US SUPREME COURT UNANIMOUSLY ADOPTS HEIGHTENED "UNDUE HARDSHIP" STANDARD IN TITLE VII RELIGIOUS ACCOMMODATION ANALYSIS

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OVERVIEW

As of 29 June 2023, employers must modify their practices when evaluating requests for religious accommodations under Title VII of the Civil Rights Act of 1964 (Title VII), because "undue hardship" is no longer defined by the low threshold of a de minimis cost to an employer. Instead, the US Supreme Court (Court) in *Groff v. DeJoy*[1] held that an "undue hardship" for purposes of evaluating a religious accommodation request is defined as substantial increased costs in relation to the conduct of its particular business. The ruling in *Groff v. DeJoy* unanimously upended almost 50 years of Title VII jurisprudence tracing back to the Court's 1977 decision in *Trans World Airlines, Inc. v. Hardison*,[2] where "undue hardship" was defined to mean more than a de minimis cost. With the Court's adoption of a heightened standard for undue hardship, employers will have a more difficult time denying the request on the basis of undue hardship and will have to modify their practices accordingly.

PRIOR LEGAL LANDSCAPE

Prior to the *Groff* ruling, courts interpreted "undue hardship" under Title VII as having more than minimal cost or burden on the employer, a lower burden than under the Americans with Disabilities Act (ADA), which required a "significant difficulty or expense." Since the articulation of the de minimis standard in *Hardison*, the Equal Employment Opportunity Commission (EEOC) has published guidance addressing how employers can evaluate whether a proposed religious accommodation would cause an undue hardship on an employer and has identified various factors to consider, including direct monetary costs as well as the overall burden on the business (which burdens may include violating a seniority system, causing a lack of necessary staffing, or jeopardizing the security or health of employees and the public).[3] Further, in its guidance, the EEOC has addressed specific types of accommodation requests and weighed in on the relative burden associated with them, all under the de minimis undue hardship standard. Employers, relying on this guidance and common law interpretations, evaluated undue hardship for religious accommodation requests through the lens of the de minimis standard, which afforded them more leeway to reject certain requested accommodations based upon its business needs. Following *Groff*, employers will now have to apply a heightened standard when reviewing whether requests for a religious accommodation pose an undue hardship.

SUMMARY OF OPINION

Gerald Groff (Groff) is an Evangelical Christian who worked for the United States Postal Service (USPS). In accordance with his religion, Groff believed that Sundays should be devoted to worship and rest. When Groff first began working for USPS, his position generally did not involve Sunday work. However, that later changed and Groff was expected to work on Sundays. Groff requested he be excused from working on Sundays as a form of religious accommodation, a request that was denied by the USPS on the basis of undue hardship. Despite his accommodation being denied, Groff was unwilling to work on Sundays due to his religious beliefs, and as a result continued to receive progressive discipline for his failure to do so. Groff ultimately resigned his employment with USPS.

Groff thereafter sued USPS under Title VII, alleging that USPS could have accommodated his Sunday Sabbath practice without undue hardship on the conduct of its business. The district court, applying the well-established de minimis standard, granted summary judgment in favor of USPS, and the Third Circuit Court of Appeals affirmed. The Third Circuit felt bound by the precedent established by *Hardison*, which it interpreted as creating a low threshold—something more than a de minimis cost—for proving "undue hardship."

The *Groff* Court began its analysis by discussing the historical development of Title VII and EEOC regulations promulgated thereunder leading up to the decision in *Hardison*. The Court noted that a single sentence in the *Hardison* opinion became the authoritative interpretation of the statutory term "undue hardship" for many of the lower courts: "To require TWA to bear more than a *de minimis* cost in order to give Hardison Saturdays off is an undue hardship." The Court in *Groff*, however, doubted that this sentence was meant to take on this large role, and instead observed that the Court in Hardison described the true governing standard three separate times—an accommodation is not required when it entails "costs" or "expenditures" that are "substantial."

Opining that the *Hardison* decision cannot be reduced to one phrase, the Court in *Groff* held that showing "more than a de minimis cost" does not suffice to establish "undue hardship" under Title VII. Instead, "undue hardship" is shown when a burden is substantial in the overall context of an employer's business. The Court arrived at this conclusion by examining the plain language of the statute and the various definitions of "hardship" in common lexicon. Further, the Court explained that the courts must apply this newly clarified test in a manner that takes into account all relevant factors in the case at hand, including the particular accommodations at issue and their practical impact in light of the nature, size, and operating cost of an employer.

Seeking to define a new undue hardship standard, *Groff* argued that the Court should instruct lower courts to draw upon decades of case law discussing the ADA. The US solicitor general argued that the Court should rule that the EEOC's construction of the *Hardison* decision has been basically correct. The Court rejected both views.[4] The Court acknowledged that a "good deal" of the EEOC's guidance on this issue will likely be unaffected, and that the Court's opinion may prompt little, if any, change in the EEOC's guidance. However, the Court refused to ratify *in toto* the pre-existing body of EEOC interpretation.

The Court concluded by setting forth important considerations for the undue hardship analysis moving forward. First, although an accommodation's impact on coworkers may be relevant, it is not determinative. Second, bias or hostility to a religious practice or religious accommodation cannot serve as the justification for finding undue hardship. Third, it is not enough that an employer assess the reasonableness of a particular requested religious accommodation; instead, the employer also must consider other possible accommodations that would not pose an undue hardship.

IMPLICATIONS

What does this mean for employers in the United States that are subject to Title VII? Simply put, requests for religious accommodations need to be evaluated applying the heightened standard, which means, in short, that accommodations that may have been denied pre-*Groff* may need to be accommodated post-*Groff*.

While there will undoubtedly be more guidance in the future on how employers practically apply this new standard, the Court's opinion hinted at some acceptable approaches. Although the Court did not point to specific guidelines for interpreting the clarified standard and rejected adoption of the ADA's "significant difficulty or expense" formulation, the Court did note that it had "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." That being said, employers should tread carefully when relying upon prior EEOC guidance and instead should evaluate a religious accommodation request under the clarified standard of whether the "burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business." Employers also should be cognizant that although they carry a higher burden in establishing undue hardship post-*Groff*, the guidance and jurisprudence on evaluating the sincerity of an employee's religious belief underlying the accommodation request was not at issue in *Groff* and has not changed. As before, only if the employer has a bona fide doubt about the underlying basis for the accommodation request may it make a limited inquiry into the facts and circumstances of the employee's claim that the belief or practice at issue is religious and sincerely held, and therefore requires an accommodation.

Following this ruling, and in the absence of specific guidance from the courts on how to interpret the clarified standard, employers should take the following actions to ensure compliance under Title VII:

- Review and evaluate current accommodation policies and procedures to ensure that religious accommodation requests are evaluated for undue hardship under the new clarified standard;
- Train managers, human resource professionals, and those involved in reviewing requests for an accommodation on the appropriate standard to evaluate requests;
- Consider standardizing and centralizing the process for reviewing both religious and disability accommodation requests to ensure each request is evaluated in accordance with applicable law and by trained personnel; and
- When evaluating religious accommodation requests for undue hardship, consider all relevant factors and the practical impact of the accommodation given the nature, size, and operating cost of the business as well as other potential reasonable accommodations before making an undue hardship determination.

Finally, it is unclear as to how the *Groff* decision may impact religious accommodations under state and local anti-discrimination laws, as many look to cases under Title VII for interpretative guidance. While prior precedent under state law likely will remain intact, states and localities may adopt regulatory changes following *Groff*. Therefore, employers should monitor developments at the federal, state, and local level in the wake of *Groff*.

FOOTNOTES

[1] No. 22-174, 600 U.S. ___ (2023).

[2] 432 U.S. 63 (1977).

[3] US Equal Employment Opportunity Commission, Compliance Manual on Religious Discrimination (January 15, 2023).

[4] The Court's clarified undue hardship test is on the surface analogous to the ADA's undue hardship test for assessing requested reasonable accommodations for a disability. However, in rejecting a wholesale adoption of such standard, the Court implicitly acknowledged the significant differences between a religious accommodation and an accommodation for a disability.

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