

SJC Rules Denial of Lateral Transfer May Be “Adverse Employment Action” Under Mass. Anti-Discrimination Law

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On January 29, 2019, the Massachusetts Supreme Judicial Court (SJC) ruled in *Yee v. Mass. State Police* that an employer’s denial of an employee’s request for a lateral transfer that would have no impact on the employee’s base pay or benefits may constitute an adverse employment action under Massachusetts’ anti-discrimination statute, G.L. c. 151B (“Chapter 151B”). The SJC’s decision expands the scope of employment actions that may be actionable under Chapter 151B.

The *Yee* decision arose from a dispute between the Massachusetts State Police and one of its lieutenants, who was born in Hong Kong and identifies as Chinese-American. In 2008, the plaintiff requested a transfer to State Police unit Troop F, which is headquartered at Logan International Airport. Although lieutenants earn the same base pay and benefits regardless of where they are stationed, the plaintiff desired the transfer because he believed Troop F had better opportunities to work overtime and paid details. His request was denied, but, between the time of his request and April 2014, the State Police transferred nine troopers – all white males – to Troop F in the position of lieutenant. The plaintiff sued, alleging that the State Police had discriminated against him on the basis of race, age and national origin in violation of Chapter 151B by failing to transfer him to Troop F. The Superior Court granted summary judgment to the State Police, on the ground that that no adverse employment action had been taken against the plaintiff because he had failed to produce sufficient evidence supporting a conclusion that he had “lost money” as a result of the denial of his transfer request.

On appeal, the SJC overturned the Superior Court’s decision, holding that “where there are material differences between two positions in the opportunity to earn compensation, or in the terms, conditions or privileges of employment, the failure to grant a lateral transfer to the preferred position may constitute an adverse employment action under c. 151B.” In so ruling, the SJC noted that the term “adverse employment action” has been defined broadly in its past decisions. It reasoned that, because an employer’s denial of a transfer is certainly an “employment action,” and a denial that would deprive an employee of the opportunity to earn additional compensation is “adverse,” the allegations in this particular case, if accepted by a jury, could establish an “adverse employment action.”

In the Superior Court proceedings, the plaintiff had produced evidence showing that a comparative lieutenant had earned on average \$30,000 more per year when he was stationed with Troop F as compared to when he was stationed elsewhere. According to the SJC, this evidence could lead a fact finder to reasonably infer that the comparator’s increase in earnings from overtime derived, at least in part, from greater overtime opportunities available to Troop F lieutenants. Although evidence from a single comparator might prove to be insufficient at trial, the SJC concluded that the plaintiff had met his modest burden at the summary judgment stage.

The SJC’s decision highlights both the court’s willingness to construe Chapter 151B liberally in an employee’s favor, and an employee’s modest burden in defeating an employer’s summary judgment motion in the discrimination context. The decision also serves as a warning to Massachusetts employers to treat transfer decisions with the same level of scrutiny as other employment decisions, such as decisions to hire, fire or discipline employees, as transfer decisions may give rise of liability under Chapter 151B.

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