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Supreme Court Clears the Way for an Influx of Religious Accommodation Requests

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As is tradition, the United States Supreme Court likes to save its blockbuster opinions until the end of the term. Such is the case with the June 28 ruling in *Groff v. Dejoy*, where the Court, while indicating that it was merely "clarifying" the existing legal standard, may have wiped away almost 50 years of precedent by requiring employers to show a "substantial increased costs" in order to deny a worker's request for religious accommodation. The *Groff* ruling is likely to result in an uptick of difficult to address religious accommodation requests.

Background

Employers may be familiar with the prior law on religious accommodation and how it differs from accommodation requests made under the Americans with Disabilities Act (ADA). Most employers are required to provide a reasonable accommodation to an employee's working conditions to address a sincerely held religious belief. Similarly, most employers are required to provide a reasonable accommodation to a disabled employee in order to assist the employee in performing the essentially functions of the job. Both laws do not require the accommodation if it would create an undue hardship on the employer. That is where the two laws diverge.

It is difficult for an employer to show an undue hardship under the ADA, where general guidance states that the hardship must involve "significant difficulty or expense" based upon a review of factors such as the company's financial resources, cost of the accommodation, impact on other employees, and nature of the company's operations. Conversely, the "undue hardship" bar under religious accommodation law is relatively low, with Supreme Court precedent from 1977 suggesting that all the employer needs to show is "more than a de minimis (i.e. minimal)" cost or inconvenience.

Despite this difference, there was thought to be some symmetry in the two laws because, although the undue hardship bar in the ADA context was high, so was the proof needed for an employee to illustrate he or she suffered from a disability. While the bar to illustrate an undue hardship in the religious context was relatively low, so too was the level of proof needed to show that the employee had some type of sincerely held religious belief.

Groff

Groff was a mail carrier. For religious reasons, he sought Sundays off. His employer (USPS) accommodated this request for a time, but as demand increased, USPS found it more and more difficult to get the mail delivered given Groff's day off. USPS ultimately required Groff to work on Sundays, citing undue hardship. Groff resigned and sued, claiming that USPS's failure to accommodate his religious convictions was a violation of Title VII of the Civil Rights Act.

The lower courts sided with USPS, which argued that scheduling was a problem, other employees were resentful of Groff being permitted to have Sundays off, and that the "special treatment" for Groff resulting in at least one employee quitting and others complaining to management. The lower court found that USPS's evidence "far surpasses" the de minimis burden needed to show undue hardship.

Groff brought an appeal to the Supreme Court, arguing that the 1977-based standard was just plain wrong. Groff focused on the exact words "undue hardship", arguing that those words can only be logically interpreted to require "significant" costs or difficulty, and not merely anything more than a "de minimis" cost or inconvenience.

The Supreme Court held that an employer that denies a religious accommodation must show that the burden of granting an accommodation would result in "substantial increased costs in relation to the conduct of its particular

business." The decision was in many ways a middle ground between USPS's position, which was that prior precedent dictated that the de minimis burden be applied, and Groff's argument that "hardship" should be read to mean "significant difficulty or expense". The Court went on to agree with prior EEOC guidance "explaining why no undue hardship is imposed by temporary costs, voluntary shift swapping, occasional shift swapping, or administrative costs". The Court also rejected Groff's assertion that an undue hardship could not take into account the impact a potential accommodation has on a person's co-workers. "Because the conduct of a business plainly includes the management and performance of the business's employees, undue hardship on the conduct of a business may include undue hardship on the business's employees."

What Does It Mean for Employers

While the Supreme Court has positioned its opinion as one of "clarification" and not of setting a new standard, the decision may be read otherwise, and courts and regulatory agencies will no longer be referring to a "de minimis" standard versus the rather plainly heightened standard of showing "substantial increased costs in relation to the conduct of its particular business." The result is likely to be that employers will see an uptick in religious accommodation requests, ranging from exceptions to vaccination programs, to taking off religious holidays (or every Saturday or Sunday), to prayer breaks, to exceptions to any and all matters of dress codes. Employers will no longer be able to confidently and with relative ease set forth some type of burden to satisfy the "more than de minimis" standard, but will now need to thoroughly evaluate the request in light of *Groff.*

Partridge Snow & Hahn Partners Michael A. Gamboli and Alicia J. Samolis are ready to answer any related questions. For additional information and resources, visit Employment & Labor.

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