a Rule 12(c) dismissal. *See infra* at II.

[2] Harrison also alleged that the School District retaliated against her for a previous EEOC Complaint. The District Court dismissed this claim because Harrison failed to exhaust her administrative remedies. Harrison does not appeal the dismissal of her retaliation claim, and we do not further address it here.

The District Court dismissed Harrison's claims under Federal Rule of Civil Procedure 12(c). It relied on this circuit's prior precedent holding that Title VII protects employees against only "ultimate employment decisions," and it found that the School District's refusal to pay for Harrison to attend the Leadership Academy was not such a decision. Harrison appealed.

II

We review Rule 12(c) dismissals *de novo*. *Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008). We use the same standard as that of Rule 12(b)(6), asking "whether, in the light most favorable to the plaintiff, the complaint states a valid claim for relief." *Id.* (quoting *Hughes v. Tobacco Inst., Inc.*, 278 F.3d 417, 420 (5th Cir. 2001)). "Although we must accept the factual allegations in the pleadings as true, a plaintiff must plead 'enough facts to state a claim to relief that is plausible on its face.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

III

A plaintiff asserting Title VII claims[3] must first establish a *prima facie* case, "which requires a showing that the plaintiff (1) is a member of a protected group; (2) was qualified for the position at issue; (3) was discharged or suffered some adverse employment action by the employer; and (4) was replaced by someone outside [her] protected group or was treated less favorably than other similarly situated employees outside the protected group." *McCoy v. City of Shreveport*, 492 F.3d 551, 556 (5th Cir. 2007) (citing *Wheeler v. BL Dev. Corp.*, 415 F.3d 399, 405 (5th Cir. 2005); *see also*

[3] Harrison also seeks reversal of the dismissal of her § 1981 discrimination claim. The standards of liability for both Harrison's Title VII claim and her § 1981 claim are the same. *Outley v. Luke & Assocs., Inc.*, 840 F.3d 212, 216 n.3 (5th Cir. 2016); *Johnson v. PRIDE Indus., Inc.*, 7 F.4th 392, 399 (5th Cir. 2021). Accordingly, we focus on only Harrison's Title VII claim, as she does in her briefing.

McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). The only element in dispute is whether Harrison suffered an "adverse employment action."

Harrison's primary argument: Title VII's text sweeps wide enough to encompass her claim, so the School District's refusal to pay for her to attend the Leadership Academy is necessarily an "adverse employment action." Title VII reads: "It shall be an unlawful employment practice for an employer . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race [or] sex." 42 U.S.C. § 2000e-2(a)(1). Harrison emphasizes that payment for her training could constitute a "privilege" under that term's plain meaning. She also stresses that because she had to pay for the training herself, the School District's actions also affected her "compensation." To bolster this textual argument, Harrison presses that Supreme Court precedent, EEOC guidance, and congressional action since Title VII's passage all suggest that Title VII should be read broadly.

Until recently, this argument would have failed in our circuit. Hamilton's allegations concerning the School District's payment of white males' Leadership Academy fees, but not hers, would not have constituted an "ultimate employment decision" under our prior Title VII precedent. But *Hamilton* changes our analysis by "flatten[ing]" our prior "ultimate employment decision" requirement. 2023 WL 5316716, at *5. A brief recounting of *Hamilton* helps one understand why this change occurred and how our adverse employment action analyses shifted as a result.

A

In *Hamilton*, nine female correctional officers pursued Title VII discrimination claims against Dallas County, alleging that it discriminated against them through changes to its scheduling policy. *Id.* at *1. They alleged

that Dallas County switched from a seniority-based to a sex-based system that made it impossible for female employees to receive full weekends off, even though both male and female employees performed the same tasks. *Id.* The District Court reasoned that changes to a work schedule did not fit within our old precedent's "ultimate employment decision" framework. *Id.* at *2. As a result, it found that the officers failed to allege the Title VII adverse employment action element and dismissed their claims. *Id.*

The officers appealed, and the case's original panel affirmed under the same reasoning. *Id.* But, while doing so, the panel urged the full court to "'reexamine our ultimate-employment-decision requirement' in light of our deviation from Title VII's plain text." *Id.* (quoting *Hamilton v. Dallas Cnty.*, 42 F.4th 550, 557 (5th Cir. 2022)). We did, held that our prior "ultimate employment decision" standard "l[aid] on fatally flawed foundations," and so did away with it because Title VII's text and Supreme Court precedent confirm that Title VII liability is *not* limited to ultimate employment decisions. *Id.* at *4–5. Stripping away this "atextual" requirement, "we apply the statute as it is written and as construed by the Supreme Court." *Id.* at *5.

B

Title VII's text, which is where we must start, contains two elements. *Id.* "To plead a disparate treatment claim under Title VII, a plaintiff must allege acts plausibly showing '(1) an adverse employment action, (2) taken against a plaintiff because of her protected status.'" *Id.* (quoting *Cicalese v. Univ. of Tex. Med. Branch*, 924 F.3d 762, 767 (5th Cir. 2019)) (internal quotation marks omitted). "[T]o plead an adverse employment action, a plaintiff need only allege facts plausibly showing discrimination in hiring, firing, compensation, or in the '*terms, conditions, or privileges*' of his or her employment." *Id.* at *6 (quoting 42 U.S.C. § 2000e-2(a)(1) (emphasis added); *see also Hishon v. King & Spalding*, 467 U.S. 69, 77 (1984) (noting that

the challenged employment action "need only be a term, condition, or privilege of employment"). And, as precedent informs us, the phrase "terms, conditions, or privileges" should be broadly construed. *See, e.g.*, *Hamilton*, 2023 WL 5316716, at *6 (discussing same in detail). For example, the phrase is not limited to "economically adverse employment actions." *Id.* at *7; *see also Faragher v. City of Boca Raton*, 524 U.S. 775, 786 (1998) ("We have repeatedly made clear that although the statute mentions specific employment decisions with immediate consequences, the scope of the prohibition is not limited to 'economic' or 'tangible' discrimination, and that it covers more than 'terms' and 'conditions' in the narrow contractual sense." (cleaned up)).

Viewing Harrison's claims through *Hamilton*'s lens, we conclude that she plausibly alleges discrimination "with respect to h[er] . . . terms, conditions, or privileges of employment." 42 U.S.C. § 2000e-2. Two reasons underpin this conclusion: Harrison established adversity and asserts a non-*de minimis* injury (sometimes referred to as satisfying the "materiality" requirement). *See, e.g.*, *Threat v. City of Cleveland*, 6 F.4th 672, 678 (6th Cir. 2021) (noting same). We address each in turn.

First, taking Harrison's allegations as true—that the School District (1) agreed to pay for similarly situated white males' fees to attend the Leadership Academy; (2) promised to pay her fees (a promise she relied on); and (3) reneged on that promise—we conclude that she plausibly stated a Title VII disparate treatment claim. Put otherwise, the School District's actions, as alleged, discriminated against Harrison, a black female, with "respect to [a] privilege of employment[] because of [her] race [and] sex." 42 U.S.C. § 2000e-2(a)(1). This privilege (having her Leadership Academy fees paid for) can also be construed as a "benefit" falling within Title VII's ambit. *See Hishon*, 467 U.S. at 75 ("A benefit that is part and parcel of the employment relationship may not be doled out in a discriminatory fashion,

even if the employer would be free under the employment contract simply not to provide the benefit at all."). Thus, Harrison plausibly alleges adversity.

Second, in making that determination, we remain cognizant of the Supreme Court's warning against "transform[ing] Title VII into a general civility code for the American workplace." *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80 (1998). Part of heeding that warning is recognizing that the *de minimis* rule, a background principle of law that Congress did not expressly displace in this context, applies here. *See Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 692 (1946) ("We do not, of course, preclude the application of a *de minimis* rule"); *see also Sandifer v. U.S. Steel Corp.*, 571 U.S. 220, 234–34 (2014) (noting that "the roots of the *de minimis* doctrine stretch to ancient soil" but concluding that it did not apply because the statute in that case was "*all about* trifles"); *Threat*, 6 F.4th at 678 ("At the same time, our approach honors a *de minimis* exception that forms the backdrop of all laws."). It follows that Title VII "does not permit liability for *de minimis* workplace trifles." *Hamilton*, 2023 WL 5316716, at *7. Thus, Harrison must allege not only an adverse action, but something more than a *de minimis* harm borne of that action. *Id.* This is often referred to as the "materiality" half of the analysis. *See*, *e.g., Threat*, 6 F.4th at 678.

Most every circuit sets forth variations of this limitation on Title VII actions.[4] After reviewing these decisions post-*Hamilton*, we are most persuaded by the Sixth Circuit's approach in *Threat*. There, the Sixth Circuit confronted a Title VII claim and had occasion to discuss the varying approaches taken to Title VII's inability to support *de minimis* claims. *Id.* at 678–80. As the *Threat* court explained:

[4] *See, e.g.*, *Hamilton*, 2023 WL 5316716, at * 7 nn. 62, 64 (collecting and discussing authority concerning same).

To "discriminate" reasonably sweeps in some form of an adversity and a materiality threshold. It prevents the undefined word "discrimination" from commanding judges to supervise the minutiae of personnel management. It ensures that a discrimination claim involves a meaningful difference in the terms of employment and one that injures the affected employee. And it ensures that any claim under Title VII involves an Article III injury—and not, for example, differential treatment that helps the employee or perhaps even was requested by the employee. Surely those are reasonable assumptions.

At the same time, our approach honors a *de minimis* exception that forms the backdrop of all laws. The doctrine *de minimis non curat lex* (the law does not take account of trifles) has roots that stretch to ancient soil. So ancient, the "old law maxim" was already venerable at the founding. From the beginning, the *de minimis* canon has been part of the established background of legal principles against which all enactments are adopted, and which all enactments (absent contrary indication) are deemed to accept.

When Congress enacted Title VII, the National Legislature provided no indication that it sought to disregard these considerations or to use the word "discriminate" to cover any difference in personnel matters. Yes, hundreds if not thousands of decisions say that an "adverse employment action" is essential to the plaintiff's prima facie case even though that term does not appear in any employment-discrimination statute. And, yes, the same could be said about a "materiality" requirement. But we take these innovations to be shorthand for the operative words in the statute and otherwise to incorporate a de minimis exception to Title VII.

But de minimis means de minimis, and shorthand characterizations of laws should not stray. Else, like the children's game of telephone, we risk converting the ultimate

> message into something quite different from the original message—indeed sometimes into the opposite message.

Threat, 6 F.4th at 678–79 (cleaned up) (emphasis added); *see also Chambers v. D.C.*, 35 F.4th 870, 889–94 (D.C. Cir. 2022) (Katsas, J., dissenting) (discussing "objectively material" inquiry).[5]

Turning to Harrison's complaint, it alleges more than a *de minimis* injury inflicted on her by the School District's adverse action: the personal expenditure of approximately $2,000. That is not a *de minimis* out-of-pocket injury, particularly when that expense was originally promised to be paid by someone else. Harrison's injury clears the *de minimis* threshold.

IV

Because (1) Harrison plausibly alleges facts that satisfy both adverse employment action prongs and (2) the adverse employment action element was the only element in dispute, she sets forth a plausible Title VII claim under Rule 12. We thus REVERSE the District Court's judgment and REMAND for further proceedings consistent with this opinion.

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[5] In adopting the *de minimis* threshold, we align not only with the Sixth Circuit but also with the Seventh, *see Washington v. Ill. Dep't of Revenue*, 420 F.3d 658, 660 (7th Cir. 2005), at least one separate opinion from the D.C. Circuit, *see Chambers*, 35 F.4th at 882 (Walker, J., concurring in the judgment and dissenting in part), and maybe even another, *id.* at 883 ("I see little if any gap between a non-de-minimis-injury standard . . . and the correct understanding of an objectively-material-injury standard (like that explained by Judge Katsas)."). Other circuits have settled on some variation of a "materiality" standard. *See Hamilton*, 2023 WL 5316716, at *7 n.62 (collecting cases). We take no position today on "whether 'material' and 'more than *de minimis*' are simply two sides of the same coin, or whether there is more room between those terms." *Id.* at *7 n. 64.