

Supreme Court Settles Circuit Split on Standard of Proof for "Reverse Discrimination" Lawsuits

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On June 5, the US Supreme Court issued a unanimous opinion settling a split among the federal appellate courts about the burdens of proof in lawsuits alleging “reverse discrimination,” in which a member of a majority group sues for employment discrimination. The Court held that claims brought by members of a majority class are held to a standard identical to that of claims brought by members of a minority class. See *Ames v. Ohio Dept. of Youth Services*.

The plaintiff in the case, Marlean Ames, is a heterosexual woman who alleged that her employer failed to promote her and ultimately demoted her because of her sexual orientation. She alleged that the roles were filled by a lesbian woman and a gay man. The lower courts dismissed Ames’s lawsuit, holding that she did not provide any evidence of “background circumstances” that would support the “unusual” conclusion that her employer discriminates against the majority.

Under Title VII, to prove an employment discrimination claim, an employee must make a *prima facie* case, which involves identifying others outside the employee’s protected class (race, gender, sexual orientation, religion, etc.) who were treated more favorably than the employee making the claim. One way to make this showing is to point to evidence that the employee was replaced by someone outside their protected class. While Ames made this showing, the lower courts, following precedent in their circuit, held that this was not sufficient to proceed with her claim, as “reverse discrimination” lawsuits require additional facts.

The Supreme Court’s decision resolved an inconsistency among the lower federal courts. Courts in the Sixth, Seventh, Eighth, Tenth, and DC Circuits had held that there was a higher burden for members of a majority class to prevail on an employment discrimination claim. Focusing on the text of Title VII, the Supreme Court unanimously rejected this approach, agreeing with the remaining federal circuits that members of majority and minority classes should be held to the same legal standard.

This decision could have far-reaching implications for employers throughout the country, particularly as businesses grapple with shifting federal regulations and guidance around diversity, equity, and inclusion in hiring practices. In addition to heightened federal scrutiny of such initiatives, individual employees who are members of a majority class now have a clearer legal pathway to relief if they feel they have experienced workplace discrimination. Employers should ensure that they have

policies in place to prevent harassment, discrimination, and retaliation in the workplace and avenues for employees to report those concerns.

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