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BELL NUNNALLY'S MARK SHOFFNER AND MASON JONES ON TEXAS LAWBOOK EXPLORE TITLE VII EMPLOYMENT DISCRIMINATION RAMIFICATIONS OF FIFTH CIRCUIT'S HAMILTON DECISION

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Bell Nunnally Partner Mark A. Shoffner and Associate Mason G. Jones authored *The Texas Lawbook* article "Fifth Circuit Expands Scope of Liability for Title VII Discrimination Claims," describing the employment implications of the court's August 18 decision in *Hamilton v. Dallas County*.

In *Hamilton*, the Fifth Circuit, through a 14-3 *en banc* decision, expanded the scope of actionable discrimination under Title VII beyond the previous standard covering only actions directly linked to "ultimate employment decisions," such as hiring, firing, promoting or demoting.

Shoffner and Jones write:

Following the ruling, Title VII plaintiffs need not allege discrimination with respect to an ultimate employment decision. Rather plaintiffs must only plead that they were discriminated against — because of a protected characteristic — with respect to hiring, firing, compensation or the "terms, conditions, or privileges of employment." The Fifth Circuit noted that the statutory phrase "terms, conditions, or privileges of employment" is broad but declined to provide guidance on the "precise level of minimum workplace harm a plaintiff must allege on top of showing discrimination in one's terms, conditions, or privileges of employment.

Further clarity regarding which actions are covered/not covered under Title VII, Shoffner and Jones speculate, was likely withheld by the Fifth Circuit as it awaits the U.S. Supreme Court's decision in the upcoming case *Mudrow v. City of St. Louis*, a matter with the potential to solve circuit ambiguity on Title VII.

Fifth Circuit Judge Edith Jones dissented in *Hamilton*, specifically citing the ambiguity of Title VII applicability employers were left with in the majority's opinion.

Notably, in concurrence, Judge James Ho raised the possibility that, under this new Title VII interpretation, standard corporate DEI policies and programs may run afoul of federal antidiscrimination law by impermissibly altering the "terms, conditions, or privileges of employment."

Shoffner and Jones close by cautioning, "Employers should reexamine internal policies and practices to ensure compliance with this expanded interpretation of Title VII."

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