

Employment Tip of the Month – December 2023

Article By:

Laura Stutz

Q: What obligations do employers have when considering employee requests for time off for religious observances, especially during the holidays?

A: While employers generally are free to approve or refuse employee requests for time off, when it comes to requests for time off for religious observance, they are *required by law* to provide reasonable accommodations to employees for religious observances that conflict with work requirements at any point during the year, including holidays when there is an increase in such requests, unless doing so would create an undue hardship.

Title VII of the Civil Rights Act of 1964 (Title VII), applicable to employers with 15 or more employees, and similar state laws prohibit employers from discriminating against employees in hiring, firing, and other terms and conditions of employment because of their religious beliefs.

“Religious belief” is interpreted broadly by the Equal Employment Opportunity Commission (EEOC) and the courts to include not only traditional organized religions, such as Buddhism, Christianity, Hinduism, Islamism and Judaism, but also nontraditional religions and ethical and moral beliefs if they are sincerely held. Title VII also requires employers to reasonably accommodate the religious beliefs of employees unless doing so would impose an undue hardship on the employer. Reasonable accommodations can take many forms, from a work schedule modification or shift change to time off, leaving the question: What’s an undue hardship?

Until recently, the threshold to prove undue hardship was defined as “more than a de minimus” expense. Earlier this year, in *Groff v. DeJoy*, 600 U.S. 447 (2023), the Supreme Court of the United States did away with the “de minimus” threshold and clarified that to establish the undue hardship defense, under which the employer must show that granting the accommodation would result in a substantial burden to the employer, taking into account the particular accommodation at issue and its practical impact on the business. Under *Groff*, an employer must conduct an individualized assessment of a religious accommodation request and may deny it only if granting the accommodation would result in substantial increased costs in relation to the employer’s business operations.

While permitting work schedule modifications or time off to accommodate religious observances during the holidays can present administrative headaches, such accommodations often have little or no cost – save for the rare occasion when it may be necessary to hire and train a substitute

employee. As a best practice, employers should permit employees to modify their work schedules or take time off for religious observation during the holidays.

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