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Employee Benefit Plan Review

Employers Need to Go Further to Accommodate an Employee's Religion

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The U.S. Supreme Court recently issued a unanimous opinion in *Groff v. DeJoy*[1] that effectively made it easier for employees to secure religious-based accommodations in the workplace.

Prior to *DeJoy*, an employer could deny an accommodation request if it could show that the accommodation imposed anything more than a de minimis cost on the business (de minimis meaning so very small or trifling that it is not even worth noticing). After *DeJoy*, employers may now only refuse the request if the accommodation would cause a substantial burden in the overall context of an employer's business.

This article discusses the opinion and where employers go from here.

How We Got Here: The Court Calls the de Minimis Standard Into Question

Title VII of the Civil Rights Act of 1964 (Title VII) prohibits discrimination based on an employee's religion. It defines religion to include "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." It is the meaning of "undue hardship" that was at issue in *DeJoy*.

In *Trans World Airlines, Inc. v. Hardison*,[2] the Supreme Court interpreted the term "undue hardship" to mean anything more than a de minimis cost. Although there is some debate as to whether or not the Supreme Court actually intended this de minimis standard to play such a large role with respect to interpreting the statutory term "undue hardship," lower courts latched onto de minimis as the governing standard in the ensuing decades. Over time multiple Supreme Court justices indicated that the Court should revisit this standard. *Groff* provided them with that opportunity.

The Supreme Court Moves Away from a de Minimis to a Substantial Standard

In *Groff*, the Supreme Court finally had an opportunity to clarify the de minimis standard seemingly outlined in *Hardison*. In *Groff*, a postal worker claimed that the United States Postal Service (USPS) could have accommodated his Sunday Sabbath practice without "undue hardship" to USPS's business. The lower court observed that under *Hardison*, this "undue hardship" standard was not a difficult threshold to pass and concluded that exempting Groff from Sunday work had imposed

hardship on his coworkers, disrupted the workplace and workflow, and diminished employee morale.

With its opportunity to revisit this standard in hand, the Supreme Court concluded that it was doubtful that *Hardison* intended to create a de minimis "undue hardship" standard, and held that an employer may demonstrate "undue hardship" by showing "that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business."

The Supreme Court Attempts to Place Some Contours Around The New Standard

Although the Supreme Court redefined this "undue hardship" standard in *Groff*, it was careful to note that its application is context specific, and therefore, should be considered at the lower court level. It instructed lower courts to "apply the 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.'" And without adopting the current EEOC guidance on this issue, it also recognized that such guidance would be mostly "unaffected" by the decision, including with respect to analyzing temporary costs, voluntary shift swapping, occasional shift swapping and administrative costs.

The Court also provided some additional guidance when an employer analyzes undue hardship in the context of impact on other employees.

The Court recognized that, often times, an employer argues that an accommodation is unreasonable solely based on the impact it has on other employees. But the Court also reminded employers that this employee-based impact must also then translate to an impact on the conduct of the employer's business. Thus, employers need to be careful to confirm whether and when an employee-based impact also sufficiently impacts the conduct of the business.

On this point, while the Court did not specifically explain when an impact on employees would also impact the conduct of the business (a notable omission), it did note at least two particular instances when it does not: where the undue hardship (1) "is attributable to employee animosity to a particular religion, to religion in general, or to the very notion of accommodating religious practice," or (2) results in additional labor to coordinate voluntary shift swaps.

Finally, the Court reminded employers: that they have an obligation to find a reasonable accommodation that does not cause undue hardship in response to their employee's religious based request; that such an obligation does not simply end because they are in a position to reject an employee's requested accommodation; and that they must explore alternatives to see if anything else will work.

What This Means for Employers

In practical terms, this opinion creates a more demanding standard making it more difficult for employers to deny religious-based accommodation requests.

Employers should revisit their policies and procedures for administrating religious-based accommodation requests to ensure future ones will be analyzed under the appropriate standard.

Further, employers should also remember that certain other state and local laws may define undue hardship in an even more restrictive manner and ensure they are accounted for when analyzing potential accommodations.

Finally, employers should also track legal developments in this area as a new body of law will take shape interpreting this new standard.

Notes

1. https://www.supremecourt.gov/opinions/22pdf/22-174_k536.pdf.
2. Trans World Airlines, Inc. v. Hardison, 432 U.S. 63 (1977).

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