Insights: Alerts

Recent SCOTUS Decision Institutes More Demanding Standard for Denying Religious Accommodations

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On Thursday, June 29, 2023, the U.S. Supreme Court decided *Groff v. DeJoy*, No. 22-174, significantly altering the long-standing religious accommodation test. This opinion presented SCOTUS with its first opportunity in nearly 50 years to explain the decision of *Trans. World Airlines, Inc v. Hardison*, 432 U.S. 63 (1977). The Court took full advantage of this opportunity to discuss the historical legal background of the religious accommodation standard and to clarify/heighten the standard for "undue hardship" and when an employer is justified in denying a religious accommodation. Justice Alito wrote for the unanimous court, with Justice Sotomayor writing a concurrence that Justice Jackson joined.

Factual Background

Plaintiff-Appellant Gerald Groff is an Evangelical Christian who believes for religious reasons that Sunday should be devoted to worship and rest and not secular labor. In 2012, he began working for the United States Postal Service ("USPS") as a Rural Carrier Associate. When he first took this USPS position, it generally did not require Sunday work. However, in 2013, USPS entered into an agreement with Amazon to begin facilitating Sunday deliveries, and in 2016, USPS signed a memorandum of understanding with the National Rural Letter Carriers' Association that set out how Sunday and holiday parcel delivery would be handled. During a 2-month peak season, each post office would use its own staff to deliver packages, but at all other times, Sunday and holiday deliveries would be carried out by employees, including Rural Carrier Associates like Groff, working from a "regional hub." For Quarryville, PA, where Groff was originally stationed, the regional hub was the Lancaster Annex.

The 2016 memorandum of understanding specified the order in which employees were called in for Sunday work outside of peak season: (1) Assistant Rural Carriers then (2) any volunteers from the geographic area and then (3) all other carriers, who are compelled to do the work on a rotating basis. Groff fell into the third category and after the memorandum was adopted he was told that he was required to work on Sundays. To avoid working Sundays, he sought and received a transfer to Holtwood, a small rural USPS station that only had seven employees and that, at the time of his transfer, did not make Sunday deliveries. In March 2017, that station began making Sunday deliveries.

Because Groff was unable to work on Sundays, USPS made alternative arrangements. During the peak season, Sunday deliveries that Groff would have handled were carried out by the rest of the Holtwood staff, including the postmaster (whose job ordinarily does not involve delivering mail). During the other non-peak months, Groff's Sunday assignments were redistributed to other carriers assigned to the regional hub. Throughout this, Groff continued to receive "progressive discipline" for his failure to work on Sundays. In January 2019, Groff resigned (though he represents that his resignation was in light of an expected termination and the District Court found a genuine issue of material fact foreclosed summary judgment as to whether Groff suffered an adverse employment action).

Subsequent Litigation to Groff's Resignation

Groff sued under Title VII asserting that USPS could have accommodated his Sunday Sabbath practice without undue hardship on the conduct of USPS's business. The District Court granted summary judgment to USPS and the Third Circuit affirmed. The Third Circuit stated that it felt "bound by [the] ruling" in *Hardison*, which it construed to mean that "requiring an employer 'to bear more than a de minimus cost' to provide a religious accommodation is an undue hardship." The Third Circuit looked to Circuit precedent and determined that this low standard was met in this case because exempting Groff from Sunday work had "imposed on his coworkers, disrupted the workplace and workflow, and diminished employee morale." The Supreme Court granted Groff's cert petition thereafter.

SCOTUS's Ruling, the New Standard, and What Employers Need to Know

Because this was SCOTUS's first time in nearly 50 years expounding on its decision in *Hardison*, it began its ruling going through the historical background of Title VII and the EEOC's subsequent interpretations and regulations. When originally enacted in 1964, Title VII provided little clarification on what it meant by religious discrimination, which created significant confusion on how to prevent it or when it occurred in the workplace. After numerous EEOC regulations and judicial rulings, Congress amended Title VII in 1972 seeking to provide some clarity. The statutory amendment provided that "[t]he term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. 2000e(j). While this amendment provided some clarification on the scope of religious discrimination, the definition of "undue hardship" or when it occurred "on the conduct of the employer's business" that would justify an employer's denial of an accommodation request was still unsettled. In 1977, SCOTUS entered its ruling in *Hardison* and considered what "undue hardship" meant in this context. One sentence of the opinion stated: "To require [the employer] to bear more than a de minimus cost in order to give [the employee] Saturdays off is an undue hardship." That sentence became the standard for religious accommodations for almost the last 50 years.

In its ruling last week, SCOTUS explicitly ended the reign of the "de minimus" standard and stated: "We hold that showing 'more than a de minimus cost,' as that phrase is used in common parlance, does not suffice to establish 'undue hardship' under Title VII. *Hardison* cannot be reduced to that one phrase." It continued its holding to set the new standard (based on other language in the *Hardison* ruling) and said: **We "understand *Hardison* to mean that 'undue hardship' is shown when a burden is substantial in the overall context of an employer's business."** SCOTUS also emphasized that applying this standard requires a fact-specific inquiry.

In light of this opinion, the most important question for employers is "what must they do to have reason to deny a religious accommodation and not violate Title VII?" The good news is that SCOTUS specifically addressed that question and stated: **"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."** Finally, the Court emphasizes two further points that are crucial for employers to know going forward: (1) that the accommodation must impact the conduct of the business and (2) that Title VII requires the employer reasonably accommodate an employee's practice of religion, not merely that it assess the reasonableness of a particular possible accommodation or accommodations.

Kilpatrick Townsend's Labor & Employment team are here to assist with any further questions and needs. Our team will continue to monitor any supplemental guidance put out by the EEOC and update this Legal Alert accordingly.