Eye On Compliance: A Shift In Religious Accommodation Law

By **William Cook and Matthew High** (July 27, 2023)

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Knowing how to accommodate the religious practices of employees can be a tall task for employers.

This process often depends on the requested accommodation, the effect that the accommodation will have on the business, and the size of the business.

Although accommodating religious practices has always been a fact-specific endeavor, the U.S. Supreme Court precedent before the justices' June 29 ruling in Groff v. DeJoy[1] made it easier for employers to deny religious accommodations. That will now change.

Title VII of the Civil Rights Act of 1964 requires employers to accommodate the religious practices of their employees unless doing so would impose "an undue hardship on the conduct of the employer's business."

However, before Groff many courts interpreted "an undue hardship" to mean any effort or cost that is "more than … de minimis." This was a lenient and employer-friendly standard that allowed employers to routinely deny religious accommodations — even minor ones.

Now employers must wrestle with the fallout from Groff, which will require employers to prove the burden of granting an accommodation will result in substantial increased costs in relation to the conduct of its particular business. This is a notable change in the law that employers would be prudent to observe.

Before Groff

Lower courts' reliance on the de minimis standard was taken from the Supreme Court's 1977 ruling in Trans World Airlines Inc. v. Hardison.[2]

TWA hired Larry Hardison to work as an "around-the-clock" employee. He eventually underwent a religious conversion, and his religion required him to refrain from performing any work from sunset on Friday until sunset on Saturday.

Initially, Hardison did not have any work schedule conflicts, but issues arose when he transferred to another position in which he lacked the seniority to avoid work during his Sabbath. Attempts at accommodations failed and TWA discharged Hardison for insubordination.

Hardison filed suit against TWA and his union. The district court and the U.S. Court of Appeals for the Eighth Circuit sided with Hardison, finding that reasonable accommodations were available to TWA.

The Supreme Court disagreed, stating that "the principal issue on which TWA and the union came to this Court" was whether Title VII "require[s] an employer and a union who have agreed on a seniority system to deprive senior employees of their seniority rights in order to accommodate a junior employee's religious practices."

Simply put, the court found that TWA could not accommodate Hardison without violating seniority rights.

The key quote, however, landed near the end of the court's opinion: "to require TWA to bear more than a de minimis cost in order to give Hardison Saturdays off is an undue hardship." Many lower courts latched onto this quote and used it as the standard of undue hardship. That will now change after the court's decision in Groff.

Groff v. DeJoy

Gerald Groff was a U.S. Postal Service worker who believed Sundays should be reserved for worship, not labor.

The USPS worked to accommodate Groff at first by redistributing his Sunday assignments to other carriers, all the while Groff was receiving progressive discipline. He eventually resigned and filed suit against the USPS under Title VII alleging that it could have accommodated him without undue hardship on its business.

The district court granted summary judgment for the USPS, and the U.S. Court of Appeals for the Third Circuit affirmed relying on the "de minimis" language in Hardison.

The Supreme Court, however, rejected this approach taken by the Third Circuit and lower courts, and instead implemented a "substantial increased costs" test.

The court stated that "showing 'more than a de minimis cost,' as that phrase is used in common parlance, does not suffice to establish 'undue hardship' under Title VII."

"'Undue hardship' is shown when a burden is substantial in the overall context of an employer's business." Or, as the court said, "We think it is enough to say that an employer must show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business."

This will be a case-specific analysis that evaluates "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.'"

But employers cannot escape liability merely by showing that an accommodation causes it to incur additional costs. The costs must rise to an excessive or unjustifiable level.

Unfortunately, the Supreme Court did not say much more in terms of defining the standard for lower courts to apply going forward, and instead expressly stated that the lower courts will need to decide this issue on a case-by-case basis: "Having clarified the Title VII undue-hardship standard, we think it appropriate to leave the context-specific application of that clarified standard to the lower court in the first instance."

Takeaways for Employers

It should be no surprise that employers must now change how they approach religious accommodations. There are three key takeaways for employers after the court's ruling.

First, the U.S. Equal Employment Opportunity Commission's guidance on religious accommodations will likely remain the same, and the court stated as much in its opinion: "We have no reservations in saying that a good deal of the EEOC's guidance in this area is sensible and will, in all likelihood, be unaffected by our clarifying decision today."

This means that — at least initially — employers can follow the EEOC's guidance on why an undue hardship is not imposed by temporary costs or voluntary shift-swapping.

However, prudent employers would be wise to train their human resources staff on this update in the law and ensure that all religious accommodation requests are properly considered.

Second, given the new meaning of "undue hardship," it is likely far more religious accommodations may need to be granted.

This may cause employers to demand that their employees show their religious accommodation requests are based on a "sincerely held religious belief."

The problem, though, is that this can be a subjective inquiry, and employers should not scrutinize employees belonging to one religious faith more than employees belonging to another. So if employers intend to question whether an employee's religious accommodation is based on a sincerely held religious belief, it needs to be done impartially and uniformly.

Conclusion

Lastly — and perhaps most importantly — employers should develop a standardized system for evaluating what constitutes an undue hardship.

Determining which accommodation requests satisfy this threshold can be especially difficult depending on the size of the business, the type of the request and the costs of the request on the business.

For this reason, it is very important for employers to develop a consistent system for evaluating requests. For example, if one employee from one religious faith requests not to work on Mondays and another employee from another religious faith requests not to work on Saturdays, make sure the same process is followed in both situations.

In the end, employers must do what they always do — adjust.

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This article is part of a monthly column that provides guidance on employers' top compliance concerns.

[1] Groff v. DeJoy, No. 22-174 (June 29, 2023).

[2] TWA v. Hardison, 432 U.S. 63 (1977).