August 4, 2023

Supreme Court Reexamines Undue Hardship Standard for Title VII Religious Accommodation

The U.S. Supreme Court recently issued a decision reinterpreting the undue hardship standard in religious accommodation cases under Title VII of the Civil Rights Act of 1964, effectively creating a greater legal burden for employers when denying employees religious accommodation in the workplace. The Supreme Court's decision in *Groff v. DeJoy* marks the first time in more than 45 years that the Supreme Court has considered the applicable standard to determine whether an employee's request for a religious accommodation imposes an "undue hardship." Previously, employers could establish undue hardship by showing that granting an employee's request for religious accommodation required them "to bear more than a *de minimis*" cost. The new standard articulated by the Supreme Court in *Groff v. DeJoy* will have significant consequences for employers throughout the United States, as it requires an individual assessment of each request for religious accommodation, including an examination of the cost of granting an accommodation relative to how an employer conducts its particular business.

Title VII's Religious Accommodation Requirement and the De Minimis Standard

Title VII requires employers to reasonably accommodate employees whose sincerely held religious beliefs, practices or observances conflict with work requirements, unless the accommodation would create an undue hardship for the employer.

It was unclear, however, what an employer was required to demonstrate when an employee's requested religious accommodation created an undue hardship. In 1977, the Supreme Court issued its decision in *Trans World Airlines, Inc. v. Hardison*, which considered whether a commercial airline discriminated against one of its employees when it terminated his employment for his refusal to work on weekends. The employee claimed that working on weekends was prohibited by his religion. The airline argued that the accommodation requested by the employee—namely, a switch to a four-day work schedule—created an undue hardship for the airline, as the employee's position "was essential and on weekends he was the only available person on his shift to perform it." Thus, the proposed accommodation would significantly impair the airline's functions.

The Supreme Court sided with the airline and articulated a clear standard for determining "undue hardship" in religious accommodation cases. The Supreme Court found that requiring an employer "to bear more than a *de minimis* cost" to accommodate an employee's religious practices "when no such costs are incurred to give other employees the days off that they want would involve unequal treatment of employees on the basis of their religion." As such, the Supreme Court held that all employers needed to do to establish undue hardship under Title VII was to show that the cost of the accommodation was more than *de minimis*.

The New Standard Under Groff

The Supreme Court recently had the chance to review its *Hardison* decision in *Groff v. DeJoy*. Groff is a former postal worker for the U.S. Postal Service who resigned from his position after receiving progressive disciplines for his refusal to work on Sundays. Groff claimed that working on Sundays conflicted with his religion as an Evangelical Christian because Sundays

should be devoted to worship and rest as opposed to "secular labor." A unanimous Supreme Court sided with Groff, and in doing so took the opportunity to abdicate the *de minimis* standard in favor of a more employee-friendly standard.

With regard to *Hardison*, the Supreme Court held "that showing 'more than a *de minimis* cost,' as that phrase is used in common parlance, does not suffice to establish 'undue hardship' under Title VII." Referencing the *Hardison* Court's use of the word "substantial" in describing an employer's burden in religious accommodation cases under Title VII, the Supreme Court adopted a new standard for establishing undue hardship, whereby an employer that denies a religious accommodation is required to show that the burden incurred by the employer "is substantial in the overall context of an employer's business." The Supreme Court noted that this is a fact-specific inquiry, which an employer can meet by showing "substantial increased costs in relation to the conduct of its particular business." The Supreme Court also expressed its opinion that this standard is more in line with the plain language of Title VII.

Bottom Line

The new standard for proving undue hardship in religious accommodation cases brought under Title VII creates a more onerous standard for employers to meet when denying their employees' requests for religious accommodation. While *Hardison*'s *de minimis* standard, which was in effect for more than 40 years, allowed employers to demonstrate undue hardship by showing only a *de minimis* cost that would be incurred by granting a religious accommodation, the *Groff* standard requires a fact-sensitive analysis of the cost of the requested accommodation relative to the overall context of their business operations. In other words, the standard is no longer uniform, as what may be substantial for a small business may not be substantial for a larger one. Employers should be aware of the new standard when they are considering denying a religious accommodation request based on undue hardship.

Authors

Theresa A. Kelly

Partner

Parsippany, NJ | (973) 966-8168

tkelly@daypitney.com

Jonathan E. Kohut

Associate

Parsippany, NJ | (973) 966-8116

jkohut@daypitney.com

Heather Weine Brochin

Partner

Parsippany, NJ | (973) 966-8199

New York, NY | (212)-297-5800

hbrochin@daypitney.com

Glenn W. Dowd

Partner

Hartford, CT | (860) 275-0570

gwdowd@daypitney.com

Francine Esposito

Partner

Parsippany, NJ | (973) 966-8275

fesposito@daypitney.com

Rachel A. Gonzalez

Partner

Parsippany, NJ | (973) 966-8201

New York, NY | (212) 297-5800

rgonzalez@daypitney.com

James M. Leva

Partner

Parsippany, NJ | (973) 966-8416

Stamford, CT | (973) 966-8416

jleva@daypitney.com

Daniel L. Schwartz

Partner

Stamford, CT | (203) 977-7536

New York, NY | (212) 297-5800

dlschwartz@daypitney.com