Updates

The Supreme Court of the United States issued its opinion in *Groff v. DeJoy* (opinion here) on June 29, 2023, holding that Title VII requires an employer denying a religious accommodation to show that granting the accommodation would result in "substantial increased costs in relation to the conduct of its particular business." This decision clarifies the established precedent of *Trans World Airlines, Inc. v. Hardison*, which courts had interpreted as setting forth a "more than de minimis cost" standard when analyzing undue hardship in this context.

Trans World Airlines, Inc. v. Hardison **Explained**

To understand the import of the *Groff* decision, it is important to discuss it in the context of precedent dating back to 1977. That year, the Supreme Court issued its opinion in *Trans World Airlines, Inc. v. Hardison,* which addressed an employer's denial of a religious accommodation request on the basis of undue hardship. The Court stated that requiring an employer to "bear more than a de minimis cost" to accommodate an employee's religious beliefs is an undue hardship. "More than de minimis cost" remained the standard by which many courts measured the undue hardship placed on an employer in offering religious accommodations.

The employee in *Hardison* sought a religious accommodation to be excused from work on Saturday because it was his Sabbath. Granting the employee's request would have required TWA to compel Hardison's coworkers to take over his shift, in violation of seniority rights established via a collective bargaining agreement. Pointing to the fact that "seniority systems are afforded special treatment under Title VII itself," the Court explained that Title VII did not require an employer and a union that had agreed on a seniority system to deprive senior employees of their seniority rights in order to accommodate a junior employee's religious practices. The Court went on to consider other options, including inducing other workers to work on Saturday by paying them overtime wages. The other options were rejected as not feasible without devoting significant analysis to what costs might constitute an undue hardship, other than to say that requiring TWA to incur more than a *de minimis* cost would constitute an undue hardship.

Groff Seeks Religious Accommodation To Be Exempt From Working Sunday Shifts

Gerald Groff was a rural carrier associate working for the U.S. Postal Service (USPS). He identifies as an evangelical, Protestant Christian. Groff resigned from his job after the USPS did not grant him a religious accommodation to not work shifts on Sundays.

The USPS offered to find employees to trade shifts with him, but, on numerous occasions, no co-worker would swap. Groff requested that the USPS exempt him entirely from Sunday work, but the USPS declined, stating that his requested accommodation would cause an undue hardship. As in *Hardison*, the requested exemption also would have violated a collective bargaining agreement. In response, Groff did not work when scheduled on Sundays, prompting the USPS to institute progressive discipline proceedings. Groff eventually resigned in 2019, stating that he decided to leave his job because he was unable to find an "accommodating employment atmosphere with the USPS that would honor [his] personal religious beliefs" and would, instead, pursue "more rewarding work/service interests."

Groff Sues the USPS for Religious Discrimination and Loses

Groff sued the USPS under Title VII of the Civil Rights Act of 1964 for religious discrimination under theories of disparate treatment and failure to accommodate. The district court granted the USPS's motion for summary judgment on both of Groff's theories of religious discrimination, holding that allowing Groff to be exempt from all Sunday shifts would have more than a *de minimis* impact on coworkers and, thus, met the undue hardship

standard for Title VII.

The U.S. Court of Appeals for the Third Circuit affirmed the lower court, holding that the USPS did not violate Title VII because exempting Groff from working on Sundays caused undue hardship to the USPS by imposing on Groff's coworkers, disrupting the workplace and workflow, and diminishing employee morale.

Groff Files Petition for Writ of Certiorari

Groff filed a petition for a writ of certiorari, and the Supreme Court heard oral argument on April 18, 2023. In his certiorari petition, Groff argued that defining undue hardship as meaning anything incurring more than a *de minimis* cost for an employer "'effectively nullif[ies]' the statute's promise of a workplace free from religious discrimination." Groff urged the Court to adopt the definition of "undue hardship" found in the Americans with Disabilities Act (ADA), which is "an action requiring significant difficulty or expense"—a higher standard than the undue hardship standard under Title VII. Groff also urged the Court to answer the question of "whether an employer may demonstrate 'undue hardship on the conduct of the employer's business' under Title VII merely by showing that the requested accommodation burdens the employee's coworkers rather than the business itself."

Oral Argument in *Groff*

At oral argument, both parties agreed that the *Hardison de minimis* language was not the appropriate standard. They disagreed, however, as to what the appropriate standard should be. Groff advocated replacing the current standard with the ADA's "significant difficulty or expense test." The government contended that the Supreme Court in *Hardison* was using the term "de minimis" interchangeably with "substantial costs" and that lower courts and the Equal Employment Opportunity Commission (EEOC) have properly applied Hardison in light of its context. The government urged the justices to uphold *Hardison* so as to not "disrupt and unsettle" the vast body of law and EEOC guidance interpreting the context-dependent meaning of "undue hardship" under *Hardison*.

The Supreme Court's Opinion

The Supreme Court unanimously agreed with the government, holding that Title VII requires an employer denying a religious accommodation to show that granting the accommodation would result in "substantial increased costs in relation to the conduct of its particular business." In an opinion written by Justice Alito, the Court further explained that when analyzing undue hardship, courts must 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.'"

Further, the Court addressed the second question presented and noted that coworker impact may only be considered in the undue hardship analysis to the extent that the impact also affects the conduct of the business. "[A] hardship that is attributable to employee animosity to a particular religion, to religion in general, or to the very notion of accommodating religious practice cannot be considered 'undue.'"

Additionally, the Court clarified that "Title VII requires that an employer reasonably accommodate an employee's practice of religion, not merely that it assess the reasonableness of a particular possible accommodation or accommodations." As in the ADA context, employers are thus required to consider multiple options for reasonable accommodations, if available, rather than simply concluding a single accommodation option causes the employer undue hardship.

The Bottom Line

The Court expressly declined to provide factual scenarios for what might meet Title VII's undue hardship standard, leaving it to the lower courts to establish the contours of this analysis. While the Court did not specifically adopt previous EEOC guidance, it did note 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." This prior guidance has said that undue hardship should not encompass things such as "administrative costs" in reworking schedules, the "'infrequent' or temporary 'payment of premium wages for a substitute,' and 'voluntary substitutes and swaps' when they are not contrary to a 'bona fide seniority system.'" The Court's favorable discussion of EEOC guidance suggests the guidance remains a good starting point for employers and courts alike when assessing the validity of the undue hardship defense.

Given that the undue hardship analysis is a "fact-specific inquiry," it may be more difficult for employers to obtain summary judgment on this defense in the short term until clarifying precedent is developed in the lower courts.

Next Steps for Employers

Employers should take the following actions and contact experienced counsel for guidance:

- Review current policies on religious discrimination and accommodation in the workplace to determine if updates are needed in light of the *Groff* decision.
- Review current internal processes for evaluating religious accommodation requests and modify those processes to conform to the ruling, if necessary. Ensure that when considering whether an employee's request for religious accommodation should be granted, careful consideration of various types of accommodation is given, as an employer would do in assessing a requested ADA accommodation.
- If accommodation options may affect co-workers in a potentially negative fashion, evaluate how the accommodation may affect the conduct of the business before rejecting the option solely based on co-worker concerns.

- Train managers and human resources professionals on how to handle religious accommodation requests in accordance with the updated policies and processes.

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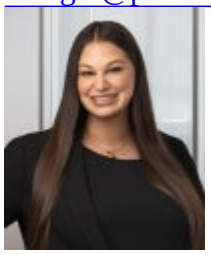

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