Supreme Court Decision Leaves Employers in Religious Accommodation Purgatory

A recent decision of the U.S. Supreme Court, clarifying the "undue hardship" standard an employer must meet in rejecting a proposed accommodation of an employee's religious needs, has shaken up attorneys' and employers' understanding of the demands of Title VII's religious non-discrimination requirements. The decision in Groff v. DeJoy makes it clear that the language most familiar to employment attorneys and general counsels—that an accommodation request imposed a hardship on an employer if it was "more than *de minimis*—is *not* the proper measuring stick for religious accommodation. Instead, the Court held, an accommodation given to an employee on the basis of his or her religion must "result in substantial increased costs in relation to the conduct of [the employer's] particular business," before it causes an employer an "undue hardship."

The Groff case featured an evangelical Christian postal worker who refused to work on Sundays, despite the fact that Sunday work was assigned to every other postal worker in his facility on a rotating basis. After Groff—who was progressively disciplined for his refusals, which forced the postal service to make alternate arrangements such as the local postmaster personally deliver mail, as well as colleagues from another office in the region—resigned in anticipation of termination, he sued the US Postal Service (USPS) for failing to accommodate his religious needs under Title VII.

Groff's lawsuit was dismissed on summary judgment by a federal district court—a decision that was further upheld by a federal Court of Appeals, which found that exempting Groff from Sunday work "imposed on his coworkers, disrupted the workplace and workflow, and diminished employee morale," all of which satisfied USPS's burden of showing that Groff's requested accommodation imposed a "more than *de minimis* cost."

The Supreme Court disagreed, holding that courts, employers, and the EEOC had been misapplying the proper standard and clarifying that the "*de minimis*" language of its prior decisions was *not* the full expression of an employer's obligation in a religious-accommodation situation. Instead, the Court explained, the key statutory term—"undue hardship"—clearly meant something *more* than "a mere burden"; it meant costs or impacts that were "excessive" or "unjustified." As a result, employers must show "substantial increased costs," not just something beyond a pittance or an inconvenience.

The federal government—arguing for the USPS—*agreed* that the "*de minimis*" language was an inappropriate standard, essentially

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conceding that the standard should be something more plaintiff- and employee-friendly; however, the government disagreed with the scope of the standard Groff and his attorneys believed the Court should adopt, which is the heightened standard the Court ultimately adopted.

In establishing the heightened standard employers must now meet when evaluating religious accommodation requests, three notable aspects of the Court's decision stand out. First, the Court rejected Groff's contention that language and caselaw from the Americans with Disabilities Act (ADA) must be used in applying the standard—suggesting that the burden on an employer when accommodating religious needs is still lower than the burden when accommodating disabilities under the ADA. Second, however, the Court emphasized that Title VII requires an employer reasonably accommodate an employee's religious practices and beliefs, not simply evaluate one possible accommodation for reasonableness—stating that if one accommodation amounted to an "undue hardship," then "consideration of other options…would also be necessary." Despite the Court's suggestion that the burden on employers in accommodating religious needs is lower than when accommodating disabilities, this strongly suggests that the Court envisioned religious accommodations to look much like the "interactive process," or back-and-forth discussion of possibilities, that is required when accommodating a disability under the ADA. Finally (and somewhat ominously) the Court cautioned that in assessing the employer's burden, there is a distinction to be drawn between impacts of the accommodation on *co-workers*, and impacts on the *conduct of the business,* and impacts on co-workers alone would not necessarily give rise to a "substantial increased cost"—suggesting that inconvenience to co-workers or impact on employee morale might not be significant considerations in these cases. This last point of the Court's decision is of particular concern because most religious accommodation requests are for time off from work, which tend to cause other employees to cover (often undesirable) shifts (such as weekends and holidays). Typically, employer denials of religious accommodation requests relate to the burden on other employees when they must cover the shifts of employees requesting the time off. Employer economic costs are not usually the issue when employers consider requests for religious accommodation.

In view of the significant modification of the standard previously used by most employers, both public- and private-sector entities should familiarize themselves with the Groff decision and review and revise their current religious-accommodation policies and practices accordingly—possibly to include revisiting recent accommodation denials—as well as training first-line supervisors to recognize and respond to religious accommodation requests. Employers should furthermore give thought to applying an "interactive process" model to religious accommodation requests, similar to their responses to disability-accommodation

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requests. Employers should also remain apprised of additional EEOC guidance and court decisions using the standard described in Groff, as a new body of religious accommodation case law develops to guide compliance in this changed environment.

4883-2136-2030, v. 1

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