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Fifth Circuit Broadens Definition of "Adverse Employment Action" under Title VII

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The Fifth Circuit Court of Appeals has historically been one of the more restrictive federal appellate courts in its definition of an "adverse employment action." The court recently held, however, that a city police department's restriction of a detective's responsibilities after his return from a disciplinary suspension was sufficient to fall within the category of "adverse employment action."

Waco's police department suspended detective Allen Thompson (an African-American) and two white detectives on the basis of "allegations that they had falsified time sheets" but later reinstated all three officers. After the reinstatements, the department imposed written restrictions on Thompson that it did not impose on the two white detectives. Those restrictions allegedly barred Thompson from searching for evidence without supervision, logging evidence, and working in an undercover capacity. In his complaint, Thompson alleged that he "no longer functions as a full-fledged detective; he is, effectively, an assistant to other detectives."

Thompson sued the city, and the city responded by moving to dismiss the suit, arguing that Thompson had failed to set forth the required "adverse employment action" necessary to support a Title VII discrimination claim. The trial court granted the city's motion. That decision was **reversed, however, by the Fifth Circuit**, which found that while the mere "loss of some job responsibilities" does not automatically constitute an adverse employment action, that does not mean that a change or loss of some responsibilities can never establish an actionable discrimination claim. Therefore, according to the court, based on the specific facts set forth by Thompson as to the negative effects associated with his restricted responsibilities, Thompson's claims overcame the initial hurdle required by Title VII of an "adverse employment action."

Employers take note. If the terms and conditions of employment are changed to the extent that the basic nature of the job itself is impacted — even without a pay cut or a reduction in benefits — such action may be sufficiently "adverse" to support a discrimination claim under Title VII.

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