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The Supreme Court Has Weighed in: Employers Considering Title VII Religious Accommodation Requests Now Face a Heightened Standard

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On June 29, 2023, the Supreme Court of the United States issued three opinions. Of them, Groff v. DeJoy ("Groff"),in which the Court unanimously revised the standard for determining whether accommodating an employee's religious beliefs would constitute an "undue hardship" under Title VII of the Civil Rights Act of 1964 ("Title VII"), will have the most immediate impact on employers.
In Groff, the Court held that employers cannot deny a religious accommodation by demonstrating that it would result in only more than a de minimis cost, but rather must demonstrate that it would result in a substantial cost.

How Did We Get Here?

Groff, a postal worker, sued because his employer, the United States Postal Service (USPS), refused to exempt him from a scheduling practice that required all employees at his location to work on Sundays. Groff sued USPS alleging religious discrimination in violation of Title VII and lost on summary judgment. On appeal, the U.S. Court of Appeals for the Third Circuit affirmed, finding that the USPS had demonstrated that accommodating Groff's objection to Sunday shifts imposed a burden on other workers and thus carried more than a de minimis cost, thereby satisfying a standard established by the Supreme Court more than 45 years ago in Trans World Airlines, Inc. v. Hardison.

In that 1977 case, the Supreme Court concluded that providing the plaintiff Saturdays off in contravention to seniority rights under a collective bargaining agreement to accommodate his religious beliefs would cause the defendant-employer to "bear more than a de minimis cost." Thereafter, lower courts repeatedly invoked the phrase in upholding the denial of accommodations and finding undue hardship when employers demonstrated that a requested accommodation would pose more than a de minimis cost.

Both parties before the Court in Groff agreed that the de minimis standard is not correct but differed in their proposed alternative language. Groff proposed that the Supreme Court adopt the Americans with Disabilities Act (ADA) standard for demonstrating undue hardship, i.e., a "significant difficulty or expense." USPS asked the Court to adopt the EEOC's interpretation of the undue hardship standard for religious accommodations, i.e., the de minimis cost standard mentioned in Hardison. While agreeing that the so-called de minimis standard was an erroneous interpretation of its Hardison decision, the Court rejected both of the proffered alternatives – it refused to apply the ADA standard to Title VII religious discrimination claims and declined to "ratify in toto" the EEOC's interpretation. Instead, it carved out a middle ground.

The Court ruled that "Title VII requires an employer that denies a religious accommodation to show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business."

What is the difference between "substantial" and "significant"?

Under the decision, lower courts must decide what constitutes an undue hardship under Title VII, i.e., "substantial increased costs," on a case-by-case basis. Courts must now analyze context and "all relevant factors. . ., including the particular accommodations at issue and their practical impact in light of the nature, 'size and operating cost of [an] employer.'" The Court's decision does not, however, direct judges to follow the case law established by litigation of claims brought pursuant to the ADA.

Imposing on Coworkers Can Be a Hardship for Employers

Of importance, although it heightened the standard for denying a religious accommodation request, the Court found that the impact of an accommodation on other employees may still be sufficient to demonstrate a hardship on an employer to the extent that such impact affects the conduct of the business.

While the majority opinion pays scant attention to this factor, Justice Sotomayor's concurring opinion buttresses the conclusion that the effects an accommodation for one employee may have on coworkers are germane to analyzing whether a requested accommodation is reasonable. Her opinion states that a plain-language reading of Title VII's requirement that employers be spared an "'undue hardship on the conduct of the employer's business'" encompasses workforce management and employee performance concerns. Suggesting that employers may weigh proposed accommodations with respect to their impact on other employees and not just business operations as a whole, Sotomayor aptly notes that, "for many businesses, labor is more important to the conduct of the business than any other factor."

Nevertheless, the Court made clear that an employer cannot show an undue hardship by pointing to coworker animosity to a particular religion, to religion in general, or to accommodating religious practice. The Court further noted that it would not be enough for an employer to simply conclude, for example, that forcing other employees to work overtime would be sufficient to show an undue hardship. An employer would need to look at other options, such as voluntary shift swapping. How far this goes, however, remains unclear and it will be up to the lower courts to further elucidate this new standard on a case-by-case basis.

What's Next?

Although the majority opinion states that “a good deal of the EEOC’s guidance in this area is sensible and will, in all likelihood, be unaffected” by the result in Groff, we will monitor and provide further advice if and when the EEOC issues updated guidance on this issue. In the meantime, employers facing requests for religious accommodations under Title VII should consider whether granting those requests and/or implementing any measure of accommodations would impose an identifiable substantial increase in costs to their business.

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