

## Be Careful What They Wish For

January 20, 2015 | [Employment Discrimination](#), [Labor And Employment](#)



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Effectively confirming the worst Sixth Circuit employment law decision of 2014 (maybe ever?), the United States Supreme Court let stand a ruling that an employee who asks for a job transfer, then gets that job transfer and works in that new position for 10 months, can nonetheless *still* claim that the transfer constituted an adverse employment action in support of his claim of discrimination. After 25 years with the Kalamazoo County Road Commission, Robert Deleon applied for an open job as an equipment and facilities superintendent. The job was a lateral move with the same pay, benefits and responsibilities, and the conditions weren't great - it was in a garage with exposure to loud noises and fumes, but Mr. Deleon was under the impression that this was his path to move up with the Commission. Mr. Deleon was not initially selected for the job, but when the Commission's top candidate dropped out, the Commission selected Mr. Deleon and he accepted the new job. Ten months later, when the Commission terminated Mr. Deleon's employment for failing to return to work after a medical leave, Mr. Deleon argued that he had been discriminated against on the basis of his race, national origin and age, and offered up the job transfer as evidence that he had suffered a "materially adverse employment action." The U.S. District Court did not agree, and granted summary judgment to the Commission, but upon Deleon's appeal, the Sixth Circuit reversed, finding that an employee transfer can constitute an adverse employment action, *regardless of whether the employee had requested the transfer*, so long as the work environment is "objectively intolerable." The Supreme Court won't hear the case, despite a scathing dissent from Justice Alito on the Sixth Circuit's "obvious error" ("In the Sixth Circuit...employees need not be careful what they ask for because, if their request is granted and they encounter buyer's regret, they can sue"). So, the case is now headed to trial and, depending on the outcome, the Supreme Court may get another chance. Until then, the decision stands as binding precedent within the Sixth Circuit.

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