KRIEG DEVAULT

Insights

SCOTUS Raises the Bar for Employers in Denying Religious Accommodations

August 21, 2023

By: Elizabeth M. Roberson, Nancy J. Townsend, and Virginia A. Talley

On June 29, 2023, the U.S. Supreme Court clarified the "undue hardship" standard that allows employers to reject some employees' requests for a religious accommodation under Title VII of the Civil Rights Act of 1964 ("Title VII"). With the Court's recent decision in *Groff v. DeJoy*,[1] employers must allow religious accommodations unless they would cause "substantial increased costs in relation to the conduct of [an employer's] particular business." Employers could previously deny religious accommodations that would impose "more than a *de minimis* cost" on the business.

1. The Old *"de Minimis"* Framework

Under Title VII, employers must reasonably accommodate employees whose sincerely held religious beliefs or observances interfere with their work requirements unless such accommodation would create an "undue hardship" for the employer.[2] Neither Title VII nor its regulations define undue hardship, so employers must rely on court precedent to decide whether they can deny a particular request as an undue hardship. Since 1977, *Trans World Airlines, Inc. v. Hardison*[3] has defined undue hardship as any accommodation that requires the employer to "bear more than a *de minimis* cost." In a footnote in that decision, the Court noted that employers need not "incur substantial costs" to accommodate an employee's religious belief or observance. Employers had relied upon this *"de minimis"* framework for 46 years until the Court's opinion in *Groff*.

2. Background and Procedural History of *Groff v. DeJoy*

Plaintiff Gerald Groff sued his former employer, the United States Postal Service ("USPS") in 2019, for failing to reasonably accommodate a religious observance that prevented him from working on Sunday. Groff had begun working for USPS in 2012 in a position that did not require Sunday work, which changed when USPS entered into an agreement with Amazon in 2013 that required Sunday package deliveries. When Groff's post office began Sunday delivery in 2015 and advised Groff that he must work on Sundays, Groff transferred to another location in August 2016. When that location also began delivering on Sundays in 2017, USPS initially arranged for other employees to cover Groff's Sunday shifts. When an employee filed a grievance, USPS halted that policy, and Groff received progressive discipline for failing to work on scheduled Sundays. Groff then resigned and sued USPS under Title VII for failing to reasonably accommodate his religious practice.

The district court granted summary judgment to USPS, and the Third Circuit Court of Appeals affirmed. The Court of Appeals, adhering to *Hardison*, applied the *de minimis* cost standard to judge the employee's accommodation request. The Court of Appeals found that the burden on the employer from requiring Groff's co-workers to cover his Sunday shifts was more than a *de minimis* cost and was therefore an undue hardship that USPS need not incur to accommodate Groff's religious beliefs. The Supreme Court granted certiorari.

3. The Opinion and Reasoning of *Groff v. DeJoy*

In a unanimous opinion authored by Justice Samuel Alito, the Court "clarified" its ruling in *Hardison*. It explained that it now "understands *Hardison* to mean that 'undue hardship' is shown when a burden is substantial in the overall context of an employer's business." The Court held "that showing more than a *"de minimis cost* . . . does not suffice to establish 'undue hardship' under Title VII." In doing so, it criticized the lower courts for reducing *Hardison* to a single *"de minimis"* phrase because the opinion "referred repeatedly to 'substantial' burdens." This decision vacated the ruling of the Court of Appeals and remanded the case for application of this clarified standard.

While reiterating that the employer bears the burden to show that a particular request would impose an undue hardship, the *Groff* decision provides little guidance as to what exactly constitutes a "substantial burden." The Court also declined to adopt existing precedent and analysis for accommodations under the Americans with Disabilities Act (ADA), which defines undue hardship as "significant expense or difficulty." Instead, courts moving forward must undertake a case-by-case examination and "apply the test [for undue hardship] in a manner that takes into account all relevant factors in the case at hand, including the particular accommodations at issue and their practical impact in light of the nature, 'size and operating cost of [an] employer.'"

Harkening back to the text of Title VII, the *Groff* decision holds: "[w]hat is most important is that 'undue hardship' in Title VII means what it says, and courts should resolve whether hardship would be substantial in the context of an employer's business in the commonsense manner."

4. Post *Groff* Considerations for Employers

Although portrayed as a clarification of *Hardison*, the *Groff* decision represents a significant change to the "undue hardship" standard that has guided employers and the Equal Employment Opportunity Commission ("EEOC") for nearly fifty years. Employers must adapt their analyses of religious accommodation requests and document the "substantial increased cost" to justify a denial. This analysis will differ depending on the overall size and operating expenses of the employer, with larger employers likely facing a greater difficulty to demonstrate "substantial increased costs." As employees learn of the heightened burden for employers to deny religious accommodation requests, such requests may increase.

There are several steps for employers to consider in handling religious accommodation requests post-*Groff*, including:

- Revisit prior denials of religious accommodation requests to determine whether such denials remain proper under the revised "undue hardship" standard.
- Consider potential accommodation options that can be implemented without creating "substantial increased costs" in relation to the organization's business.
- Review and update internal policies for processing religious accommodation requests.
- Create a standard method to evaluate potential costs of providing a religious accommodation (e.g., impacts to the business due to lower worker morale) while also considering factors that may preclude inclusion of such costs in an accommodation analysis (e.g., lower worker morale driven by bias against a particular religion).
- Train managers, HR professionals, and others who make religious accommodation decisions on the revised standard under Groff and any policy or procedure updates.

The authors gratefully acknowledge the contributions of Aristotle Jones, law student and Krieg DeVault summer associate, in preparing this article.

[1] No. 22-174 (June 29, 2023).
[2] 29 CFR § 1605.1.
[3] 432 U.S. 63 (1977).