



EMPLOYERS NOW HAVE A HEIGHTENED RESPONSIBILITY TO MAKE RELIGIOUS ACCOMMODATIONS FOR EMPLOYEES.

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For the first time in nearly fifty years, the United States Supreme Court has provided updated guidance on what constitutes an “undue hardship” when providing employees with religious accommodations under Title VII of the Civil Rights Act of 1964. Title VII requires that employers reasonably accommodate employees whose sincerely held religious beliefs, practices, or observances conflict with work requirements, unless the accommodation would create an undue hardship. Without a precise definition of “undue hardship,” courts have relied on the Supreme Court’s decision in *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977) as guidance concerning the interpretation of what constitutes an undue burden in providing a religious accommodation. Since *Hardison*, the courts have determined that a religious accommodation that required more than a *de minimis* cost was an undue hardship to employers. 432 U.S. at 84 (“To require [the employer] to bear more than a *de minimis* cost in order to give [the religious accommodation] is an undue hardship.”). Now, according to the Supreme Court, employers may no longer use a *de minimis* increase in cost as a defense for not providing such an accommodation, thereby revisiting the 1977 standard set forth in *Hardison*.

Recently, the Supreme Court revisited the topic of undue hardship and religious accommodations in *Groff v. DeJoy, Postmaster General*, No. 22-174 (June 29, 2023). In a unanimous decision, the Supreme Court held that for a religious accommodation to be considered an undue burden, an employer must show that it would result in a substantial increase in cost in relation to its business. In coming to its holding, the Court emphasized the language in Title VII, which states that an accommodation should not impose an **undue** hardship, as opposed to just a burden.

This heightened standard requires employers assessing religious accommodation requests to consider whether there is evidence that providing the accommodation would result in “substantial

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increased costs” to the employer’s business. If the accommodation would result in *de minimis* costs (*i. e.*, “very small or trifling” costs), employers are required to provide the religious accommodation.

Factual Background

Gerald Groff, an Evangelical Christian and former employee of the United States Postal Service (USPS), refused to work Sunday shifts due to his religious beliefs. Early in his employment, the USPS did not deliver on Sundays, so this did not pose a problem. However, in 2016, the USPS entered into an agreement with Amazon to provide Sunday deliveries. Groff requested a transfer to a smaller, rural USPS station that did not provide Sunday service as a means of accommodating his religious practices. This request was granted; however, in 2017, Groff’s new location also began providing Sunday delivery. Groff refused to work on Sunday, and his duties were distributed to other employees, resulting in Groff receiving discipline for failing to work on Sundays. Ultimately, Groff resigned and filed suit against USPS under Title VII, claiming that USPS could have accommodated his Sunday Sabbath without undue hardship.

The Court reexamined the history of Title VII and its holding in *Hardison*, and determined that in order to decide whether a particular religious accommodation is an undue hardship on an employer requires a showing that there is a substantial burden “in the overall context of an employer’s business.” This requires courts to consider all relevant factors, including the particular accommodation, the practicality of providing such an accommodation, and the operating cost of the employer. The Court declined to extend the more employee-friendly undue hardship analysis of the Americans with Disabilities Act, which requires a showing of “significant difficulty and expense” in order to deny an accommodation to the religious setting. This leaves employers and courts with some uncertainty over what constitutes more than *de minimis* cost, but does not necessarily rise to the level of significant difficulty and expense when evaluating the reasonableness of a request for religious accommodation.

Practical Implications

Whether or not a religious accommodation would cause a substantial burden will likely depend on the employer’s size and the nature and scope of its operations, among other factors. In order to prepare for such accommodation requests, we recommend that employers educate their managers and recruiters, who may be tasked with receiving and evaluating religious accommodation requests, regarding this new standard. Employers should also re-visit any policies and procedures, including for instance accommodation options or choices, in place for receiving and analyzing accommodation requests.

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