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Supreme Court Clarifies Standard for Employers Evaluating Religious Accommodation Requests

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On June 29, 2023, the US Supreme Court issued a decision clarifying the standard employers must apply in considering an employee's religious accommodation request under Title VII of the Civil Rights Act. In ***Groff v. DeJoy***, the justices unanimously ruled that Title VII requires employers who deny such requests to demonstrate that granting the request would result in "substantial increased costs in relation to the conduct of its particular business." Under this heightened standard, it will be more difficult for employers – who have historically relied on a less burdensome "more than a de minimis cost" standard – to deny religious accommodation requests.

Case background

Gerald Groff, an evangelical Christian and former postal worker with the United States Postal Service (USPS), adhered to a religious belief that Sundays must be devoted to worship and rest. Accordingly, when USPS required him and co-workers to deliver packages on Sundays, he sought a religious accommodation to avoid working on Sunday. Although USPS redistributed some of Groff's Sunday shifts to other staff, it denied fully granting his requested accommodation on the basis that it would impose an undue hardship. Groff was subject to progressive discipline for failing to work on Sundays, leading to his resignation.

Groff sued under Title VII, asserting that USPS could have accommodated his Sunday Sabbath practice "without undue hardship on the conduct of [USPS's] business." The district court dismissed the case and the US Court of Appeals for the Third Circuit agreed, finding that it was bound by the Supreme Court's 1977 ruling in *Trans World Airlines, Inc. v. Hardison*, which held that an employer need only show that it would bear "more than a de minimis" cost to demonstrate that a religious accommodation is an undue hardship under the law. The Third Circuit held that this standard was "not a difficult threshold to pass," as exempting Groff from Sunday work imposed a burden on his coworkers, disrupted the workplace and workflow, and diminished employee morale. The Supreme Court granted Groff's petition for certiorari and heard oral arguments in the case in April 2023.

Ruling

The Supreme Court revisited the *Hardison* standard and concluded that lower courts had erroneously interpreted that decision as requiring only a "de minimis" standard to establish an undue hardship. Instead, the Supreme Court found that the decision referred repeatedly to "substantial" burdens, which better explains the correct standard. Therefore, the ruling clarified that an employer demonstrates an undue hardship when the burden of granting a religious accommodation "would result in substantial increased costs in relation to the conduct of its particular business."

In its ruling, the Supreme Court held that the application of this heightened standard is a fact-specific inquiry, taking into account all relevant factors at hand, such as the particular accommodations at issue and their practical impact in light of the nature, size, and operating costs of an employer. Notably, merely showing that an accommodation would impose **some** additional costs would not be sufficient; rather, the requisite burden or adversity must rise to an "excessive" or "unjustifiable" level. The justices declined to apply the context-specific application of the undue hardship to the facts at hand, and instead remanded the case for the lower

court's consideration.

The *Groff* ruling also made additional clarifications regarding recurring Title VII issues, in light of the heightened standard. First, the ruling clarified that an accommodation's impact on co-workers may be relevant to the analysis, but only insofar as it impacts the conduct of the employer's business. Indeed, the ruling stated that a hardship attributable to employee animosity to a particular religion, to religion in general or to the notion of accommodating religious practice is not "undue." Second, the Supreme Court held that Title VII requires an employer to reasonably accommodate an employee's practice of religion – not merely address the reasonableness of a particular accommodation. This includes consideration of other possible accommodations, such as voluntary shift swapping in the case of *Groff*.

Implications for employers

In light of the heightened burden on employers in demonstrating an undue hardship, employers should very carefully and seriously consider requests for religious accommodations moving forward, including requests for exemption to employer vaccine mandates, grooming and dress policies, and work scheduling changes as in *Groff*. Employer vaccine mandates will face particular scrutiny in light of this heightened burden and the significant increase in claims asserting religious discrimination arising out of such mandates during the COVID-19 pandemic. For example, the **US Equal Employment Opportunity Commission recently reported** an increase of more than 600% in charges asserting religious discrimination in fiscal year 2022, versus fiscal year 2021, which the agency attributes to "a significant increase in vaccine-related charges filed on the basis of religion." Notably, these vaccine-related charges made up nearly 20% of the agency's 2022 charges (compared to 3.4% in 2021). Blanket policies or practices uniformly denying accommodation requests are unlikely to pass muster under the clarified standard articulated by the Supreme Court.

Employers should prepare for the impact of the ruling by taking the following steps:

- Update applicable policies in compliance with the heightened standard with respect to religious accommodations.
- Educate and train human resources professionals and management regarding the heightened standard, including reevaluating procedures used to evaluate such requests.
- Evaluate possible accommodations other than the one requested by the employee, similar to an employer's obligations for disability accommodation requests under the Americans with Disabilities Act (ADA) – while the Supreme Court expressly declined to adopt the ADA standard (which defines an undue hardship as an "action requiring significant difficulty or expense" in light of factors identified in the law), the practical effect of the ruling is that employers should treat such requests similarly to how they treat disability accommodation requests.
- Document the impact of any requests on specific business operations, including costs – as the Supreme Court noted, such costs now must rise to an unjustifiable level, which may be more difficult for larger employers with more resources to demonstrate.
- Refer to the Equal Employment Opportunity Commission's guidance as a helpful starting point in considering accommodations, but look out for revised guidance from the agency in accordance with the *Groff* decision.
- Comply with all applicable laws for the jurisdiction(s) in which the business operates, as some state laws may impose even more protective standards, including those similar to, or the same as, the protective standard required under the ADA.

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