Supreme Court Clarifies Heightened 'Undue Burden' Standard for Religious Accommodation Cases

By Mollie G. Mohan and James R. Layton

Under Title VII, employers cannot discriminate against employees based on their religion.[i] Employers have an affirmative obligation to accommodate employees' bona fide religious beliefs. Specifically, an employer must accommodate an employee's religious practice and grant a workplace accommodation unless such an accommodation would impose an "undue burden" on the employer.[ii]

On June 29, 2023, the Supreme Court issued a rare unanimous decision in a Title VII religious accommodations case, *Groff v. DeJoy*, clarifying what constitutes an "undue burden" in religious accommodation cases.[iii]

Factual and Procedural Background

Gerald Groff, an Evangelical Christian, was employed as a Rural Carrier Associate for the United States Postal Service (USPS).[iv] During the peak holiday delivery season, Groff (and all other employees) were required to work occasionally on weekends – including Sundays.[v] Groff objected to Sunday work assignments on the basis of his religion, believing that "Sunday should be devoted to worship and rest."[vi]

Although USPS reassigned Groff's Sunday shifts to other employees, he was disciplined for his failure to work on Sundays.[vii] After two years of progressive discipline, he resigned in January of 2019.[viii] Groff then sued under Title VII, claiming he was constructively discharged because USPS could have, but did not, accommodated his religious beliefs "without undue hardship on the conduct of USPS's business."[ix]

The District Court granted summary judgment for USPS. The Third Circuit affirmed, based on the Supreme Court's prior ruling in *Trans World Airlines, Inc. (TWA) v. Hardison*, "which it construed to mean that requiring an employer to bear more than a *de minimis* cost to provide a religious accommodation is an undue hardship."[x]

The Supreme Court granted review on January 13, 2023 to answer two questions: (1) Whether to "disapprove [of] the more-than-*de-minimis*-cost test for refusing Title VII religious accommodations stated in *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977)?" and (2) Whether an employer "may demonstrate 'undue hardship on the conduct of the employer's business' under Title VII merely by showing that the requested accommodation burdens the employee's co-workers rather than the business itself?"[xi]

Holding

The Court began its opinion by reiterating that employers are obligated under Title VII "to make reasonable accommodations to the religious needs of employees whenever that would not work an undue hardship on the conduct of the employer's business."[xii] The Court then explained its

prior holding in *TWA v. Hardison* and its disapproval of circuit and district courts' narrowed interpretation of *TWA*.[xiii]

That prior interpretation was based on the following line from *TWA*: "To require TWA to bear more than a *de minimis* cost in order to give Hardison Saturdays off is an undue hardship."[xiv] In *Groff*, the Court expressly disavowed that narrow interpretation, noting that, "[e]ven though *Hardison*'s reference to '*de minimis'* was undercut by conflicting language and was fleeting in comparison to its discission of the 'principal issue' of seniority rights, lower courts have latched on to '*de minimis'* as the governing standard."[xv] The Court cited numerous instances where courts used the "*de minimis*" standard to "bless[] the denial of even minor accommodations in many cases, making it harder for members of minority faiths to enter the job market."[xvi] The Court held that "showing more than a *de minimis* cost, as the phrase is used in common parlance, does not suffice to establish undue hardship under Title VII."[xvii] Rather than showing that an accommodation would have a "*de minimis*" impact as suggested by *TWA*, employers should now understand that an "undue hardship" requires a showing that the proposed accommodation "is substantial in the overall context of [the] employer's business."[xviii] Thus, to deny a request for a religious accommodation, "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."[xix]

The Court directed lower courts to take a fact-specific, "common-sense" approach, "tak[ing] into account all relevant factors in the case at hand, including particular accommodations at issue and their practical impact in light of the nature, size, and operating cost of an employer."[xx]

In assessing an accommodation request, an employer must not solely analyze an employee's particular request. Rather, "Title VII requires that an employer reasonably accommodate an employee's practice of religion, not merely that it assess the reasonableness of a particular possible accommodation or accommodations."[xxi] Thus, if an employee makes an accommodation request that is not feasible, the employer cannot simply reject that request as unduly burdensome. The employer must consider whether alternative methods are available to accommodate the employee's religious practice.

The Court also discussed whether a particular accommodation's impact on coworkers would be sufficient to establish an undue burden.[xxii] The Court noted that "an accommodation's effect on co-workers may have ramifications for the conduct of the employer's business, but a court cannot stop its analysis without examining whether that further logical step is shown in a particular case."[xxiii] In other words, an employer cannot simply rely on disruption of coworkers to establish an undue burden—it must further determine if coworker disruption results in substantial increased costs to the conduct of its particular business.

The Court made clear that any hardship "attributable to employee animosity to a particular religion, to religion in general, or to the very notion of accommodating religious practice cannot be considered undue."[xxiv] Allowing employee bias or hostility to religion to permit an employer to deny a religious accommodation would result in Title VII being "at war with itself."[xxv]

In sum, the Court in *Groff* clarified that *TWA*'s language regarding '*de minimis*' cost is not the operative standard for determining what is an undue burden. Employers must now assess whether accommodating an employee's religious beliefs would result in substantial increased cost to the business.

Key Takeaways for In House Counsel

Going forward, an employer will no longer be able to deny a request for a religious accommodation merely because there is a minimal cost associated with granting the accommodation. An employer may deny a request as unduly burdensome only when the accommodation results in a substantial increased cost. In analyzing whether there is a substantial increased cost, an employer may take into account, among other things, the impact on coworkers, the size of the business, and overall operating costs of the business.

Employers should review their policies, training materials, and practices, to ensure their interactive process for receiving and processing religious accommodation requests complies with federal and state law. Some tips to ensure compliance are:

- Update policies
    - Policies should be updated to note that an undue burden must be one that results in a substantial increased cost to the business. Remove any mention of '*de minimis*' cost from your interactive process policy.
    - Make sure policies include a robust interactive process employees can utilize to request a religious accommodation. Confirm that this comprehensive process requires documentation of each step in the process. If a request is denied, the interactive process policy should require documentation of exactly how accommodating an employee's religious practice would result in a substantial increased cost to the business.[xxvi]
    - Although an employee's particular accommodation request need not be granted (if, for example, it results in an undue burden), that does not alleviate the employer's duty to accommodate the employee's practice of religion. An employer is affirmatively required to determine whether any other reasonable alternative accommodations exist.[xxvii]
    - Policies should have a mechanism to confirm that accommodation requests are being processed in a consistent manner – in both process and result (hint – maintain data to support consistency!).

- Train key personnel
    - It is not enough to train HR! More often, requests are received (and could potentially be ignored) by frontline supervisors. Make sure all decision-makers are aware of and trained on policies and the interactive process.
    - Although an employee's request for an accommodation must be clear, no "magic words" are necessary to trigger the interactive process and an employer has a duty to engage in the interactive process when an employer either knows or reasonably should know that a communication is a request for an accommodation based on

religion.[xxviii] Supervisors and HR personnel should be trained to recognize and properly respond to a religious accommodation request.
    - Make sure decision-makers and coworkers are cross-trained about retaliation. Even if an employee's accommodation request is granted, if he or she is subsequently retaliated against for this accommodation request – by being subjected to an adverse employment action or harassment in the workplace – this could lead to liability under the anti-retaliation provisions of Title VII (and state law).
    - Remember, your policies are only effective if employees are trained to consistently follow these policies!

- Consult EEOC guidance
    - Although the Court has recently expressed skepticism about agency guidance, it spoke favorably in the *Groff* decision about the EEOC's regulations and guidance related to religious accommodations.[xxix]
    - The Court agreed with the EEOC's position that it was ***not*** an undue hardship for an employer to, for example, (1) incur administrative costs involved in reworking schedules, (2) tolerate the infrequent or temporary payment of premium wages for a substitute, (3) permit voluntary substitutes and swaps (if they do not conflict with a bona fide seniority system), and (4) allow for the relaxation of dress codes.[xxx]

- Don't forget state law
    - Under the Missouri Human Rights Act (MHRA), an employer has "an obligation to make reasonable accommodations to the religious needs of employees . . . where these accommodations can be made without undue hardships on the conduct of the employer's business."[xxxi]
    - Missouri requires an employer to provide a reasonable accommodation if it does not "impose undue financial and administrative burdens on the employer."[xxxii]
    - With regard to the potential burden on other employees, Missouri courts have held, in disability discrimination cases, that a reasonable accommodation "does not require the employer to reassign an employee or to restructure a job in a way that would usurp the legitimate rights of other employees."[xxxiii]
    - When analyzing an employee's accommodation request, remember to consider both federal and state law to avoid any potential claim.

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[i] *See, e.g., EEOC v. Chemsico, Inc*., 216 F. Supp. 2d 940, 949 (E.D. Mo. 2002) (quoting 42 U.S.C. § 2000e-2.a.1).
[ii] *Id*.
[iii] *Groff v. DeJoy*, 600 U.S. ---, No. 22-14, 2023 WL 4239256 (June 29, 2023).
[iv] *Id*. at *4.
[v] *Id*.
[vi] *Id*.
[vii] *Id*. at *5.
[viii] *Id*.
[ix] *Id*. (cleaned up).
[x] *Id*. (quoting *TWA v. Hardison*, 432 U.S. 63, 97 (1977)).
[xi] Questions Presented, SUPREME COURT, https://www.supremecourt.gov/qp/22-00174qp.pdf (last visited July 20, 2023).
[xii] *Groff*, 2023 WL 4239256, at *5 (quoting 29 C.F.R. § 1605.1 (1968)).

[xiii] *Id*. at *8
[xiv] *Id*. (quoting *TWA*, 432 U.S. at 84).
[xv] *Id*. at *9.
[xvi] *Id*.
[xvii] *Id*. at *10.
[xviii] *Id*.
[xix] *Id*. at *11.
[xx] *Id*. (cleaned up).
[xxi] *Id*.
[xxii] *Id*. at *12.
[xxiii] *Id*.
[xxiv] *Id*.
[xxv] *Id*.
[xxvi] For example, if accommodating an employee's religious accommodation request would require hiring an additional employee, document the cost of the hiring process, the added payroll cost for the new employee, any other ancillary costs related to hiring this additional employee, and any potential impacts on existing personnel.
[xxvii] *Id*.
[xxviii] *Powley v. Rail Crew Xpress, LLC*, 25 F.4th 610, 612 (8th Cir. 2022) (analyzing disability accommodation claim).
[xxix] *Groff*, 2023 WL 4239256, at *9 (quoting 29 C.F.R. § 1605.2.3.2 (2022)); *id*. at *11 (noting 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").
[xxx] *Id*. For EEOC guidance on religious accommodations, see Section 12: Religious Guidance, EEOC, https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination (last visited July 21, 2023); What You Should Know: Workplace Religious Accommodation, EEOC, https://www.eeoc.gov/laws/guidance/what-you-should-know-workplace-religious-accommodation (last visited July 21, 2023); Religious Garb and Grooming in the Workplace: Rights and Responsibilities, EEOC, https://www.eeoc.gov/laws/guidance/religious-garb-and-grooming-workplace-rights-and-responsibilities (last visited July 21, 2023).
[xxxi] 8 C.S.R. § 60-3.050.
[xxxii] *Wells v. Lester E. Cox Med. Ctrs.*, 379 S.W.3d 919, 924 (Mo. App. 2012) (analyzing reasonable accommodation requirement in MHRA disability case).
[xxxiii] *Reed v. Kansas City Mo. Sch. Dist*., 504 S.W.3d 235, 247 (Mo. App. 2016) (quoting *Umphries v. Jones*, 804 S.W.2d 38, 41 (Mo. App. 1991)).