



Supreme Court "Substantially" Raises Bar for Denial of Religious Accommodations

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The Supreme Court, on June 29, 2023, announced its unanimous opinion in *Groff v. DeJoy*, which concerned religious accommodations under Title VII. The statute prohibits employers from denying reasonable accommodations for religious observance, practices, and beliefs unless the accommodation creates an “undue hardship on the conduct of the employer's business.” The Justices took this opportunity to revisit its forty-six-year-old precedent in *Trans World Airlines v. Hardison*, regarding the definition of “undue hardship” in relation to Title VII religious accommodations.

In the unanimous *Groff* opinion, the Supreme Court announced employers can no longer justify a denial of a religious accommodation based on the mere creation of “more than a *de minimis* cost.” Employers must, instead, show the accommodation would result in *substantial* increased costs in relation to the conduct of the company’s particular business.

Brief Facts

Gerald Groff began working for the U.S. Postal Service when mail employees did not generally work on Sundays, which was important to Groff as an Evangelical Christian. However, with the rise in popularity of Amazon, the Postal Service entered an agreement to deliver Amazon packages on Sundays. While Groff avoided such obligations for a time by moving to a more rural area, the expanse of Sunday Postal Service work soon reached his new location. Groff refused to work on Sundays in accordance with his deeply held religious belief. And, as a result, Groff started to receive attendance

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violations. Eventually, Groff resigned to avoid termination for accruing the requisite number of attendance points.

Groff sued the Postal Service, alleging his employer did not accommodate his religious observance of the Sabbath and such accommodation would not create an undue hardship. The lower courts granted and affirmed summary judgment for the Postal Service, following the *Hardison* Court's rationale that the accommodation of Groff's religious practice would create more than a *de minimis* cost. The Circuit Court held that exempting Groff from Sunday work "had imposed on his coworkers, disrupted the workplace and workflow, and diminished employee morale."

The Supreme Court agreed to hear Groff's appeal to revisit and clarify the contours of its decision in *Hardison*.

Supreme Court's Reasoning

After detailing the legislative and regulatory history of Title VII religious accommodations as well as the facts of the *Hardison* decision, the Court explained, for nearly half a century, lower courts had over emphasized one line in *Hardison*: "To require [the employer] to bear more than a *de minimis* cost in order to give [the employee, who is seeking a religious accommodation,] Saturday off is an undue hardship." In *Groff*, the Court clarified the emphasis on that line had been in error.

The Justices instructed lower courts to assess the term "undue hardship" as whether "a burden is substantial in the overall context of an employer's business." The Court further explained that such an analysis would be a fact-specific inquiry, entailing an assessment of the specific accommodation being sought as well as the nature, size, and operating cost of the employer.

What the Court did not do is also important. First, the Court did not adopt the definition of undue burden from the American with Disabilities Act (or its case law). Nor did the Court give an example of what would constitute a substantial increased cost in relation to the conduct of the company's particular business. Instead, the Court noted three rationales that would not suffice: (1) impacts on coworkers that do not affect the conduct of the business; (2) employee or customer animosity toward a religious practice or religious accommodation; and (3) the mere conclusion that forcing other employees to work overtime would constitute an undue hardship without considering other options like voluntary shift swapping.

What's Next

The *Groff* Court left district courts and circuit courts with a near-blank canvas for determining what constitutes an undue burden for Title VII religious accommodations. While the new standard will likely remain amorphous for some time while courts reason what creates a substantial increased cost on a case-by-case (and employer-by-employer) basis, one thing is certain: the bar employers must meet to deny a religious accommodation is substantially higher after the *Groff* decision.