

## Alert | Labor & Employment



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### 5th Circuit Expands Scope of Title VII in Employment Discrimination Cases

Reversing decades of precedent that limited the scope of Title VII of the Civil Rights Act, on Aug. 18, 2023, the Fifth Circuit en banc ruled in *Hamilton v. Dallas County* that “a plaintiff plausibly alleges a disparate-treatment claim under Title VII if she pleads discrimination in hiring, firing, compensation, or the ‘terms, conditions, or privileges’ of her employment.” Accordingly, plaintiffs no longer need to show an “ultimate employment decision” to assert a viable claim under Title VII because the Fifth Circuit held that the phrase “ultimate employment decision” does not appear in the statute. Employees or applicants only need to show they were subjected to bias or discrimination in the workplace relating to “hiring, firing, compensation, OR in the ‘terms, conditions, or privileges’ of his or her employment.”

Nine female correctional officers alleged that their shift schedules, formerly determined based on seniority, changed in April 2019, when the county adopted a sex-based scheduling policy that detrimentally impacted them. They argued the new scheduling system allowed male officers to have full weekends off, while female officers could only receive weekdays and/or partial weekends off. Based on these allegations, plaintiffs sued the county for sex discrimination under Title VII. Relying on Fifth Circuit precedent, the district court dismissed the complaint because it did not allege an ultimate adverse employment action. The Court held that a necessary element of Title VII was absent, namely that “[c]hanges to an employee’s work schedule, such as the denial of weekends off, are not an ultimate employment decision.” On initial appeal, the panel affirmed, holding that it was “bound by this circuit’s

present” and urged the full court to “reexamine our ultimate-employment-decision requirement.” The Fifth Circuit then granted a rehearing en banc for such consideration.

While no judges from the Fifth Circuit dissented, several concurred in the final decision because they believed the Court issued an “incomplete” ruling, stating, “[t]he majority holding amounts to this: we hold that speeding is illegal, but we will not say now what speed is illegal under what circumstances. Ordinary concepts of due process should have required notice to the public regarding this vital and pervasive workplace law.” The majority countered that it believes its new standard is in line with the U.S. Supreme Court’s construction of Title VII, but the Court acknowledged that “federal courts [are] not to ‘transform Title VII into a general civility code for the American workplace.’” The Court’s ruling may open the door to wider complaints from employees.

## Authors

This GT Alert was prepared by:

- [Shira R. Yoshor](#) | +1 215.988.7806 | [yoshors@gtlaw.com](mailto:yoshors@gtlaw.com)
- [Shirin Afsous](#) | +1 703.749.1354 | [Shirin.Afsous@gtlaw.com](mailto:Shirin.Afsous@gtlaw.com)

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