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INSIGHTS

Supreme Court "Clarifies" Employer Duty to Make Religious Accommodations

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On June 29, 2023, in ***Groff v. DeJoy***, the US Supreme Court unanimously adopted a new interpretation of the standard for when an employee's religious accommodation poses an "undue hardship" for an employer under Title VII of the Civil Rights Act (Title VII). In *Groff*, the Supreme Court repudiated the commonly held understanding of *Transworld Airlines v. Hardison*—a nearly 50-year-old decision. Under the old *Hardison* interpretation, employers could demonstrate "undue hardship" by merely showing that accommodating an employee's religious practice would require "more than a *de minimis* cost." Post-*Groff*, employers must engage in a fact-specific inquiry to determine whether the "burden is substantial in the overall context of an employer's business."

Case Background

In *Groff*, an Evangelical Christian postal worker opposed working on Sundays because of his Sabbath observance. US Postal Service (USPS) worked around Groff's religious practice by reassigning his Sunday deliveries to other employees, including the postmaster who ordinarily would not have delivered mail. USPS imposed progressive discipline on Groff for failing to work Sundays. He ultimately resigned and sued USPS.

The US District Court for the Eastern District of Pennsylvania sided with USPS, and the Third Circuit Court of Appeals agreed. Applying the prior interpretation of *Hardison*, the Third Circuit held that requiring an employer to bear "more than a *de minimis* cost" in accommodating a religious practice would pose an "undue hardship," noting that this is "not a difficult threshold to pass."

***Groff* Revises "Undue Hardship" Standard**

The Supreme Court determined the Third Circuit's reading of *Hardison* was improperly narrow. Showing "more than a *de minimis* cost" is not enough to establish an undue hardship under Title VII. Rather, the Supreme Court held that an undue hardship will exist "when a burden is substantial in the overall context of an employer's business." This is a "context-specific" inquiry and employers must consider the particular religious accommodation in light of "all relevant factors," including the "practical impact" of the requested accommodation given an employer's size, operating cost, and the nature of its business.

An employer will not be able to conclude, without considering other options, that forcing other employees to work overtime is an undue hardship. An employer also will not be able to successfully assert undue hardship by relying on the need to manage co-worker animosity towards accommodating religion. The impact of an accommodation on co-workers will be relevant only to the extent it affects "the conduct of the business." The Court recognized that hardship on co-workers may, in some circumstances, be an undue hardship and we expect this to be an area that will be further developed.

Key Takeaways For Employers

With the *Groff* opinion, the Supreme Court has telegraphed to employers that if it can reasonably provide a religious accommodation, it should. Despite *Groff*'s dearth of practical guidance on how employers can comply with their increased obligations, *Groff* elucidates several key takeaways that will help employers navigate this new standard:

First, the Supreme Court noted that a "good deal of the EEOC's guidance in this area is sensible and will, in all likelihood, be unaffected" by this holding. This is not surprising, given that much of the EEOC's guidance has focused on what should be accommodated.

Second, it is insufficient for an employer to consider only the accommodation request before it and determine whether that particular accommodation poses an undue hardship. Employers are obligated to consider other potential accommodations. Notably, in *Groff,* the Supreme Court declined to adopt the same definition of "undue hardship" used in interpreting employers' obligations under the Americans with Disabilities Act (ADA)— "significant difficulty or expense." Although the "undue hardship" standards under the ADA and Title VII remain distinct, utilizing an interactive process, similar to the process required by the ADA, may aid an employer in fulfilling its obligations to provide reasonable accommodations for religious practices.

Third, employers can no longer rely on some additional costs, alone, to justify denying a religious accommodation request. Rather, the additional cost would need to be substantial in order to demonstrate undue hardship. While there is no bright line rule, *Groff* makes clear that the process must be a fact-specific determination, and the level of burden posed by a particular accommodation will be inversely correlated with the employer's size, revenue, and footprint.

Fourth, employers should revise any accommodation policies in place that reference the "*de minimis* cost" standard and consult with employment counsel to ensure religious accommodation policies and procedures comply with this new test.