Employer Update

Weil

July 6, 2023

Supreme Court Clarifies and Augments Title VII Religious Accommodation Standard: *De Minimis* No More

*By John P. Barry, Celine J. Chan, and Elizabeth J. Casey**

In *Groff v. DeJoy*, 600 U.S. __ (2023), a unanimous Supreme Court of the United States clarified and augmented the decades-old standard pursuant to which employers may invoke the "undue hardship" defense in denying requests for religious accommodations under Title VII of the Civil Rights Act of 1964. Under the new standard, an employer may establish an "undue hardship" only if the burden is "substantial" "in relation to the conduct of its particular business."

An overview of the background and key takeaways from the decision is below. As the Supreme Court expressly labeled its new standard "context-specific" in application, it remains to be seen how the lower court will apply the decision to the particular set of facts in *Groff*. Weil will continue to monitor developments in this space, and remains available to advise how to navigate the changes coming out of this decision, including with respect to internal religious and other accommodation processes and requests, and employee training and policies regarding the same.

Background and *TWA v. Hardison*

Under Title VII, covered employers cannot discriminate against an individual "with respect to his compensation, terms, conditions, or privileges [of] employment, because of such individual's . . . religion." 42 U.S.C. § 2000e–2(a)(1). In interpreting Title VII, the Equal Employment Opportunity Commission implemented regulations requiring employers "to make reasonable accommodations to the religious needs of employees" so long as doing so would not place an "undue hardship on the conduct of the employer's business." 29 C.F.R. § 1605.1 (1968).

With no statutory definition of "undue hardship," courts and the EEOC have relied for a near half-century as authoritative interpretation on the 1977 Supreme Court decision in *Trans World Airlines v. Hardison*. In *Hardison*, the Court stated that requiring an employer to bear more than a "*de minimis* cost" is an "undue hardship" justifying denial of a religious accommodation. 432 U.S. 63, 84 (1977). The EEOC even incorporated the *de minimis* language into its regulations implementing Title VII as it relates to religious discrimination. *See* 29 C.F.R. § 1605.2(e)(1).

*Summer Associate Clare Godfryd assisted in the preparation of this article.

But in *Groff*, the Supreme Court rejected the "more than a *de minimus* cost" standard, emphasizing that the *de minimus* language in *Hardison* came from a single line taken out of context and that related to one narrow aspect of a much broader analysis. Upon closer examination of Title VII, along with the context of the *Hardison* analysis, the Court in *Groff* held that Title VII requires that an employer show that the burden of religious accommodation would result in "*substantial increased costs* in relation to the conduct of its particular business" (emphasis added).

Groff v. DeJoy Background

Gerald Groff is an evangelical Christian whose religious beliefs prohibit him from working on Sundays in observation of the Sabbath. In 2013, USPS entered into an agreement with Amazon to facilitate Sunday deliveries. As a result, Groff was instructed that he would have to work on Sundays. Groff requested a transfer to a smaller USPS station that at the time did not make Sunday deliveries. But shortly thereafter, his new station began making deliveries on Sundays.

In an effort to accommodate Groff's religious beliefs, USPS offered to find other postal carriers to cover Groff's Sunday shifts, but on numerous occasions, no co-workers were available. USPS also offered to allow Groff to come in late on Sundays after church, to allow Groff to take another day off to observe the Sabbath, and to excuse Groff if he could find his own Sunday coverage. USPS rejected Groff's request to transfer to a position that did not require Sunday work because no such positions were typically available. When no co-workers were available to cover his Sunday shifts, Groff was progressively disciplined for failure to report to work, and he ultimately resigned.

Groff filed suit against USPS under Title VII. *Groff v. DeJoy*, 2021 WL 1264030, at *1 (E.D. Pa. Apr. 6, 2021). Groff alleged, in part, that USPS failed to accommodate his observation of Sunday Sabbath. *Id*. USPS argued, and the District Court for the Eastern District of Pennsylvania agreed, that USPS reasonably accommodated Groff, and, in the alternative, USPS would suffer an undue hardship if it had to accommodate Groff. *Id*. at *9–*12. Relying on *Hardison*, the District Court held that exempting Groff from Sunday work would have imposed "more than a *de minimis* cost" on USPS because the accommodation would have violated a collective bargaining agreement and burdened his colleagues. *Id*. at *11. The Third Circuit affirmed, opining that "exempting Groff from working on Sundays caused more than a de minimis cost on USPS because it actually imposed on his coworkers, disrupted the workplace and workflow, and diminished employee morale." *Groff v. DeJoy*, 35 F.4th 162, 175 (3d Cir. 2022).

The Supreme Court's Decision

Justice Alito, writing for a unanimous court, rejected the lower courts' application of the *Hardison* "*de minimis*" standard. The Court explained that while the *de minimis* language in *Hardison* has been overemphasized, many lower courts have correctly understood that the language should not be read in a manner undermining the decision's simultaneous references to "substantial" cost. The Court also recognized that the EEOC has attempted to "soften the impact" of the language by cautioning against using the *de minimis* standard to reject out of hand the administrative costs involved in reworking schedules, the infrequent or temporary payment of premium wages for a substitute, and the cost of allowing voluntary shift swaps when not contrary to a seniority system. But the Court was also troubled by arguments from *amici* that employers have relied on the *de minimis* standard to deny "even minor accommodations" for religious beliefs, which has increased job market barriers for members of minority religions.

The Supreme Court ultimately declined to overrule *Hardison* and instead clarified the meaning of "undue hardship" under Title VII. Based on *Groff,* now showing "more than a *de minimis* cost" is no longer sufficient to establish an "undue hardship" under Title VII. Rather, the Court held that the correct reading of *Hardison* is that to deny a religious accommodation, "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"—mere "additional costs" are not sufficient. This is a fact-specific inquiry, and the Court

directed lower courts to consider "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." (internal quotations omitted). Without ratifying an entire body of EEOC interpretation based on the decision at hand, the Court did suggest that its clarification in *Groff* may prompt little, "if any," change in the EEOC's existing guidance that no undue hardship would be imposed by "temporary costs, voluntary shift swapping, occasional shift swapping or administrative costs."

The Court highlighted that lower courts must still ask whether a hardship would be substantial in the context of an employer's business in the common sense manner. The Court further indicated that impacts on coworkers are generally relevant to the analysis only to the extent those impacts go on to affect the conduct of the business. But of course, a hardship attributable to employee animosity towards a particular religious practice cannot be considered undue.

The Court also made clear that Title VII requires that an employer reasonably accommodate an employee's practice of religion, not merely assess the reasonableness of a particular possible accommodation or accommodations. In other words, an employer may not simply consider the specific accommodation request raised by the employee and conclude that it would constitute an undue hardship. An employer must consider other options that may not have the same impact.

Practical Considerations

With a heightened standard for establishing undue hardship, employers will likely face an uptick in religious accommodation requests and associated failure to accommodate claims. And while it remains to be seen how lower courts will apply this new standard, in response to the Supreme Court's clarification of an employer's burden, we recommend taking the following steps:

- Review and update written policies or procedures to remove any references to the "more than *de minimis* cost" standard in the context of religious accommodation requests. (Note that state and local jurisdictions may have more stringent standards than that articulated in *Groff*, and employers must also comply with those to the extent applicable);
- Review any pending or recently denied religious accommodation requests to evaluate whether the decision-making process is defensible under the new standard;
- Prepare legal and HR, as well as those in supervisory and managerial positions who will need to work closely with legal and HR, for an influx of religious accommodation requests, including by delivering updated training on accommodation processes;
- Anticipate potential accommodations requests related to schedule changes or prayer/worship breaks and exemptions from certain aspects of dress and grooming policies and evaluate how those requests and potential associated costs will actually impact the "conduct of [an employer's] particular business"; and
- Review diversity, equity and inclusion initiatives to ensure religious differences are discussed, considered and respected.

Employer Update is published by the Employment Litigation practice group of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, +1 212 310 8000, www.weil.com.

If you have questions concerning the contents of this issue, or would like more information about Weil's Employment Litigation practice, please speak to your regular contact at Weil, or to the editors or practice group members listed below:

Editors:

John P. Barry
Partner, Practice Group Leader
New York
+1 212 310 8150
john.barry@weil.com

Celine Chan
Counsel
New York
+1 212 310 8045
celine.chan@weil.com

Justin DiGennaro
Counsel
New York
+1 212 310 8219
justin.digennaro@weil.com

Rebecca Sivitz
Counsel
Boston
+1 617 772 8339
rebecca.sivitz@weil.com

Gary D. Friedman
Partner
New York
+1 212 310 8963
gary.friedman@weil.com