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June 30, 2023 • Advisory • www.atllp.com

SCOTUS CLARIFIES THAT AN EMPLOYER MAY DENY RELIGIOUS ACCOMMODATIONS ONLY WHEN EMPLOYER WOULD INCUR "SUBSTANTIAL INCREASED COSTS"

In a unanimous decision issued June 29, 2023, the Supreme Court of the United States (SCOTUS) ruled in *Groff v. DeJoy* that, in order to comply with the religious accommodation provisions of Title VII of the Civil Rights Act of 1964, an employer that wishes to deny an accommodation is required to show that the burden of granting an accommodation for the religious practice of an employee would result in an "undue hardship," which the Court has now defined as "substantial increased costs in relation to the conduct of its particular business." This differs from the previous "undue hardship" standard followed by many courts, stemming from a 1977 decision which had been interpreted as requiring only more than a *de minimis* cost to prove an undue hardship for the employer.

Title VII requires employers to accommodate the religious practice of their employees unless doing so would impose an "undue hardship" on the conduct of the employer's business. In *Groff*, plaintiff Gerald Groff worked as a Rural Carrier Associate for the United States Postal Service (USPS) in Quarryville, Pennsylvania. Groff is an Evangelical Christian who objects to working on Sundays for religious reasons, and when he began working at USPS, the job generally did not require him to do so. However, after USPS began accepting Sunday deliveries through Amazon, Groff was told that he would be required to work on Sundays. Although USPS would redistribute his Sunday work to other carriers assigned to that location, one or more employees complained about this arrangement. Throughout this time period, Groff continued to receive progressive discipline for failing to work on Sundays. Groff resigned in 2019, and claims that he did so only in light of his expected termination.

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Groff brought a lawsuit under Title VII of the Civil Rights Act, asserting that USPS could have accommodated his Sunday Sabbath observance without undue hardship on the conduct of USPS's business. The District Court granted summary judgment to USPS, and the Third Circuit affirmed. Citing the standard from the 1977 decision, *Hardison v. Trans World Airlines*, the Third Circuit reasoned that requiring the employer to bear more than a *de minimis* cost to provide a religious accommodation is an "undue hardship" and that this threshold was not difficult for an employer to overcome. Thus, exempting Groff from Sunday work, the Third Circuit found, had imposed inconvenience on his coworkers, disrupted the workplace and workflow, and diminished employee morale. That was enough to constitute an "undue hardship" on USPS.

Groff appealed to SCOTUS. *Groff v. DeJoy* is the Court's first opportunity in almost 50 years to explain the contours of *Hardison v. Trans World Airlines*, which concerned a similar dispute between an employee who observed the Sabbath and an employer who operated its business 24 hours per day, 365 days per year. In *Hardison*, the Court considered Title VII's express, special protection for bona fide seniority systems, and determined that Title VII does not require an accommodation that involuntarily deprives employees of seniority rights. 432 U.S. 63, 80 (1977). The oft-quoted line from *Hardison* that has formed the threshold for religious accommodations reads as follows: "To require TWA to bear more than a de minimis cost in order to give *Hardison* Saturdays off is an undue hardship." However, SCOTUS noted that the lower courts have relied on that statement out of context, ignoring the *Hardison* court's "repeated references to 'substantial expenditures' or 'substantial additional costs'" as underlying its ruling. Moreover, in the Court's opinion in *Groff*, the Court noted that a "bevy of diverse religious organizations has told this Court that the de minimis test has blessed the denial of even minor accommodation in many cases, making it harder for members of minority faiths to enter the job market."

In reaching its holding in *Groff*, the Supreme Court agreed that *Hardison* "does not compel courts to read the 'more than *de minimis*' standard 'literally' or in a manner that undermines *Hardison*'s references to 'substantial' cost." Accordingly, the Court held that "undue hardship" is shown when the "the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business." The Court emphasized that this is a "fact-specific inquiry," and that courts must "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."

When considering an employee's religious accommodation request, employers should carefully consider the clarified standard articulated in *Groff* and, where

appropriate, consult with counsel. If you have any questions specific to your organization, please contact your regular Armstrong Teasdale lawyer or one of the authors listed below.