

# Run Over by the Failure to Train: Fifth Circuit Holds Inadequate Training May Be an Adverse Employment Action

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For employers, figuring out what constitutes an adverse employment action under Title VII may seem elusive. In general, an adverse employment action is an ultimate employment decision that affects job duties, compensation or benefits. There are obvious ones like termination, demotion and failure to promote. But what about ones like shift changes, days off and other more subtle decisions? In [\*Rahman v. Exxon Mobil Corporation\*](#), the Fifth Circuit adds “inadequate training” as another possible adverse action that can be the basis for a discrimination claim.

## The Tale of Two Candidates

Omar Rahman was hired to work at a polyolefins plant in Baton Rouge, Louisiana. As a plant operator, he had to go through a two-step training program and pass both tests and a final walkthrough. Rahman, a black male, failed 14 tests in the initial training step — if he had failed 15 tests he would have been dismissed. However, he moved to the second step of the training along with a white candidate. Rahman was given overtime to prepare for the final test of the field training, a walk-through in the plant. Rahman failed the walk-through on his first try and then failed the second try as well. Exxon terminated him. The white candidate passed.

Rahman sued Exxon for race discrimination. He claimed that Exxon gave him only two days of training for the walk-through while it gave the white candidate 15 days. Rahman claimed that his supervisors were biased, didn’t properly train him, and intentionally failed him due to his race.

Exxon moved for summary judgment, and the district court granted it. The lower court held that Rahman could not show that his alleged inadequate training was an adverse employment action under Title VII or that he was qualified for the position. Rahman appealed.

## Is It an Ultimate Employment Decision?

At the appeal stage, Exxon argued that the only type of training claim that would constitute an adverse employment decision under Title VII would be if Rahman was completely denied any training — not just that he didn’t get enough training. The Fifth Circuit disagreed. The court reasoned that if

the failure to train was directly tied to the decision to terminate, it could constitute an adverse action because it would have some effect on the employee's status or benefits. An employment decision, even if not apparently "ultimate," can meet the standard if it is so significant and material that it rises to the level of an adverse employment decision. According to the court, there has to be a strong connection between the plaintiff's training and his job.

## **Actual Training vs. Access to Training**

However, the Fifth Circuit ultimately affirmed the lower court's summary judgment in favor of Exxon. The court stated that a successful inadequate training claim must be based on the failure to provide comparable training. If the employer offered the plaintiff an equal opportunity to access the components of the training program, the inadequate training claim would be defeated. The inquiry is whether there was a "roughly similar opportunity to access the necessary parts of the training program."

The court noted that Rahman worked with a trainer to attempt to pass his walk-through. He was given overtime to finish studying his materials. He could have worked with other employees to learn the materials. When he failed the first walk-through, Exxon gave him another two weeks to study and let him take it again. His training opportunities mirrored his white classmate's. If the employer provides people with a similar opportunity to access a training program it will not be considered discrimination.

## **Train the Same — or At Least Offer the Same Opportunities to Train**

Yes, the court found that inadequate training may be considered an adverse employment action, but those types of cases should be easy to avoid. Employers who tie training to continued employment need to offer all employees the same opportunities to be trained, regardless of their protected class. It is probably a good practice to examine your training programs, be sure that everyone knows they can have access to them, and then remind employees about training opportunities.

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