

Supreme Court Lowers the Bar for “Majority Group” Plaintiffs to Sue for Employment Discrimination

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As occurs often in America’s courts, employers move for summary judgment on employees’ discrimination claims. The analytical road for most of these motions is familiar:

1. the employees need to show they were terminated under circumstances giving rise to an inference of discrimination based on a protected characteristic,
2. the employers need to produce a non-discriminatory reason for the terminations, and
3. the employees must proffer evidence exposing that rationale as a sham.

But for certain employees in certain courts, including the Tenth Circuit, the first hurdle was higher. That is, “majority group” employees – like white, male, or straight workers – not only needed to raise a discriminatory inference, **but also** demonstrate “background circumstances” suggesting they worked for the unusual employers who discriminated against the majority. Thus, members of majority groups aiming to bring wrongful termination suits under Title VII of the Civil Rights Act of 1964 bore a heavier burden than their minority-group counterparts.

That ended last week. In a unanimous decision authored by Justice Jackson, the United States Supreme Court held that the threshold burden for surviving summary judgment is the same for all plaintiffs, irrespective of group membership. Majority group plaintiffs, then, are no longer required to show additional “background circumstances” to bring Title VII employment discrimination claims.

The case – [Ames v. Ohio Department of Youth Services](#) – involved a straight woman (Marlean Ames) who worked for Ohio’s Department of Youth Services for 15 years, eventually rising from assistant to program administrator. But in 2019, the Department denied her a promotion, hiring instead a gay candidate, and demoted her to a previous position with half the pay, replacing her with another gay candidate. Ames sued, alleging discrimination on the basis of sexual orientation (a form of sex discrimination). At the district and appellate levels, her employer won summary judgment based on Ames’ failure to show “background circumstances” suggesting the Department discriminates against straight workers.

The Supreme Court reversed, striking heightened evidentiary standards for majority member groups, like the “background circumstances” standard at issue. The Court explained that Title VII prohibits discrimination against all employees on the basis of certain characteristics – with no distinction as to whether they are members of a minority or majority group. Imposing a heightened evidentiary standard on majority employees contravened Title VII’s focus on the individual, not the group.

Looking Toward the Future

Before *Ames*, the Tenth Circuit, which includes Oklahoma, was one of a number of federal appellate courts to impose this “background circumstances” standard on majority member plaintiffs. These courts reasoned use of the standard was appropriate because employers typically discriminated against minority or historically disadvantaged employees, and not majority or historically privileged employees. After *Ames*, this standard is no longer an impediment: **any** plaintiff who can offer facts raising an inference of discrimination based on a protected characteristic, like sex, can unlock the courthouse doors and force an employer to explain the legitimate, business reasons for its actions.

Employers should prepare for increased litigation in the wake of *Ames*. Beyond lowering the barriers to suit, the Court said, in one voice, the rationale animating the “background circumstances” standard doesn’t change Title VII’s plain text and its protection of the individual, rather than the group. If an employer has hiring (or any other) practices that either explicitly or implicitly consider whether employees or applicants belong to minority or historically marginalized groups, those practices may be challenged by majority employees. Employers should review internal policies and practices accordingly – and, as necessary, seek legal counsel for instituting best practices.

In addition to internal hiring practices, employers should anticipate claims of discrimination with respect to disciplinary and termination decisions. Now is the time for employers to ensure they have policies and practices in place to document their legitimate business reasons for any adverse employment decisions. Further, employers should train supervisors and managers to understand and appropriately implement those policies and practices to avoid claims of discrimination.

The Alert was prepared in collaboration with the [Employment & Labor Law Group](#) in a continuing effort to keep our clients informed of the transitions of law within the areas they operate. For questions regarding this development, or any other employment and labor questions, please contact your GableGotwals attorney or a member of our Employment & Labor Law Group.



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